



CITY OF PORTLAND, OREGON



Bureau of Police

Ted Wheeler, Mayor
Jami Resch, Chief of Police

1111 S.W. 2nd Avenue • Portland, OR 97204 • Phone: 503-823-0000

Integrity • Compassion • Accountability • Respect • Excellence • Service

Directives 330.00, Internal Affairs, Complaint Intake, and Processing; 331.00, Supervisory Investigations; 332.00 Administrative Investigations; 333.00, Criminal Investigations of Portland Police Bureau Employees and Other Law Enforcement Agency Sworn Employees; 334.00, Performance Deficiencies; 335.00, Discipline Process; 336.00, Police Review Board; 337.00, Police Review Board Selection; and 338.00, Discipline Guide

Executive Summary

Introduction

In accordance with the 2012 Department of Justice (DOJ) Settlement Agreement, the Portland Police Bureau (PPB) is required to conduct an initial six-month and subsequent 12-month reviews of DOJ-identified directives after they have received DOJ approval and been implemented by the Bureau. The Bureau enacted Directives 330.00, Internal Affairs, Complaint Intake, and Processing; 331.00, Supervisory Investigations; 332.00 Administrative Investigations; 333.00, Criminal Investigations of Portland Police Bureau Employees and Other Law Enforcement Agency Sworn Employees; 334.00, Performance Deficiencies; 335.00, Discipline Process; 336.00, Police Review Board; 337.00, Police Review Board Selection; and 338.00, Discipline Guide, shortly after receiving DOJ approval in early 2018. PPB then 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 conducting this six-month review, the Bureau revised a few of the directives to address unintended operational impacts, clarify procedures, and incorporate City-adopted changes to the discipline process.

Public Comments

The Bureau received very little feedback on the aforementioned directives over the course of both universal review and public comment periods. Participants generally commented on the Bureau's procedures regarding complaint intake and investigations, as well as the structure of the discipline process. Because the Bureau received so few comments during the review periods, the following summarization pertains to those policies on which it received actionable or directive-specific feedback.

Directive 330.00, Internal Affairs, Complaint Intake, and Processing

The Bureau only received comments on the directive from a local community group during both universal review and public comment periods. The group primarily expressed concern about perceived inconsistencies between the Bureau's policy and City Code language and it also highlighted certain Bureau procedures with which it disagreed. Specifically, the community group suggested that provisions in the directive pertaining to the dismissal of a complaint are inconsistent with City Code.

The City Auditor adopted specific administrative rules regarding the Independent Police Review's (IPR) procedures for receiving and processing complaints. At the direction of the DOJ and in conjunction with the IPR Director, the Bureau developed complaint intake and processing procedures that mirror the City-established procedures. The process outlined in the "Administrative Closure" section of the policy, which provides guidance for Bureau-led investigations, is consistent with the City's Administrative Rule PSF 5.01, Independent Police Review Complaint Intake and Processing.

Directive 332.00, Administrative Investigations

During the first universal review and public comment period, a community group called on the Bureau to define the term "vulnerable populations," which the Bureau included in the section that pertains to interviewing witnesses for administrative investigations. The Bureau revised the language to clarify its intent and added a provision that allows any witness to request a support person during an interview.

Directive 333.00, Criminal Investigations of Police Bureau Employees and Other Law Enforcement Agency Sworn Employees

The Bureau received a recommendation to modify its policy to allow members to notify the IPR upon receipt of a complaint of criminal conduct by a Bureau member. Although it does not investigate complaints of this nature, the Bureau included IPR as a possible reporting outlet for members in this context to allow for an external option for members who may not feel comfortable making an internal notification of the complaint.

Directive 334.00, Performance Deficiencies

The Bureau did not make significant changes to this directive; however, it did adopt a recommendation made by a community group to clarify in policy that the Responsibility Unit (RU) Manager and Assistant Chief cannot take corrective action or otherwise act on proposed findings until Internal Affairs (IA) has approved the findings.

Directive 336.00, Police Review Board

As one commenter noted during the second universal review and public comment period, the Bureau proposed incorporating guidance regarding the Police Review Board's (PRB) involvement in the Bureau's collision review process. While certain collisions are eligible for PRB review, the Bureau is currently in the process of conducting a comprehensive assessment of its collision review process and procedures; therefore, the Bureau removed the proposed language at this time. The Bureau may seek to include similar language in the directive during the next review, at which time the Bureau's assessment of the collision will be complete.

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 closely reviewed all of the policies in conjunction with the DOJ, COCL, and City Attorney's Office. With the exception of Directive 335.00, Discipline Process, which required extensive revisions to incorporate the City-adopted stipulated discipline process, the Bureau made slight modifications to the policies, as the aforementioned working group did not identify any significant operational issues during the initial period of implementation. More specifically, the Bureau

added language to Directive 330.00, Internal Affairs, Complaint Intake, and Processing, to clarify the Bureau's role during IPR investigations and to provide clear guidance with regard to the handling of disposition letters when there are changes to findings. Changes to Directives 331.00, Supervisory Investigations, and 332.00, Administrative Investigations, largely consist of procedural clarifications, and Directive 333.00, Criminal Investigations of Police Bureau Employees and Other Law Enforcement Agency Sworn Employees (formerly, "Criminal Investigations of Police Bureau Employees") now includes guidelines for handling complaints of criminal conduct by sworn members from other law enforcement agencies. The Bureau's most significant changes came in the form of incorporating the City's language pertaining to the newly adopted stipulated discipline process, which essentially created a process by which certain categories of investigations are eligible for pre-determined upon discipline, into Directive 335.00, Discipline Process.

The Bureau believes that the revised directive provides more clarity and enhanced guidance to its members; however, any suggestions to further improve this policy are welcome during its next review.

These directives will become effective on April 25, 2020.

Published on 3/26/2020

330.00, Internal Affairs, Complaint Intake, and Processing

Refer:

- Administrative Rule PSF 5.01, Independent Police Review—Complaint Intake and Processing
- Administrative Rule PSF 5.19 3b (5), Independent Police Review Division – Case Handling Guidelines
- Administrative Rule PSF 5.20, Internal Affairs Guidelines for Screening Referrals from IPR
- City of Portland, Human Resource Administrative Rule (HRAR) 2.02, Prohibition Against Workplace Harassment, Discrimination, and Retaliation
- DIR 211.20, Files, Bureau and Division Personnel
- DIR 310.20, Discrimination, Harassment, and Retaliation Prohibited
- DIR 315.00, Laws, Rules, and Orders
- DIR 315.30, Satisfactory Performance
- DIR 331.00, Supervisory Investigations
- DIR 332.00, Administrative Investigations
- DIR 333.00, Criminal Investigations of Police Bureau Employees
- DIR 334.00, Performance Deficiencies
- DIR 335.00, Discipline Process
- DIR 336.00, Performance Review Board
- DIR 345.00, Employee Information System
- DIR 1200.00, Inspections, Responsibility, and Authority
- Internal Affairs Complaint Log Form

Definitions:

- **Administrative Closure:** In accordance with Administrative Rule PSF 5.20, a determination by the Internal Affairs (IA) Captain, only as permitted below, that after an initial investigation has been conducted by the Bureau or the Independent Police Review (IPR), a complaint will not be investigated further.
- **Administrative Investigation:** A complete investigation into allegations of policy violations, conducted by or at the direction of IA or IPR.
- **Complaint:** Any complaint made to the City by a member of the public, a PPB officer, or a civilian PPB employee of alleged misconduct by a Bureau member.
- **Mediation:** A voluntary, non-disciplinary, confidential process used in an effort to resolve certain complaints by community members. Mediation involves the use of a neutral, professionally trained mediator to help facilitate and direct discussions between a complainant and Bureau members.
- **Misconduct:** Conduct by a member that violates Bureau regulations, orders, directives, or other standards of conduct required of City employees.

- Supervisory Investigation (SI): A formal, non-disciplinary process in which the involved member's supervisor is tasked with reviewing a complaint stating a member provided poor quality of service or committed a rule violation that, if substantiated, would not result in corrective action greater than command counseling.

Policy:

1. The Portland Police Bureau and IPR shall work in partnership to address complaints of policy violations against members of the Portland Police Bureau. Jointly, the Bureau and IPR shall ensure that patterns or behaviors that erode community trust and confidence are identified and addressed impartially and professionally, that individual and organizational accountability for member conduct is promoted, and that policy and training issues that will strengthen our police-and-community relationship and quality of service are identified.

Procedure:

1. Role of IPR.
 - 1.1. As set forth in this directive and in city ordinance, IPR has a role in receiving, numbering, and documenting complaints regarding allegations of misconduct against members of the Bureau, monitoring IA investigations of complaints, coordinating appeals of Bureau findings of complaints, and recommending changes in police practice and policy. IPR has the authority to conduct investigations that may include the types of complaints described in section 5.3.1. of this directive.
2. Complaint Intake.
 - 2.1. Community Member Complaint.
 - 2.1.1. A community member may file a complaint (e.g., verbal, written, electronic) regarding alleged member misconduct with IPR, IA, a Police Bureau Precinct, the Police Commissioner, or with any Bureau member.
 - 2.1.1.1. If the community member elects to make a complaint in writing, the Bureau will ensure that complaint forms are made available at each precinct.
 - 2.1.2. If a community member expresses concern about the actions of a Bureau member, the receiving member shall notify a supervisor as soon as practical, but no later than end of shift.
 - 2.1.2.1. If the community member's concern alleges misconduct, the supervisor shall document the complaint and forward the information directly to IA.
 - 2.1.2.2. If the information is ambiguous or incomplete, the supervisor shall make inquiry sufficient to determine whether an allegation of misconduct is being made.
 - 2.1.2.2.1. If the supervisor determines that the allegation rises to the level of misconduct, they shall forward the allegation directly to IA.
 - 2.1.3. Supervisors receiving information about a possible complaint may contact the community member to clarify whether an allegation of misconduct is being made.
 - 2.2. Internal Complaints.
 - 2.2.1. Members may file a complaint against another Bureau member. The member may report the alleged misconduct to anyone in or out of the chain of command (e.g.,

the Chief, Bureau of Human Resources [BHR], etc.). Individuals receiving a complaint shall forward the information directly to IA.

- 2.2.2. If the circumstances warrant, the Bureau shall initiate an investigation, even in the absence of a complaint from an individual. Circumstances will warrant investigation when information regarding misconduct that has not been previously addressed and which, if true, could result in discipline.
- 2.3. When the IA Captain, the Assistant Chief of Investigations, or a member of the Police Commissioner's staff receives information that a member has engaged in conduct that may be subject to criminal and/or administrative investigation, they shall notify the IPR Director in a timely manner.
- 2.4. IA and BHR shall jointly conduct investigations regarding allegations related to HRAR 2.02. The IA Captain, or designee, shall immediately notify the Chief when any investigations involving HRAR 2.02, Directive 310.20, Discrimination, Harassment, and Retaliation Prohibited, or any other City Administrative Rule or Bureau directive the IA Captain deems appropriate are initiated. If allegations of misconduct involve the IA Captain and/or any other member of IA, the Chief shall be notified and shall designate a member of command staff to assume the role of the IA Captain and/or any other member of IA for all purposes related to the investigation.
- 2.5. Once IA receives a complaint, the authority for processing, investigating, or referring the complaint, unless the Chief directs otherwise in writing, is delegated by the Chief, to the IA Captain or designee. No Bureau official has the authority to stop, intercede in, suspend, or in any way direct and/or unduly influence the substance of an IA administrative investigation. When allegations of misconduct require immediate attention, supervisors shall initiate the necessary action and notify the IA Captain or designee and the appropriate Assistant Chief through the chain of command.
- 2.6. Documentation.
 - 2.6.1. The responding supervisor, or a designee, shall collect and document the following information, if available:
 - 2.6.1.1. Names of complainant(s) and witnesses, addresses, telephone numbers, email address, and dates of birth,
 - 2.6.1.2. Date, time, and place of alleged misconduct,
 - 2.6.1.3. Identification of the member(s) involved,
 - 2.6.1.4. Potential physical evidence identified in the complaint, and
 - 2.6.1.5. Nature of the complaint.
3. Complaint Processing and Assignment.
 - 3.1. Subject to the restrictions and criteria set forth in this Directive, the IA Captain or designee shall process each complaint through one of the following means:
 - 3.1.1. Administrative Investigation conducted by IA,
 - 3.1.2. Administrative Investigation conducted by the Responsibility Unit (RU),
 - 3.1.3. Administrative Investigation conducted by IPR,

- 3.1.4. Investigation by an outside entity, such as BHR, when IA has an actual conflict of interest or a special circumstance arises that, in the opinion of the IA Captain or designee, prohibits IA from conducting a timely or credible investigation,
 - 3.1.5. Supervisory Investigation,
 - 3.1.6. Mediation, or
 - 3.1.7. Administrative Closure.
- 3.2. The IA Captain or designee shall coordinate with the Assistant Chief of Investigations concerning all matters alleging criminal misconduct, in accordance with Directive 333.00, Criminal Investigations of Police Bureau Employees.
 - 3.3. A case shall be assigned for administrative investigation when there is a prima facie allegation of conduct that, if true, violates one or more Bureau directives and could result in discipline.
 - 3.4. Generally, IA investigators shall conduct IA investigations; however, the IA Captain or designee, when appropriate, may assign complaints to be investigated or resolved at the RU level. IA shall assign the case within seven days of receipt. In determining whether it is appropriate for an investigation to be conducted at the RU level, the IA Captain or designee shall consider the following criteria:
 - 3.4.1. If there could be a violation of criminal law,
 - 3.4.2. The seriousness of the allegation based on the level of potential discipline should the allegation be sustained,
 - 3.4.3. The involved member's complaint and discipline history,
 - 3.4.4. If the assignment to the RU presents a potential conflict of interest,
 - 3.4.5. Input provided by the member's RU Manager, and
 - 3.4.6. The involved RU Manager's ability to conduct an investigation.
 - 3.5. Allegation formation.
 - 3.5.1. If IA opens the case, they shall review the available material to determine which policies may have been violated. All alleged policy violations will be reflected in the investigation as allegations of misconduct.
 - 3.5.2. Allegations will be written in such a way as to:
 - 3.5.2.1. Accurately reflect the concerns of the complainant;
 - 3.5.2.2. Be phrased as violations of directives; and
 - 3.5.2.3. Be specific enough to give the involved member notice of what misconduct they are being accused.
 - 3.5.3. Allegations are subject to changes as the investigation uncovers new information or if the original allegation was improperly framed.
 - 3.5.4. All allegations against an involved member stemming from the same incident shall be investigated by a single investigative unit. The most serious allegation will govern the assignment of the case.
 - 3.6. The IA Captain or designee shall notify IPR of the processing and assignment of each complaint. If IPR disagrees with the decision, IPR will promptly notify the IA Captain,

or designee. IPR has the authority to conduct the administrative investigation if the disagreement is not resolved.

3.6.1. If IA is conducting an investigation at the time of the notification, IA shall cease its investigation and provide all investigative materials to IPR.

4. Notifications.

4.1. When IPR receives a complaint, IPR is responsible for providing each complainant and the involved member with a tracking number and informing each complainant of the allegation classification and assignment.

4.2. When IA opens a complaint, IA shall notify each complainant and the involved member of the allegation classification and assignment upon designating a case number. IA shall forward a copy of the notice to IPR.

4.2.1. IA shall notify the complainant if the case is internal (i.e., against a fellow member).

4.3. The information provided to the involved member shall be sufficient to reasonably apprise them of the nature of the allegation(s) in the complaint.

4.4. IA shall provide additional notification to each complainant and the involved member once the allegation has been framed. IA shall forward a copy of the second notification to IPR.

4.5. These notifications may be delayed in cases of criminal misconduct or where notification may compromise the integrity of an investigation.

5. Administrative Investigations.

5.1. An IA investigator assigned an administrative investigation shall follow the procedures described in Directive 332.00, Administrative Investigations.

5.1.1. IPR may choose to participate in an IA investigation without assuming the primary investigative role.

5.2. An RU investigator assigned an administrative investigation shall follow the procedures described in Directive 334.00, Performance Deficiencies, and Directive 332.00, Administrative Investigations.

5.3. An IPR investigator assigned an administrative investigation follows IPR procedures.

5.3.1. IPR may choose to conduct its own investigation. Pursuant to City Code, IPR has the authority to investigate cases of public interest which may include complaints involving:

5.3.1.1. Crowd control;

5.3.1.2. Disparate treatment or retaliation against a community member;

5.3.1.3. Vulnerable or mentally ill persons;

5.3.1.4. Sworn members of the rank of Captain or higher;

5.3.1.5. Cases in which IPR disagrees with the IA Captain's processing or assignment decision; or

- 5.3.1.6. Matters that the IPR Director determines are in the public interest and over which IPR has jurisdiction under City code.
 - 5.3.2. If IPR notifies the IA Captain that they intend to conduct an independent investigation of any of the complaints listed in Section 5.3.1., IA shall not conduct a concurrent investigation.
 - 5.3.3. IPR may request that IA participate in an IPR investigation, without relinquishing the primary investigative role. When requested, IA shall assist strictly in an administrative capacity and shall not perform any investigative functions unless IPR requests.
6. Supervisory Investigation.
 - 6.1. Pursuant to Directive 331.00, Supervisory Investigations, supervisors shall investigate complaints against a member that, if sustained, would not result in corrective action greater than command counseling.
7. Mediation.
 - 7.1. If the complainant is willing to engage in mediation, and the IPR Director and the IA Captain (or IA designee) conclude that mediation will meet the needs of the Police Bureau and the community, the involved member's RU Manager shall offer mediation to the involved officer. This option is contingent upon the mutual agreement of: the IA Captain (or designee), the involved member's RU Manager, the involved member(s), and the complainant. The IA Captain or designee, the involved member's RU Manager, or the involved member may decline an IPR recommendation to mediate a complaint.
 - 7.1.1. If any portion of a complaint relates to the following, then the complaint will not be eligible for mediation:
 - 7.1.1.1. Allegations of excessive force by a member;
 - 7.1.1.2. Allegations of criminal conduct by a member; or
 - 7.1.1.3. Circumstances in which the member is a witness against the complainant in a pending criminal or traffic prosecution.
8. Administrative Closure.
 - 8.1. With the exception of any allegation of excessive force and after initial investigation by either IA or IPR, the IA Captain or designee may administratively close an investigation after sufficient inquiry. In that circumstance, no further investigative action will be taken, although the IA Captain may refer the complaint to the appropriate RU Manager for an informal debriefing. The IA Captain may decline to conduct further investigation of an allegation contained within a complaint under the following circumstances as set forth in Administrative Rules PSF 5.01 and PSF 5.20:
 - 8.1.1. No Misconduct: The employee's conduct, as alleged by the complainant, does not violate Bureau policy.
 - 8.1.2. Trivial or *De Minimis* Rules Violation: The employee's conduct, as alleged by the complainant, constitutes a minor technical violation that, if sustained, would not result in discipline and is too minor or too vague to justify a Supervisory Investigation.
 - 8.1.3. No Jurisdiction: The complaint is against a non-employee, a former employee, or an employee of another department or other agency; or the employee resigns,

retires, or shall no longer be employed by the Bureau by the time an investigation and disciplinary process could be completed. Even if the Bureau lacks jurisdiction, the IA Captain may decide to investigate a complaint based on the nature and seriousness of the allegations or based on a request from IPR or another law enforcement agency. For example, if serious misconduct has been alleged, the IA Captain may order an investigation so that the findings will be placed in the employee's personnel or IA file, forward the findings to another agency, review the actions of the employee's supervisors, or recommend a review of Bureau training or policies. Discipline may also be imposed if the employee returns to service.

- 8.1.4. Judicial Review: If it is likely that the investigation would focus on the action of a complainant such as an allegation that the complainant was improperly cited for a traffic infraction. Such cases are better addressed through legal proceedings where a court could place witnesses under oath, take live testimony, and render a decision.
- 8.1.5. Unidentifiable Employee: A documented reasonable investigative effort was not able to identify the (involved) employee.
- 8.1.6. Previously Investigated or Adjudicated: The alleged conduct was previously investigated or adjudicated by the Bureau and the current complaint does not provide substantially new evidence or allegations.
- 8.1.7. Lacks Investigative Merit: The IA Captain or designee must articulate specific reasons why the complaint is not credible or reliable.
- 8.1.8. The Complainant Delayed Too Long in Filing the Complaint to Justify Present Investigation: Complaints alleging significant misconduct will not be dismissed due to a delay in filing.

8.2. In all cases in which an investigation is administratively closed, IA will prepare an explanation and send it to IPR so the complainant can be advised. If the investigation is administratively closed because the involved officer is an employee of a different agency, IA will refer the complainant to that agency.

9. Criminal Complaints Involving Members.

- 9.1. Allegations of member misconduct, which include a possible criminal law violation, shall be investigated concurrently as a criminal and administrative investigation. Criminal cases involving members shall be processed according to Directive 333.00, Criminal Investigations of Police Bureau Employees.

10. Unlawful Employment Practices, Discrimination Complaints, and Equal Employment Opportunities.

- 10.1. Complaints by members alleging unlawful employment practices shall be processed according to the City's Human Resource Administrative Rule 2.02, Prohibition Against Workplace Harassment, Discrimination, and Retaliation and Directive 310.20, Discrimination, Harassment, and Retaliation Prohibited.

11. Personnel Performance Deficiencies.

11.1. Complaints regarding job performance problems or minor work rule violations may be processed according to the procedures in Directive 334.00, Performance Deficiencies.

12. Disposition Notification.

12.1. If the complainant is a community member, IA shall write a disposition letter. The letter shall explain the investigation and findings or administrative closure. IA shall provide the letter to IPR within seven days of completion of the Police Review Board (PRB) for IPR's use to notify the complainant.

12.1.1. If the complainant is a Bureau member, IA shall notify the individual and IPR directly.

12.2. If any changes in the findings occur as a result of proceedings relating to the collective bargaining agreement between the City and the labor organizations that represent sworn members of the Police Bureau, or as a result of administrative or judicial review, IA shall write a new disposition letter to follow up with the complainant as permitted by law. The complainant shall be notified of the new findings as described in Section 12.1. and 12.1.1. of this directive.

13. Liability Management.

13.1. If an officer's use of force gives rise to a finding of liability in a civil trial, PPB shall: (1) enter that civil liability finding in the EIS; (2) reevaluate the officer's fitness to participate in all current and prospective specialized units; (3) if no IA investigation has previously been conducted based upon the same allegation of misconduct and reached an administrative finding, conduct a full IA investigation with the civil trial finding creating a rebuttable presumption that the force used also violated PPB policy, which presumption can only be overcome by specific, credible evidence by a preponderance of evidence; (4) if an IA investigation has already concluded based upon the same allegation of misconduct and failed to reach a sustained finding, identify whether any new evidence exists in the record of the civil trial to justify the reopening of the IA investigation, and if so, reinitiate an IA investigation; and (5) if an IA investigation has already concluded based upon the same allegation of misconduct and failed to reach a sustained finding, and no new evidence from the civil trial justifies reopening the IA investigation, work with IPR to identify the reason why the administrative finding was contrary to the civil trial finding and publish a summary of the results of the inquiry.

13.2. Police liability management may review closed IA cases for compliance with policy, rules, and procedures related to the review of claims against the Bureau.

330.00, Internal Affairs, Complaint Intake, and Processing

Refer:

- Administrative Rule PSF 5.01, Independent Police Review—Complaint Intake and Processing
- Administrative Rule PSF 5.19 3b (5), Independent Police Review Division – Case Handling Guidelines
- Administrative Rule PSF 5.20, Internal Affairs Guidelines for Screening Referrals from IPR
- City of Portland, Human Resource Administrative Rule (HRAR) 2.02, Prohibition Against Workplace Harassment, Discrimination, and Retaliation
- DIR 211.20, Files, Bureau and Division Personnel
- DIR 310.20, Discrimination, Harassment, and Retaliation Prohibited
- DIR 315.00, Laws, Rules, and Orders
- DIR 315.30, Satisfactory Performance
- DIR 331.00, Supervisory Investigations
- DIR 332.00, Administrative Investigations
- DIR 333.00, Criminal Investigations of Police Bureau Employees
- DIR 334.00, Performance Deficiencies
- DIR 335.00, Discipline Process
- DIR 336.00, Performance Review Board
- DIR 345.00, Employee Information System
- DIR 1200.00, Inspections, Responsibility, and Authority
- Internal Affairs Complaint Log Form

Definitions:

- **Administrative Closure:** In accordance with Administrative Rule PSF 5.20, a determination by the Internal Affairs (IA) Captain, only as permitted below, that after an initial investigation has been conducted by the Bureau or the Independent Police Review (IPR), a complaint will not be investigated further.
- **Administrative Investigation:** A complete investigation into allegations of policy violations, conducted by or at the direction of IA or IPR.
- **Complaint:** Any complaint made to the City by a member of the public, a PPB officer, or a civilian PPB employee of alleged misconduct by a Bureau member.
- **Mediation:** A voluntary, non-disciplinary, confidential process used in an effort to resolve certain complaints by community members. Mediation involves the use of a neutral, professionally trained mediator to help facilitate and direct discussions between a complainant and Bureau members.
- **Misconduct:** Conduct by a member that violates Bureau regulations, orders, directives, or other standards of conduct required of City employees.

- Supervisory Investigation (SI): A formal, non-disciplinary process in which the involved member's supervisor is tasked with reviewing a complaint stating a member provided poor quality of service or committed a rule violation that, if substantiated, would not result in corrective action greater than command counseling.

Policy:

1. The Portland Police Bureau and IPR shall work in partnership to address complaints of policy violations against members of the Portland Police Bureau. Jointly, the Bureau and IPR shall ensure that patterns or behaviors that erode community trust and confidence are identified and addressed impartially and professionally, that individual and organizational accountability for member conduct is promoted, and that policy and training issues that will strengthen our police-and-community relationship and quality of service are identified.

Procedure:

1. Role of IPR.
 - 1.1. As set forth in this directive and in city ordinance, IPR has a role in receiving, numbering, and documenting complaints regarding allegations of misconduct against members of the Bureau, monitoring IA investigations of complaints, coordinating appeals of Bureau findings of complaints, and recommending changes in police practice and policy. IPR has the authority to conduct investigations that may include the types of complaints described in section 5.3.1. of this directive.
2. Complaint Intake.
 - 2.1. Community Member Complaint.
 - 2.1.1. A community member may file a complaint (e.g., verbal, written, electronic) regarding alleged member misconduct with IPR, IA, a Police Bureau Precinct, the Police Commissioner, or with any Bureau member.
 - 2.1.1.1. If the community member elects to make a complaint in writing, the Bureau will ensure that complaint forms are made available at each precinct.
 - 2.1.2. If a community member expresses concern about the actions of a Bureau member, the receiving member shall notify a supervisor as soon as practical, but no later than end of shift.
 - 2.1.2.1. If the community member's concern alleges misconduct, the supervisor shall document the complaint and forward the information directly to IA.
 - 2.1.2.2. If the information is ambiguous or incomplete, the supervisor shall make inquiry sufficient to determine whether an allegation of misconduct is being made.
 - 2.1.2.2.1. If the supervisor determines that the allegation rises to the level of misconduct, they shall forward the allegation directly to IA.
 - 2.1.3. Supervisors receiving information about a possible complaint may contact the community member to clarify whether an allegation of misconduct is being made.
 - 2.2. Internal Complaints.
 - 2.2.1. Members may file a complaint against another Bureau member. The member may report the alleged misconduct to anyone in or out of the chain of command (e.g.,

the Chief, Bureau of Human Resources [BHR], etc.). Individuals receiving a complaint shall forward the information directly to IA.

- 2.2.2. If the circumstances warrant, the Bureau shall initiate an investigation, even in the absence of a complaint from an individual. Circumstances will warrant investigation when information regarding misconduct that has not been previously addressed and which, if true, could result in discipline.
- 2.3. When the IA Captain, the Assistant Chief of Investigations, or a member of the Police Commissioner's staff receives information that a member has engaged in conduct that may be subject to criminal and/or administrative investigation, they shall notify the IPR Director in a timely manner.
- 2.4. IA and BHR shall jointly conduct investigations regarding allegations related to HRAR 2.02. The IA Captain, or designee, shall immediately notify the Chief when any investigations involving HRAR 2.02, Directive 310.20, Discrimination, Harassment, and Retaliation Prohibited, or any other City Administrative Rule or Bureau directive the IA Captain deems appropriate are initiated. If allegations of misconduct involve the IA Captain and/or any other member of IA, the Chief shall be notified and shall designate a member of command staff to assume the role of the IA Captain and/or any other member of IA for all purposes related to the investigation.
- 2.5. Once IA receives a complaint, the authority for processing, investigating, or referring the complaint, unless the Chief directs otherwise in writing, is delegated by the Chief, to the IA Captain or designee. No Bureau official has the authority to stop, intercede in, suspend, or in any way direct and/or unduly influence the substance of an IA administrative investigation. When allegations of misconduct require immediate attention, supervisors shall initiate the necessary action and notify the IA Captain or designee and the appropriate Assistant Chief through the chain of command.
- 2.6. Documentation.
 - 2.6.1. The responding supervisor, or a designee, shall collect and document the following information, if available:
 - 2.6.1.1. Names of complainant(s) and witnesses, addresses, telephone numbers, email address, and dates of birth,
 - 2.6.1.2. Date, time, and place of alleged misconduct,
 - 2.6.1.3. Identification of the member(s) involved,
 - 2.6.1.4. Potential physical evidence identified in the complaint, and
 - 2.6.1.5. Nature of the complaint.
3. Complaint Processing and Assignment.
 - 3.1. Subject to the restrictions and criteria set forth in this Directive, the IA Captain or designee shall process each complaint through one of the following means:
 - 3.1.1. Administrative Investigation conducted by IA,
 - 3.1.2. Administrative Investigation conducted by the Responsibility Unit (RU),
 - 3.1.3. Administrative Investigation conducted by IPR,

- 3.1.4. Investigation by an outside entity, such as BHR, when IA has an actual conflict of interest or a special circumstance arises that, in the opinion of the IA Captain or designee, prohibits IA from conducting a timely or credible investigation,
 - 3.1.5. Supervisory Investigation,
 - 3.1.6. Mediation, or
 - 3.1.7. Administrative Closure.
- 3.2. The IA Captain or designee shall coordinate with the Assistant Chief of Investigations concerning all matters alleging criminal misconduct, in accordance with Directive 333.00, Criminal Investigations of Police Bureau Employees.
 - 3.3. A case shall be assigned for administrative investigation when there is a prima facie allegation of conduct that, if true, violates one or more Bureau directives and could result in discipline.
 - 3.4. Generally, IA investigators shall conduct IA investigations; however, the IA Captain or designee, when appropriate, may assign complaints to be investigated or resolved at the RU level. IA shall assign the case within seven days of receipt. In determining whether it is appropriate for an investigation to be conducted at the RU level, the IA Captain or designee shall consider the following criteria:
 - 3.4.1. If there could be a violation of criminal law,
 - 3.4.2. The seriousness of the allegation based on the level of potential discipline should the allegation be sustained,
 - 3.4.3. The involved member's complaint and discipline history,
 - 3.4.4. If the assignment to the RU presents a potential conflict of interest,
 - 3.4.5. Input provided by the member's RU Manager, and
 - 3.4.6. The involved RU Manager's ability to conduct an investigation.
 - 3.5. Allegation formation.
 - 3.5.1. If IA opens the case, they shall review the available material to determine which policies may have been violated. All alleged policy violations will be reflected in the investigation as allegations of misconduct.
 - 3.5.2. Allegations will be written in such a way as to:
 - 3.5.2.1. Accurately reflect the concerns of the complainant;
 - 3.5.2.2. Be phrased as violations of directives; and
 - 3.5.2.3. Be specific enough to give the involved member notice of what misconduct they are being accused.
 - 3.5.3. Allegations are subject to changes as the investigation uncovers new information or if the original allegation was improperly framed.
 - 3.5.4. All allegations against an involved member stemming from the same incident shall be investigated by a single investigative unit. The most serious allegation will govern the assignment of the case.
 - 3.6. The IA Captain or designee shall notify IPR of the processing and assignment of each complaint. If IPR disagrees with the decision, IPR will promptly notify the IA Captain,

or designee. IPR has the authority to conduct the administrative investigation if the disagreement is not resolved.

3.6.1. If IA is conducting an investigation at the time of the notification, IA shall cease its investigation and provide all investigative materials to IPR.

4. Notifications.

4.1. When IPR receives a complaint, IPR is responsible for providing each complainant and the involved member with a tracking number and informing each complainant of the allegation classification and assignment.

4.2. When IA opens a complaint, IA shall notify each complainant and the involved member of the allegation classification and assignment upon designating a case number. IA shall forward a copy of the notice to IPR.

4.2.1. IA shall notify the complainant if the case is internal (i.e., against a fellow member).

4.3. The information provided to the involved member shall be sufficient to reasonably apprise them of the nature of the allegation(s) in the complaint.

4.4. IA shall provide additional notification to each complainant and the involved member once the allegation has been framed. IA shall forward a copy of the second notification to IPR.

4.5. These notifications may be delayed in cases of criminal misconduct or where notification may compromise the integrity of an investigation.

5. Administrative Investigations.

5.1. An IA investigator assigned an administrative investigation shall follow the procedures described in Directive 332.00, Administrative Investigations.

5.1.1. IPR may choose to participate in an IA investigation without assuming the primary investigative role.

5.2. An RU investigator assigned an administrative investigation shall follow the procedures described in Directive 334.00, Performance Deficiencies, and Directive 332.00, Administrative Investigations.

5.3. An IPR investigator assigned an administrative investigation follows IPR procedures.

5.3.1. IPR may choose to conduct its own investigation. Pursuant to City Code, IPR has the authority to investigate cases of public interest which may include complaints involving:

5.3.1.1. Crowd control;

5.3.1.2. Disparate treatment or retaliation against a community member;

5.3.1.3. Vulnerable or mentally ill persons;

5.3.1.4. Sworn members of the rank of Captain or higher;

5.3.1.5. Cases in which IPR disagrees with the IA Captain's processing or assignment decision; or

- 5.3.1.6. Matters that the IPR Director determines are in the public interest and over which IPR has jurisdiction under City code.
 - 5.3.2. If IPR notifies the IA Captain that they intend to conduct an independent investigation of any of the complaints listed in Section 5.3.1., IA shall not conduct a concurrent investigation.
 - 5.3.3. IPR may request that IA participate in an IPR investigation, without relinquishing the primary investigative role. When requested, IA shall assist strictly in an administrative capacity and shall not perform any investigative functions unless IPR requests.
6. Supervisory Investigation.
 - 6.1. Pursuant to Directive 331.00, Supervisory Investigations, supervisors shall investigate complaints against a member that, if sustained, would not result in corrective action greater than command counseling.
7. Mediation.
 - 7.1. If the complainant is willing to engage in mediation, and the IPR Director and the IA Captain (or IA designee) conclude that mediation will meet the needs of the Police Bureau and the community, the involved member's RU Manager shall offer mediation to the involved officer. This option is contingent upon the mutual agreement of: the IA Captain (or designee), the involved member's RU Manager, the involved member(s), and the complainant. The IA Captain or designee, the involved member's RU Manager, or the involved member may decline an IPR recommendation to mediate a complaint.
 - 7.1.1. If any portion of a complaint relates to the following, then the complaint will not be eligible for mediation:
 - 7.1.1.1. Allegations of excessive force by a member;
 - 7.1.1.2. Allegations of criminal conduct by a member; or
 - 7.1.1.3. Circumstances in which the member is a witness against the complainant in a pending criminal or traffic prosecution.
8. Administrative Closure.
 - 8.1. With the exception of any allegation of excessive force and after initial investigation by either IA or IPR, the IA Captain or designee may administratively close an investigation after sufficient inquiry. In that circumstance, no further investigative action will be taken, although the IA Captain may refer the complaint to the appropriate RU Manager for an informal debriefing. The IA Captain may decline to conduct further investigation of an allegation contained within a complaint under the following circumstances as set forth in Administrative Rules PSF 5.01 and PSF 5.20:
 - 8.1.1. No Misconduct: The employee's conduct, as alleged by the complainant, does not violate Bureau policy.
 - 8.1.2. Trivial or *De Minimis* Rules Violation: The employee's conduct, as alleged by the complainant, constitutes a minor technical violation that, if sustained, would not result in discipline and is too minor or too vague to justify a Supervisory Investigation.
 - 8.1.3. No Jurisdiction: The complaint is against a non-employee, a former employee, or an employee of another department or other agency; or the employee resigns,

retires, or shall no longer be employed by the Bureau by the time an investigation and disciplinary process could be completed. Even if the Bureau lacks jurisdiction, the IA Captain may decide to investigate a complaint based on the nature and seriousness of the allegations or based on a request from IPR or another law enforcement agency. For example, if serious misconduct has been alleged, the IA Captain may order an investigation so that the findings will be placed in the employee's personnel or IA file, forward the findings to another agency, review the actions of the employee's supervisors, or recommend a review of Bureau training or policies. Discipline may also be imposed if the employee returns to service.

- 8.1.4. Judicial Review: If it is likely that the investigation would focus on the action of a complainant such as an allegation that the complainant was improperly cited for a traffic infraction. Such cases are better addressed through legal proceedings where a court could place witnesses under oath, take live testimony, and render a decision.
 - 8.1.5. Unidentifiable Employee: A documented reasonable investigative effort was not able to identify the (involved) employee.
 - 8.1.6. Previously Investigated or Adjudicated: The alleged conduct was previously investigated or adjudicated by the Bureau and the current complaint does not provide substantially new evidence or allegations.
 - 8.1.7. Lacks Investigative Merit: The IA Captain or designee must articulate specific reasons why the complaint is not credible or reliable.
 - 8.1.8. The Complainant Delayed Too Long in Filing the Complaint to Justify Present Investigation: Complaints alleging significant misconduct will not be dismissed due to a delay in filing.
- 8.2. In all cases in which an investigation is administratively closed, IA will prepare an explanation and send it to IPR so the complainant can be advised. If the investigation is administratively closed because the involved officer is an employee of a different agency, IA will refer the complainant to that agency.
9. Criminal Complaints Involving Members.
- 9.1. Allegations of member misconduct, which include a possible criminal law violation, shall be investigated concurrently as a criminal and administrative investigation. Criminal cases involving members shall be processed according to Directive 333.00, Criminal Investigations of Police Bureau Employees.
10. Unlawful Employment Practices, Discrimination Complaints, and Equal Employment Opportunities.
- 10.1. Complaints by members alleging unlawful employment practices shall be processed according to the City's Human Resource Administrative Rule 2.02, Prohibition Against Workplace Harassment, Discrimination, and Retaliation and Directive 310.20, Discrimination, Harassment, and Retaliation Prohibited.
11. Personnel Performance Deficiencies.

11.1. Complaints regarding job performance problems or minor work rule violations may be processed according to the procedures in Directive 334.00, Performance Deficiencies.

12. Disposition Notification.

12.1. If the complainant is a community member, IA shall write a disposition letter. The letter shall explain the investigation and findings or administrative closure. IA shall provide the letter to IPR within seven days of completion of the Police Review Board (PRB) for IPR's use to notify the complainant.

12.1.1. If the complainant is a Bureau member, IA shall notify the individual and IPR directly.

12.2. If any changes in the findings occur as a result of proceedings relating to the collective bargaining agreement between the City and the labor organizations that represent sworn members of the Police Bureau, or as a result of administrative or judicial review, IA ~~will notify IPR~~ shall write a new disposition letter to follow up with the complainant as permitted by law. The complainant shall be notified of the new findings as described in Section 12.1. and 12.1.1. of this directive.

13. Liability Management.

13.1. If an officer's use of force gives rise to a finding of liability in a civil trial, PPB shall: (1) enter that civil liability finding in the EIS; (2) reevaluate the officer's fitness to participate in all current and prospective specialized units; (3) if no IA investigation has previously been conducted based upon the same allegation of misconduct and reached an administrative finding, conduct a full IA investigation with the civil trial finding creating a rebuttable presumption that the force used also violated PPB policy, which presumption can only be overcome by specific, credible evidence by a preponderance of evidence; (4) if an IA investigation has already concluded based upon the same allegation of misconduct and failed to reach a sustained finding, identify whether any new evidence exists in the record of the civil trial to justify the reopening of the IA investigation, and if so, reinitiate an IA investigation; and (5) if an IA investigation has already concluded based upon the same allegation of misconduct and failed to reach a sustained finding, and no new evidence from the civil trial justifies reopening the IA investigation, work with IPR to identify the reason why the administrative finding was contrary to the civil trial finding and publish a summary of the results of the inquiry.

13.2. Police liability management may review closed IA cases for compliance with policy, rules, and procedures related to the review of claims against the Bureau.

#1

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Saturday, September 15, 2018 4:31:42 PM
Last Modified: Saturday, September 15, 2018 4:32:38 PM
Time Spent: 00:00:56

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 330.00 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 330.00 INTERNAL AFFAIRS COMPLAINTS (previous comments July 2017)

The Bureau rewrote this Directive significantly following the last draft that was sent out for public comment. To their credit, they included language requiring that as required by the DOJ Agreement, Use of Force complaints will not be subject to "Administrative Closure" (now in Section 8.1). This was suggested by PCW in July. Similarly, there is now a list of what kinds of cases cannot go to mediation, including Use of Force cases (Section 7.1.1), also a PCW suggestion. The Bureau also reinserted the terms "impartially and professionally" into the Policy Section on IA per our comments.

We are concerned, though, that IA's terminology for ending investigations is now the same as IPR's. IPR ceasing work on complaints used to be called "dismissals" and IA's were called "declinations." This made it easier to sort out which entity was responsible for shutting down the investigation. Now both are using the term "Administrative Closure," which will make these data harder to track. Combining them erases the difference between the entities and further suggests that IPR is not as "Independent" as its name suggests.

PCW continues its call for all Disparate Treatment allegations to be investigated.

Section 2.1 contains several troubling provisions. Most striking is Section 2.1.3 which allows a supervisor to contact a community member to clarify why they felt an officer's actions were inappropriate. This was probably written by someone who does not appreciate that a person who feels they have been harmed by the police in most cases does not want to be contacted by the police. This is one reason the community keeps pushing for IPR to be a truly independent review body. Such follow up should be done from the IPR office by default unless the community member asks for the Supervisor to call. PCW apologizes for not noticing this provision (old Section 2.1.2) previously.

Section 2.1.2 suggests that officers intercept a person's complaint before sending it to IA to be sure the complaint includes allegations of misconduct. This determination should be made by IPR, not anyone associated with the Bureau. The desire to streamline the process should not result in people being discouraged from filing complaints-- or complaints being misinterpreted as less than meaningful.

New Section 2.1.1.1 is written in an illogical way, stating that if a community member wants to file a complaint in writing, the PPB will make a form available. Instead it should say PPB shall have forms available so that people can file complaints in writing.

While it apparently reflects work related to the DOJ Agreement, the various intake points for complaints seem to increase the likelihood that IPR will be bypassed, now that they are no longer listed as the single point for intake. Section 1.1 used to say IPR was responsible for receiving and numbering complaints, now they "have a role" in those actions.

PCW is also concerned that a new Section (5.3.3) allows IPR to ask for help from Internal Affairs during an "Independent" investigation. Though that sentence should clarify the reason for our concern, we will spell it out: If IPR is independent of the Bureau, they should not be relying on them during investigations the community expects to be done by an outside agency.

Another alarming new section states that changes to a complaint's outcome as a result of collective bargaining-related actions may or may not be relayed back to the complainant (Section 12.2).

We still do not understand why Supervisory Investigations include complaints that could result in discipline, where discipline is Command Counseling (Section 6.1 and 331.00, below).** The point of these less-than-full investigations was to handle low level

Directive 330.00 Feedback

complaints with no discipline attached.

It's also not clear why the current version still did not reinsert the provision that actions prior to investigation attempting to resolve the complaint be documented (previous Section 5.1.5).

We appreciate that the Bureau responded to our concerns about dismissals based on failure to identify officers. Rather than saying "a reasonable investigative effort would not" be able to identify a cop, Section 8.1.5 now requires a documented effort to do so.

The Bureau also cut former Section 9.1.8 saying IA could decline a case because they have to focus resources on "more provable complaints," another suggestion by PCW.

We are still concerned about:

- the provision that complaints can be dismissed for being "too vague," which is not in City Code (8.1.2); and
- IA's ability to decline a case if they think "the complaint is not credible or reliable" (8.1.7).

PCW also appreciates these new sections and edits, which again were added without being posted for comment ahead of time:

- New Section 3.5 talks about formulating allegations, including that they must reflect the complainant's concerns, and might change as the investigation goes on.
- New Section 3.6.1 requires IA to hand over its initial investigative files if IPR takes over the investigation.
- Section 7.1 on mediation now begins by acknowledging the complainant has to agree to the process first.
- Section 12.1 now requires IA to return its disposition letter to IPR within seven days.
- New Section 13.1 incorporates language from the DOJ Agreement about investigating cases where a jury has found an officer to be liable for harm, requiring new investigation if none was done or if new information came out at trial, and if no new information came out for the PPB and IPR to figure out why the jury and the Bureau disagreed.

** In our previous comments we mentioned Letters of Reprimand, which are actually one step up the discipline ladder from Command Counseling, thus are not involved in cases assigned as Supervisory Investigations. PCW regrets the error.

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: Friday, March 01, 2019 4:21:25 PM
Last Modified: Friday, March 01, 2019 4:22:06 PM
Time Spent: 00:00:41
IP Address: 97.120.206.243

Page 1

Q1 Please provide feedback for this directive

COMMENTS ON ACCOUNTABILITY, AND OTHER DIRECTIVES FEBRUARY/MARCH 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 February/March . While reviewing ten Directives at once is overwhelming, the Bureau's red-line copies helped point us to the areas that were changed, and since we commented on nine of the policies in September (and the other, on Altered Duty, in November) the process was a bit quicker. That said, part of the ease of review is that the Bureau has barely made any changes to the Directives, so most of our comments still stand. We recognize a few of the changes were made in response to our comments.

We still would like to see the Bureau post comments as they arrive so commenters would be able to build off each others' ideas.

One item we'd like to highlight up front is our suggestion in Directive 338.00 on the Discipline Guide that the Guide itself should be posted for public review and input along with the policy. We have made one recommendation based on the recent case of Sgt. Gregg Lewis but would take a "deeper dive" given a formal opportunity.

As we noted in September, the findings on misconduct allegations are a source of great concern. Not only are there poorly defined allegations for general misconduct cases ("Not Sustained" and "Unfounded" need to be fixed), but in deadly force and non-disciplinary investigations there are only two possible findings-- and those are not even the same as each other ("In Policy/Out of Policy" and "Substantiated/Not Substantiated").

We also noted several times that many Directives refer to the Professional Standards Division (PSD) and/or Captain, while others refer to the Internal Affairs (IA) Captain. Since IA is part of PSD this is confusing, and nothing has been done to clarify the issue.

We once again urge the Bureau to make the review periods at least 30 days on both ends of the rewriting process so organizations who only meet monthly have time to give feedback. In addition to the other advisory committees we have mentioned in the past (BHU Advisory Committee, Training Advisory Council, and Citizen Review Committee), the newly formed Portland Committee on Community Engaged Policing (PCCEP) seems to have too much on its plate to respond quickly to requests for input.

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 330.00 Feedback

DIRECTIVE 330.00 INTERNAL AFFAIRS COMPLAINTS

The changes proposed to the Internal Affairs Complaints Directive include that Section 5.3.3 now clarifies IA's role in supporting the "Independent" Police Review should only be administrative, not investigative. This partially resolves the concern we raised, but not the issue that a body which is sold to the public as being independent of the Police Bureau should not be relying on any police personnel to conduct investigations.

Section 12.2 has been changed to include notifying the complainant of any changes to the findings, which PCW suggested in September. Unfortunately, rather than having IPR send the new findings, the draft allows IA to write the new disposition letter. Past examples show that the Bureau's letters are not as empathetic as they should be, often stating in the second person that "you" (the complainant) took certain actions rather than being more objective.

We remain concerned with the decision to group IPR dismissals and IA declinations into the same category of "Administrative Closure," since it will make it harder to track which agency is closing out complaints before they can be fully investigated. We also noted that the combined term further erases the line between the Bureau and the so-called independent review body.

Also from our previous comments:

--IPR or another civilian agency, not officers' supervisors, should contact community members who complain about inappropriate officer behavior (Section 2.1.3). Most of the time, a person who feels they have been harmed by the police does not want to be contacted by the police.

--Similarly, Section 2.1.2 seems to suggest that officers hold up a complaint from getting investigated to be sure there are actual misconduct allegations included; again, IPR should be doing this screening, which is less likely to discourage people from filing complaints or result in the misinterpretation of the complaints.

--All Disparate Treatment allegations should be investigated.

--Section 2.1.1.1 should say that PPB shall have forms available for people to file complaints in writing, rather than saying the community member has to ask for such a form to be made available to them.

--PCW continues to be concerned that having so many possible intake points for complaints (Section 2.1.1) increases the likelihood that IPR will not even be able to fulfill its "role" in receiving and numbering complaints (Section 1.1).

--Supervisory Investigations include complaints that could result in Command Counseling (Section 6.1 and 331.00, below), which is a form of discipline as we understand it. Non-Disciplinary Complaints are supposed to be so low-level that no discipline can be attached.

--The Bureau did not reinsert a previous provision that officers must document any actions attempting to resolve the complaint prior to investigation.

--Complaints can still be dismissed for being "too vague," a provision which is not in City Code (8.1.2); and

--IA should not have the ability to decline a case if they think "the complaint is not credible or reliable" (8.1.7).

CONCLUSION

PCW again appreciates that the Bureau asks for community comments on its policies, and the few changes that were made in response to our feedback. However, the other common-sense ideas we are putting forward which would lead to a more trustworthy and community-minded police force should not be brushed aside. We are hoping that the once the PCCEP starts making recommendations, the Bureau will engage in public discussions (including the Committee members and the general public) rather than continuing to be

Directive 330.00 Feedback

the Bureau will engage in public discussions (involving the Committee members and the general public) rather than continuing to go behind closed doors to assess community input. That would show a true commitment to "community engaged policing."

Thank you for your time

--Portland Copwatch

Q2 Contact Information (optional)

Name

Portland Copwatch

Email Address

331.00, Supervisory Investigations

Refer:

- DIR 330.00, Internal Affairs, Complaint Intake, and Processing
- DIR 332.00, Administrative Investigations

Definitions:

- **Command Counseling:** A formal non-disciplinary corrective action that involves verbal counseling in response to a sustained finding for a minor policy violation. Command counseling is conducted by the Responsibility Unit (RU) manager or a designee and is documented in a memo to Internal Affairs (IA).
- **Complaint:** Any complaint made to the City by a member of the public, a PPB officer, or a civilian PPB employee of alleged misconduct by a Bureau member.
- **Misconduct:** Conduct by a member that violates Bureau regulations, orders, directives, or other standards of conduct required of City employees.
- **Supervisory Investigation (SI):** A formal, non-disciplinary process where the involved member's supervisor is tasked with reviewing a complaint stating a member provided poor quality of service or committed a rule violation that, if substantiated, would not result in corrective action greater than command counseling.
- **Supervisory Investigation Findings:** A conclusion, based upon a preponderance of evidence, as to whether a member's conduct violated Bureau directives. A "substantiated" finding means that the evidence was sufficient to prove a violation of directives. A "not substantiated" finding means that either: the evidence was insufficient to prove a violation of directives; the act described by the complainant occurred, but was within policy; or the allegation was demonstrably false.

Policy:

1. The Portland Police Bureau and the Independent Police Review (IPR) will work together to address complaints of poor service quality and/or rule violations, in an effort to promote and underscore the importance of individual and organizational accountability.
2. The goals of the supervisory investigation (SI) process are to improve Bureau service delivery by addressing community member concerns in a timely manner and to review and correct member behavior that may violate established rules not rising to the level of an IA investigation.

Procedure:

1. Receipt of Complaint.
 - 1.1. IPR, IA, or any member may receive complaints from community members alleging minor rule violations or poor quality of service.

- 1.1.1. Pursuant to Directive 330.00, Internal Affairs, Complaint Intake, and Processing, members shall submit all complaints, including those that allege poor quality of service or a rule violation, to IA.
2. IA Captain Responsibilities.
 - 2.1. The IA Captain or designee may assign for SI those complaints which, if proven, could result in no more than command counseling.
 - 2.1.1. Complaints alleging disparate treatment, use of force, criminal conduct, or any misconduct which, if substantiated, would result in discipline will not be handled as an SI.
 - 2.1.2. Complaints against members who have already received a substantiated SI finding or sustained administrative investigation finding within the last calendar year regarding the same or similar type of misconduct shall not be eligible for assignment as an SI, and shall instead be assigned as an administrative investigation.
 - 2.2. The IA Captain shall track SIs and ensure RU Managers complete them in the prescribed timeline.
 - 2.3. Upon receipt of a complaint meeting the SI criteria, the IA Captain or designee shall notify IPR and assign the SI to the involved member's RU for resolution.
 - 2.4. When the RU Manager returns the completed SI Resolution Memorandum, the IA Captain or designee will review and either:
 - 2.4.1. Return the case to the RU for any additional information or action needed; or
 - 2.4.2. Review the memorandum and forward the case to IPR. Upon final case review from IPR, the IA Captain or designee shall close the Internal Affairs case file.
 - 2.5. The IA Captain or designee shall maintain case files for all completed SI cases through the retention period pursuant to Directive 332.00, Administrative Investigations.
 - 2.5.1. SIs are non-disciplinary in nature and, therefore, shall not be placed in a member's personnel file.
3. RU Manager Responsibilities.
 - 3.1. Upon receipt of an SI, assign the case to a supervisor.
 - 3.2. Review the supervisor's findings prior to the supervisor disclosing the result of the investigation to the involved member.
 - 3.3. Review all completed SI case files for completeness and forward them to Internal Affairs once approved.
 - 3.4. Ensure that SIs are completed within 21 days of receipt at the RU, unless extended in writing for good cause shown.
4. Investigating Supervisor Responsibilities.

- 4.1. Identify specific quality of service issues and/or alleged minor rules violations.
- 4.2. Review all available reports, Computer Aided Dispatch (CAD) entries, videos, photographs, and other relevant documentation.
- 4.3. Make a good faith effort to contact the complainant to discuss the complaint. Generally, supervisors should make at least three attempts at contacting the complainant prior to discussing the complaint with the involved member(s).
 - 4.3.1. Investigating supervisors shall document successful and unsuccessful attempts to contact complainants.
- 4.4. Gather information relevant to the complaint.
 - 4.4.1. The investigating supervisor should make a good faith effort to identify, contact, and interview any community member witnesses and document those efforts.
 - 4.4.2. The investigating supervisor shall identify and interview any witness members (i.e., Bureau members).
- 4.5. After consulting with the Shift Lieutenant, immediately contact the IA Captain if, after initial contact with the complainant, it appears reasonably likely that disciplinary action of suspension without pay or greater will result after a full investigation if the allegation(s) are proven to be true.
- 4.6. Meet with each involved member to gather information relevant to the complaint.
- 4.7. Make the SI finding(s).
- 4.8. Discuss the investigation and SI findings with the involved member. In the conversation, the investigating supervisor shall:
 - 4.8.1. Explain the community member's perception of the member's behavior;
 - 4.8.2. Discuss the member's actions, and if necessary, make appropriate suggestions for improvement;
 - 4.8.3. Convey Bureau and RU Manager expectations of compliance with rules and quality of service, if these expectations were not met; and
 - 4.8.4. Discuss alternative approaches for improving service, if appropriate.
- 4.9. Follow up with complainant and explain the resolution of the complaint to the extent permitted by law.
- 4.10. Document the results and process of the investigation and SI finding in an SI Resolution Memorandum.
- 4.11. Following this discussion, the supervisor shall document the discussion in the Employee Information System (EIS), pursuant to Directive 345.00, Employee Information System.
- 4.12. Forward the SI Resolution Memorandum through channels to the RU Manager.

331.00, Supervisory Investigations

Refer:

- DIR 330.00, Internal Affairs, Complaint Intake, and Processing
- DIR 332.00, Administrative Investigations

Definitions:

- **Command Counseling:** A formal non-disciplinary corrective action that involves verbal counseling in response to a sustained finding for a minor policy violation. Command counseling is conducted by the Responsibility Unit (RU) manager or a designee and is documented in a memo to Internal Affairs (IA).
- **Complaint:** Any complaint made to the City by a member of the public, a PPB officer, or a civilian PPB employee of alleged misconduct by a Bureau member.
- **Misconduct:** Conduct by a member that violates Bureau regulations, orders, directives, or other standards of conduct required of City employees.
- **Supervisory Investigation (SI):** A formal, non-disciplinary process where the involved member's supervisor is tasked with reviewing a complaint stating a member provided poor quality of service or committed a rule violation that, if substantiated, would not result in corrective action greater than command counseling.
- **Supervisory Investigation Findings:** A conclusion, based upon a preponderance of evidence, as to whether a member's conduct violated Bureau directives. A "substantiated" finding means that the evidence was sufficient to prove a violation of directives. A "not substantiated" finding means that either: the evidence was insufficient to prove a violation of directives; the act described by the complainant occurred, but was within policy; or the allegation was demonstrably false.

Policy:

1. The Portland Police Bureau and the Independent Police Review (IPR) will work together to address complaints of poor service quality and/or rule violations, in an effort to promote and underscore the importance of individual and organizational accountability.
2. The goals of the supervisory investigation (SI) process are to improve Bureau service delivery by addressing community member concerns in a timely manner and to review and correct member behavior that may violate established rules not rising to the level of an IA investigation.

Procedure:

1. Receipt of Complaint.
 - 1.1. IPR, IA, or any member may receive complaints from community members alleging minor rule violations or poor quality of service.

- 1.1.1. Pursuant to Directive 330.00, Internal Affairs, Complaint Intake, and Processing, members shall submit all complaints, including those that allege poor quality of service or a rule violation, to IA.
2. IA Captain Responsibilities.
 - 2.1. The IA Captain or designee may assign for SI those complaints which, if proven, could result in no more than command counseling.
 - 2.1.1. Complaints alleging disparate treatment, use of force, criminal conduct, or any misconduct which, if substantiated, would result in discipline will not be handled as an SI.
 - 2.1.2. Complaints against members who have already received a substantiated SI finding or sustained administrative investigation finding within the last calendar year regarding the same or similar type of misconduct shall not be eligible for assignment as an SI, and shall instead be assigned as an administrative investigation.
 - 2.2. The IA Captain shall track SIs and ensure RU Managers complete them in the prescribed timeline.
 - 2.3. Upon receipt of a complaint meeting the SI criteria, the IA Captain or designee shall notify IPR and assign the SI to the involved member's RU for resolution.
 - 2.4. When the RU Manager returns the completed SI Resolution Memorandum, the IA Captain or designee will review and either:
 - 2.4.1. Return the case to the RU for any additional information or action needed; or
 - 2.4.2. Review the memorandum and forward the case to IPR. Upon final case review from IPR, the IA Captain or designee shall close the Internal Affairs case file.
 - 2.5. The IA Captain or designee shall maintain case files for all completed SI cases through the retention period pursuant to Directive 332.00, Administrative Investigations.
 - 2.5.1. SIs are non-disciplinary in nature and, therefore, shall not be placed in a member's personnel file.
3. RU Manager Responsibilities.
 - 3.1. Upon receipt of an SI, assign the case to a supervisor.
 - 3.2. Review the supervisor's findings prior to the supervisor disclosing the result of the investigation to the involved member.
 - 3.3. Review all completed SI case files for completeness and forward them to Internal Affairs once approved.
 - 3.4. Ensure that SIs are completed within 21 days of receipt at the RU, unless extended in writing for good cause shown.
4. Investigating Supervisor Responsibilities.

- 4.1. Identify specific quality of service issues and/or alleged minor rules violations.
- 4.2. Review all available reports, Computer Aided Dispatch (CAD) entries, videos, photographs, and other relevant documentation.
- 4.3. Make a good faith effort to contact the complainant to discuss the complaint. Generally, supervisors should make at least three attempts at contacting the complainant prior to discussing the complaint with the involved member(s).
 - 4.3.1. Investigating supervisors shall document successful and unsuccessful attempts to contact complainants.
- 4.4. Gather information relevant to the complaint.
 - 4.4.1. The investigating supervisor should make a good faith effort to identify, contact, and interview any community member witnesses and document those efforts.
 - 4.4.2. The investigating supervisor shall identify and interview any witness members (i.e., Bureau members).
- 4.5. After consulting with the Shift Lieutenant, immediately contact the IA Captain if, after initial contact with the complainant, it appears reasonably likely that disciplinary action of suspension without pay or greater will result after a full investigation if the allegation(s) are proven to be true.
- 4.5.4.6. Meet with each involved member to gather information relevant to the complaint.
- 4.6.4.7. Make the SI finding(s).
- 4.7.4.8. Discuss the investigation and SI findings with the involved member. In the conversation, the investigating supervisor shall:
 - 4.7.1.4.8.1. Explain the community member's perception of the member's behavior;
 - 4.7.2.4.8.2. Discuss the member's actions, and if necessary, make appropriate suggestions for improvement;
 - 4.7.3.4.8.3. Convey Bureau and RU Manager expectations of compliance with rules and quality of service, if these expectations were not met; and
 - 4.7.4.4.8.4. Discuss alternative approaches for improving service, if appropriate.
- 4.8.4.9. Follow up with complainant and explain the resolution of the complaint to the extent permitted by law.
- 4.9.4.10. Document the results and process of the investigation and SI finding in an SI Resolution Memorandum.
- 4.10.4.11. Following this discussion, the supervisor shall document the discussion in the Employee Information System (EIS), pursuant to Directive 345.00, Employee Information System.
- 4.11.4.12. Forward the SI Resolution Memorandum through channels to the RU Manager.

#1

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Saturday, September 15, 2018 4:30:19 PM
Last Modified: Saturday, September 15, 2018 4:31:20 PM
Time Spent: 00:01:00

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 331.00 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 331.00 SUPERVISORY INVESTIGATIONS (previous comments July 2017)

PCW continues to suggest that minor rule violations not rising to the level of discipline should be called "Non-Disciplinary Complaints" (NDCs). In fact, Captain Jeff Bell used this term at the City Council hearing on September 5 to describe "Supervisory Investigations." We also are confused by the Bureau's assertion in its release memo that Command Counseling, which can be the result of misconduct investigation if an NDC is not handled as a Supervisory Investigation (SI), is not considered discipline (see Definitions and new Section 2.1). It is listed as such in IPR's annual reports and is usually referred to as the lowest level of discipline. The Bureau refers to it as "corrective action."

In our last comments, we noted there were no definitions for the findings in SIs. The current Directive includes two findings which do not match either deadly force (In Policy/Out of Policy) or other administrative investigations (Exonerated/Not Sustained/Unfounded/Sustained). The findings are "substantiated" which is the same as Out of Policy/Sustained, and "unsubstantiated" which is the same as the other three possible findings in a full investigation. This seems terribly confusing and unnecessary; moreover it is probably good practice for line Supervisors to use the same findings as RU Managers if they are going to be proposing findings on more serious cases.

On that note, the current Directive still says the RU Manager should review the Supervisor's findings before they are "disclosed" (Section 3.2) but cuts the old version's requirement for the line Supervisor to share the findings with their Manager (Section 4.7). As we noted before, the Directive does not give guidance on what happens if the RU Manager does not approve of the Supervisor's proposed findings.

In our previous comments, we hoped that Internal Affairs would keep records of the NDCs and their outcomes for 7-10 years as required by Directive 332.00, even if they are not placed in officers' personnel files (Section 2.2.2.1). The Bureau's memo says findings are entered into the Employee Information System, but the Directive's new Section 4.10 only requires the Supervisor's discussion with the officer to be put into the EIS. PCW continues to be concerned that NDCs are designed to silence complainants who wished to see full investigations, as there is no requirement that the civilian involved approve the case handling or the outcome, only that the Supervisor make a "good faith effort" to contact the complainant during the investigation (Section 4.3) and explain the resolution of the complaint (Section 4.8). Supervisors are required to document their efforts to talk to the complainant (Section 4.3.1), though that seems to apply only to the investigation and not the outcome.

We continue to support Policy Section 1 and Procedure Section 2.4.2 which mention the IPR being involved in needing to approve of NDCs. The Directive says IPR will "review" the case memo before the investigations are closed, again not indicating what happens if they disagree with the findings (Section 2.4.2). The public should be informed of who reviews these cases, since "Supervisory Investigation" makes it sound as if nobody else looks at the complaints.

The Directive still doesn't seem to take into account if the complainant is a fellow officer, though perhaps the same procedures apply. It also is unclear what happens if a minor rule violation is reported to a precinct or the Police Commissioner as outlined in 330.00.

One final note, which applies elsewhere but seems worthy of mention here. The Bureau added the phrase "to the extent permitted by law" to the Section (4.8) in which the complainant finds out the resolution of their own complaint. An open and transparent government has no right to keep the person who feels harmed from learning what happened to their complaint. The PPB and City Council should work to change any state law restricting such information being shared.

Directive 331.00 Feedback

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: Friday, March 01, 2019 4:10:43 PM
Last Modified: Friday, March 01, 2019 4:11:22 PM
Time Spent: 00:00:39
IP Address: 97.120.206.243

Page 1

Q1 Please provide feedback for this directive

COMMENTS ON ACCOUNTABILITY, AND OTHER DIRECTIVES FEBRUARY/MARCH 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 February/March . While reviewing ten Directives at once is overwhelming, the Bureau's red-line copies helped point us to the areas that were changed, and since we commented on nine of the policies in September (and the other, on Altered Duty, in November) the process was a bit quicker. That said, part of the ease of review is that the Bureau has barely made any changes to the Directives, so most of our comments still stand. We recognize a few of the changes were made in response to our comments.

We still would like to see the Bureau post comments as they arrive so commenters would be able to build off each others' ideas.

One item we'd like to highlight up front is our suggestion in Directive 338.00 on the Discipline Guide that the Guide itself should be posted for public review and input along with the policy. We have made one recommendation based on the recent case of Sgt. Gregg Lewis but would take a "deeper dive" given a formal opportunity.

As we noted in September, the findings on misconduct allegations are a source of great concern. Not only are there poorly defined allegations for general misconduct cases ("Not Sustained" and "Unfounded" need to be fixed), but in deadly force and non-disciplinary investigations there are only two possible findings-- and those are not even the same as each other ("In Policy/Out of Policy" and "Substantiated/Not Substantiated").

We also noted several times that many Directives refer to the Professional Standards Division (PSD) and/or Captain, while others refer to the Internal Affairs (IA) Captain. Since IA is part of PSD this is confusing, and nothing has been done to clarify the issue.

We once again urge the Bureau to make the review periods at least 30 days on both ends of the rewriting process so organizations who only meet monthly have time to give feedback. In addition to the other advisory committees we have mentioned in the past (BHU Advisory Committee, Training Advisory Council, and Citizen Review Committee), the newly formed Portland Committee on Community Engaged Policing (PCCEP) seems to have too much on its plate to respond quickly to requests for input.

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 331.00 Feedback

DIRECTIVE 331.00 SUPERVISORY INVESTIGATIONS

A significant change was made to this Directive to say that if an officer has been found guilty of misconduct for the same behavior being alleged in a minor rule violation (which the Bureau keeps changing names for, the latest being Supervisory Investigations*), then a low-level resolution is not appropriate (Section 2.1.2). Another change is the addition of Section 4.5** to require that a supervisor who believes the allegation could result in discipline suspend the Supervisory Investigation (SI) and alert Internal Affairs. A less significant change is that the IA Captain can designate someone else to assign a SI to an officer's supervisor (Section 2.1.).

PCW still feels that Non-Disciplinary Complaint (NDC) is a better term for these allegations. We noted in September that IA Captain Jeff Bell used this term at City Council. As noted in our comments on 330.00, Command Counseling, which can be the result of either an SI or a full misconduct investigation, is somehow not considered to be discipline (Definitions and Section 2.1). IPR lists Command Counseling as discipline in its annual reports, while the Bureau refers to it as "corrective action."

As noted previously, the Directive includes only two possible findings: "Substantiated" which is the same as Out of Policy/Sustained, and "Not Substantiated" which is the same as the other three possible findings in a full investigation (Exonerated/ Not Sustained/ Unfounded). We wrote, "this seems terribly confusing and unnecessary; moreover it is probably good practice for line Supervisors to use the same findings as RU Managers if they are going to be proposing findings on more serious cases."

In responding to the COCL's January report, PCW noted the COCL's lament that SIs put officers in an unfair position when a complaint is about a structural issue and not the officer's particular behavior. We noted that "in 2010, a City-organized Stakeholder Group facilitated by John Campbell put together a number of recommendations, one of which was to create categories of 'Communication Issues, Training Issues, Equipment Issues, and Other Policy-Related Issues' as findings separate from whether an allegation was being leveled at the officer themselves."***

Also, Section 3.2 still says the RU Manager should review a Supervisor's findings before they are "disclosed" but no longer requires the line Supervisor to share the findings with their Manager (Section 4.8). We have repeatedly noted that the Directive does not describe the procedure when the RU Manager does not approve a Supervisor's proposed findings.

We continue to encourage IA to keep records of NDCs for 10 years as required for other misconduct complaints in Directive 332.00 (Section 7), even if they are not placed in officers' personnel files (Section 2.2.2.1). The Bureau wrote that findings are entered into the Employee Information System, but Section 4.11 only requires the Supervisor's discussion with the officer to be put into the EIS. Because there is no requirement that the civilian involved approve the case handling or the outcome, NDCs can easily be used to silence complainants who wish to see full investigations. Section 4 only requires the Supervisor to (a) make a "good faith effort" to contact the complainant during the investigation (4.3), (b) explain the resolution of the complaint (4.9), and (c) document their efforts to talk to the complainant (4.3.1), though that seems to apply only to the investigation and not the outcome.

PCW still agrees with Policy Section 1 and Procedure Section 2.4.2 requiring IPR to approve NDCs, though again there is nothing describing what happens if they disagree with the findings. PCW repeats its suggestion that the review by IPR be a prominent part of the description of "Supervisory Investigations" so that the public knows someone other than the officer's boss is reviewing these complaints.

Also, as noted previously:

--there is no provision for peer officers to file these low-level complaints;

--it is unclear what happens if a minor rule violation is reported to a precinct or the Police Commissioner as outlined in 330.00; and

--Section 4.9 restricts the Bureau to relate the outcome to the complainant "to the extent permitted by law." PCW noted that "an open and transparent government has no right to keep the person who feels harmed from learning what happened to their complaint. The PPB and City Council should work to change any state law restricting such information being shared."

*-maybe these weren't all the same, but in the 27 years PCW has been around, the PPB has had categories of "Inquiries," "Service Complaints," "Service Improvement Opportunities," and now "Operational Investigations."

Directive 331.00 Feedback

Complaints," "Service Improvement Opportunities" and now "Supervisory Investigations."

**-though Sections 4.5-4.11 are renumbered as a result of the new Section, the "red line" version does not indicate the changes.

***- http://www.cdri.com/library/PoliceOversightStakeholderReport2010_V2.pdf at p. 12.

CONCLUSION

PCW again appreciates that the Bureau asks for community comments on its policies, and the few changes that were made in response to our feedback. However, the other common-sense ideas we are putting forward which would lead to a more trustworthy and community-minded police force should not be brushed aside. We are hoping that the once the PCCEP starts making recommendations, the Bureau will engage in public discussions (involving the Committee members and the general public) rather than continuing to go behind closed doors to assess community input. That would show a true commitment to "community engaged policing."

Thank you for your time

--Portland Copwatch

Q2 Contact Information (optional)

Name

Portland Copwatch

Email Address

332.00, Administrative Investigations

Refer:

- ORS § 192.355, Public Records Exempt from Disclosure
- Portland City Code Chapter 3.21, City Auditor's Independent Police Review
- DIR 330.00, Internal Affairs, Complaint Intake, and Processing
- DIR 333.00, Criminal Investigations of Police Bureau Employees
- DIR 335.00, Discipline Process
- 8001 Internal Affairs Division Retention Schedule

Definitions:

- **Administrative Investigation:** A complete investigation into allegations of policy violations, conducted by or at the direction of Internal Affairs (IA) or Independent Police Review (IPR).
- **Administrative Review Findings for Deadly Force or In-custody Deaths:** A conclusion, based upon a preponderance of evidence, as to whether a member's conduct violated Bureau directives. A finding that is "in policy" means that the evidence was sufficient to prove that the member's actions complied with directives. A finding that is "out of policy" means that the evidence was sufficient to prove that the member's actions were in violation of directive(s). An "in policy" finding may include a recommendation for action items or a debriefing.
- **Command Counseling:** A formal non-disciplinary corrective action that involves verbal counseling in response to a sustained finding for a minor policy violation. Command Counseling is conducted by the Responsibility Unit (RU) manager or a designee and is documented in a memo to IA.
- **Debrief:** A formal critique of an incident added to a not sustained finding by a RU Manager. A debrief is intended to provide a learning opportunity for a member, and is non-disciplinary in nature.
- **Findings:** A conclusion as to whether a member's conduct violated Bureau directives.
 - **Sustained:** The preponderance of evidence proves a violation of policy or procedure.
 - **Not Sustained:** The evidence was insufficient to prove a violation of policy or procedure.
 - **Exonerated:** The preponderance of evidence proves the member's conduct was lawful and within policy.
 - **Unfounded:** The preponderance of evidence proves the allegation was false or devoid of fact or there was not a credible basis for a possible violation of policy or procedure.

Policy:

1. IA has the primary responsibility for investigating allegations of Bureau member misconduct, which if sustained, may result in disciplinary action. Administrative investigations may also be conducted at the RU level at the direction of the IA Captain or designee. Administrative investigations shall be conducted objectively and in accordance with Bureau directives and

applicable labor agreements. IA shall work with IPR to ensure that complaints against Bureau members are investigated fairly, professionally, and objectively. In accordance with City Code, IPR has the authority to conduct administrative investigations independent from IA.

Procedure:

1. Member Responsibilities.
 - 1.1. Members shall cooperate fully in administrative investigations. Members shall answer all questions fully, truthfully, and candidly.
 - 1.2. Members shall not conceal or omit information, impede, or interfere with the reporting or investigation of any complaint.
 - 1.3. If a member (who is not the subject of the investigation) has knowledge of an incident that is being investigated, knows that the incident is being investigated, and has not been contacted by the investigator, then the member shall notify IA within 72 hours of learning of the investigation.
2. Investigator Responsibilities.
 - 2.1. When assigned an administrative investigation, the investigator shall:
 - 2.1.1. Maintain the integrity of the case file and the confidentiality of the investigation.
 - 2.1.2. Conduct a complete, thorough, and objective investigation adhering to current investigative standards for IA, as set forth in IA Standard Operating Procedures (SOP) #20.
 - 2.1.3. Complete the investigation and submit an investigative report to IA within ten weeks from the date the complaint was assigned.
 - 2.1.4. Notify the IA Captain or designee when it is determined the investigation will not be completed within the allotted time. The investigator shall provide written notification to the IA Captain or designee as soon as it is determined that the case will be delayed. They shall include in the notification justification for the delay, as well as an updated estimated case completion date. If the IA Captain or designee find good cause for the delay, they may grant an extension for 30 days after the original due date. For each case past its due date, the IA Captain or designee will evaluate the case for tardiness on a weekly basis. If the investigator determines that additional time is needed to complete the case, they may submit a request for an additional extension. The investigator shall request any additional extension(s) prior to the newly established due date. The IA Captain or designee shall limit the number of extensions granted to ensure the delay does not exceed 90 days beyond the original case completion deadline, unless extraordinary circumstances exist. The investigator shall document those extraordinary circumstances in writing and an extension beyond the 90 day limit must be approved by the IA Captain or designee.
 - 2.1.5. Interview all members and witnesses separately.
 - 2.1.5.1. In the case of witnesses who are juveniles or individuals who are under the care of a designated person, a guardian or caregiver will be allowed to be present but not participate during the interview. If the guardian or caregiver

is also a witness to the same incident, they shall be interviewed separately and another responsible adult will be allowed to be present during the interview with the juvenile or member of the vulnerable population.

- 2.1.5.1.1. The Bureau shall allow a support person to be present during an interview, upon request by any witness.
 - 2.1.6. Audio record all interviews of members and if possible, all non-Bureau complainants or witnesses. A separate recording is required for each interview conducted. If an interview is not recorded, the investigator shall document the reason in the case file.
 - 2.1.7. Advise all members of their *Garrity* warning and any other applicable rights as prescribed by the appropriate collective bargaining agreement.
 - 2.1.8. Include a transcription for each person interviewed in the case file. Interviews that are not recorded shall be summarized in the investigative report.
 - 2.1.9. Write an investigative report outlining the overall results of the investigation. The investigator shall include a recommended finding for each allegation or applicable area of review based on the evaluation of all relevant evidence, including interviews, physical evidence, and documentation.
 - 2.1.10. Submit the investigative report with recommended findings to the IA Captain, or designee, for review and approval.
3. IA Captain (or Designee) Responsibilities.
- 3.1. The IA Captain or designee shall ensure that the assignment, investigation, documentation, and record maintenance for administrative investigations are completed in accordance with Directive 330.00, Internal Affairs, Complaint Intake, and Processing. Additionally, the IA Captain or designee shall:
 - 3.1.1. Review all complaints received and determine how the complaints will be handled pursuant to Directive 330.00, Internal Affairs, Complaint Intake, and Processing.
 - 3.1.2. Coordinate with the Assistant Chief of Investigations about all matters alleging criminal misconduct in accordance with Directive 333.00, Criminal Investigations of Police Bureau Employees.
 - 3.1.3. Send a copy of the investigation case file to IPR for a concurrent seven-day review prior to the RU Manager's review.
 - 3.1.4. Review all investigations and recommended findings to ensure accuracy, completeness, and compliance with contractual, directive, and city code requirements, as well as to determine whether additional allegations or investigations warrant further investigation, within seven days of receipt. If the investigation is deficient or additional investigation is warranted, the PSD Captain shall take appropriate action.
 - 3.1.5. Forward a copy of the completed administrative investigation with the investigator's recommended findings to the involved member's RU Manager, who is responsible for making an RU Manager finding(s), within seven days of completion of the review.
 - 3.1.6. Notify involved members and complainants when the case is sent to the RU for findings.

- 3.1.7. If an RU Manager requests that IA conduct additional investigation, the IA Captain shall ensure the investigation is completed as soon as practical but not more than 30 days, unless extraordinary circumstances documented in writing warrant otherwise.
 - 3.1.8. Review the investigator's recommended findings and the RU Manager's concurrence or disagreement and distribute the information to the appropriate Assistant Chief and IPR for a final concurrent seven-day review.
4. IPR Responsibilities.
 - 4.1. Conduct an initial review of investigations and recommended findings to ensure accuracy, completeness, and compliance with contractual, directive, and city code requirements, as well as to determine whether additional allegations or investigations are necessary , within seven days of receipt from the IA Captain or designee. Upon completion of the review, the IPR Director or designee should return the case file to IA.
 - 4.2. Conduct a final review of all investigations and recommended findings, including the RU Manager's concurrence or disagreement, within seven days of receipt from the IA Captain and concurrent with the appropriate Assistant Chief's review. If further action is required, the IPR Director or designee should notify the IA Captain, who shall ensure that follow-up is conducted.
 5. RU Manager Responsibilities.
 - 5.1. Administrative investigations assigned to an RU.
 - 5.1.1. Ensure that administrative investigations under review by a RU Manager are maintained as confidential.
 - 5.1.2. Ensure that administrative investigations assigned to the RU for investigation are thoroughly investigated.
 - 5.1.2.1. Ensure investigations are completed and forwarded to IA within ten weeks.
 - 5.2. RU Manager Review and Findings.
 - 5.2.1. If the RU Manager needs more information, they shall return the case file within seven days to the investigating body with a written request for further investigation.
 - 5.2.2. Review the entire case file and the investigator's recommended findings and ensure the recommendation is supported by the preponderance of evidence.
 - 5.2.2.1. If the RU Manager concurs with all findings, they shall document their concurrence by signing the accompanying findings cover memorandum.
 - 5.2.2.2. If the RU Manager disagrees with any of the findings, they shall write a thorough memorandum, stating the basis for disagreeing with the investigator's recommended findings.
 - 5.2.3. The RU Manager shall submit the entire case file to IA within seven days of receipt.
 - 5.2.3.1. For administrative reviews of incidents involving a member's use of deadly force, death as a result of force, and in-custody deaths, the RU Manager shall submit the entire case to IA within 14 days of receipt.

- 5.2.4. If a finding is not sustained, the RU Manager may recommend a debrief pursuant to Directive 335.00, Discipline Process, if there is a perceived benefit to discussing the incident with the involved member. The discussion should be instructive in nature, not corrective.
6. Assistant Chief Review.
 - 6.1. The appropriate Assistant Chief shall review all investigations and recommended findings to ensure accuracy, completeness, and compliance with contractual, directive, and city code requirements, as well as to determine whether additional allegations warrant further investigation, within seven days of receipt. If further action is required, they shall notify the IA Captain who shall ensure that follow-up is conducted.
7. Retention of IA Files.
 - 7.1. The policy and procedure for retaining IA files pertains to those files that are in the custody and control of IA.
 - 7.2. Files for IA investigations where the involved member was either terminated as a result of the investigations or resigned or retired with the investigation pending shall be retained for no less than ten years from the date of separation.
 - 7.3. PPB shall retain all other individual IA case files for ten years following the involved officers' tenure with PPB unless otherwise directed by court order.
 - 7.4. Questions regarding the retention of IA files should be directed to the City Attorney's Office.
8. Public Disclosure of Personal Information.
 - 8.1. The personal information of complainants and Bureau members who are the subject of complaints are exempt from public disclosure under ORS § 192.355.
 - 8.1.1. Personal information contained in files shared with Citizen Review Committee (CRC) or Police Review Board (PRB) citizen members in preparation for their respective hearings are not public disclosures under the statute.

332.00, Administrative Investigations

Refer:

- ORS § 192.502, ~~Other~~355, Public Records Exempt from Disclosure
- Portland City Code Chapter 3.21, City Auditor's Independent Police Review
- DIR 330.00, Internal Affairs, Complaint Intake, and Processing
- DIR 333.00, Criminal Investigations of Police Bureau Employees
- DIR 335.00, Discipline Process
- 8001 Internal Affairs Division Retention Schedule

Definitions:

- Administrative Investigation: A complete investigation into allegations of policy violations, conducted by or at the direction of Internal Affairs (IA) or Independent Police Review (IPR).
- Administrative Review Findings for Deadly Force or In-custody Deaths: A conclusion, based upon a preponderance of evidence, as to whether a member's conduct violated Bureau directives. A finding that is "in policy" means that the evidence was sufficient to prove that the member's actions complied with directives. A finding that is "out of policy" means that the evidence was sufficient to prove that the member's actions were in violation of directive(s). An "in policy" finding may include a recommendation for action items or a debriefing.
- Command Counseling: A formal non-disciplinary corrective action that involves verbal counseling in response to a sustained finding for a minor policy violation. Command Counseling is conducted by the Responsibility Unit (RU) manager or a designee and is documented in a memo to IA.
- Debrief: A formal critique of an incident added to a not sustained finding by a RU Manager. A debrief is intended to provide a learning opportunity for a member, and is non-disciplinary in nature.
- Findings: A conclusion as to whether a member's conduct violated Bureau directives.
 - Sustained: The preponderance of evidence proves a violation of policy or procedure.
 - Not Sustained: The evidence was insufficient to prove a violation of policy or procedure.
 - Exonerated: The preponderance of evidence proves the member's conduct was lawful and within policy.
 - Unfounded: The preponderance of evidence proves the allegation was false or devoid of fact or there was not a credible basis for a possible violation of policy or procedure.

Policy:

1. IA has the primary responsibility for investigating allegations of Bureau member misconduct, which if sustained, may result in disciplinary action. Administrative investigations may also be conducted at the RU level at the direction of the IA Captain or designee. Administrative investigations shall be conducted objectively and in accordance with Bureau directives and

applicable labor agreements. IA shall work with IPR to ensure that complaints against Bureau members are investigated fairly, professionally, and objectively. In accordance with City Code, IPR has the authority to conduct administrative investigations independent from IA.

Procedure:

1. Member Responsibilities.
 - 1.1. Members shall cooperate fully in administrative investigations. Members shall answer all questions fully, truthfully, and candidly.
 - 1.2. Members shall not conceal or omit information, impede, or interfere with the reporting or investigation of any complaint.
 - 1.3. If a member (who is not the subject of the investigation) has knowledge of an incident that is being investigated, knows that the incident is being investigated, and has not been contacted by the investigator, then the member shall notify IA within 72 hours of learning of the investigation.
2. Investigator Responsibilities.
 - 2.1. When assigned an administrative investigation, the investigator shall:
 - 2.1.1. Maintain the integrity of the case file and the confidentiality of the investigation.
 - 2.1.2. Conduct a complete, thorough, and objective investigation adhering to current investigative standards for IA, as set forth in IA Standard Operating Procedures (SOP) #20.
 - 2.1.3. Complete the investigation and submit an investigative report to IA within ten weeks from the date the complaint was assigned.
 - 2.1.4. ~~If~~ Notify the IA Captain or designee when it is anticipated that determined the investigation will not be completed within the allotted time, ~~the~~. The investigator shall ~~notify~~ provide written notification to the IA Captain, ~~or designee~~ as soon as ~~that determination~~ it is made, but no later than the established due date and make a written request for determined that the case will be delayed. They shall include in the notification justification for the delay, as well as an updated estimated case completion date. If the IA Captain or designee find good cause for the delay, they may grant an extension for good cause shown of 30 days after the original due date not to exceed 30 days for any single. For each case past its due date, the IA Captain or designee will evaluate the case for tardiness on a weekly basis. If the investigator determines that additional time is needed to complete the case, they may submit a request for an additional extension, and all. The investigator shall request any additional extension(s) prior to the newly established due date. The IA Captain or designee shall limit the number of extensions not to granted to ensure the delay does not exceed 90 days cumulatively, absent beyond the original case completion deadline, unless extraordinary circumstances documented exist. The investigator shall document those extraordinary circumstances in writing, and an extension beyond the 90 day limit must be approved by the IA Captain or designee.
 - 2.1.5. Interview all members and witnesses separately.

- 2.1.5.1. In the case of witnesses who are juveniles or ~~members~~individuals who are under the care of vulnerable populationsa designated person, a guardian or caregiver will be allowed to be present but not participate during the interview. If the guardian or caregiver is also a witness to the same incident, they shall be interviewed separately and another responsible adult will be allowed to be present during the interview with the juvenile or member of the vulnerable population.
 - 2.1.5.1.1. The Bureau shall allow a support person to be present during an interview, upon request by any witness.
 - 2.1.6. Audio record all interviews of members and if possible, all non-Bureau complainants or witnesses. A separate recording is required for each interview conducted. If an interview is not recorded, the investigator shall document the reason in the case file.
 - 2.1.7. Advise all members of their *Garrity* warning and any other applicable rights as prescribed by the appropriate collective bargaining agreement.
 - 2.1.8. Include a transcription for each person interviewed in the case file. Interviews that are not recorded shall be summarized in the investigative report.
 - 2.1.9. Write an investigative report outlining the overall results of the investigation. The investigator shall include a recommended finding for each allegation or applicable area of review based on the evaluation of all relevant evidence, including interviews, physical evidence, and documentation.
 - 2.1.10. Submit the investigative report with recommended findings to the IA Captain, or designee, for review and approval.
3. IA Captain (or Designee) Responsibilities.
- 3.1. The IA Captain or designee shall ensure that the assignment, investigation, documentation, and record maintenance for administrative investigations are completed in accordance with Directive 330.00, Internal Affairs, Complaint Intake, and Processing. Additionally, the IA Captain or designee shall:
 - 3.1.1. Review all complaints received and determine how the complaints will be handled pursuant to Directive 330.00, Internal Affairs, Complaint Intake, and Processing.
 - 3.1.2. Coordinate with the Assistant Chief of Investigations about all matters alleging criminal misconduct in accordance with Directive 333.00, Criminal Investigations of Police Bureau Employees.
 - 3.1.3. Send a copy of the investigation case file to IPR for a concurrent seven-day review prior to the RU Manager's review.
 - 3.1.3.3.1.4. Review all investigations and recommended findings to ensure accuracy, completeness, and compliance with contractual, directive, and city code requirements, as well as to determine whether additional allegations or investigations warrant further investigation, within seven days of receipt. If the investigation is deficient or additional investigation is warranted, the PSD Captain shall take appropriate action.
 - 3.1.4.3.1.5. Forward a copy of the completed administrative investigation with the investigator's recommended findings to the involved member's RU Manager,

who is responsible for making an RU Manager finding(s), within seven days of completion of the review.

3.1.5.3.1.6. Notify involved members and complainants when the case is sent to the RU for findings.

3.1.6.3.1.7. If an RU Manager requests that IA conduct additional investigation, the IA Captain shall ensure the investigation is completed as soon as practical but not more than 30 days, unless extraordinary circumstances documented in writing warrant otherwise.

3.1.7.3.1.8. Review the investigator's recommended findings and the RU Manager's concurrence or disagreement and distribute the information to the appropriate Assistant Chief and IPR for a final concurrent seven-day review.

4. IPR Responsibilities.

4.1. Conduct an initial review of investigations and recommended findings to ensure accuracy, completeness, and compliance with contractual, directive, and city code requirements, as well as to determine whether additional allegations or investigations are necessary, within seven days of receipt from the IA Captain or designee. Upon completion of the review, the IPR Director or designee should return the case file to IA.

4.2. Conduct a final review of all investigations and recommended findings, including the RU Manager's concurrence or disagreement, within seven days of receipt from the IA Captain and concurrent with the appropriate Assistant Chief's review. If further action is required, the IPR Director or designee should notify the IA Captain, who shall ensure that follow-up is conducted.

4.5. RU Manager Responsibilities.

4.1.5.1. Administrative investigations assigned to an RU.

4.1.1.5.1.1. Ensure that administrative investigations under review by a RU Manager are maintained as confidential.

4.1.2.5.1.2. Ensure that administrative investigations assigned to the RU for investigation are thoroughly investigated.

4.1.2.1.5.1.2.1. Ensure investigations are completed and forwarded to IA within ten weeks.

4.2.5.2. RU Manager Review and Findings.

4.2.1.5.2.1. If the RU Manager needs more information, they shall return the case file within seven days to the investigating body with a written request for further investigation.

4.2.2.5.2.2. Review the entire case file and the investigator's recommended findings and ensure the recommendation is supported by the preponderance of evidence.

4.2.2.1.5.2.2.1. If the RU Manager concurs with all findings, they shall document their concurrence by signing the accompanying findings cover memorandum.

4.2.2.2.5.2.2.2. If the RU Manager disagrees with any of the findings, they shall write a thorough memorandum, stating the basis for disagreeing with the investigator's recommended findings.

~~4.2.3.5.2.3.~~ The RU Manager shall submit the entire case file to IA within seven days of receipt.

~~4.2.3.1.5.2.3.1.~~ For administrative reviews of incidents involving a member's use of deadly force, death as a result of force, and in-custody deaths, the RU Manager shall submit the entire case to IA within 14 days of receipt.

~~4.2.4.5.2.4.~~ If a finding is not sustained, the RU Manager may recommend a debrief pursuant to Directive 335.00, Discipline Process, if there is a perceived benefit to discussing the incident with the involved member. The discussion should be instructive in nature, not corrective.

~~5.6.~~ Assistant Chief ~~and IPR~~ Review.

~~5.1.6.1.~~ The appropriate Assistant Chief ~~and IPR~~ shall review all investigations and recommended findings to ensure accuracy, completeness, and compliance with contractual, directive, and city code requirements, as well as to determine whether additional allegations warrant further investigation, within seven days of receipt. If further action is required, they shall notify the IA Captain who shall ensure that follow-up is conducted.

~~6.7.~~ Retention of IA Files.

~~6.1.7.1.~~ The policy and procedure for retaining IA files pertains to those files that are in the custody and control of IA.

~~6.2.7.2.~~ Files for IA investigations where the involved member was either terminated as a result of the investigations or resigned or retired with the investigation pending shall be retained for no less than ten years from the date of separation.

~~6.3.7.3.~~ PPB shall retain all other individual IA case files for ten years following the involved officers' tenure with PPB unless otherwise directed by court order.

~~6.4.7.4.~~ Questions regarding the retention of IA files should be directed to the City Attorney's Office.

~~7.8.~~ Public Disclosure of Personal Information.

~~7.1.8.1.~~ The personal information of complainants and Bureau members who are the subject of complaints are exempt from public disclosure under ORS § 192.~~502355~~.

~~7.1.1.8.1.1.~~ Personal information contained in files shared with Citizen Review Committee (CRC) or Police Review Board (PRB) citizen members in preparation for their respective hearings are not public disclosures under the statute.

#1

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Saturday, September 15, 2018 4:28:59 PM
Last Modified: Saturday, September 15, 2018 4:29:57 PM
Time Spent: 00:00:58

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 332.00 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 332.00 ADMINISTRATIVE INVESTIGATIONS (previous comments July 2017)

Some changes were made to this Directive after the last time it was sent out for review. These include:

- adding that an "In Policy" deadly force finding can also include a debriefing (Definitions).
- timelines intended to help meet requirements by the US DOJ have been added to Sections 2.1.4, 3.1.4, 3.1.6 and 4.2.3.
- new Section 2.1.5 requires witnesses to be interviewed separately, but provides for juveniles or those from "vulnerable populations" to have a support person present.
- the timeline for findings on a deadly force case are listed as 14 days rather than 7 days (4.2.3.1); this is likely because the investigative materials are much larger in such cases.
- new Section 5 outlines the responsibilities of IPR and the Assistant Chief.

PCW supports these changes, though it's unclear why the IPR/Chief section doesn't address their ability to controvert the proposed findings. It also likely would help to define "vulnerable populations." To us this includes people of color, houseless persons, LGBTQ persons, immigrants, refugees, people with disabilities and political protestors.

Other changes include:

- the Definition and reference to the "Court List" (previous Section 5.3) have been cut.
- the Chief is no longer allowed to request that files be kept for longer than 10 years (Section 6.3).
- a debriefing is explicitly supposed to be "instructive, not corrective" in Section 4.24.

We are not sure why these changes were made and hope the Bureau will explain.

The last draft of this Directive listed only two possible findings, "Sustained" and "Not Sustained." As noted in our comments on 335.00, PCW appreciates that the Bureau reinstated the four possible findings, with the caveat about the name of "Not Sustained" and definition of "Unfounded."

The Directive still includes language about an "investigator" including recommended findings in their packet to the officer's Supervisor (Sections 2.1.9, 2.1.10). However, Section 2 seems to focus on Internal Affairs investigators. It should be explicit in the Directive that IPR investigators can also send forward such recommended findings.

It's still not clear whether the Commander controverting the IA recommendation triggers a Police Review Board hearing, as would happen if IA controverted the Commander (4.2.2.2). We noted before that if the case has to go back to IA again, it will just result in more unnecessary delays.

Also, as we mentioned in our 2017 comments:

- A previous requirement that Internal Affairs contact the complainant and officer every 6 weeks, still has not been re-inserted.
- The timeline to finish investigations begins when the investigator is assigned, rather than when IA receives the case (2.1.3).

CONCLUSION

Directive 332.00 Feedback

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: Friday, March 01, 2019 4:17:04 PM
Last Modified: Friday, March 01, 2019 4:18:00 PM
Time Spent: 00:00:55

Page 1

Q1 Please provide feedback for this directive

COMMENTS ON ACCOUNTABILITY, AND OTHER DIRECTIVES FEBRUARY/MARCH 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 February/March . While reviewing ten Directives at once is overwhelming, the Bureau's red-line copies helped point us to the areas that were changed, and since we commented on nine of the policies in September (and the other, on Altered Duty, in November) the process was a bit quicker. That said, part of the ease of review is that the Bureau has barely made any changes to the Directives, so most of our comments still stand. We recognize a few of the changes were made in response to our comments.

We still would like to see the Bureau post comments as they arrive so commenters would be able to build off each others' ideas.

One item we'd like to highlight up front is our suggestion in Directive 338.00 on the Discipline Guide that the Guide itself should be posted for public review and input along with the policy. We have made one recommendation based on the recent case of Sgt. Gregg Lewis but would take a "deeper dive" given a formal opportunity.

As we noted in September, the findings on misconduct allegations are a source of great concern. Not only are there poorly defined allegations for general misconduct cases ("Not Sustained" and "Unfounded" need to be fixed), but in deadly force and non-disciplinary investigations there are only two possible findings-- and those are not even the same as each other ("In Policy/Out of Policy" and "Substantiated/Not Substantiated").

We also noted several times that many Directives refer to the Professional Standards Division (PSD) and/or Captain, while others refer to the Internal Affairs (IA) Captain. Since IA is part of PSD this is confusing, and nothing has been done to clarify the issue.

We once again urge the Bureau to make the review periods at least 30 days on both ends of the rewriting process so organizations who only meet monthly have time to give feedback. In addition to the other advisory committees we have mentioned in the past (BHU Advisory Committee, Training Advisory Council, and Citizen Review Committee), the newly formed Portland Committee on Community Engaged Policing (PCCEP) seems to have too much on its plate to respond quickly to requests for input.

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 332.00 ADMINISTRATIVE INVESTIGATIONS

Directive 332.00 Feedback

New Section 4 pulls together the responsibilities of the Independent Police Review, including reviewing a case file (4.1, reflecting new Section 3.1.3) and findings (4.2, reflecting what is now Section 3.1.8). Previously, IPR's duties were included with the Assistant Chief's in what is now Section 6. These changes make the Directive clearer. However, much of the Directive-- including the guidelines around recommended findings in Section 3.1.8-- do not account for what happens when IPR conducts the investigation. Despite our previous comments, the Directive still says an "investigator" will include recommended findings in their packet to the officer's Supervisor (Sections 2.1.9 and 2.1.10), but isn't explicit that those investigators could be from either IA or IPR.

Section 2.1.5.1 changes "members of vulnerable populations" to "individuals who are under the care of a designated person," which at first seems to take away rights for other community members. However, the Bureau went beyond the old provision and now allows anyone to bring a support person in during an interview (new Section 2.1.5.1.1). PCW applauds this change.

We also previously raised the question of whether IPR and the Assistant Chief can still disagree with proposed findings ("controvert") and send cases to the Police Review Board. The Directive also does not lay out next steps after IA controverts the Commander (3.1.8) or if the RU Commander disagrees with IA (5.2.2.2).

While this Directive allows for debriefings to be added to an "In Policy" finding in deadly force cases (Definitions), PCW still believes the same findings should be used in those investigations as with any misconduct case (as noted in our comments on 335.00, which explains that we would like to see the name of "Not Sustained" and the definition of "Unfounded" be changed).

Also, as we mentioned in both 2017 and 2018:

--A previous requirement that Internal Affairs contact the complainant and officer every 6 weeks still has not been re-inserted.

--The timeline to finish investigations begins when the investigator is assigned, rather than when IA receives the case (2.1.3).

A minor change similar to 331.00 allows the IA Captain to designate someone else to take on their responsibilities (Section 3).

We never got explanations for why the Bureau cut the references to a "Court List," and removed the ability of the Chief to request case files to be kept longer than 10 years.

CONCLUSION

PCW again appreciates that the Bureau asks for community comments on its policies, and the few changes that were made in response to our feedback. However, the other common-sense ideas we are putting forward which would lead to a more trustworthy and community-minded police force should not be brushed aside. We are hoping that the once the PCCEP starts making recommendations, the Bureau will engage in public discussions (involving the Committee members and the general public) rather than continuing to go behind closed doors to assess community input. That would show a true commitment to "community engaged policing."

Thank you for your time

--dan handelman

Q2 Contact Information (optional)

Name

Portland Copwatch

Email Address

333.00, Criminal Investigations of Police Bureau Employees and Other Law Enforcement Agency Sworn Employees

Refer:

- DIR 210.21, Leaves from Service
- DIR 315.00, Laws, Rules and Orders
- DIR 330.00, Internal Affairs, Complaint Intake, and Processing
- DIR 332.00, Administrative Investigations
- DIR 1010.10, Deadly Force and In-Custody Death Reporting and Investigation Procedures
- Detective Division Standard Operation Procedure 39, Criminal Internal Investigations

Definitions:

- **Criminal Investigation:** A complete investigation into allegations of criminal conduct by a member, conducted by or at the direction of the Investigations Branch.

Policy:

1. Thorough investigations of allegations of criminal misconduct by Bureau members are essential to the maintenance of Bureau integrity, effectiveness, efficiency, and accountability. Criminal investigations of members will be conducted concurrently with any administrative investigation involving the same event without undue delay and in a manner consistent with the highest standards of objectivity and professionalism.
2. Bureau members subject to a criminal investigation will be afforded rights guaranteed under the United States and State of Oregon Constitutions throughout the investigation.
3. Investigations of deadly force or in-custody deaths are governed by Directive 1010.10, Deadly Force and In-Custody Death Reporting and Investigation Procedures.

Procedure:

1. Member Responsibilities.
 - 1.1. Any member who receives a complaint of criminal conduct by another member or has knowledge of any criminal conduct by a member, or has knowledge of any criminal investigation of a member, shall immediately notify their Shift Supervisor or any of the following:
 - 1.1.1. Reporting member's Responsibility Unit Manager.
 - 1.1.2. Any Assistant Chief (AC).
 - 1.1.3. IA Captain.
 - 1.1.4. Independent Police Review (IPR)
 - 1.2. Any member in a supervisory or higher position listed above shall forward the complaint to the Detective Division Commander.
 - 1.3. Any member who observes criminal conduct by another member has a duty to reasonably intervene if safe and feasible. Members shall immediately notify their supervisor or any individual listed above.

- 1.4. Any member who is arrested, charged, or becomes aware that they are the subject of a criminal investigation shall ensure that their direct supervisor or, if unavailable, an on-duty supervisor is notified as soon as practical, but no later than 24 hours. The appropriate supervisor shall notify, through channels, the Assistant Chief of Investigations.
- 1.5. Any member who receives a complaint of criminal conduct against a sworn law enforcement employee from another agency or has knowledge of any criminal conduct by a sworn law enforcement employee from another agency, shall notify their immediate supervisor as soon as practical. The immediate supervisor shall notify the Professional Standards Division Commander as soon as practical. The PSD Commander shall determine what additional steps are necessary (e.g., notification to the head of the other law enforcement agency, assignment of detectives if the alleged criminal conduct occurred in Portland).
2. Detective Division Commander Responsibilities.
 - 2.1. Brief the AC of Investigations within 24 hours of receipt of complaint for determination of investigative unit assignment.
 - 2.2. Notify the IA Captain or designee within 24 hours.
 - 2.3. Conduct monthly meetings with IA to provide IA information concerning criminal investigations, as well as provide the IA Captain with a status of the case (i.e., ongoing interviews, reports written, awaiting evidence, interviews or discussions with District Attorney's Office, etc.).
 - 2.4. Ensure the original case reports are delivered to the AC of Investigation and IA Captain when the investigation is complete.
 - 2.5. Act in accordance with the Detective Division's Standard Operating Procedure (SOP) 39, Criminal Internal Investigations.
3. AC of Investigations Responsibilities.
 - 3.1. Ensure the Chief is informed at the outset of the criminal investigation and provide updates on active criminal investigations.
 - 3.2. Notify the IA Captain or designee and the Detective Division Commander of any member who is arrested or charged in a criminal investigation.
 - 3.3. Determine what investigative unit shall be responsible for the criminal investigation of any Bureau employee providing the alleged criminal incident occurred in the City of Portland.
4. Investigations.
 - 4.1. For alleged criminal actions by Bureau members occurring within the city of Portland, the Chief or designee may request an outside law enforcement or prosecutorial agency to conduct the criminal investigation concurrent with the administrative investigation conducted by PPB.
 - 4.2. Internal Assignment.
 - 4.2.1. The assigned investigative unit supervisor shall:

- 4.2.1.1. Assign appropriate criminal investigators to the case.
 - 4.2.1.1.1. In making the assignment, the supervisor shall avoid any real or perceived bias or conflict of interest, as well as consider investigative expertise and resource availability.
- 4.2.1.2. Contact IA and provide the case number, complainant's name, subject member's name, name of investigators, and a summary of each allegation.

4.3. Preliminary Investigations.

- 4.3.1. Investigators shall conduct a preliminary investigation and brief the Detective Division Commander or designee who shall determine the appropriate investigative strategy.
 - 4.3.1.1. If the investigation indicates the complaint is without merit, the investigator shall submit a confidential memorandum, through channels, to the AC of Investigations, detailing specific, articulable facts to close the case.
 - 4.3.1.1.1. The Detective Division will create a case number for intakes of this nature.
 - 4.3.1.2. If the preliminary investigation indicates the need for further inquiry, the investigator shall:
 - 4.3.1.2.1. Comport with the terms of applicable collective bargaining agreements when questioning Bureau members during a criminal investigation.
 - 4.3.1.2.2. Obtain, or cause to be obtained, a privatized and confidential Police Bureau case number from the Records Division Supervisor or via direct entry. If the case number is obtained by direct entry, then the investigator shall provide the case number to the Records Division Supervisor within 72 hours.
 - 4.3.1.2.3. Contact the District Attorney's Office or other appropriate prosecutorial agency for assignment of a Deputy District Attorney or prosecutor to the investigation to coordinate investigative and judicial proceedings.
 - 4.3.1.2.4. The investigator shall conduct a complete and thorough investigation.

4.4. Investigation Completion.

- 4.4.1. The Detective Division Commander or designee shall send the final case file to the IA Captain.
- 4.4.2. IA shall archive all criminal investigation case files.

5. IA Captain Responsibilities.

- 5.1. To ensure that concurrent administrative investigations of all cases involving criminal investigations of Bureau members are tracked and completed, the IA Captain shall:
 - 5.1.1. Maintain a Criminal Internal database that includes case number, complainant's name, subject member's name, name of investigators, case status, allegation summaries, and the opening and closure dates of investigations.
 - 5.1.2. Meet monthly with IPR and the AC of Investigations or designee to discuss the commencement and ongoing coordination of criminal and administrative investigations, but shielding all IA *Garrity*-protected administrative investigative material from disclosure.
 - 5.1.3. Act in accordance with Directive 330.00, Internal Affairs, Complaint Intake, and Processing, and investigate in accordance with Directive 332.00, Administrative Investigations, upon receipt of a complaint of criminal conduct.
 - 5.1.4. Document delays due to protection of the integrity of the criminal investigation.

6. Concurrent criminal and administrative investigations.
 - 6.1. An administrative investigation into allegations of misconduct shall be conducted at the same time as the criminal investigation so long as it does not compromise the criminal investigation. In these situations, the following procedures will apply:
 - 6.1.1. A clear line of separation shall be maintained between those individuals responsible for the criminal process and those responsible for the administrative process.
 - 6.1.2. No information from a *Garrity*-protected administrative interview or any information derived from the *Garrity*-protected interview shall be shared with the District Attorney's (or other prosecutor's) Office or anyone involved in the criminal investigation.
 - 6.1.3. All information developed in the criminal investigation shall be forwarded to IA.
 - 6.1.4. The IA Captain shall take all steps necessary to prevent the disclosure of information from administrative interviews of any employee subject to a criminal investigation. This includes securing interview recordings and transcripts.
 - 6.1.5. If the criminal investigation is ongoing, no one from the Investigations Branch, including the AC of Investigations, shall review findings and/or participate in or attend any Police Review Board proceeding associated with the case.
 - 6.1.6. Administrative staff authorized to conduct work on the case shall be limited strictly to those individuals necessary to conduct the work.
 - 6.1.7. If necessary at the outset of the administrative investigation, the Chief and IA Captain shall prepare a memorandum outlining specific procedures for maintaining the line of separation between the criminal and administrative investigations, including who is authorized to possess information about the administrative case.
7. Outside Jurisdiction.
 - 7.1. For a case in which a criminal investigation is being conducted by another agency, the following procedures shall apply:
 - 7.1.1. The IA Captain or designee shall:
 - 7.1.1.1. After receiving notification that an outside criminal investigation is being conducted, inform the AC of Investigations within 24 hours.
 - 7.1.1.2. Act as the liaison with the other jurisdiction to monitor the progress of the investigation and court action if the alleged criminal conduct occurred outside the City of Portland boundaries.
 - 7.1.1.2.1. The role of the liaison is to offer assistance and gather information without influencing the course of the investigation.
 - 7.1.1.3. Coordinate investigative actions (such as interviews) with the agency conducting the investigation and/or the prosecutor so as to avoid jeopardizing the criminal case.
 - 7.1.1.4. Ensure that no information from the administrative investigation is shared with anyone involved in the criminal investigation or prosecution.

333.00, Criminal Investigations of Police Bureau Employees and Other Law Enforcement Agency Sworn Employees

Refer:

- DIR 210.21, Leaves from Service
- DIR 315.00, Laws, Rules and Orders
- DIR 330.00, Internal Affairs, Complaint Intake, and Processing
- DIR 332.00, Administrative Investigations
- DIR 1010.10, Deadly Force and In-Custody Death Reporting and Investigation Procedures
- Detective Division Standard Operation Procedure 39, Criminal Internal Investigations

Definitions:

- Criminal Investigation: A complete investigation into allegations of criminal conduct by a member, conducted by or at the direction of the Investigations Branch.

Policy:

1. Thorough investigations of allegations of criminal misconduct by Bureau members are essential to the maintenance of Bureau integrity, effectiveness, efficiency, and accountability. Criminal investigations of members will be conducted concurrently with any administrative investigation involving the same event without undue delay and in a manner consistent with the highest standards of objectivity and professionalism.
2. Bureau members subject to a criminal investigation will be afforded rights guaranteed under the United States and State of Oregon Constitutions throughout the investigation.
3. Investigations of deadly force or in-custody deaths are governed by Directive 1010.10, Deadly Force and In-Custody Death Reporting and Investigation Procedures.

Procedure:

1. Member Responsibilities.
 - 1.1. Any member who receives a complaint of criminal conduct by another member or has knowledge of any criminal conduct by a member, or has knowledge of any criminal investigation of a member, shall immediately notify their Shift Supervisor or any of the following:
 - 1.1.1. Reporting member's Responsibility Unit Manager.
 - 1.1.2. Any Assistant Chief (AC).
 - 1.1.3. IA Captain.
 - 1.1.3.1.4. Independent Police Review (IPR)
 - 1.2. Any member in a supervisory or higher position listed above shall forward the complaint to the Detective Division Commander.
 - 1.3. Any member who observes criminal conduct by another member has a duty to reasonably intervene if safe and feasible. Members shall immediately notify their supervisor or any individual listed above.

1.4. Any member who is arrested, charged, or becomes aware that they are the subject of a criminal investigation shall ensure that their direct supervisor or, if unavailable, an on-duty supervisor is notified as soon as practical, but no later than 24 hours. The appropriate supervisor shall notify, through channels, the Assistant Chief of Investigations.

1.5. Any member who receives a complaint of criminal conduct against a sworn law enforcement employee from another agency or has knowledge of any criminal conduct by a sworn law enforcement employee from another agency, shall notify their immediate supervisor as soon as practical. The immediate supervisor shall notify the Professional Standards Division Commander as soon as practical. The PSD Commander shall determine what additional steps are necessary (e.g., notification to the head of the other law enforcement agency, assignment of detectives if the alleged criminal conduct occurred in Portland).

2. Detective Division Commander Responsibilities.

2.1. Brief the AC of Investigations within 24 hours of receipt of complaint for determination of investigative unit assignment.

2.2. Notify the IA Captain or designee within 24 hours.

2.3. Conduct monthly meetings with IA to provide IA information concerning criminal investigations, as well as provide the IA Captain with a status of the case (i.e., ongoing interviews, reports written, awaiting evidence, interviews or discussions with District Attorney's Office, etc.).

2.4. Ensure the original case reports are delivered to the AC of Investigation and IA Captain when the investigation is complete.

2.5. Act in accordance with the Detective Division's Standard Operating Procedure (SOP) 39, Criminal Internal Investigations.

3. AC of Investigations Responsibilities.

3.1. Ensure the Chief is informed at the outset of the criminal investigation and provide updates on active criminal investigations.

3.2. Notify the IA Captain or designee and the Detective Division Commander of any member who is arrested or charged in a criminal investigation.

3.3. Determine what investigative unit shall be responsible for the criminal investigation of any Bureau employee providing the alleged criminal incident occurred in the City of Portland.

4. Investigations.

4.1. For alleged criminal actions by Bureau members occurring within the city of Portland, the Chief or designee may request an outside law enforcement or prosecutorial agency to conduct the criminal investigation concurrent with the administrative investigation conducted by PPB.

4.2. Internal Assignment.

4.2.1. The assigned investigative unit supervisor shall:

- 4.2.1.1. Assign appropriate criminal investigators to the case.
 - 4.2.1.1.1. In making the assignment, the supervisor shall avoid any real or perceived bias or conflict of interest, as well as consider investigative expertise and resource availability.
- 4.2.1.2. Contact IA and provide the case number, complainant's name, subject member's name, name of investigators, and a summary of each allegation.

4.3. Preliminary Investigations.

- 4.3.1. Investigators shall conduct a preliminary investigation and brief the Detective Division Commander or designee who shall determine the appropriate investigative strategy.
 - 4.3.1.1. If the investigation indicates the complaint is without merit, the investigator shall submit a confidential memorandum, through channels, to the AC of Investigations, detailing specific, articulable facts to close the case.
 - 4.3.1.1.1. The Detective Division will create a case number for intakes of this nature.
 - 4.3.1.2. If the preliminary investigation indicates the need for further inquiry, the investigator shall:
 - 4.3.1.2.1. Comport with the terms of applicable collective bargaining agreements when questioning Bureau members during a criminal investigation.
 - 4.3.1.2.2. Obtain, or cause to be obtained, a privatized and confidential Police Bureau case number from the Records Division Supervisor or via direct entry. If the case number is obtained by direct entry, then the investigator shall provide the case number to the Records Division Supervisor within 72 hours.
 - 4.3.1.2.3. Contact the District Attorney's Office or other appropriate prosecutorial agency for assignment of a Deputy District Attorney or prosecutor to the investigation to coordinate investigative and judicial proceedings.
 - 4.3.1.2.4. The investigator shall conduct a complete and thorough investigation.

4.4. Investigation Completion.

- 4.4.1. The Detective Division Commander or designee shall send the final case file to the IA Captain.
- 4.4.2. IA shall archive all criminal investigation case files.

5. IA Captain Responsibilities.

- 5.1. To ensure that concurrent administrative investigations of all cases involving criminal investigations of Bureau members are tracked and completed, the IA Captain shall:
 - 5.1.1. Maintain a Criminal Internal database that includes case number, complainant's name, subject member's name, name of investigators, case status, allegation summaries, and the opening and closure dates of investigations.
 - 5.1.2. Meet monthly with [Independent Police Review \(IPR\)](#) and the AC of Investigations or designee to discuss the commencement and ongoing coordination of criminal and administrative investigations, but shielding all IA *Garrity*-protected administrative investigative material from disclosure.
 - 5.1.3. Act in accordance with Directive 330.00, Internal Affairs, Complaint Intake, and Processing, and investigate in accordance with Directive 332.00, Administrative Investigations, upon receipt of a complaint of criminal conduct.
 - 5.1.4. Document delays due to protection of the integrity of the criminal investigation.

6. Concurrent criminal and administrative investigations.
 - 6.1. An administrative investigation into allegations of misconduct shall be conducted at the same time as the criminal investigation so long as it does not compromise the criminal investigation. In these situations, the following procedures will apply:
 - 6.1.1. A clear line of separation shall be maintained between those individuals responsible for the criminal process and those responsible for the administrative process.
 - 6.1.2. No information from a *Garrity*-protected administrative interview or any information derived from the *Garrity*-protected interview shall be shared with the District Attorney's (or other prosecutor's) Office or anyone involved in the criminal investigation.
 - 6.1.3. All information developed in the criminal investigation shall be forwarded to IA.
 - 6.1.4. The IA Captain shall take all steps necessary to prevent the disclosure of information from administrative interviews of any employee subject to a criminal investigation. This includes securing interview recordings and transcripts.
 - 6.1.5. If the criminal investigation is ongoing, no one from the Investigations Branch, including the AC of Investigations, shall review findings and/or participate in or attend any Police Review Board proceeding associated with the case.
 - 6.1.6. Administrative staff authorized to conduct work on the case shall be limited strictly to those individuals necessary to conduct the work.
 - 6.1.7. If necessary at the outset of the administrative investigation, the Chief and IA Captain shall prepare a memorandum outlining specific procedures for maintaining the line of separation between the criminal and administrative investigations, including who is authorized to possess information about the administrative case.
7. Outside Jurisdiction.
 - 7.1. For a case in which a criminal investigation is being conducted by another agency, the following procedures shall apply:
 - 7.1.1. The IA Captain or designee shall:
 - 7.1.1.1. After receiving notification that an outside criminal investigation is being conducted, inform the AC of Investigations within 24 hours.
 - 7.1.1.2. Act as the liaison with the other jurisdiction to monitor the progress of the investigation and court action if the alleged criminal conduct occurred outside the City of Portland boundaries.
 - 7.1.1.2.1. The role of the liaison is to offer assistance and gather information without influencing the course of the investigation.
 - 7.1.1.3. Coordinate investigative actions (such as interviews) with the agency conducting the investigation and/or the prosecutor so as to avoid jeopardizing the criminal case.
 - 7.1.1.4. Ensure that no information from the administrative investigation is shared with anyone involved in the criminal investigation or prosecution.

#1

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Saturday, September 15, 2018 4:27:46 PM
Last Modified: Saturday, September 15, 2018 4:28:33 PM
Time Spent: 00:00:46

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 333.00 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 333.00 CRIMINAL INVESTIGATIONS OF PPB EMPLOYEES(previous comments August 2017)

We have written repeatedly in the past questioning why Policy Section 3 states that criminal investigation procedures on deadly force situations or in-custody deaths are covered by Directive 1010.10. The Bureau's memo outlining the current final version states that Directive 333.00 is a more general guideline while 1010.10 is more specific. Examining the language carefully, PCW is comfortable with this explanation.

We raised the point that it would be easier to keep the "firewall" between Internal Affairs (IA) and Detectives "if someone other than the Portland Police investigated criminal behavior, such as an independent prosecutor's office, and/or if the administrative investigations were handed over to the 'Independent' Police Review to conduct without any PPB supervisory involvement." Perhaps as an acknowledgment of this concern, the current version has a new Section (4.1) that allows the Portland Police to call in an outside agency to investigate criminal behavior by an officer within City limits. PCW supports this addition.

We continue to urge the Bureau to allow officers to report possible criminal behavior to IPR or the Police Commissioner if they fear retaliation, where Section 1.1 only allows them to report to their supervisor, Internal Affairs or an Assistant Chief.

PCW also would like to see a re-insertion of previous Section 15 which called on supervisors to remind officers of the "ramifications" of criminal behavior and to encourage reporting by education on the Bureau's goals.

Although some clarity has been added around our confusion on how the chain of command is informed about criminal investigations, problems remain. The Directive still says an officer's supervisor is supposed to notify the A/C of investigations about criminal investigations (1.4), the Detective Division is supposed to brief the A/C within 24 hours of being assigned a case (2.1) and IA (2.2). However, the A/C is supposed to notify the IA Captain and Detective Division if a member is arrested or charged (3.2). The PPB's memo explains that criminal investigation could come from a variety of sources, implying they are just covering their bases. Thus it is odd that rather than duplicate the phrase "if IA is not already aware" from previous Section 2.2 in other places for clarity, that phrase was struck in the final version. We noted that duplication is better than lack of clarity to avoid what happened with Chief O'Dea's arrest in 2016. We asked that the Chief be required to report his/her arrest to the Police Commissioner since there is no supervisor for the Chief; that change was not made.

We also continue to ask the Bureau not to use the term "privatized" to mean "redacted" (Section 4.3.2.1.2), since the word "privatized" means taking a public entity and putting it in the hands of a private corporation. We assume this is not what the PPB intends.

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.

Directive 333.00 Feedback

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: Friday, March 01, 2019 4:06:28 PM
Last Modified: Friday, March 01, 2019 4:07:29 PM
Time Spent: 00:01:01
IP Address: 97.120.206.243

Page 1

Q1 Please provide feedback for this directive

COMMENTS ON ACCOUNTABILITY, AND OTHER DIRECTIVES FEBRUARY/MARCH 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 February/March . While reviewing ten Directives at once is overwhelming, the Bureau's red-line copies helped point us to the areas that were changed, and since we commented on nine of the policies in September (and the other, on Altered Duty, in November) the process was a bit quicker. That said, part of the ease of review is that the Bureau has barely made any changes to the Directives, so most of our comments still stand. We recognize a few of the changes were made in response to our comments.

We still would like to see the Bureau post comments as they arrive so commenters would be able to build off each others' ideas.

One item we'd like to highlight up front is our suggestion in Directive 338.00 on the Discipline Guide that the Guide itself should be posted for public review and input along with the policy. We have made one recommendation based on the recent case of Sgt. Gregg Lewis but would take a "deeper dive" given a formal opportunity.

As we noted in September, the findings on misconduct allegations are a source of great concern. Not only are there poorly defined allegations for general misconduct cases ("Not Sustained" and "Unfounded" need to be fixed), but in deadly force and non-disciplinary investigations there are only two possible findings-- and those are not even the same as each other ("In Policy/Out of Policy" and "Substantiated/Not Substantiated").

We also noted several times that many Directives refer to the Professional Standards Division (PSD) and/or Captain, while others refer to the Internal Affairs (IA) Captain. Since IA is part of PSD this is confusing, and nothing has been done to clarify the issue.

We once again urge the Bureau to make the review periods at least 30 days on both ends of the rewriting process so organizations who only meet monthly have time to give feedback. In addition to the other advisory committees we have mentioned in the past (BHU Advisory Committee, Training Advisory Council, and Citizen Review Committee), the newly formed Portland Committee on Community Engaged Policing (PCCEP) seems to have too much on its plate to respond quickly to requests for input.

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 333.00 Feedback

DIRECTIVE 333.00 CRIMINAL INVESTIGATIONS OF PPB EMPLOYEES

PCW appreciates that the Bureau has added IPR as a place where officers can report possible criminal conduct by one of their peers (new Section 1.1.4). Of course, this isn't as helpful as it could be since IPR is not empowered to conduct criminal investigations, nor compel officer testimony.

In a related issue, we have repeatedly suggested that the City can better maintain a "firewall" between Internal Affairs (IA) and criminal Detectives "if someone other than the Portland Police investigated criminal behavior, such as an independent prosecutor's office, and/or if the administrative investigations were handed over to the 'Independent' Police Review to conduct without any PPB supervisory involvement." We previously acknowledged that Section 4.1 allows the PPB to call in an outside agency to investigate criminal behavior by an officer within City limits, which is a step in the right direction.

New Section 2.5 tells Detectives to follow Standard Operating Procedure 39 on Criminal Investigations; the PPB should post SOPs online and include a link so the public knows what is being required.

PCW also asked the Bureau to re-insert a previous Section which called on supervisors to remind officers of the "ramifications" of criminal behavior, and to encourage reporting by educating officers about the Bureau's goals.

We asked that the Bureau clean up the Directive to be sure there is clarity around the chain of command being informed about criminal investigations. Section 1.4 still says an officer's supervisor is supposed to notify the Assistant Chief of Investigations and Internal Affairs within 24 hours of being assigned a case. However, Section 3.2 says the A/C must notify the IA Captain and Detective Division if a member is arrested or charged. The PPB has written that criminal investigation could come from a variety of sources, so PCW suggests again that the phrase "if [person or Division] is not already aware," which was in a previous version of the Directive, could be included throughout. We repeat that duplication is better than lack of clarity to avoid what happened with Chief O'Dea's arrest in 2016 when proper reporting did not take place. PCW still believes the Chief should be required to report his/her arrest to the Police Commissioner since there is no other supervisor for the Chief.

We ask the Bureau once more not to use the term "privatized" to mean "redacted" in referring to removing information from reports (Section 4.3.2.1.2). Because the word "privatized" means taking a public entity and putting it in the hands of a private corporation, this just causes confusion in the community.

CONCLUSION

PCW again appreciates that the Bureau asks for community comments on its policies, and the few changes that were made in response to our feedback. However, the other common-sense ideas we are putting forward which would lead to a more trustworthy and community-minded police force should not be brushed aside. We are hoping that the once the PCCEP starts making recommendations, the Bureau will engage in public discussions (involving the Committee members and the general public) rather than continuing to go behind closed doors to assess community input. That would show a true commitment to "community engaged policing."

Thank you for your time

--Portland Copwatch

Q2 Contact Information (optional)

Name

Portland Copwatch

Email Address

334.00, Performance Deficiencies

Refer:

- Portland City Code 3.21.120(F), Independent Police Review Division, Handling Complaints
- DIR 315.30, Satisfactory Performance
- DIR 330.00, Internal Affairs, Complaint Intake, and Processing
- DIR 332.00, Administrative Investigations
- DIR 335.00, Discipline Process

Definitions:

- Findings: A conclusion as to whether a member's conduct violated Bureau directives.
 - Sustained: The preponderance of evidence proves a violation of policy or procedure.
 - Not Sustained: The evidence was insufficient to prove a violation of policy or procedure.
 - Exonerated: The preponderance of evidence proves the member's conduct was lawful and within policy.
 - Unfounded: The preponderance of evidence proves the allegation was false or devoid of fact or there was not a credible basis for a possible violation of policy or procedure.
- Performance Deficiency: Inadequate completion or execution of routine work duties or functions including, but not limited to, issues with attendance, incomplete reports, lack of follow through on cases, and failure to properly perform assigned duties.
- Performance Deficiency Investigation: An administrative investigation performed at the Responsibility Unit (RU) level to address inadequate completion or execution of routine work duties or functions.

Policy:

1. Member accountability and professionalism are of paramount importance. The Bureau shall ensure that all member misconduct, including insufficient or poor work performance, is thoroughly investigated and appropriately addressed to maintain individual and organizational accountability and preserve community trust and confidence. Internal Affairs (IA) shall manage the investigation of performance deficiencies and work closely with Independent Police Review (IPR) to ensure that allegations of this nature are investigated fairly, professionally, and objectively.

Procedure:

1. Investigations of member work performance are generally conducted by the RU in accordance with the necessary provisions in Directives 330.00, Internal Affairs, Complaint Intake, and Processing, and 332.00, Administrative Investigations.
2. Investigation Initiation Procedures.
 - 2.1. The RU Manager shall identify member performance deficiencies and consult with Internal Affairs (IA) to determine if an investigation into the member's performance is warranted.
 - 2.1.1. When notifying IA, the RU Manager shall include a detailed description of the member's behavior, in an effort to identify specific Bureau directives that will frame the allegations if there is an investigation.
3. Processing and Case Assignment.

- 3.1. The IA Captain (or Designee) shall:
 - 3.1.1. Assign the investigation to the involved member's RU Manager or a designee, if the IA Captain agrees that the case is related to a performance deficiency and determines that an investigation is necessary.
 - 3.1.2. Provide all necessary forms and case materials to the RU Manager.
 - 3.1.3. Number and track all performance investigations to ensure adherence with procedures and timelines.
 - 3.1.4. Notify IPR Director of the investigation.
- 3.2. The RU Manager presumptively shall assign the investigation to the involved member's shift Lieutenant. However, the RU Manager may assign the investigation to another appropriate supervisor.

4. Investigation.

- 4.1. The Investigating Supervisor shall:
 - 4.1.1. Conduct the Performance Deficiency Investigation in accordance with the necessary provisions of Directive 332.00, Administrative Investigations.
 - 4.1.2. Submit the investigative report with recommended findings to the IA Captain, or designee, for review and approval.
- 4.2. The RU Manager shall:
 - 4.2.1. Ensure that performance deficiency investigations are maintained as confidential.
 - 4.2.2. Ensure that performance deficiency investigations are adequately investigated, in a manner consistent with all applicable law and bargaining agreements.
 - 4.2.3. Ensure that performance investigations are completed within 10 weeks after assignment.
 - 4.2.4. Review the investigator's recommended findings and ensure the recommendation is supported by the preponderance of evidence.
 - 4.2.4.1. If the RU Manager concurs with all findings, they shall document their concurrence by signing the accompanying findings cover memorandum.
 - 4.2.4.2. If the RU Manager disagrees with any of the findings, they shall write a thorough memorandum, stating the basis for controverting the investigator's recommended findings.
 - 4.2.5. Upon completion of review and concurrence or contravention with proposed findings, the RU Manager or designee shall submit the proposed findings, through channels, to the IA Captain or designee.
- 4.3. The IA Captain (or Designee) shall:
 - 4.3.1. Review investigative reports and recommended findings for completeness and accuracy.
 - 4.3.2. Review the investigation and assigned RU investigator's findings within seven days of receipt of the investigation and case file. The IA Captain shall assess adequacy of the investigation and determine whether the investigation supports the recommended findings. The IA Captain will return for timely further investigation all case files requiring further information.
 - 4.3.3. If the IA Captain approves the investigator's recommended findings, then within seven days of receipt of the case file, the IA Captain shall distribute a copy of the completed investigative report with the investigator's recommended findings to the involved member's RU Manager for making proposed findings.

5. Findings and Corrective Action.
 - 5.1. A member who did not serve as the investigating supervisor (i.e., RU Manager or designee) shall make a proposed finding on each allegation investigated within seven days of receipt of the case file.
 - 5.1.1. Upon completion of review and development of proposed findings, the RU Manager or designee shall submit the proposed findings, through channels, to the IA Captain or designee.
 - 5.2. The IA Captain (or Designee) shall:
 - 5.2.1. Review proposed findings and discipline to ensure completeness and accuracy.
 - 5.2.2. Distribute the case file, including the recommended and proposed findings and discipline, to the appropriate Assistant Chief and IPR for a concurrent seven-day review.
 - 5.3. The RU Manager or the Assistant Chief shall not take any action on proposed findings, initiate corrective action, or discipline a member prior to formal approval and notification from IA.
 - 5.4. Disciplinary action related to performance deficiencies will normally be progressive in nature; however serious performance problems may justify suspension or termination without prior warning or attempts at corrective action or discipline.
 - 5.4.1. Supervisors shall refer to Directive 335.00, Discipline Process for guidance regarding the process for recommending and assigning corrective or disciplinary action.
6. Records Retention.
 - 6.1. IA shall maintain performance investigation case files in accordance with records-retention policies. Performance investigation files shall be retained for no less than ten years from the date of separation.

334.00, Performance Deficiencies

Refer:

- Portland City Code 3.21.120(F), Independent Police Review Division, Handling Complaints
- DIR 315.30, Satisfactory Performance
- DIR 330.00, Internal Affairs, Complaint Intake, and Processing
- DIR 332.00, Administrative Investigations
- DIR 335.00, Discipline Process

Definitions:

- Findings: A conclusion as to whether a member's conduct violated Bureau directives.
 - Sustained: The preponderance of evidence proves a violation of policy or procedure.
 - Not Sustained: The evidence was insufficient to prove a violation of policy or procedure.
 - Exonerated: The preponderance of evidence proves the member's conduct was lawful and within policy.
 - Unfounded: The preponderance of evidence proves the allegation was false or devoid of fact or there was not a credible basis for a possible violation of policy or procedure.
- Performance Deficiency: Inadequate completion or execution of routine work duties or functions including, but not limited to, issues with attendance, incomplete reports, lack of follow through on cases, and failure to properly perform assigned duties.
- Performance Deficiency Investigation: An administrative investigation performed at the Responsibility Unit (RU) level to address inadequate completion or execution of routine work duties or functions.

Policy:

1. Member accountability and professionalism are of paramount importance. The Bureau shall ensure that all member misconduct, including insufficient or poor work performance, is thoroughly investigated and appropriately addressed to maintain individual and organizational accountability and preserve community trust and confidence. Internal Affairs (IA) shall manage the investigation of performance deficiencies and work closely with Independent Police Review (IPR) to ensure that allegations of this nature are investigated fairly, professionally, and objectively.

Procedure:

1. Investigations of member work performance are generally conducted by the RU in accordance with the necessary provisions in Directives 330.00, Internal Affairs, Complaint Intake, and Processing, and 332.00, Administrative Investigations.
2. Investigation Initiation Procedures.

- 2.1. The RU Manager shall identify member performance deficiencies and consult with Internal Affairs (IA) to determine if an investigation into the member's performance is warranted.
 - 2.1.1. When notifying IA, the RU Manager shall include a detailed description of the member's behavior, in an effort to identify specific Bureau directives that will frame the allegations if there is an investigation.
3. Processing and Case Assignment.
 - 3.1. The IA Captain (or Designee) shall:
 - 3.1.1. Assign the investigation to the involved member's RU Manager or a designee, if the IA Captain agrees that the case is related to a performance deficiency and determines that an investigation is necessary.
 - 3.1.2. Provide all necessary forms and case materials to the RU Manager.
 - 3.1.3. Number and track all performance investigations to ensure adherence with procedures and timelines.
 - 3.1.4. Notify IPR Director of the investigation.
 - 3.2. The RU Manager presumptively shall assign the investigation to the involved member's shift Lieutenant. However, the RU Manager may assign the investigation to another appropriate supervisor.
4. Investigation.
 - 4.1. The Investigating Supervisor shall:
 - 4.1.1. Conduct the Performance Deficiency Investigation in accordance with the necessary provisions of Directive 332.00, Administrative Investigations.
 - 4.1.2. Submit the investigative report with recommended findings to the IA Captain, or designee, for review and approval.
 - 4.2. The RU Manager shall:
 - 4.2.1. Ensure that performance deficiency investigations are maintained as confidential.
 - 4.2.2. Ensure that performance deficiency investigations are adequately investigated, in a manner consistent with all applicable law and bargaining agreements.
 - 4.2.3. Ensure that performance investigations are completed within 10 weeks after assignment.
 - 4.2.4. Review the investigator's recommended findings and ensure the recommendation is supported by the preponderance of evidence.
 - 4.2.4.1. If the RU Manager concurs with all findings, they shall document their concurrence by signing the accompanying findings cover memorandum.
 - 4.2.4.2. If the RU Manager disagrees with any of the findings, they shall write a thorough memorandum, stating the basis for controverting the investigator's recommended findings.
 - 4.2.5. Upon completion of review and concurrence or contravention with proposed findings, the RU Manager or designee shall submit the proposed findings, through channels, to the IA Captain or designee.
 - 4.3. The IA Captain (or Designee) shall:

- 4.3.1. Review investigative reports and recommended findings for completeness and accuracy.
 - 4.3.2. Review the investigation and assigned RU investigator's findings within seven days of receipt of the investigation and case file. The IA Captain shall assess adequacy of the investigation and determine whether the investigation supports the recommended findings. The IA Captain will return for timely further investigation all case files requiring further information.
 - 4.3.3. If the IA Captain approves the investigator's recommended findings, then within seven days of receipt of the case file, the IA Captain shall distribute a copy of the completed investigative report with the investigator's recommended findings to the involved member's RU Manager for making proposed findings.
5. Findings and Corrective Action.
 - 5.1. A member who did not serve as the investigating supervisor (i.e., RU Manager or designee) shall make a proposed finding on each allegation investigated within seven days of receipt of the case file.
 - 5.1.1. Upon completion of review and development of proposed findings, the RU Manager or designee shall submit the proposed findings, through channels, to the IA Captain or designee.
 - 5.2. The IA Captain (or Designee) shall:
 - 5.2.1. Review proposed findings and discipline to ensure completeness and accuracy.
 - 5.2.2. Distribute the case file, including the recommended and proposed findings and discipline, to the appropriate Assistant Chief and IPR for a concurrent seven-day review.
~~Neither the~~
 - 5.3. ~~The~~ RU Manager, ~~nor or~~ the Assistant Chief shall ~~not~~ take any action on proposed findings, initiate corrective action, or discipline a member prior to formal approval and notification ~~from~~ IA.
 - 5.4. Disciplinary action related to performance deficiencies will normally be progressive in nature; however serious performance problems may justify suspension or termination without prior warning or attempts at corrective action or discipline.
 - 5.4.1. Supervisors shall refer to Directive 335.00, Discipline Process for guidance regarding the process for recommending and assigning corrective or disciplinary action.
6. Records Retention.
 - 6.1. IA shall maintain performance investigation case files in accordance with records-retention policies. Performance investigation files shall be retained for no less than ten years from the date of separation.

#1

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Tuesday, September 04, 2018 10:04:18 AM
Last Modified: Tuesday, September 04, 2018 10:08:24 AM
Time Spent: 00:04:06

Page 1

Q1 Please provide feedback for this directive

The directive is acceptable for what it covers but it does not allow for mentoring of officers, especially young officers, by supervisors. Younger officers typically need more guidance to become solid officers. While this mentoring is taking place, there should not IA cases being generated against them.

The policy should go further in defining what would constitute poor or unacceptable work performance so that every "teaching or mentoring moment" does not become an IA investigation.

Q2 Contact Information (optional)

Respondent skipped this question

#2

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Saturday, September 15, 2018 4:26:27 PM
Last Modified: Saturday, September 15, 2018 4:27:19 PM
Time Spent: 00:00:51

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 334.00 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 334.00 PERFORMANCE DEFICIENCIES (previous comments August 2017)

In our previous comments on this Directive, we wondered why the Independent Police Review (IPR) or Internal Affairs (IA) would not have a larger role in looking at patterns of performance problems. The current version seems to cut out IPR from the ability to review completed investigations (old Section 2.6.8) even though they still have to be informed the investigation is happening (Section 3.1.4) and sign off on the recommended findings and discipline (Section 5.2.2). We strongly believe IPR should also review the investigation before it moves on for findings (likely in Section 4.3).

Several changes were made to this Directive before it was finalized, including:

- the default person to conduct a Performance Deficiency Investigation is the officer's Lieutenant (3.2).
- requiring the investigating Supervisor to turn the files over to IA (4.1.2).
- explicitly saying the RU Manager has to review the findings by a preponderance of evidence, sign the memo or controvert the findings (4.2.4) and send the information to IA (4.2.5).
- outlining how IA should review the findings and send cases back for more investigation if necessary (4.3.2).

PCW has no problem with these changes.

There is a slight problem with the renumbering of what was Section 5.3, saying that the RU Manager and Assistant Chief cannot take action until IA has signed off on the findings. Similar language was struck from the RU Manager's responsibilities in 5.1, and this language is now included under the IA's responsibilities in 5.2.2.1. For clarity, it should be moved back out to its own section.

We noted earlier that the package to be submitted by the RU Manager previously specified its contents (investigative report, interview recordings, transcripts and exhibits-- old Section 2.6.7) but now only asks for "development of proposed findings" (Section 5.1.1). The fuller description is much more useful.

Also see our comments on Directive 330.00 for our concerns about the definitions of possible findings.

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: Friday, March 01, 2019 4:12:54 PM
Last Modified: Friday, March 01, 2019 4:13:45 PM
Time Spent: 00:00:51
IP Address: 97.120.206.243

Page 1

Q1 Please provide feedback for this directive

COMMENTS ON ACCOUNTABILITY, AND OTHER DIRECTIVES FEBRUARY/MARCH 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 February/March . While reviewing ten Directives at once is overwhelming, the Bureau's red-line copies helped point us to the areas that were changed, and since we commented on nine of the policies in September (and the other, on Altered Duty, in November) the process was a bit quicker. That said, part of the ease of review is that the Bureau has barely made any changes to the Directives, so most of our comments still stand. We recognize a few of the changes were made in response to our comments.

We still would like to see the Bureau post comments as they arrive so commenters would be able to build off each others' ideas.

One item we'd like to highlight up front is our suggestion in Directive 338.00 on the Discipline Guide that the Guide itself should be posted for public review and input along with the policy. We have made one recommendation based on the recent case of Sgt. Gregg Lewis but would take a "deeper dive" given a formal opportunity.

As we noted in September, the findings on misconduct allegations are a source of great concern. Not only are there poorly defined allegations for general misconduct cases ("Not Sustained" and "Unfounded" need to be fixed), but in deadly force and non-disciplinary investigations there are only two possible findings-- and those are not even the same as each other ("In Policy/Out of Policy" and "Substantiated/Not Substantiated").

We also noted several times that many Directives refer to the Professional Standards Division (PSD) and/or Captain, while others refer to the Internal Affairs (IA) Captain. Since IA is part of PSD this is confusing, and nothing has been done to clarify the issue.

We once again urge the Bureau to make the review periods at least 30 days on both ends of the rewriting process so organizations who only meet monthly have time to give feedback. In addition to the other advisory committees we have mentioned in the past (BHU Advisory Committee, Training Advisory Council, and Citizen Review Committee), the newly formed Portland Committee on Community Engaged Policing (PCCEP) seems to have too much on its plate to respond quickly to requests for input.

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 334.00 PERFORMANCE DEFICIENCIES

Directive 334.00 Feedback

The only change in this Directive reflects PCW's suggestion to make it clear the RU Manager and Assistant Chief cannot take action until IA has signed off on the findings in a misconduct case. That provision had been renumbered incorrectly and is now back to being in its own Section labeled 5.3. (Old Section 5.3 became 5.4 as a result, but the red line version does not make that clear). That Section also was rewritten so the grammar better explains the restriction on taking disciplinary action without an OK from IA.

We repeat here our concern that the Directive requires the Independent Police Review to be notified of a Performance Deficiency investigation, but doesn't require IPR to review the finished investigation before findings are attached. They are asked to review the findings and proposed discipline in Section 5.2.2, but as with Directives 331.00 and 332.00, it does not say what happens if they disagree.

PCW also continues to recommend an earlier list outlining items for the RU Manager's investigative packet beyond "development of proposed findings" (Section 5.1.1) should be included. A previous version said the packet would include the investigative report, interview recordings, transcripts and exhibits.

Also see our comments on Directive 330.00 for our concerns about the definitions of possible findings.

CONCLUSION

PCW again appreciates that the Bureau asks for community comments on its policies, and the few changes that were made in response to our feedback. However, the other common-sense ideas we are putting forward which would lead to a more trustworthy and community-minded police force should not be brushed aside. We are hoping that the once the PCCEP starts making recommendations, the Bureau will engage in public discussions (involving the Committee members and the general public) rather than continuing to go behind closed doors to assess community input. That would show a true commitment to "community engaged policing."

Thank you for your time

--Portland Copwatch

Q2 Contact Information (optional)

Name

Portland Copwatch

Email Address

335.00, Discipline Process

Refer:

- Portland City Code 3.20.140 Police Review Board
- City of Portland, Human Resources Administrative Rule 5.01, Discipline
- DIR 330.00, Internal Affairs, Complaint Intake, and Processing
- DIR 336.00, Police Review Board
- DIR 338.00, Discipline Guide

Definitions:

- **Case File:** Administrative package containing the originals or copies of the Internal Affairs (IA) investigation or other investigation materials, including all materials related to findings.
- **Command Counseling:** A formal non-disciplinary corrective action that involves verbal counseling in response to a sustained finding for a minor policy violation. Command counseling is conducted by the Responsibility Unit (RU) manager or a designee and is documented in a memorandum to IA.
- **Corrective Action Recommendation Memorandum:** A form attached to an administrative investigation case file by the RU Manager recommending the corrective action or discipline. The form indicates whether the RU Manager believes a Command Counseling, a Letter of Reprimand, or a Police Review Board is appropriate. The form also ensures the RU Manager considers the individual's discipline history and uses the Discipline Guide in reaching any recommended discipline.
- **Demotion:** Reversion to a lower rank or job classification.
- **Discipline Guide:** An advisory document used to provide direction to Responsibility Unit Managers, the Police Review Board (PRB), the Chief of Police, and the Commission in Charge, when determining an appropriate level of discipline.
- **Findings:** A conclusion as to whether a member's conduct violated Bureau directives.
 - **Sustained:** The preponderance of evidence proves a violation of policy or procedure.
 - **Not Sustained:** The evidence was insufficient to prove a violation of policy or procedure.
 - **Exonerated:** The preponderance of evidence proves the member's conduct was lawful and within policy.
 - **Unfounded:** The preponderance of evidence proves the allegation was false or devoid of fact or there was not a credible basis for a possible violation of policy or procedure.
- **Findings Cover Sheet:** A form attached to an administrative investigation case file by the RU Manager recommending the finding. This form includes sections for the appropriate Assistant Chief, Professional Standards Division (PSD) Captain, and the Independent Police Review (IPR) Director to list whether they concur or controvert the findings, whether more investigation is warranted, whether the case would benefit from a PRB hearing, and/or

suggest additional recommendations (e.g., training review, policy review, supervisory review).

- Letter of Reprimand: A disciplinary letter placed in the member's personnel file detailing a member's conduct or performance that violated one or more Bureau directives but does not involve an economic sanction such as a suspension, demotion or termination.
- Pre-determination meeting: A due-process meeting with the Chief of Police or designee to discuss the involved member's proposed discipline prior to a final disciplinary decision. This meeting is the member's opportunity to discuss the case with the Chief or designee, and present any mitigating factors for consideration.
- Preponderance of the Evidence: The facts and circumstances indicate it is more likely than not that a violation of policy or procedure either occurred or did not occur.
- Stipulated Discipline: A process by which pre-determined categories of investigations are eligible for agreed upon discipline.
- Suspension: Removal from work status, without pay, for a specified period of time.
- Termination: Discharge from Police Bureau employment.

Policy:

1. The purpose of this directive is to provide guidance to members regarding the process for recommending and assigning corrective or disciplinary action when an allegation of a policy violation or misconduct against a member is sustained.
2. In order to maintain public confidence in the ability of the Police Bureau to investigate and properly address legitimate complaints concerning employee conduct and performance, and to ensure internal accountability, a broad range of tools are available to set expectations, issue corrective action, and institute discipline. The Bureau has a responsibility to impose corrective or disciplinary action when warranted by a member's violation of policy.
3. The Bureau's philosophy with respect to corrective action and discipline is the same philosophy that is applied to employees who work elsewhere in the City, which is that corrective and disciplinary action are tools available to assist supervisors in working with employees whose behavior or job performance does not meet the expectations associated with the position they hold. Corrective action or discipline can be used to correct behavior, to deter a violation of policies or procedures, and to hold employees accountable for their behavior or performance. Generally speaking, corrective action or discipline is used to put the employee on notice of unacceptable conduct or performance, and give the employee a reasonable opportunity to correct their behavior.
4. Generally, discipline is progressive, beginning with an oral warning or Letter of Reprimand and proceeding to suspension, demotion, or termination. Serious offenses may result in termination, even if there has been no prior warnings, attempts at corrective action or

disciplinary action. Serious offenses include, but are not limited to, criminal or other unlawful acts, abuse of authority, theft, untruthfulness, excessive force, failure to follow orders, unlawful discrimination, workplace harassment, retaliation, creation of a hostile work environment, or workplace violence and may justify suspension or termination without the necessity of progressive discipline.

5. In certain cases, as defined in City Code 3.20.140, the Bureau and member may both agree to the appropriate disciplinary action to allow for a more timely resolution, i.e., Stipulated Discipline.
6. In all cases, the level and degree of discipline shall be in keeping with the seriousness of the offense, taking into account the circumstances relevant to the case. It is not the purpose of this directive to require an automatic progression of disciplinary measures. Rather, the circumstances of each situation are considered on a case-by-case basis. The Discipline Guide serves to ensure that corrective action and discipline are applied in an impartial and consistent manner.
7. Before the Bureau takes corrective action or disciplinary action, the Bureau or IPR will conduct a thorough investigation to assist it in determining whether the employee, in fact, engaged in misconduct or performance that is contrary to Bureau directives and policies.
8. Members are subject to disciplinary action for cause or just cause. Possible disciplinary actions are identified in Human Resources Administrative Rule 5.01 - Discipline, the Discipline Guide, or the applicable collective bargaining agreement.
9. Counseling, instruction, and training are not considered disciplinary action.

Procedure:

1. Those responsible for making recommendations on findings and discipline shall refer to the Discipline Guide in accordance with Directive 338.00, Discipline Guide.
2. Development of Proposed Findings and Recommended Discipline.
 - 2.1. RU Manager Responsibilities.
 - 2.1.1. Obtain the member's discipline history by contacting:
 - 2.1.1.1. The discipline coordinator in PSD for administrative investigations of sworn members.
 - 2.1.1.2. The CRB coordinator in PSD for collision review board (CRB) cases.
 - 2.1.1.3. The BHR business partner in PPB's personnel division for non-sworn members.
 - 2.1.2. Review and consider the member's work history including aggravating and mitigating factors as set forth in the Discipline Guide when recommending corrective or disciplinary action.
 - 2.1.3. Make a discipline recommendation and document such on the Findings Cover Sheet and in the Corrective Action Recommendation Memorandum.
 - 2.1.4. Submit the entire packet to IA, including the Findings Cover Sheet and the Corrective Action Recommendation Memorandum, within seven days of receipt of the case file.

- 2.1.4.1. When submitting the packet to IA, the RU Manager shall also indicate in the Corrective Action Recommendation Memorandum whether the case is eligible for Stipulated Discipline (subject to member's agreement and final approval by the Chief and the Commissioner in Charge). If the case is eligible for Stipulated Discipline, the RU Manager shall include specific recommended discipline in the Corrective Action Recommendation Memorandum.
 - 2.1.5. RU Managers or designees are not permitted to take any corrective action or discipline prior to being informed by the IA Captain or Discipline Coordinator that the case has been closed.
 - 2.2. IA Captain Responsibilities.
 - 2.2.1. Upon receipt of the RU Manager's proposed findings, the IA Captain or their designee shall, by the end of the next business day, send a copy of the case file, including the proposed findings and recommended discipline, to the IPR Director and the supervising Assistant Chief for a seven-day concurrent review.
 - 2.2.2. The IA Captain shall review the proposed findings and recommended discipline within seven days of receipt.
 - 2.2.2.1. The IA Captain may controvert the RU manager's proposed findings and/or recommended discipline. All controverts shall be documented in a memorandum that clearly articulates that the reviewer wishes to controvert and provides an adequate explanation for the writer's basis for disagreeing with the proposed finding or recommended discipline.
 - 2.3. Supervising Assistant Chief Responsibilities.
 - 2.3.1. The Supervising Assistant Chief shall review the proposed findings and recommended discipline and resubmit to IA within seven days of receipt.
 - 2.3.1.1. The Assistant Chief may controvert the proposed findings and/or recommended discipline. All controverts shall be documented in a memorandum that clearly articulates that the reviewer wishes to controvert and provides an adequate explanation for the writer's basis for disagreeing with the proposed finding or recommended discipline.
 - 2.4. IPR Director Responsibilities.
 - 2.4.1. The IPR Director will review the proposed findings and recommended discipline and resubmit to IA within seven days of receipt.
 - 2.4.1.1. The IPR Director may controvert the proposed findings and/or recommended discipline. All controverts shall be documented in a memorandum that clearly articulates that the reviewer wishes to controvert and provides an adequate explanation for the writer's basis for disagreeing with the proposed finding or recommended discipline.
 - 2.5. Controverted Findings and Discipline.
 - 2.5.1. If a proposed finding or recommended discipline of the RU Manager is controverted by the supervising Assistant Chief, the IPR Director, or the IA

Captain, the case will be heard by the PRB in accordance with Directive 336.00, Police Review Board.

3. Imposition of Corrective Action or Discipline.

3.1. Command Counseling or Letter of Reprimand.

- 3.1.1. The IA Captain shall refer all cases where proposed corrective action or discipline is less than suspension to the involved member's RU Manager to implement the corrective action or discipline.
- 3.1.2. The IA Captain shall notify the RU Manager and the Discipline Coordinator when the case is closed and the Command Counseling or Letter of Reprimand can be issued.
- 3.1.3. The RU Manager, in consultation with the Discipline Coordinator, shall prepare the proposed corrective action or discipline and other documentation as appropriate.
- 3.1.4. The appropriate Assistant Chief shall review the RU Manager's recommended action and upon approval return the documentation to the Discipline Coordinator.
- 3.1.5. The Discipline Coordinator shall receive the documentation and coordinate corrective action or discipline with the RU Manager.
- 3.1.6. Pursuant to city code, involved members may appeal the proposed findings to the Citizen Review Committee (CRC).
 - 3.1.6.1. In such cases, the Chief shall not issue proposed discipline or make recommendations until the CRC has made a final decision, or until after the City Council has made a determination, if the CRC appeal process has resulted in referral of the case to the City Council.
- 3.1.7. If the proposed corrective action is Command Counseling:
 - 3.1.7.1. The RU Manager shall meet with the member to review the incident and communicate their expectations moving forward.
 - 3.1.7.2. The RU Manager shall outline the expectations in the meeting with the member and document as such in a memorandum.
 - 3.1.7.3. The RU Manager shall forward the Command Counseling memorandum to the Discipline Coordinator.
 - 3.1.7.4. The Command Counseling memorandum shall not include findings that are not sustained and include a debrief. Debriefings shall be documented separately in accordance with Directive 332.00, Administrative Investigations.
- 3.1.8. If the proposed corrective action is a Letter of Reprimand:
 - 3.1.8.1. The RU Manager shall meet with the member to review the incident and communicate their expectation moving forward.
 - 3.1.8.2. The RU Manager shall serve the member with the letter of proposed discipline.
 - 3.1.8.2.1. The member can request a pre-determination meeting with their supervising Assistant Chief.
 - 3.1.8.2.1.1. Following the meeting, the Assistant Chief shall notify the Discipline Coordinator in writing of the final discipline to be imposed.

- 3.1.8.3. The Discipline Coordinator shall coordinate with the RU Manager the service of the final Letter of Reprimand.
- 3.1.9. The Discipline Coordinator shall forward a copy of the Command Counseling memorandum or the proposed and final Letters of Reprimand to the Personnel Division for inclusion in the member's personnel file.
- 3.2. Discipline of Suspension or Greater.
 - 3.2.1. All cases in which recommended discipline is suspension or greater will be heard by the PRB. PRB procedures are outlined in Directive 336.00, Police Review Board.
 - 3.2.2. Pursuant to city code, involved members may appeal the PRB's recommended findings to the CRC.
 - 3.2.2.1. If a member files a timely appeal with the CRC, the Chief shall not issue proposed discipline until the CRC has made a final decision or until after the City Council has made a determination, if the CRC appeal process has resulted in referral of the case to the City Council.
 - 3.2.3. After the close of the CRC appeal window or after the completion of the CRC appeal process, if any, the Discipline Coordinator shall forward the PRB's recommendation memorandum to the Chief.
 - 3.2.4. The Chief, after consultation with the Police Commissioner, shall provide the Chief's proposed findings to the Discipline Coordinator and to PSD.
 - 3.2.5. The Discipline Coordinator shall provide the letter of proposed discipline to the RU Manager for delivery to the involved member.
 - 3.2.6. Upon receipt of the letter of proposed discipline, the involved member may request a pre-determination meeting with the Chief.
 - 3.2.6.1. The Chief shall notify the Discipline Coordinator in writing of the final discipline to be imposed following the meeting.
 - 3.2.6.1.1. If the imposed discipline is suspension without pay, the Bureau shall adhere to the following suspension guidelines to ensure that members are held accountable.
 - 3.2.6.1.1.1. Members shall not use accrued vacation time in lieu of suspension, unless authorized by the Chief or their designee.
 - 3.2.6.1.1.2. Suspension of 40 hours or fewer: Suspension will be taken in consecutive increments of time (e.g., 20-hour suspension equals two 10-hour back-to-back work days) according to the member's schedule. The suspension can carry over into the following pay period, but once the suspension starts, the member shall not be scheduled for work during the period of the suspension.
 - 3.2.6.1.1.3. Suspension of 40 hours or more: Members may choose to take their suspension all at once or schedule the suspension in 40-hour increments in consecutive following months. In other words, someone receiving a 120-hour suspension may serve 40 hours suspension (in consecutive increments of time) in the current month, 40 hours in the following month, and the last 40 hours in the third month. This method allows the member to continue

receiving health benefits in accordance with their respective collective bargaining agreements.

- 3.2.6.2. The Discipline Coordinator shall coordinate the service of the final letter of imposed discipline to the involved member with the RU Manager.
 - 3.2.7. The Discipline Coordinator shall schedule the dates of the suspension or separation with the RU Manager and shall forward the dates to the Fiscal Division.
4. Stipulated Findings and Discipline.
- 4.1. The following categories of cases are not eligible for stipulated findings and recommended discipline and, if they otherwise meet the criteria for review by the PRB, shall go through PRB review and recommendations:
 - 4.1.1. Cases involving alleged use of excessive force;
 - 4.1.2. Physical injury caused by an officer that requires hospitalization;
 - 4.1.3. Any use of force where the recommended finding is “out of policy;”
 - 4.1.4. Cases involving alleged discrimination, disparate treatment or retaliation;
 - 4.1.5. Reviews of officer-involved shootings and in-custody deaths; and
 - 4.1.6. Cases in which the Chief or the Commissioner-in-Charge does not agree to accept the member’s proposed stipulation to findings and recommended discipline.
 - 4.2. The following categories of investigations are eligible for Stipulated Discipline without review by the PRB when the involved member elects, with the concurrence of the Chief and the Commissioner-in-Charge, to accept the proposed findings and recommended discipline of the RU Manager following a full investigation of the alleged misconduct, issuance of investigative findings and concurrence with the findings by IPR, PSD and the member’s Branch Assistant Chief:
 - 4.2.1. First time offenses that fall under Category A through Category D of the Police Bureau Discipline Guide and that are not otherwise excluded above;
 - 4.2.2. Second time offenses that fall under Category A of the Police Bureau Discipline Guide;
 - 4.2.3. First-time, off-duty driving while under the influence offenses that fall under Category E of the Police Bureau Discipline Guide. To be eligible for stipulated discipline for an off-duty driving under the influence offense, there can be no other driving-related violations or charges and the member must comply with all court-ordered conditions of a diversion or delayed prosecution;
 - 4.3. In an investigation involving multiple sustained violations, the violation with the highest category from the Police Bureau Discipline Guide will be used to determine whether the case qualifies for stipulated discipline.
 - 4.4. Stipulated Discipline Request Procedures.
 - 4.4.1. Upon receipt of the case file, including completed Findings Cover Sheets, IA administrative staff shall provide notice to the member and, when applicable, the member’s bargaining unit representative, of the proposed findings and recommended disciplinary action.
 - 4.4.2. After receiving the notice, the member shall have ten calendar days to review the case file and request Stipulated Discipline.

- 4.4.2.1. If the member requests Stipulated Discipline, they shall provide written notification to the IA Captain and the Discipline Coordinator.
- 4.4.3. Upon receipt of the request from the member, the Discipline Coordinator shall submit the member's request and the case file to the Chief for review.
- 4.4.4. The Chief, in consultation with the Commissioner-in-Charge, shall then have ten calendar days to either accept or reject the Stipulated Discipline proposal.
 - 4.4.4.1. If the Chief or Commissioner-in-Charge does not approve the Stipulated Discipline proposal, the case will revert to its normal review procedure.
 - 4.4.4.2. If the Chief and the Commissioner-in-Charge approve the Stipulated Discipline proposal, the Stipulated Discipline will be imposed without going through any further review process.

335.00, Discipline Process

Refer:

- Portland City Code 3.20.140 Police Review Board
- City of Portland, Human Resources Administrative Rule 5.01, Discipline
- DIR 330.00, Internal Affairs, Complaint Intake, and Processing
- DIR 336.00, Police Review Board
- DIR 338.00, Discipline Guide

Definitions:

- Case File: Administrative package containing the originals or copies of the Internal Affairs (IA) investigation or other investigation materials, including all materials related to findings.
- Command Counseling: A formal non-disciplinary corrective action that involves verbal counseling in response to a sustained finding for a minor policy violation. Command ~~counseling~~counseling is conducted by the Responsibility Unit (RU) manager or a designee and is documented in a memorandum to IA.
- Corrective Action Recommendation Memorandum: A form attached to an administrative investigation case file by the RU Manager recommending the corrective action or discipline. The form indicates whether the RU Manager believes a Command Counseling, a Letter of Reprimand, or a PerformancePolice Review Board is appropriate. The form also ensures the RU Manager considers the individual's discipline history and uses the Discipline Guide in reaching ~~their~~any recommended discipline.
- Demotion: Reversion to a lower rank or job classification.
- Discipline Guide: An advisory document used to provide direction to Responsibility Unit Managers, the Police Review Board (PRB), the Chief of Police, and the Commission in Charge, when determining an appropriate level of discipline.
- Findings: A conclusion as to whether a member's conduct violated Bureau directives.
 - Sustained: The preponderance of evidence proves a violation of policy or procedure.
 - Not Sustained: The evidence was insufficient to prove a violation of policy or procedure.
 - Exonerated: The preponderance of evidence proves the member's conduct was lawful and within policy.
 - Unfounded: The preponderance of evidence proves the allegation was false or devoid of fact or there was not a credible basis for a possible violation of policy or procedure.
- Findings Cover Sheet: A form attached to an administrative investigation case file by the RU Manager recommending the finding. This form includes sections for the appropriate Assistant Chief, Professional Standards Division (PSD) Captain, and the Independent Police Review (IPR) Director to list whether they concur or controvert the findings, whether more investigation is warranted, whether the case would benefit from a PRB hearing, and/or

suggest additional recommendations (e.g., training review, policy review, supervisory review).

- Letter of Reprimand: A disciplinary letter placed in the member's personnel file detailing a member's conduct or performance that violated one or more Bureau directives but does not involve an economic sanction such as a suspension, demotion or termination.
- Pre-determination meeting: A due-process meeting with the Chief of Police or designee to discuss the involved member's proposed discipline prior to a final disciplinary decision. This meeting is the member's opportunity to discuss the case with the Chief or designee, and present any mitigating factors for consideration.
- Preponderance of the Evidence: The facts and circumstances indicate it is more likely than not that a violation of policy or procedure either occurred or did not occur.
- Stipulated Discipline: A process by which pre-determined categories of investigations are eligible for agreed upon discipline.
- Suspension: Removal from work status, without pay, for a specified period of time.
- Termination: Discharge from Police Bureau employment.

Policy:

1. The purpose of this directive is to provide guidance to members regarding the process for recommending and assigning corrective or disciplinary action when an allegation of a policy violation or misconduct against a member is sustained.
2. In order to maintain public confidence in the ability of the Police Bureau to investigate and properly address legitimate complaints concerning employee conduct and performance, and to ensure internal accountability, a broad range of tools are available to set expectations, issue corrective action, and institute discipline. The Bureau has a responsibility to impose corrective or disciplinary action when warranted by a member's violation of policy.
3. The Bureau's philosophy with respect to corrective action and discipline is the same philosophy that is applied to employees who work elsewhere in the City, which is that corrective and disciplinary action are tools available to assist supervisors in working with employees whose behavior or job performance does not meet the expectations associated with the position they hold. Corrective action or discipline can be used to correct behavior, to deter a violation of policies or procedures, and to hold employees accountable for their behavior or performance. Generally speaking, corrective action or discipline is used to put the employee on notice of unacceptable conduct or performance, and give the employee a reasonable opportunity to correct their behavior.
4. Generally, discipline is progressive, beginning with an oral warning or Letter of Reprimand and proceeding to suspension, demotion, or termination. Serious offenses may result in termination, even if there has been no prior warnings, attempts at corrective action or

disciplinary action. Serious offenses include, but are not limited to, criminal or other unlawful acts, abuse of authority, theft, untruthfulness, excessive force, failure to follow orders, unlawful discrimination, workplace harassment, retaliation, creation of a hostile work environment, or workplace violence and may justify suspension or termination without the necessity of ~~prior warnings or attempts at corrective action or progressive~~ discipline.

5. In certain cases, as defined in City Code 3.20.140, the Bureau and member may both agree to the appropriate disciplinary action to allow for a more timely resolution, i.e., Stipulated Discipline.

~~5.6.~~In all cases, the level and degree of discipline shall be in keeping with the seriousness of the offense, taking into account the circumstances relevant to the case. It is not the purpose of this directive to require an automatic progression of disciplinary measures. Rather, the circumstances of each situation are considered on a case-by-case basis. The Discipline Guide serves to ensure that corrective action and discipline are applied in an impartial and consistent manner.

~~6.7.~~Before the Bureau takes corrective action or disciplinary action, the Bureau or IPR will conduct a thorough investigation to assist it in determining whether the employee, in fact, engaged in misconduct or performance that is contrary to Bureau directives and policies.

~~7.8.~~Members are subject to disciplinary action for cause or just cause. Possible disciplinary actions are identified in Human Resources Administrative Rule 5.01, ~~-~~ Discipline, the Discipline Guide, or the applicable collective bargaining agreement.

~~8.9.~~Counseling, instruction, and training are not considered disciplinary action.

Procedure:

1. Those responsible for making recommendations on findings and discipline shall refer to the Discipline Guide in accordance with Directive 338.00, Discipline Guide.
2. Development of Proposed Findings and Recommended Discipline.
 - 2.1. RU Manager Responsibilities.
 - 2.1.1. Obtain the member's discipline history by contacting:
 - 2.1.1.1. The discipline coordinator in PSD for administrative investigations of sworn members.
 - 2.1.1.2. The CRB coordinator in PSD for collision review board (CRB) cases.
 - 2.1.1.3. The BHR business partner in PPB's personnel division for non-sworn members.
 - 2.1.2. Review and consider the member's work history including aggravating and mitigating factors as set forth in the Discipline Guide when recommending corrective or ~~disciplined~~disciplinary action.
 - 2.1.3. Make a discipline recommendation and document such on the Findings Cover Sheet and in the Corrective Action Recommendation Memorandum.
 - 2.1.4. Submit the entire packet to IA, including the Findings Cover Sheet and the Corrective Action Recommendation Memorandum, within seven days of receipt of the case file.

2.1.4.1. When submitting the packet to IA, the RU Manager shall also indicate in the Corrective Action Recommendation Memorandum whether the case is eligible for Stipulated Discipline (subject to member's agreement and final approval by the Chief and the Commissioner in Charge). If the case is eligible for Stipulated Discipline, the RU Manager shall include specific recommended discipline in the Corrective Action Recommendation Memorandum.

2.1.5. RU Managers or designees are not permitted to take any corrective action or discipline prior to being informed by the IA Captain or Discipline Coordinator that the case has been closed.

2.2. IA Captain Responsibilities.

2.2.1. Upon receipt of the RU Manager's proposed findings, the IA Captain or their designee shall, by the end of the next business day, send a copy of the case file, including the proposed findings and recommended discipline, to the IPR Director and the supervising Assistant Chief for a seven-day concurrent review.

2.2.2. The IA Captain shall review the proposed findings and recommended discipline within seven days of receipt.

2.2.2.1. The IA Captain may controvert the RU manager's proposed findings and/or recommended discipline. All controverts shall be documented in a memorandum that clearly articulates that the reviewer wishes to controvert and provides an adequate explanation for the writer's basis for disagreeing with the proposed finding or recommended discipline.

2.3. Supervising Assistant Chief Responsibilities.

2.3.1. The Supervising Assistant Chief shall review the proposed findings and recommended discipline and resubmit to IA within seven days of receipt.

2.3.1.1. The Assistant Chief may controvert the proposed findings and/or recommended discipline. All controverts shall be documented in a memorandum that clearly articulates that the reviewer wishes to controvert and provides an adequate explanation for the writer's basis for disagreeing with the proposed finding or recommended discipline.

2.4. IPR Director Responsibilities.

2.4.1. The IPR Director will review the proposed findings and recommended discipline and resubmit to IA within seven days of receipt.

2.4.1.1. The IPR Director may controvert the proposed findings and/or recommended discipline. All controverts shall be documented in a memorandum that clearly articulates that the reviewer wishes to controvert and provides an adequate explanation for the writer's basis for disagreeing with the proposed finding or recommended discipline.

2.5. Controverted Findings and Discipline.

2.5.1. If a proposed finding or recommended discipline of the RU Manager is controverted by the supervising Assistant Chief, the IPR Director, or the IA

Captain, the case will be heard by the PRB in accordance with Directive 336.00, Police Review Board.

3. Imposition of Corrective Action or Discipline.

3.1. Command Counseling or Letter of Reprimand.

3.1.1. The IA Captain shall refer all cases where proposed corrective action or discipline is less than suspension to the involved member's RU Manager to implement the corrective action or discipline.

3.1.2. The IA Captain shall notify the RU Manager and the Discipline Coordinator when the case is closed and the Command Counseling or Letter of Reprimand can be issued.

3.1.3. The RU Manager, in consultation with the Discipline Coordinator, shall prepare the proposed corrective action or discipline and other documentation as appropriate.

3.1.4. The appropriate Assistant Chief shall review the RU Manager's recommended action and upon approval return the documentation to the Discipline Coordinator.

3.1.5. The Discipline Coordinator shall receive the documentation and coordinate corrective action or discipline with the RU Manager.

3.1.6. Pursuant to city code, involved members may appeal the proposed findings to the Citizen Review Committee (CRC).

3.1.6.1. In such cases, the Chief shall not issue proposed discipline or make recommendations until the CRC has made a final decision, or until after the City Council has made a determination, if the CRC appeal process has resulted in referral of the case to the City Council.

3.1.7. If the proposed corrective action is Command Counseling:

3.1.7.1. The RU Manager shall meet with the member to review the incident and communicate their expectations moving forward.

3.1.7.2. The RU Manager shall outline the expectations in the meeting with the member and document as such in a memorandum.

3.1.7.3. The RU Manager shall forward the Command Counseling memorandum to the Discipline Coordinator.

3.1.7.4. The Command Counseling memorandum shall not include ~~debriefings associated with findings that are~~ not sustained ~~findings and include a debrief.~~ Debriefings shall be documented separately in accordance with Directive 332.00, Administrative Investigations.

3.1.8. If the proposed corrective action is a Letter of Reprimand:

3.1.8.1. The RU Manager shall meet with the member to review the incident and communicate their expectation moving forward.

3.1.8.2. The RU Manager shall serve the member with the letter of proposed discipline.

3.1.8.2.1. The member can request a pre-determination meeting with their supervising Assistant Chief.

3.1.8.2.1.1. Following the meeting, the Assistant Chief shall notify the Discipline Coordinator in writing of the final discipline to be imposed.

- 3.1.8.3. The Discipline Coordinator shall coordinate with the RU Manager the service of the final Letter of Reprimand.
- 3.1.9. The Discipline Coordinator shall forward a copy of the Command Counseling memorandum or the proposed and final Letters of Reprimand to the Personnel Division for inclusion in the member's personnel file.
- 3.2. Discipline of Suspension or Greater.
 - 3.2.1. All cases in which recommended discipline is suspension or greater will be heard by the PRB. PRB procedures are outlined in Directive 336.00, Police Review Board.
 - 3.2.2. Pursuant to city code, involved members may appeal the PRB's recommended findings to the CRC.
 - 3.2.2.1. If a member files a timely appeal with the CRC, the Chief shall not issue proposed discipline until the CRC has made a final decision or until after the City Council has made a determination, if the CRC appeal process has resulted in referral of the case to the City Council.
 - 3.2.3. After the close of the CRC appeal window or after the completion of the CRC appeal process, if any, the Discipline Coordinator shall forward the PRB's recommendation memorandum to the Chief.
 - 3.2.4. The Chief, after consultation with the Police Commissioner, shall provide the Chief's proposed findings to the Discipline Coordinator and to PSD.
 - 3.2.5. The Discipline Coordinator shall provide the letter of proposed discipline to the RU Manager for delivery to the involved member.
 - 3.2.6. Upon receipt of the letter of proposed discipline, the involved member may request a pre-determination meeting with the Chief.
 - 3.2.6.1. The Chief shall notify the Discipline Coordinator in writing of the final discipline to be imposed following the meeting.
 - 3.2.6.1.1. If the imposed discipline is suspension without pay, the Bureau shall adhere to the following suspension guidelines to ensure that members are held accountable.
 - 3.2.6.1.1.1. Members shall not use accrued vacation time in lieu of suspension, unless authorized by the Chief or their designee.
 - 3.2.6.1.1.2. Suspension of 40 hours or fewer: Suspension will be taken in consecutive increments of time (e.g., 20-hour suspension equals two 10-hour back-to-back work days) according to the member's schedule. The suspension can carry over into the following pay period, but once the suspension starts, the member shall not be scheduled for work during the period of the suspension.
 - 3.2.6.1.1.3. Suspension of 40 hours or more: Members may choose to take their suspension all at once or schedule the suspension in 40-hour increments in consecutive following months. In other words, someone receiving a 120-hour suspension may serve 40 hours suspension (in consecutive increments of time) in the current month, 40 hours in the following month, and the last 40 hours in the third month. This method allows the member to continue

receiving health benefits in accordance with their respective collective bargaining agreements.

- 3.2.6.2. The Discipline Coordinator shall coordinate the service of the final letter of imposed discipline to the involved member with the RU Manager.
- 3.2.7. The Discipline Coordinator shall schedule the dates of the suspension or separation with the RU Manager and shall forward the dates to the Fiscal Division.

4. Stipulated Findings and Discipline.

4.1. The following categories of cases are not eligible for stipulated findings and recommended discipline and, if they otherwise meet the criteria for review by the PRB, shall go through PRB review and recommendations:

- 4.1.1. Cases involving alleged use of excessive force;
- 4.1.2. Physical injury caused by an officer that requires hospitalization;
- 4.1.3. Any use of force where the recommended finding is “out of policy;”
- 4.1.4. Cases involving alleged discrimination, disparate treatment or retaliation;
- 4.1.5. Reviews of officer-involved shootings and in-custody deaths; and
- 4.1.6. Cases in which the Chief or the Commissioner-in-Charge does not agree to accept the member’s proposed stipulation to findings and recommended discipline.

4.2. The following categories of investigations are eligible for Stipulated Discipline without review by the PRB when the involved member elects, with the concurrence of the Chief and the Commissioner-in-Charge, to accept the proposed findings and recommended discipline of the RU Manager following a full investigation of the alleged misconduct, issuance of investigative findings and concurrence with the findings by IPR, PSD and the member’s Branch Assistant Chief:

- 4.2.1. First time offenses that fall under Category A through Category D of the Police Bureau Discipline Guide and that are not otherwise excluded above;
- 4.2.2. Second time offenses that fall under Category A of the Police Bureau Discipline Guide;
- 4.2.3. First-time, off-duty driving while under the influence offenses that fall under Category E of the Police Bureau Discipline Guide. To be eligible for stipulated discipline for an off-duty driving under the influence offense, there can be no other driving-related violations or charges and the member must comply with all court-ordered conditions of a diversion or delayed prosecution;

4.3. In an investigation involving multiple sustained violations, the violation with the highest category from the Police Bureau Discipline Guide will be used to determine whether the case qualifies for stipulated discipline.

4.4. Stipulated Discipline Request Procedures.

- 4.4.1. Upon receipt of the case file, including completed Findings Cover Sheets, IA administrative staff shall provide notice to the member and, when applicable, the member’s bargaining unit representative, of the proposed findings and recommended disciplinary action.
- 4.4.2. After receiving the notice, the member shall have ten calendar days to review the case file and request Stipulated Discipline.

- 4.4.2.1. If the member requests Stipulated Discipline, they shall provide written notification to the IA Captain and the Discipline Coordinator.
- 4.4.3. Upon receipt of the request from the member, the Discipline Coordinator shall submit the member's request and the case file to the Chief for review.
- 4.4.4. The Chief, in consultation with the Commissioner-in-Charge, shall then have ten calendar days to either accept or reject the Stipulated Discipline proposal.
 - 4.4.4.1. If the Chief or Commissioner-in-Charge does not approve the Stipulated Discipline proposal, the case will revert to its normal review procedure.
 - 4.4.4.2. If the Chief and the Commissioner-in-Charge approve the Stipulated Discipline proposal, the Stipulated Discipline will be imposed without going through any further review process.

DRAFT

#1

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Saturday, September 15, 2018 4:25:09 PM
Last Modified: Saturday, September 15, 2018 4:26:03 PM
Time Spent: 00:00:54

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 335.00 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 335.00 DISCIPLINE PROCESS (previous comments made July 2017)

This Directive underwent significant revisions, including consolidating various parties' actions under two subheadings. We noted before that there are references to the proposed findings, but there is no part of the Directive calling on Managers to make such findings. This has become more prominent by calling the new Section 2 "Development of proposed findings and recommended discipline."

We continue to believe, as stated repeatedly, that having a finding called "Not Sustained" and collectively referring to that finding, "Unfounded" and "Exonerated" as "not sustained" findings is too confusing (3.1.7.4). We think "Insufficient Evidence" (the old name) or "Insufficiently Proven" would be clearer names for this finding, which means "the evidence was insufficient to prove a violation of policy or procedure." We appreciate that the definitions of the findings now clearly delineate where a preponderance of evidence is needed and for what purpose. However, we continue to believe the definition of "Unfounded" should be that "available facts do not support the allegation" rather than the accusatory one the Bureau's adopted ("false or devoid of fact"). We noted at the end of the Unfounded definition, stating "there was not a credible basis for a possible violation of policy or procedure," will get this finding mixed up with both Exonerated and Insufficient Evidence, so at the very least that part of the definition needs to go away.

The Bureau appropriately expanded its policy that the Chief should not debrief officers prior to the CRC hearing appeals by noting such appeals might also head to City Council (Sections 3.1.6.1 and 3.2.2.1).

The revised version clarifies that the officer's supervisor cannot impose discipline before Internal Affairs declares the process is completed (Section 2.1.5), per our suggestion. Clarifying that the IA Captain can only take until the end of the next business day to forward a completed file to the IPR and an Assistant Chief rather than saying "as soon as practicable" also fixes an issue we raised (Section 2.2.1). And, a reference to the Chief consulting with the Commissioner in Charge on discipline decisions which had been struck was reinserted at our request (Section 3.2.4).

We are still interested in knowing whether the issues about training, policy and supervision raised in the "Findings Cover Sheets" are publicly available (Definition). Section 2.1.3 continues to require only that a supervisor make a discipline recommendation on that sheet, not a finding or identification of such issues.

Also, it is not clear what happened to pre-2017 instructions on sending non-sustained findings to the complainant and officer, and the requirement for IA to keep original copies of case files.

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.

Directive 335.00 Feedback

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: Friday, March 01, 2019 4:23:26 PM
Last Modified: Friday, March 01, 2019 4:24:09 PM
Time Spent: 00:00:42

Page 1

Q1 Please provide feedback for this directive

COMMENTS ON ACCOUNTABILITY, AND OTHER DIRECTIVES FEBRUARY/MARCH 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 February/March . While reviewing ten Directives at once is overwhelming, the Bureau's red-line copies helped point us to the areas that were changed, and since we commented on nine of the policies in September (and the other, on Altered Duty, in November) the process was a bit quicker. That said, part of the ease of review is that the Bureau has barely made any changes to the Directives, so most of our comments still stand. We recognize a few of the changes were made in response to our comments.

We still would like to see the Bureau post comments as they arrive so commenters would be able to build off each others' ideas.

One item we'd like to highlight up front is our suggestion in Directive 338.00 on the Discipline Guide that the Guide itself should be posted for public review and input along with the policy. We have made one recommendation based on the recent case of Sgt. Gregg Lewis but would take a "deeper dive" given a formal opportunity.

As we noted in September, the findings on misconduct allegations are a source of great concern. Not only are there poorly defined allegations for general misconduct cases ("Not Sustained" and "Unfounded" need to be fixed), but in deadly force and non-disciplinary investigations there are only two possible findings-- and those are not even the same as each other ("In Policy/Out of Policy" and "Substantiated/Not Substantiated").

We also noted several times that many Directives refer to the Professional Standards Division (PSD) and/or Captain, while others refer to the Internal Affairs (IA) Captain. Since IA is part of PSD this is confusing, and nothing has been done to clarify the issue.

We once again urge the Bureau to make the review periods at least 30 days on both ends of the rewriting process so organizations who only meet monthly have time to give feedback. In addition to the other advisory committees we have mentioned in the past (BHU Advisory Committee, Training Advisory Council, and Citizen Review Committee), the newly formed Portland Committee on Community Engaged Policing (PCCEP) seems to have too much on its plate to respond quickly to requests for input.

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 335.00 DISCIPLINE PROCESS

Directive 335.00 Feedback

The major changes to this policy involve the addition of "stipulated discipline" where officers can agree they violated a policy and accept discipline without a complex process (Definitions, new Policy Section 5 and Procedure Section 2.1.4.1 and new Section 4.) There are also details about officers' time off (additions to Section 3.2.6.1) which indicate that officers could lose benefits if they are given 120 hour (three week) suspension without pay. It is a little odd that a person being disciplined for some kind of serious behavior is allowed to split up their punishment over three months' time.

We now repeat and add to our comments from September.

We have noted a few times that this policy has references to the proposed findings, but no part of the Directive calls on Managers to make such findings, despite Section 2 being titled "Development of proposed findings and recommended discipline." Now that IA and the "Independent" Police Review (IPR) can attach their own proposed findings to investigations they conduct, it would probably be good to clarify how the findings are made. Directive 334.00, which deals only with Performance Deficiencies, addresses this topic.

As noted above (and many times in the past), having a finding called "Not Sustained" while collectively referring to that finding, "Unfounded" and "Exonerated" as "not sustained" findings is confusing (3.1.7.4). We continue to suggest "Insufficient Evidence" (the old name) or "Insufficiently Proven" as the name for the finding which means "the evidence was insufficient to prove a violation of policy or procedure." We also continue to urge the Bureau to return to its earlier definition of "Unfounded" that "available facts do not support the allegation," rather than the accusatory one saying the allegation is "false or devoid of fact." We have also pointed out that the last part of the Unfounded definition, which states "there was not a credible basis for a possible violation of policy or procedure," could also define either an "Exonerated" or "Insufficient Evidence" finding, so at the very least that clause should be deleted.

We still would like to find out whether issues about training, policy and supervision raised in the "Findings Cover Sheets" are publicly available (Definition). Section 2.1.3 continues to require only that a supervisor make a discipline recommendation on that sheet, not a finding or identification of such issues. See our comments on Directive 331.00 on Supervisory Investigations for more details.

It is still not clear what happened to pre-2017 instructions on sending non-sustained findings to the complainant and officer, and the requirement for IA to keep original copies of case files.

CONCLUSION

PCW again appreciates that the Bureau asks for community comments on its policies, and the few changes that were made in response to our feedback. However, the other common-sense ideas we are putting forward which would lead to a more trustworthy and community-minded police force should not be brushed aside. We are hoping that the once the PCCEP starts making recommendations, the Bureau will engage in public discussions (involving the Committee members and the general public) rather than continuing to go behind closed doors to assess community input. That would show a true commitment to "community engaged policing."

Thank you for your time

--Portland Copwatch

Q2 Contact Information (optional)

Name

Portland Copwatch

Email Address

336.00, Police Review Board

Refer:

- Portland City Code 3.20.140 Police Review Board
- Portland City Code 3.21 City Auditor's Independent Police Review
- City of Portland, Human Resource Administrative Rule 2.02, Prohibition Against Workplace Harassment, Discrimination and Retaliation
- DIR 330.00, Internal Affairs, Complaint Intake, and Processing
- DIR 335.00, Discipline Process
- DIR 640.52, Vehicle Collision Review Board

Definitions:

- Action Items: Recommendations to the Chief to consider the review of policies, training, supervision, tactics, and equipment identified during the Police Review Board (PRB) process.
- Case File: Administrative package containing the originals or copies of the Internal Affairs (IA) investigation or other investigation materials, including all materials related to findings.
- Controverted: A Responsibility Unit (RU) Manager's recommended finding or proposed discipline that is challenged by the Captain of the Professional Standards Division (PSD), an Assistant Chief, or the Independent Police Review (IPR) Director or designee.
- Police Review Board: An advisory body to the Chief. The PRB reviews certain incidents and investigated complaints of alleged misconduct involving current or former Bureau employees, reviews certain use of force incidents involving sworn officers, and makes recommendations to the Chief regarding findings, action items, and proposed discipline. The PRB may also make recommendations to the Chief regarding the adequacy and completeness of an investigation.

Policy:

1. The City of Portland established the PRB to conduct an additional review of qualifying cases regarding allegations of member misconduct and certain use of force incidents. The Portland Police Bureau supports the efforts of the City and the PRB to further promote member and organizational accountability.
2. While this directive provides guidance to members regarding the PRB hearing process, Portland City Code 3.20.140, Police Review Board, more thoroughly delineates the purpose, authority and composition of the PRB.

Procedure:

1. Powers of the PRB.
 - 1.1. The PRB shall review incidents and investigate complaints of alleged misconduct and inquiries regarding use of force incidents by non-probationary sworn members in the following cases:

- 1.1.1. An investigation resulting in a recommended sustained finding with proposed discipline of suspension without pay or greater.
 - 1.1.2. If the supervising Assistant Chief, the IPR Director, or the PSD Captain controverts the recommended findings or proposed discipline of the Responsibility Unit (RU) manager.
 - 1.1.3. The case involves the following types of use of force:
 - 1.1.3.1. Officer involved shooting;
 - 1.1.3.2. In-Custody Death;
 - 1.1.3.3. Proposed sustained finding for out-of-policy deployment of less-lethal weapons; or
 - 1.1.3.4. Physical injury caused by a member that requires hospital admission.
 - 1.1.4. An investigation regarding an alleged violation or violations of City of Portland Human Resources Administrative Rules (HRARs) regarding discrimination that results in a recommended sustained finding.
 - 1.1.5. Discretionary cases referred by the Chief, an Assistant Chief, or the IPR Director.
- 1.2. For cases involving probationary sworn members, the PRB shall review cases that fall under section 1.1.3. of this directive and incidents and investigated complaints of alleged misconduct when referred by the Chief, an Assistant Chief, or the IPR Director. However, nothing in City Code 3.20.140 prohibits the Bureau from disciplining or terminating the employment of a probationary sworn member without convening a PRB or following the procedures of the City Code or this Directive.
2. Composition of the PRB.
- 2.1. The PRB shall be composed of five voting members and eight advisory members. All PRB members shall be advised of every case presented to them. A quorum of four voting members, including the community member and the RU Manager or designee, and four advisory members is required to be present to make recommendations to the Chief. The PRB shall be comprised of the following voting members:
 - 2.1.1. A community member. Members shall refer to Directive 337.00, Police Review Board Personnel Selection, for the qualification standards and appointment procedures for community members of the PRB;
 - 2.1.2. A peer member of the same rank or comparable rank or classification as the Bureau member under review;
 - 2.1.3. The Assistant Chief or designee of the member under review;
 - 2.1.4. The IPR Director or a designee; and
 - 2.1.5. The RU Manager or designee of the member under review.
 - 2.2. When the case involves the use of force, one additional community member, drawn on a rotating basis from the pool of current Citizen Review Committee (CRC) members, as described in City Code 3.21.080, and one additional peer member shall serve on the PRB, for a total of seven voting members. A quorum of six voting members, including two citizen members, and the RU Manager or designee, and four Advisory members is required to be present to make recommendations to the Chief.
 - 2.3. The PRB shall be comprised of the following advisory members:

- 2.3.1. The PSD Manager or designee;
 - 2.3.2. The PPB Human Resources Manager or designee;
 - 2.3.3. A representative from the City Attorney's Office (CAO);
 - 2.3.4. The PRB Coordinator;
 - 2.3.5. A representative of the Commissioner in Charge of the Bureau ("Commissioner in Charge");
 - 2.3.6. The Training Division Captain or designee; and
 - 2.3.7. The other branch Assistant Chief(s) who do not serve as the supervisor of the member under review.
3. Other PRB Hearing Attendees.
 - 3.1. During the case presentation, the following individuals may also be present:
 - 3.1.1. The involved member.
 - 3.1.2. Either a representative of the involved member's bargaining unit or an attorney.
 - 3.1.3. Representatives from the investigative divisions (e.g., IA, Detective Division, etc.).
 - 3.1.4. Other individuals invited at the discretion of the PSD Captain.
 - 3.2. After the presentation of the facts of the case, the involved member, their union representative and the case investigators will vacate, except as provided in Section 3.3, and the PRB members will convene into an executive session to discuss the presentation findings and vote. If the finding is sustained, PRB members will discuss proposed discipline.
 - 3.2.1. The PSD Captain shall have the discretion to allow non-involved observers (e.g., IA staff) to remain in the hearing through the executive session for training or similar purposes.
 - 3.3. Pursuant to the terms of PPA collective bargaining agreement, PPA union representative shall be allowed to be present during any portion of the PRB Executive Session in which non-Board member "presenter" representatives of Training Division, Internal Affairs Division, or Detective Division are allowed to attend.
 4. PRB Voting and Advisory Member Roles and Responsibilities.
 - 4.1. Voting members shall review the case file prior to the PRB hearing.
 - 4.1.1. During the review of the case file, if a voting member deems that additional information is needed in order to render a finding, the voting member shall apprise the PRB Coordinator of their need. The PRB Coordinator will solicit assistance from the IA investigator to answer any questions. Any unanswered questions shall be brought to the attention of the PSD Captain prior to the hearing.
 - 4.2. An advisory member's role is to answer the questions of voting members and to bring to the attention of the PRB clarifying facts within their area of expertise. Advisory members will not provide opinions or information outside of their areas of expertise.
 - 4.3. Voting members shall reach a conclusion regarding each allegation before them based upon a preponderance of evidence standard.

- 4.4. In cases where voting members recommend a sustained finding, they shall also recommend discipline that is consistent with applicable City and Bureau rules, the Discipline Guide, and obligations under collective bargaining agreements.
 - 4.5. Voting members may make recommendations regarding the following:
 - 4.5.1. The adequacy and completeness of an investigation; and/or
 - 4.5.2. Policy or training.
 - 4.6. All information and discussions are confidential and shall only be discussed amongst participants of the particular review for the purposes of the particular review.
 - 4.7. By majority vote, the PRB may request that investigations be returned to the investigating entity for additional investigation necessary to reach a finding. The investigating entity shall conduct the additional requested investigation. The investigating entity must make reasonable attempts to conduct the additional investigation or obtain the additional information within 10 business days or provide a written statement to the PRB explaining why additional time is needed.
5. PSD Captain Responsibilities.
 - 5.1. Convening a PRB.
 - 5.1.1. Within seven days of receipt of the findings review from IPR, the Assistant Chief and IA, the PSD Captain shall present a qualifying case file to the PRB Coordinator, authorizing the scheduling of a PRB hearing.
 - 5.1.2. The PSD Captain shall approve any delays in scheduling PRB hearings and ensure the reason is documented in the case file.
 - 5.1.3. On the date of the hearing, the PSD Captain shall meet with the involved member and/or their bargaining unit representative or attorney (if present), peer and community voting members, and review the PRB's process.
 - 5.1.3.1. The PSD Captain shall notify the involved member, or their designated representative, and the Chief regarding the PRB's recommended findings and corrective action by the end of the day that the hearing is conducted.
 - 5.1.3.2. The IA unit shall facilitate the review of the case file by the involved member(s) and/or their union representatives.
 - 5.1.4. The PSD Captain shall not disclose how individual members voted.
 6. PRB Coordinator Responsibilities.
 - 6.1. The PRB Coordinator shall:
 - 6.1.1. Upon receipt of a qualifying case file or request from the PSD Captain, set a date for the hearing. The hearing must be within 21 days from receipt of the file. If a reason exists to convene a hearing on a date outside of the 21 day requirement, notify the PSD Captain of the delay and reason;
 - 6.1.2. Schedule the facilitator, community members, and peer members for each PRB;
 - 6.1.3. At least 14 days prior to the hearing, notify the voting and advisory PRB members and the involved Bureau member(s) of the date, time, and location of the PRB hearing;

- 6.1.4. Facilitate the review of the case file by the community and peer members at a Bureau facility selected by the PRB Coordinator;
- 6.1.5. Distribute copies of the case file to the voting and advisory members of the PRB at least five days prior to the hearing;
- 6.1.6. Provide PRB members with a written description of the PRB procedures;
- 6.1.7. At the conclusion of the hearing, provide a written copy of the PRB's majority findings to the PSD Captain;
- 6.1.8. Upon receipt of the PRB Facilitator's memorandum containing the PRB's recommended findings and recommendations, forward the memorandum to the Chief within seven days.
 - 6.1.8.1. If the Chief is unable to reach a finding after conducting an initial review and requests an additional investigation, the PRB Coordinator shall forward the PRB Facilitator's updated memorandum containing the PRB's recommended findings and recommendations to the Chief within seven days receipt of the memorandum.
- 6.1.9. Serve as the custodian of all PRB records, while PSD shall maintain a record of all action items recommended and document the actions taken in response to the recommendations; and
- 6.1.10. At least twice each calendar year, release a public report including the summations of the statements of findings and training or investigation issues written by the PRB facilitator(s). The reports shall not include the names of involved members, witnesses or complainants. A case may not be included in the report until a final decision, including discipline (if any), is made by the Chief or Commissioner in Charge.

7. PRB Facilitator Responsibilities.

7.1. The PRB Facilitator shall:

- 7.1.1. Balance participation in PRB meetings as appropriate, pay attention to group dynamics, and strictly adhere to the established board processes and rules;
- 7.1.2. Remain neutral and not influence PRB members' decision-making or encourage a particular recommendation, even if the facilitator possesses an opinion on the subject matter. The facilitator shall allow voting board members to arrive at their own conclusions and recommendations.
 - 7.1.2.1. The PRB Facilitator shall recuse themselves from participating in a PRB if they have a potentially strong bias with regard to a particular case.
- 7.1.3. Prepare a written statement of recommended findings and recommendations, along with any proposed discipline, as well as any policy, training and/or investigation issues or concerns raised by the PRB. The completed statement must be submitted to the PRB Coordinator within two weeks of the PRB meeting date and include the following:
 - 7.1.3.1. A summary of the case;
 - 7.1.3.2. The PRB's recommended findings and a brief explanation of the board's rationale for its recommendations, including a description of the recommendations proposed by members voting in the minority, when the decision is not unanimous;
 - 7.1.3.3. The PRB's range of recommended discipline, if any; and

- 7.1.3.4. Any policy, training or supervisory issues raised by the PRB.
- 7.1.4. If the Chief is unable to reach a finding after conducting an initial review, prepare an updated written statement of recommended findings and corrective action, which reflects any changes to or reaffirms the PRB's initial recommendations. The completed statement must be submitted to the PRB Coordinator within two weeks of the PRB's additional review and should include the information outlined in Sections 7.1.3.1. through 7.1.3.4. of this directive.
- 7.2. Facilitators shall maintain strict confidentiality of all case file information and PRB discussions and deliberations.
- 8. Chief Responsibilities.
 - 8.1. Review the case file and, considering the PRB recommendations, make a final determination of findings and discipline.
 - 8.2. Notify the PRB Coordinator of the Chief's findings within two weeks of receipt of the PRB Facilitator's memorandum from the PRB Coordinator.
 - 8.3. If the Chief is unable to reach a finding on the current record, they may request that investigations be returned to the investigating entity for additional investigation necessary to make a determination of findings and discipline.
 - 8.3.1. The case shall return to the purview of the PRB, and the investigating entity shall conduct the additional requested investigation. The investigating entity must make reasonable attempts to conduct the additional investigation or obtain the additional information within 10 business days or provide a written statement to the PRB explaining why additional time is needed.
 - 8.3.2. The PRB shall consider any new information offered by the investigating entity. Voting members shall again reach a conclusion regarding each allegation before them based upon the preponderance of evidence standard (i.e., changing their initial recommended findings and corrective action or each component intact).
 - 8.3.3. The PSD Captain shall notify the involved member and the Chief regarding the PRB's recommended findings and corrective action by the end of the day of the completed PRB review, whether or not the PRB changes its recommended findings or corrective action.
 - 8.3.4. The Chief shall again review the case file and consider the PRB's new or reaffirmed recommendations to make a final determination of findings and discipline.
 - 8.3.5. The Chief shall then notify the PRB Coordinator of their findings within two weeks of receipt of the PRB Facilitator's updated memorandum from the PRB Coordinator.
- 9. Involved Member.
 - 9.1. The involved member shall be given at least 14 days to review the case file before the PRB meeting.

9.2. If the involved member and/or their representative elect to be present, they may, after the presentation of the case, provide a personal statement of relevant details.

9.2.1. The involved member may provide the information to the PRB in written or oral format.

9.3. The involved member may remain in the hearing until executive session.

10. Special Case Findings.

10.1. Findings for deadly force or in-custody death cases shall be limited to the following:

10.1.1. In Policy: The member's actions complied with policies; or

10.1.2. Out of Policy: The member was found to be in violation of policy.

10.2. Any finding shall include a recommendation for action items or a debriefing regarding any of the following, if:

10.2.1. Critical Incident Stress Debriefing for the involved member and/or chain of command;

10.2.2. Organizational Assessments to include policies, training, equipment, and/or tactics.

336.00, Police Review Board

Refer:

- Portland City Code 3.20.140 Police Review Board
- Portland City Code 3.21 City Auditor's Independent Police Review
- City of Portland, Human Resource Administrative Rule 2.02, Prohibition Against Workplace Harassment, Discrimination and Retaliation
- DIR 330.00, Internal Affairs, Complaint Intake, and Processing
- DIR 335.00, Discipline Process
- [DIR 640.52, Vehicle Collision Review Board](#)

Definitions:

- Action Items: Recommendations to the Chief to consider the review of policies, training, supervision, tactics, and equipment identified during the Police Review Board (PRB) process.
- Case File: Administrative package containing the originals or copies of the Internal Affairs (IA) investigation or other investigation materials, including all materials related to findings.
- Controverted: A Responsibility Unit (RU) Manager's recommended finding or proposed discipline that is challenged by the Captain of the Professional Standards Division (PSD), an Assistant Chief, or the Independent Police Review (IPR) Director or designee.
- Police Review Board: An advisory body to the Chief. The PRB reviews certain incidents and investigated complaints of alleged misconduct involving current or former Bureau employees, reviews certain use of force incidents involving sworn officers, and makes recommendations to the Chief regarding findings, action items, and proposed discipline. The PRB may also make recommendations to the Chief regarding the adequacy and completeness of an investigation.

Policy:

1. The City of Portland established the PRB to conduct an additional review of qualifying cases regarding allegations of member misconduct and certain use of force incidents. The Portland Police Bureau supports the efforts of the City and the PRB to further promote member and organizational accountability.
2. While this directive provides guidance to members regarding the PRB hearing process, Portland City Code 3.20.140, Police Review Board, more thoroughly delineates the purpose, authority and composition of the PRB.

Procedure:

1. Powers of the PRB.
 - 1.1. The PRB shall review incidents and investigate complaints of alleged misconduct and inquiries regarding use of force incidents by non-probationary sworn members in the following cases:

- 1.1.1. An investigation resulting in a recommended sustained finding with proposed discipline of suspension without pay or greater.-
 - 1.1.1.1. This includes vehicle collisions which have been reviewed by the Collision Review Board (CRB) and found to be preventable by the RU Manager with a proposed discipline of suspension of one day or greater.
 - 1.1.2. If the supervising Assistant Chief, the IPR Director, or the PSD Captain controverts the recommended findings or proposed discipline of the Responsibility Unit (RU) manager.
 - 1.1.3. The case involves the following types of use of force:
 - 1.1.3.1. Officer involved shooting;
 - 1.1.3.2. In-Custody Death;
 - 1.1.3.3. Proposed sustained finding for out-of-policy deployment of less-lethal weapons; or
 - 1.1.3.4. Physical injury caused by a member that requires hospital admission.
 - 1.1.4. An investigation regarding an alleged violation or violations of City of Portland Human Resources Administrative Rules (HRARs) regarding discrimination that results in a recommended sustained finding.
 - 1.1.5. Discretionary cases referred by the Chief, an Assistant Chief, or the IPR Director.
- 1.2. For cases involving probationary sworn members, the PRB shall review cases that fall under section 1.1.3. of this directive and incidents and investigated complaints of alleged misconduct when referred by the Chief, an Assistant Chief, or the IPR Director. However, nothing in City Code 3.20.140 prohibits the Bureau from disciplining or terminating the employment of a probationary sworn member without convening a PRB or following the procedures of the City Code or this Directive.
2. Composition of the PRB.
 - 2.1. The PRB shall be composed of five voting members and eight advisory members. All PRB members shall be advised of every case presented to them. A quorum of four voting members, including the community member and the RU Manager or designee, and four advisory members is required to be present to make recommendations to the Chief. The PRB shall be comprised of the following voting members:
 - 2.1.1. A community member. Members shall refer to Directive 337.00, Police Review Board Personnel Selection, for the qualification standards and appointment procedures for community members of the PRB;
 - 2.1.2. A peer member of the same rank or comparable rank or classification as the Bureau member under review;
 - 2.1.3. The Assistant Chief or designee of the member under review;
 - 2.1.4. The IPR Director or a designee; and
 - 2.1.5. The RU Manager or designee of the member under review.
 - 2.2. When the case involves the use of force, one additional community member, drawn on a rotating basis from the pool of current Citizen Review Committee (CRC) members, as described in City Code 3.21.080, and one additional peer member shall serve on the PRB, for a total of seven voting members. A quorum of six voting members, including

two citizen members, and the RU Manager or designee, and four Advisory members is required to be present to make recommendations to the Chief.

- 2.3. The PRB shall be comprised of the following advisory members:
 - 2.3.1. The PSD Manager or designee;
 - 2.3.2. The PPB Human Resources Manager or designee;
 - 2.3.3. A representative from the City Attorney's Office (CAO);
 - 2.3.4. The PRB Coordinator;
 - 2.3.5. A representative of the Commissioner in Charge of the Bureau ("Commissioner in Charge");
 - 2.3.6. The Training Division Captain or designee; and
 - 2.3.7. The other branch Assistant Chief(s) who do not serve as the supervisor of the member under review.
3. Other PRB Hearing Attendees.
 - 3.1. During the case presentation, the following individuals may also be present:
 - 3.1.1. The involved member.
 - 3.1.2. Either a representative of the involved member's bargaining unit or an attorney.
 - 3.1.3. Representatives from the investigative divisions (e.g., IA, Detective Division, etc.).
 - 3.1.4. Other individuals invited at the discretion of the PSD Captain.
 - 3.2. After the presentation of the facts of the case, the involved member, their union representative and the case investigators will vacate, except as provided in Section 3.3, and the PRB members will convene into an executive session to discuss the presentation findings and vote. If the finding is sustained, PRB members will discuss proposed discipline.
 - 3.2.1. The PSD Captain shall have the discretion to allow non-involved observers (e.g., IA staff) to remain in the hearing through the executive session for training or similar purposes.
 - 3.3. Pursuant to the terms of PPA collective bargaining agreement, PPA union representative shall be allowed to be present during any portion of the PRB Executive Session in which non-Board member "presenter" representatives of Training Division, Internal Affairs Division, or Detective Division are allowed to attend.
4. PRB Voting and Advisory Member Roles and Responsibilities.
 - 4.1. Voting members shall review the case file prior to the PRB hearing.
 - 4.1.1. During the review of the case file, if a voting member deems that additional information is needed in order to render a finding, the voting member shall apprise the PRB Coordinator of their need. The PRB Coordinator will solicit assistance from the IA investigator to answer any questions. Any unanswered questions shall be brought to the attention of the PSD Captain prior to the hearing.

- 4.2. An advisory member's role is to answer the questions of voting members and to bring to the attention of the PRB clarifying facts within their area of expertise. Advisory members will not provide opinions or information outside of their areas of expertise.
 - 4.3. Voting members shall reach a conclusion regarding each allegation before them based upon a preponderance of evidence standard.
 - 4.4. In cases where voting members recommend a sustained finding, they shall also recommend discipline that is consistent with applicable City and Bureau rules, the Discipline Guide, and obligations under collective bargaining agreements.
 - 4.5. Voting members may make recommendations regarding the following:
 - 4.5.1. The adequacy and completeness of an investigation; and/or
 - 4.5.2. Policy or training.
 - 4.6. All information and discussions are confidential and shall only be discussed amongst participants of the particular review for the purposes of the particular review.
 - 4.7. By majority vote, the PRB may request that investigations be returned to the investigating entity for additional investigation necessary to reach a finding. The investigating entity shall conduct the additional requested investigation. The investigating entity must make reasonable attempts to conduct the additional investigation or obtain the additional information within 10 business days or provide a written statement to the PRB explaining why additional time is needed.
5. PSD Captain Responsibilities.
 - 5.1. Convening a PRB.
 - 5.1.1. Within seven days of receipt of the findings review from IPR, the Assistant Chief and IA, the PSD Captain shall present a qualifying case file to the PRB Coordinator, authorizing the scheduling of a PRB hearing.
 - 5.1.2. The PSD Captain shall approve any delays in scheduling PRB hearings and ensure the reason is documented in the case file.
 - 5.1.3. On the date of the hearing, the PSD Captain shall meet with the involved member and/or their bargaining unit representative or attorney (if present), peer and community voting members, and review the PRB's process.
 - 5.1.3.1. The PSD Captain shall notify the involved member, or their designated representative, and the Chief regarding the PRB's recommended findings and corrective action by the end of the day that the hearing is conducted.
 - 5.1.3.2. The IA unit shall facilitate the review of the case file by the involved member(s) and/or their union representatives.
 - 5.1.4. The PSD Captain shall not disclose how individual members voted.
 6. PRB Coordinator Responsibilities.
 - 6.1. The PRB Coordinator shall:
 - 6.1.1. Upon receipt of a qualifying case file or request from the PSD Captain, set a date for the hearing. The hearing must be within 21 days from receipt of the file. If a

reason exists to convene a hearing on a date outside of the 21 day requirement, notify the PSD Captain of the delay and reason;

- 6.1.2. Schedule the facilitator, community members, and peer members for each PRB;
- 6.1.3. At least 14 days prior to the hearing, notify the voting and advisory PRB members and the involved Bureau member(s) of the date, time, and location of the PRB hearing;
- 6.1.4. Facilitate the review of the case file by the community and peer members at a Bureau facility selected by the PRB Coordinator;
- 6.1.5. Distribute copies of the case file to the voting and advisory members of the PRB at least five days prior to the hearing;
- 6.1.6. Provide PRB members with a written description of the PRB procedures;
- 6.1.7. At the conclusion of the hearing, provide a written copy of the PRB's majority findings to the PSD Captain;
- 6.1.8. Upon receipt of the PRB Facilitator's memorandum containing the PRB's recommended findings and recommendations, forward the memorandum to the Chief within seven days.

6.1.8.1. If the Chief is unable to reach a finding after conducting an initial review and requests an additional investigation, the PRB Coordinator shall forward the PRB Facilitator's updated memorandum containing the PRB's recommended findings and recommendations to the Chief within seven days receipt of the memorandum.

- 6.1.9. Serve as the custodian of all PRB records, while PSD shall maintain a record of all action items recommended and document the actions taken in response to the recommendations; and
- 6.1.10. At least twice each calendar year, release a public report including the summations of the statements of findings and training or investigation issues written by the PRB facilitator(s). The reports shall not include the names of involved members, witnesses or complainants. A case may not be included in the report until a final decision, including discipline (if any), is made by the Chief or Commissioner in Charge.

7. PRB Facilitator Responsibilities.

7.1. The PRB Facilitator shall:

- 7.1.1. Balance participation in PRB meetings as appropriate, pay attention to group dynamics, and strictly adhere to the established board processes and rules;
- 7.1.2. Remain neutral and not influence PRB members' decision-making or encourage a particular recommendation, even if the facilitator possesses an opinion on the subject matter. The facilitator shall allow voting board members to arrive at their own conclusions and recommendations.
 - 7.1.2.1. The PRB Facilitator shall recuse themselves from participating in a PRB if they have a potentially strong bias with regard to a particular case.
- 7.1.3. Prepare a written statement of recommended findings and recommendations, along with any proposed discipline, as well as any policy, training and/or investigation issues or concerns raised by the PRB. The completed statement must be submitted to the PRB Coordinator within two weeks of the PRB meeting date and include the following:

- 7.1.3.1. A summary of the case;
- 7.1.3.2. The PRB's recommended findings and a brief explanation of the board's rationale for its recommendations, including a description of the recommendations proposed by members voting in the minority, when the decision is not unanimous;
- 7.1.3.3. The PRB's range of recommended discipline, if any; and
- 7.1.3.4. Any policy, training or supervisory issues raised by the PRB.
- 7.1.4. If the Chief is unable to reach a finding after conducting an initial review, prepare an updated written statement of recommended findings and corrective action, which reflects any changes to or reaffirms the PRB's initial recommendations. The completed statement must be submitted to the PRB Coordinator within two weeks of the PRB's additional review and should include the information outlined in Sections 7.1.3.1. through 7.1.3.4. of this directive.
- 7.2. Facilitators shall maintain strict confidentiality of all case file information and PRB discussions and deliberations.
- 8. Chief Responsibilities.
 - 8.1. Review the case file and, considering the PRB recommendations, make a final determination of findings and discipline.
 - 8.2. Notify the PRB Coordinator of the Chief's findings within two weeks of receipt of the PRB Facilitator's memorandum from the PRB Coordinator.
 - 8.3. If the Chief is unable to reach a finding on the current record, they may request that investigations be returned to the investigating entity for additional investigation necessary to make a determination of findings and discipline.
 - 8.3.1. The case shall return to the purview of the PRB, and the investigating entity shall conduct the additional requested investigation. The investigating entity must make reasonable attempts to conduct the additional investigation or obtain the additional information within 10 business days or provide a written statement to the PRB explaining why additional time is needed.
 - 8.3.2. The PRB shall consider any new information offered by the investigating entity. Voting members shall again reach a conclusion regarding each allegation before them based upon the preponderance of evidence standard (i.e., changing their initial recommended findings and corrective action or each component intact).
 - 8.3.3. The PSD Captain shall notify the involved member and the Chief regarding the PRB's recommended findings and corrective action by the end of the day of the completed PRB review, whether or not the PRB changes its recommended findings or corrective action.
 - 8.3.4. The Chief shall again review the case file and consider the PRB's new or reaffirmed recommendations to make a final determination of findings and discipline.
 - 8.3.5. The Chief shall then notify the PRB Coordinator of their findings within two weeks of receipt of the PRB Facilitator's updated memorandum from the PRB Coordinator.

9. Involved Member.

9.1. The involved member shall be given at least 14 days to review the case file before the PRB meeting.

9.2. If the involved member and/or their representative elect to be present, they may, after the presentation of the case, provide a personal statement of relevant details.

9.2.1. The involved member may provide the information to the PRB in written or oral format.

9.3. The involved member may remain in the hearing until executive session.

10. Special Case Findings.

10.1. Findings for deadly force or in-custody death cases shall be limited to the following:

10.1.1. In Policy: The member's actions complied with policies; or

10.1.2. Out of Policy: The member was found to be in violation of policy.

10.2. Any finding ~~may~~ shall include a recommendation for action items or a debriefing regarding any of the following: if:

10.2.1. Critical Incident Stress Debriefing for the involved member and/or chain of command;

10.2.2. Organizational Assessments to include policies, training, equipment, and/or tactics.

#1

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Saturday, September 15, 2018 4:23:39 PM
Last Modified: Saturday, September 15, 2018 4:24:44 PM
Time Spent: 00:01:04

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 336.00 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 336.00 POLICE REVIEW BOARD (previous comments made July 2017)

As we noted in 2017, the Bureau's stated commitment to transparency and thoroughness are undercut by closing Police Review Board (PRB) hearings entirely to the public and the press. The Directive does not allow for the person who was harmed by an action of a police officer (or his/her representative) to sit in and talk to the PRB about their experience and concerns. We noted earlier that the Ordinance guiding the PRB does not prohibit a civilian from attending, so the Bureau could add that provision in policy, but in their memo releasing the current Directive, they stated the officer's privacy is protected by state law and the civilian's point of view is conveyed through the investigation. It is fairly clear from reading the summary reports that the officer's presence sways the PRB, including times when they have expressed concerns or wishes for the officers' well being after a shooting. Seeing a survivor or family member as a flesh and blood human being instead of a report on a piece of paper could also have a similar effect. We would add that once the Bureau decides to allow complainants/survivors into the hearings, they should be allowed to have an advocate with them.

We testified to City Council upon their modifying the City Code around the PRB on September 5. We asked that cases accepted through "stipulated discipline" be included in the twice-a-year PRB reports (Section 6.1.10). Council approved that change and the Directive should reflect it; however, we also noted that an officer agreeing to accept responsibility and punishment cuts out the ability of the PRB to consider policy issues for any given case. PCW recommends that after a stipulated discipline case is finalized, the PRB should be given at 10-15 minutes or more to discuss the case for such observations. (We also note here that the formerly semi-annual PRB reports from January and July were released in February and November 2017, and the first 2018 report came out on September 11.)

We remain concerned about the over-emphasis on confidentiality at these hearings, which are very meaningful to the community. A previous version of the Directive said participants could discuss the case "as otherwise authorized in accordance with their position with the City," the Bureau cut that clause out. As we noted last year, if the Bureau wants to win over the public's trust and confidence in the post-Ferguson era, one way to do that would be to crack open these hearings, at least by calling for semi-annual meetings where the civilian pool members of the PRB could meet with the public to go over the reports and discuss generalities about how the system works. The civilian members are supposedly representing the entire community, but they never meet with the public to get a sense of what people are worrying about.

We continue to be concerned that the involved officer has 14 days to review the Case File (Section 9.1), but community and peer officer members only have 5 days (Section 6.1.5). The Bureau's memo indicates that the Review Board Coordinator (Discipline Coordinator?)* usually sends them out more than five days in advance and checks to be sure people have time to review the files. If that is so, it should be reflected in the Directive.

The current ordinance allows names to be released in officer-involved shootings and deaths in custody cases where the names have already been made public, but the Directive still does not discuss that issue, only saying the names shall not be used (Section 6.1.9). As we noted many times, the semi-annual reports have been redacting the gender of the persons involved in all misconduct investigations even though that is not required by ordinance or the Directive. The Bureau did re-insert the requirement that the reports include a case summary (Section 7.1.3.1) at PCW's suggestion.

The Bureau also states in their memo that the RU Manager's voice is important at the hearing because of their knowledge of the officer. Even if that is true, that does not mean they need to be a voting member (Section 2.1.5), only an advisory member (Section 2.3).

In our previous comments we noted that the Policy sections do not mention community trust or transparency, values stated by the

Directive 336.00 Feedback

Bureau elsewhere.

As we noted previously and above, we believe that it is prejudicial to only have two findings (In Policy or Out of Policy) for deadly force cases (Section 10). Since there are many cases where the evidence may not be sufficient to prove or disprove an officer violated policy, an "Insufficient Evidence" finding should apply in these cases as it does in all others.

It is not clear why the Bureau rewrote the guidelines for debriefings in Section 10, which used to be clear about debriefing on tactics, organizational review and performance analysis. Now the Directive more generally says the debrief can be for the involved officer or "chain of command" (perhaps this should also include any other officers on scene who were not directly involved in the use of deadly force), and "organizational assessments to include policy, training, and/or tactics." The addition of the word "training" is good, but the guidelines for using debriefings should be clearer.

Last time we asked why non-sworn members were cut from the Directive; at City Council it was stated they are never subject to PRB hearings.

There is a new Section (4.3) which explicitly states the findings will be determined by a preponderance of the evidence. PCW supports this being included in the Directive.

There is a new restriction on the Review Board Facilitator, who runs the meeting, who now must recuse themselves if they have a "potentially strong bias" around a case (Section 7.1.2.1).

Despite Section 7.1 saying the Facilitator has to "balance participation, pay attention to group dynamics, and strictly adhere to established processes and rules," some Citizen Review Committee members who have participated in PRBs say they are treated as uninformed parties whose perspective does not matter.

We continue to be concerned that voting members have to ask questions through the PRB Coordinator to Internal Affairs prior to the hearing, with no guarantee they will receive answers (Section 4.1.1).

In our last comments we noted that the Citizen Review Committee indicated that when no CRC members make themselves available to sit on PRBs on officer-involved shootings, they believed a second member of the PRB pool would be seated instead of a CRC member. The ordinance and Directive do not seem to allow for that possibility. PCW continues to ask the Bureau for clarification on this issue.

Two other notes about City Council:

--They changed the ordinance so that any Use of Force case with proposed sustained findings go to the PRB, not just "less lethal" cases (Section 1.1.3.3);

and

--At Council we repeated our concern that the US DOJ required ability for the PRB to send cases back for further investigation (Section 4.7) is not reflected in the ordinance. They took no action. This creates the impression that because this power is in policy but not law, it can be dropped once the DOJ leaves town.

*-The Directive now uses the term "PRB Coordinator" rather than "Review Board Coordinator" consistently, but still isn't clear to whom they report or that they also coordinate discipline.

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

Directive 336.00 Feedback

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: Friday, March 01, 2019 4:15:14 PM
Last Modified: Friday, March 01, 2019 4:15:58 PM
Time Spent: 00:00:43
IP Address: 97.120.206.243

Page 1

Q1 Please provide feedback for this directive

COMMENTS ON ACCOUNTABILITY, AND OTHER DIRECTIVES FEBRUARY/MARCH 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 February/March . While reviewing ten Directives at once is overwhelming, the Bureau's red-line copies helped point us to the areas that were changed, and since we commented on nine of the policies in September (and the other, on Altered Duty, in November) the process was a bit quicker. That said, part of the ease of review is that the Bureau has barely made any changes to the Directives, so most of our comments still stand. We recognize a few of the changes were made in response to our comments.

We still would like to see the Bureau post comments as they arrive so commenters would be able to build off each others' ideas.

One item we'd like to highlight up front is our suggestion in Directive 338.00 on the Discipline Guide that the Guide itself should be posted for public review and input along with the policy. We have made one recommendation based on the recent case of Sgt. Gregg Lewis but would take a "deeper dive" given a formal opportunity.

As we noted in September, the findings on misconduct allegations are a source of great concern. Not only are there poorly defined allegations for general misconduct cases ("Not Sustained" and "Unfounded" need to be fixed), but in deadly force and non-disciplinary investigations there are only two possible findings-- and those are not even the same as each other ("In Policy/Out of Policy" and "Substantiated/Not Substantiated").

We also noted several times that many Directives refer to the Professional Standards Division (PSD) and/or Captain, while others refer to the Internal Affairs (IA) Captain. Since IA is part of PSD this is confusing, and nothing has been done to clarify the issue.

We once again urge the Bureau to make the review periods at least 30 days on both ends of the rewriting process so organizations who only meet monthly have time to give feedback. In addition to the other advisory committees we have mentioned in the past (BHU Advisory Committee, Training Advisory Council, and Citizen Review Committee), the newly formed Portland Committee on Community Engaged Policing (PCCEP) seems to have too much on its plate to respond quickly to requests for input.

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 336.00 Feedback

DIRECTIVE 336.00 POLICE REVIEW BOARD

The only change to this policy is the addition of Section 1.1, where avoidable vehicle collisions can now be sent to the Police Review Board (PRB). PCW has no problem with this change.

However, we have been urging the Bureau for years to prove its stated commitment to transparency and thoroughness by opening PRB hearings to the public and the press, to no avail. We have noted the Directive does not allow for the person who was harmed by an action of a police officer (or his/her representative) to be at the hearing or make a statement to the PRB. As we have said, the Bureau could add a provision in policy to allow complainants to attend, since the Ordinance guiding the PRB does not prohibit a civilian from attending. In the memo releasing the current Directive, the Bureau claimed the civilian's point of view is conveyed through the investigation and that they want to protect the officer's privacy under state law. We are fairly sure the state law allows for exceptions in the public interest, which would cover just about any misconduct case involving civilians. When the officer appears at the PRB, summary reports indicate the Board is often swayed to their point of view, including times when PRB members have expressed concerns or well wishes for the officers after a deadly force incident. If the Board were allowed to see a survivor or family member as a real person instead of a bunch of words on a piece of paper, that could have a similar effect. Once the Bureau decides to allow complainants/survivors into the hearings, we still feel they should be allowed to have an advocate with them (as is now allowed for interview purposes in Directive 332.00).

We add a new comment here, that the Directive should list the areas of review required to be covered at PRB hearings on deadly force, such as tactics leading to the use of force-- including when a pursuit is involved, as suggested by the OIR Group in its 2019 report.

Also, with regard to the Review Board Facilitators who run the meetings, although they must recuse themselves if they have a "potentially strong bias" around a case (Section 7.1.2.1), and have to "balance participation, pay attention to group dynamics, and strictly adhere to established processes and rules" (Section 7.1), PCW urges that they be required to take training to ensure these values are upheld. Some Citizen Review Committee members who have participated in PRBs say they are treated as uninformed parties whose perspective does not matter, an attitude a well trained facilitator would not allow.

In our last two sets of comments we noted the Citizen Review Committee indicated that when no CRC members are available to sit on officer-involved shootings PRBs, they believed a second member of the PRB pool would be seated instead of a CRC member. The ordinance and Directive do not seem to allow for that possibility. PCW continues to ask the Bureau for clarification on this issue.

City Council approved a change to code to require that cases accepted through "stipulated discipline" be included in the twice-a-year PRB reports (Section 6.1.10), but that change is not still reflected in the Directive. PCW also suggested that the PRB should be given 10-15 minutes to discuss any policy issues related to stipulated discipline cases.

We would like to see the Bureau focus less on the confidentiality of PRB hearings, since the substance of the hearings are meaningful to the community. The Bureau has not re-inserted a previous clause allowing PRB participants to discuss the case "as otherwise authorized in accordance with their position with the City." We noted in 2017 and 2018 that to win over the public's trust and confidence in the post-Ferguson era, the Bureau should do more to shed light on these hearings. Our ongoing suggestion is for semi-annual meetings where the civilian pool members of the PRB could meet with the public, go over the reports and discuss generalities about how the system works. As we said, "the civilian members are supposedly representing the entire community, but they never meet with the public to get a sense of what people are worrying about."

Also, as previously stated:

--the involved officer has 14 days to review the Case File (Section 9.1), but community and peer officer members only have 5 days (Section 6.1.5); while the Review Board Coordinator supposedly sends out Case Files more than five days in advance, a longer and equitable time frame should be reflected in the Directive.

--the ordinance allows names to be released in officer-involved shootings and deaths in custody cases where the names have already been made public, but the Directive still does not discuss that issue, emphasizing the names shall not be used (Section 6.1.5).

Directive 336.00 Feedback

been made public, but the Directive still does not discuss that issue, only saying the names shall not be used (Section 6.1.9).

--the semi-annual reports have been redacting the gender of the persons involved in all misconduct investigations even though that is not required by ordinance or the Directive.

--while the Bureau asserts that an officer's supervisor (RU Manager) is an important voice at the hearing because of their knowledge of the officer, that does not mean they need to be a voting member (Section 2.1.5), only an advisory member (Section 2.3).

--the Policy sections do not mention community trust or transparency, values stated by the Bureau elsewhere.

--it is prejudicial to only have two findings (In Policy or Out of Policy) for deadly force cases (Section 10); in cases . where the evidence may not be sufficient to prove or disprove an officer violated policy, an "Insufficient Evidence" finding should apply.

--voting members have to ask questions through the PRB Coordinator to Internal Affairs prior to the hearing, with no guarantee they will receive answers (Section 4.1.1).

--Section 1.1.3.3 still does not reflect the Council's change to the ordinance requiring any Use of Force case with proposed sustained findings go to the PRB, not just "less lethal" cases, and

--the Compliance Officer/Community Liaison (COCL) has finally picked up on our concern that the US DOJ-required ability for the PRB to send cases back for further investigation (Section 4.7) is not reflected in the ordinance. This creates the impression that because this power is in policy but not law, it can be dropped once the DOJ leaves town.

The Bureau should push Council to fix the ordinance as we have suggested.

CONCLUSION

PCW again appreciates that the Bureau asks for community comments on its policies, and the few changes that were made in response to our feedback. However, the other common-sense ideas we are putting forward which would lead to a more trustworthy and community-minded police force should not be brushed aside. We are hoping that the once the PCCEP starts making recommendations, the Bureau will engage in public discussions (involving the Committee members and the general public) rather than continuing to go behind closed doors to assess community input. That would show a true commitment to "community engaged policing."

Thank you for your time

--Portland Copwatch

Q2 Contact Information (optional)

Name

Portland Copwatch

Email Address

337.00, Police Review Board Personnel Selection

Refer:

- City of Portland Code 3.20.140, Police Review Board
- DIR 330.00, Internal Affairs, Complaint Intake, and Processing
- DIR 336.00, Police Review Board

Policy:

1. The Portland Police Bureau's (PPB) Police Review Board (PRB) serves as an advisory body to the Chief of Police ("Chief"). The PRB includes command staff, community members and peer members of the same rank as the Bureau member whose conduct is the subject of review, in addition to a facilitator. Portland City Code 3.20.140 requires PPB and Independent Police Review (IPR) to establish a directive outlining selection criteria and confidentiality provisions for PRB members and facilitator.

Procedure:

1. PRB Community Members.
 - 1.1. Pursuant to City code, IPR is responsible for the selection and management of qualified community member volunteers approved to participate on the PRB.
 - 1.1.1. The Chief may identify candidates for IPR's consideration, but IPR is ultimately responsible for providing a list of qualified candidates to the Chief.
 - 1.2. Qualification of PRB Community Members:
 - 1.2.1. Community members must pass a background check performed by PPB.
 - 1.2.2. Community members must participate in Bureau training to become familiar with PRB process, police policy, and training.
 - 1.2.3. Community members must sign and adhere to a confidentiality agreement.
 - 1.2.4. Community members will be required to participate in ride-alongs at least once per year to maintain sufficient knowledge of police patrol procedures.
 - 1.3. Appointment of PRB Community Members:
 - 1.3.1. Community board members will be selected by City Council, upon nomination by IPR, based on the following:
 - 1.3.1.1. Demonstrated ability to make sound and rational decisions under pressure.
 - 1.3.1.2. Demonstrated ability to review complex investigations.
 - 1.3.1.3. Absence of any real or perceived bias for or against the police.
 - 1.3.1.4. Absence of any real or perceived bias against persons based on race, color, national origin or ethnicity, citizenship or immigrant or refugee status, religion, gender or gender identity or gender expression, age, marital or familial status, sexual orientation, mental or physical disability, mental illness, economic status, political ideology or affiliation, veteran status, language, or housing status.
 - 1.3.1.5. Absence of any real or perceived conflict of interest.
 - 1.3.1.6. Residence or business ownership within the City of Portland.
 - 1.3.2. The City Council will confirm community member volunteers to form a pool of community members to serve on the PRB.

- 1.3.3. Community members shall be appointed for a term of no more than three years. Community members may serve no more than two full terms, not including the remainder of any unexpired vacancy they are appointed to fill.

1.4. Removal of PRB Community Members:

- 1.4.1. The Chief or IPR may recommend that City Council remove a community member from the pool for the following reasons:
 - 1.4.1.1. Failure to attend training;
 - 1.4.1.2. Failure to read Case Files;
 - 1.4.1.3. Objective demonstration of disrespectful or unprofessional conduct;
 - 1.4.1.4. Repeated and excessive unavailability for service when requested;
 - 1.4.1.5. Breach of confidentiality;
 - 1.4.1.6. Objective demonstration of bias for or against the police;
 - 1.4.1.7. Objective demonstration of bias against persons based on the basis of race, color, national origin or ethnicity, citizenship or immigrant or refugee status, religion, gender or gender identity or gender expression, age, marital or familial status, sexual orientation, mental or physical disability, mental illness, economic status, political ideology or affiliation, veteran status, language, or housing status.; and/or
 - 1.4.1.8. Objective demonstration of conflict of interest.

2. PPB PRB Peer Members.

2.1. Appointment of PRB Peer Members:

- 2.1.1. Representatives of PPB's bargaining units may review peer member applications.
- 2.1.2. Peer member applications will be reviewed by Assistant Chiefs, the Professional Standards Division (PSD) Commander, and a Responsibility Unit Manager, who will make appointment recommendations to the Chief.
- 2.1.3. The Chief will appoint Bureau members to serve among a pool of peer members for the PRB.
 - 2.1.3.1. The PRB Coordinator shall select candidates for each PRB from the pool who are not related to the involved member or involved or have witnessed the incident.

2.2. Eligibility and Removal of PRB Peer Members:

- 2.2.1. All peer members will serve at the discretion of the Chief.
- 2.2.2. Bureau members are ineligible to serve as PRB peer members for the following reasons:
 - 2.2.2.1. Members currently under investigation are ineligible to serve as a peer member until the investigation is closed and any resultant discipline is imposed as a result of a sustained finding.
 - 2.2.2.1.1. This provision does not apply to investigations of complaints regarding poor quality of service or alleging a rule violation that, if sustained, would not result in corrective action greater than command counseling.
 - 2.2.2.2. Members whose actions have resulted in a sustained finding related to unsatisfactory performance or misconduct, with resulting discipline less than a 40-hour suspension, are ineligible to serve as peer members for a period of one year from the date they accept notice of final discipline. Members can reapply after the one year has passed.

2.2.2.3. Members whose actions have resulted in a sustained finding related to unsatisfactory performance or misconduct, with resulting discipline greater than a 40-hour suspension without pay, are ineligible to serve as peer members for a period of two years from the date they accept notice of final discipline. Members can reapply after the two years has passed.

2.2.3. The Chief may remove a Bureau member from the PRB for the following reasons:

2.2.3.1. Failure to attend training;

2.2.3.2. Failure to read Case Files;

2.2.3.3. Objective demonstration of disrespectful or unprofessional conduct;

2.2.3.4. Repeated and excessive unavailability for service when requested;

2.2.3.5. Breach of confidentiality;

2.2.3.6. Objective demonstration of bias for or against the police;

2.2.3.7. Objective demonstration of bias against persons based on the basis of race, color, national origin or ethnicity, citizenship or immigrant or refugee status, religion, gender or gender identity or gender expression, age, marital or familial status, sexual orientation, mental or physical disability, mental illness, economic status, political ideology or affiliation, veteran status, language, or housing status; and/or

2.2.3.8. Objective demonstration of conflict of interest.

2.2.4. Peer members may request to be removed from the list of peers at any time.

3. Training.

3.1. All voting members shall receive initial training prior to serving on a PRB.

3.2. All voting members shall attend mandatory annual training, which will be tracked and coordinated by the Training Division. Training topics shall be identified by the PSD Commander and Training Division prior to the scheduled training date.

4. PRB Facilitator.

4.1. Qualifications of PRB Facilitator:

4.1.1. To qualify, facilitators must:

4.1.1.1. Demonstrate impartiality and no appearance of conflict of interest.

4.1.1.2. Pass a background check performed by PPB.

4.1.1.3. Participate in Bureau training to become familiar with the PRB process.

4.1.1.4. Sign a confidentiality agreement.

4.2. Appointment of PRB Facilitator:

4.2.1. The PRB will be facilitated by an independent contractor who is not a board member or employed by PPB and will be selected as follows:

4.2.1.1. PPB will prepare a solicitation document in accordance with City procurement rules.

4.2.1.2. PPB will provide the IPR Director a draft of the solicitation document for comment.

4.2.1.3. The selection criteria will include:

4.2.1.3.1. Experience in the basic skills of following good meeting practices: timekeeping, following an agreed-upon agenda, and keeping a clear record.

4.2.1.3.2. Experience in managing groups and individuals and group dynamics.

- 4.2.1.3.3. Demonstrated listening skills including the ability to paraphrase and balance participation.
- 4.2.1.3.4. Demonstrated ability to be a neutral party who, by not taking sides or expressing or advocating a point of view during the PRB meeting can manage PRB meetings in accordance with established procedures.
- 4.2.1.3.5. Demonstrated ability to contribute structure and process to interactions so groups are able to function effectively and make high-quality decisions.

4.3. PPB will screen the responses to the solicitation in accordance with City procurement rules.

337.00, Police Review Board Personnel Selection

Refer:

- City of Portland Code 3.20.140, Police Review Board
- DIR 330.00, Internal Affairs, Complaint Intake, and Processing
- DIR 336.00, Police Review Board

Policy:

1. The Portland Police Bureau's (PPB) Police Review Board (PRB) serves as an advisory body to the Chief of Police ("Chief"). The PRB includes command staff, community members and peer members of the same rank as the Bureau member whose conduct is the subject of review, in addition to a facilitator. Portland City Code 3.20.140 requires PPB and Independent Police Review (IPR) to establish a directive outlining selection criteria and confidentiality provisions for PRB members and facilitator.

Procedure:

1. PRB Community Members.
 - 1.1. Pursuant to City code, IPR is responsible for the selection and management of qualified community member volunteers approved to participate on the PRB.
 - 1.1.1. The Chief may identify candidates for IPR's consideration, but IPR is ultimately responsible for providing a list of qualified candidates to the Chief.
 - 1.2. Qualification of PRB Community Members:
 - 1.2.1. Community members must pass a background check performed by PPB.
 - 1.2.2. Community members must participate in Bureau training to become familiar with PRB process, police policy, and training.
 - 1.2.3. Community members must sign and adhere to a confidentiality agreement.
 - 1.2.4. Community members will be required to participate in ride-alongs at least once per year to maintain sufficient knowledge of police patrol procedures.
 - 1.3. Appointment of PRB Community Members:
 - 1.3.1. Community board members will be selected by City Council, upon nomination by IPR, based on the following:
 - 1.3.1.1. Demonstrated ability to make sound and rational decisions under pressure.
 - 1.3.1.2. Demonstrated ability to review complex investigations.
 - 1.3.1.3. Absence of any real or perceived bias for or against the police.
 - 1.3.1.4. Absence of any real or perceived bias against persons based on race, color, national origin or ethnicity, citizenship or immigrant or refugee status, religion, gender or gender identity or gender expression, age, marital or familial status, sexual orientation, mental or physical disability, mental illness, economic status, political ideology or affiliation, veteran status, language, or housing status.
 - 1.3.1.5. Absence of any real or perceived conflict of interest.
 - 1.3.1.6. Residence or business ownership within the City of Portland.
 - 1.3.2. The City Council will confirm community member volunteers to form a pool of community members to serve on the PRB.

1.3.3. Community members shall be appointed for a term of no more than three years. Community members may serve no more than two full terms, not including the remainder of any unexpired vacancy they are appointed to fill.

1.4. Removal of PRB Community Members:

1.4.1. The Chief or IPR may recommend that City Council remove a community member from the pool for the following reasons:

- 1.4.1.1. Failure to attend training;
- 1.4.1.2. Failure to read Case Files;
- 1.4.1.3. Objective demonstration of disrespectful or unprofessional conduct;
- 1.4.1.4. Repeated and excessive unavailability for service when requested;
- 1.4.1.5. Breach of confidentiality;
- 1.4.1.6. Objective demonstration of bias for or against the police;
- 1.4.1.7. Objective demonstration of bias against persons based on the basis of race, color, national origin or ethnicity, citizenship or immigrant or refugee status, religion, gender or gender identity or gender expression, age, marital or familial status, sexual orientation, mental or physical disability, mental illness, economic status, political ideology or affiliation, veteran status, language, or housing status.; and/or
- 1.4.1.8. Objective demonstration of conflict of interest.

2. PPB PRB Peer Members.

2.1. Appointment of PRB Peer Members:

- 2.1.1. Representatives of PPB's bargaining units may review peer member applications.
- 2.1.2. Peer member applications will be reviewed by Assistant Chiefs, the Professional Standards Division Captain(PSD) Commander, and a Responsibility Unit Manager, who will make appointment recommendations to the Chief.
- 2.1.3. The Chief will appoint Bureau members to serve among a pool of peer members for the PRB.
 - 2.1.3.1. The PRB Coordinator shall select candidates for each PRB from the pool- who are not related to the involved member or involved or have witnessed the incident.

2.2. Eligibility and Removal of PRB Peer Members:

- 2.2.1. All peer members will serve at the discretion of the Chief.
- 2.2.2. Bureau members are ineligible to serve as PRB peer members for the following reasons:
 - 2.2.2.1. Members currently under investigation are ineligible to serve as a peer member until the investigation is closed and any resultant discipline is imposed as a result of a sustained finding.
 - 2.2.2.1.1. This provision does not apply to investigations of complaints regarding poor quality of service or alleging a rule violation that, if sustained, would not result in corrective action greater than command counseling.
 - 2.2.2.2. Members whose actions have resulted in a sustained finding related to unsatisfactory performance or misconduct, with resulting discipline less than a 40-hour suspension, are ineligible to serve as peer members for a period of

one year from the date they accept notice of final discipline. Members can reapply after the one year has passed.

- 2.2.2.3. Members whose actions have resulted in a sustained finding related to unsatisfactory performance or misconduct, with resulting discipline greater than a 40-hour suspension without pay, are ineligible to serve as peer members for a period of two years from the date they accept notice of final discipline. Members can reapply after the two years has passed.
- 2.2.3. The Chief may remove a Bureau member from the PRB for the following reasons:
 - 2.2.3.1. Failure to attend training;
 - 2.2.3.2. Failure to read Case Files;
 - 2.2.3.3. Objective demonstration of disrespectful or unprofessional conduct;
 - 2.2.3.4. Repeated and excessive unavailability for service when requested;
 - 2.2.3.5. Breach of confidentiality;
 - 2.2.3.6. Objective demonstration of bias for or against the police;
 - 2.2.3.7. Objective demonstration of bias against persons based on the basis of race, color, national origin or ethnicity, citizenship or immigrant or refugee status, religion, gender or gender identity or gender expression, age, marital or familial status, sexual orientation, mental or physical disability, mental illness, economic status, political ideology or affiliation, veteran status, language, or housing status; and/or
 - 2.2.3.8. Objective demonstration of conflict of interest.
- 2.2.4. Peer members may request to be removed from the list of peers at any time.

3. Training.

3.1. All voting members shall receive initial training prior to serving on a PRB.

3.2. All voting members shall attend mandatory annual training, which will be tracked and coordinated by the Training Division. Training topics shall be identified by the PSD Commander and Training Division prior to the scheduled training date.

3.4. PRB Facilitator.

3.1.4.1. Qualifications of PRB Facilitator:

3.1.1.4.1.1. To qualify, facilitators must:

3.1.1.1.4.1.1.1. Demonstrate impartiality and no appearance of conflict of interest.

3.1.1.2.4.1.1.2. Pass a background check performed by PPB.

3.1.1.3.4.1.1.3. Participate in Bureau training to become familiar with the PRB process.

3.1.1.4.4.1.1.4. Sign a confidentiality agreement.

3.2.4.2. Appointment of PRB Facilitator:

3.2.1.4.2.1. The PRB will be facilitated by an independent contractor who is not a board member or employed by PPB and will be selected as follows:

3.2.1.1.4.2.1.1. PPB will prepare a solicitation document in accordance with City procurement rules.

3.2.1.2.4.2.1.2. PPB will provide the IPR Director a draft of the solicitation document for comment.

|

3.2.1.3.4.2.1.3. The selection criteria will include:

3.2.1.3.4.2.1.3.1. Experience in the basic skills of following good meeting practices: timekeeping, following an agreed-upon agenda, and keeping a clear record.

3.2.1.3.4.2.1.3.2. Experience in managing groups and individuals and group dynamics.

3.2.1.3.4.2.1.3.3. Demonstrated listening skills including the ability to paraphrase and balance participation.

3.2.1.3.4.2.1.3.4. Demonstrated ability to be a neutral party who, by not taking sides or expressing or advocating a point of view during the PRB meeting can manage PRB meetings in accordance with established procedures.

3.2.1.3.5.4.2.1.3.5. Demonstrated ability to contribute structure and process to interactions so groups are able to function effectively and make high-quality decisions.

3.3.4.3. PPB will screen the responses to the solicitation in accordance with City procurement rules.

#1

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Saturday, September 15, 2018 4:22:18 PM
Last Modified: Saturday, September 15, 2018 4:23:12 PM
Time Spent: 00:00:53

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 337.00 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 337.00 POLICE REVIEW BOARD PERSONNEL (previous comments made July 2017)

In our previous comments on Directive 337.00, we noted Section 1.1.1 allows the Chief to identify PRB candidates-- a provision that is not in City Code, which gives sole authority to the Auditor (3.20.140 [C][1][a][1]). The Directive now turns over the nomination responsibility to IPR, which would make more sense if IPR were truly independent. It's not clear how this jibes with the ordinance, which perhaps needs to be amended to say "the Auditor or designee." This change from "Auditor" to "IPR" is also reflected in Directive Sections 1.3.1 and 1.4.1.

We continue to be concerned that bargaining units may review applications by "peer officers" who rotate onto the board (Section 2.1.1). The Directive still does not say whether the bargaining unit can object to the officers serving, so we continue to hope this is just a courtesy and not an opportunity for a veto.

The Bureau has still not re-inserted the prohibition on officers serving on the PRB if they are from the same Responsibility Unit as the involved officer (as we have asked). However, in addition to restrictions that were added in 2017, there is a list of reasons that peer officers can be removed from the PRB pool. The list is the same as reasons community members might be removed, including:

--bias for or against police (1.4.1.6/2.2.3.6)

and

--bias against people based on race, housing status, and a number of other criteria from Directive 344.05 (1.4.1.7/2.2.3.7), a new criterion which is eminently reasonable and came from the National Lawyers Guild.

PCW still has concerns that community members can be removed for "disrespectful or unprofessional conduct" (1.4.1.3). We asked who would be the arbiter of this issue, and whether it could include questioning the Bureau's training and policies, or a specific officer's egregious conduct. Similarly, we asked that there be a specific number of refusals before removing a member, rather than using the term "excessive" unavailability to serve on the Board (2.2.3.4).

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: Friday, March 01, 2019 4:25:17 PM
Last Modified: Friday, March 01, 2019 4:26:05 PM
Time Spent: 00:00:48
IP Address: 97.120.206.243

Page 1

Q1 Please provide feedback for this directive

COMMENTS ON ACCOUNTABILITY, AND OTHER DIRECTIVES FEBRUARY/MARCH 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 February/March . While reviewing ten Directives at once is overwhelming, the Bureau's red-line copies helped point us to the areas that were changed, and since we commented on nine of the policies in September (and the other, on Altered Duty, in November) the process was a bit quicker. That said, part of the ease of review is that the Bureau has barely made any changes to the Directives, so most of our comments still stand. We recognize a few of the changes were made in response to our comments.

We still would like to see the Bureau post comments as they arrive so commenters would be able to build off each others' ideas.

One item we'd like to highlight up front is our suggestion in Directive 338.00 on the Discipline Guide that the Guide itself should be posted for public review and input along with the policy. We have made one recommendation based on the recent case of Sgt. Gregg Lewis but would take a "deeper dive" given a formal opportunity.

As we noted in September, the findings on misconduct allegations are a source of great concern. Not only are there poorly defined allegations for general misconduct cases ("Not Sustained" and "Unfounded" need to be fixed), but in deadly force and non-disciplinary investigations there are only two possible findings-- and those are not even the same as each other ("In Policy/Out of Policy" and "Substantiated/Not Substantiated").

We also noted several times that many Directives refer to the Professional Standards Division (PSD) and/or Captain, while others refer to the Internal Affairs (IA) Captain. Since IA is part of PSD this is confusing, and nothing has been done to clarify the issue.

We once again urge the Bureau to make the review periods at least 30 days on both ends of the rewriting process so organizations who only meet monthly have time to give feedback. In addition to the other advisory committees we have mentioned in the past (BHU Advisory Committee, Training Advisory Council, and Citizen Review Committee), the newly formed Portland Committee on Community Engaged Policing (PCCEP) seems to have too much on its plate to respond quickly to requests for input.

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 337.00 Feedback

DIRECTIVE 337.00 POLICE REVIEW BOARD PERSONNEL

In our previous comments on this Directive, we urged the Bureau to re-insert the prohibition on officers serving on the Police Review Board if they were from the same Responsibility Unit as the involved officer. The draft policy adds a new Section 2.1.4 which lists factors to be "consider[ed]" as conflicts, though not automatic disqualifiers, including being from the same precinct or unit (2.1.4.2). The other factors are if the member is involved in the incident (2.1.4.1) or is related to the involved officer (2.1.4.3). It seems these should all be deemed conflicts of interest requiring an officer to be removed from the pool for a particular PRB.

A new Section 3 has also been added, requiring annual training for all voting members of the PRB. This appears to be in response to a recommendation from the OIR Group. PCW also suggests the facilitators be required to be a those trainings, and be reminded not to allow anti-civilian bias at Board hearings (as noted in our comments on 336.00).

We continue to note that Section 1.1.1 allows the Chief to identify PRB candidates-- a provision that is not in City Code, which gives sole authority to the Auditor (3.20.140 [C][1][a][1]). We also noted that rather than saying "the Auditor or designee" which would be consistent with code, the Directive gives responsibility for nominations to IPR (the reference is also in Sections 1.3.1 and 1.4.1).

It is also still of concern that bargaining units may review applications by "peer officers" who rotate onto the board (Section 2.1.1), though it is unclear whether bargaining unit can object to the officers serving. Unless the objection relates to the various criteria for exclusion (including the conflicts of interest listed above and those listed in Section 2.2.3) such veto power would be inappropriate.

There are also no answers to who decides when community members will be removed for "disrespectful or unprofessional conduct" (1.4.1.3), or whether such conduct could include questioning the Bureau's training and policies, or a specific officer's egregious behavior.

Also, removing a member who is unavailable "excessively" is too vague a criterion (1.4.1.4 and 2.2.3.4), and PCW recommended there be a specific number of refusals before removing a member.

CONCLUSION

PCW again appreciates that the Bureau asks for community comments on its policies, and the few changes that were made in response to our feedback. However, the other common-sense ideas we are putting forward which would lead to a more trustworthy and community-minded police force should not be brushed aside. We are hoping that the once the PCCEP starts making recommendations, the Bureau will engage in public discussions (involving the Committee members and the general public) rather than continuing to go behind closed doors to assess community input. That would show a true commitment to "community engaged policing."

Thank you for your time

--Portland Copwatch

Q2 Contact Information (optional)

Name

Portland Copwatch

Email Address

338.00, Discipline Guide

Refer:

- DIR 335.00, Discipline Process
- Portland Police Bureau Discipline Guide at www.portlandoregon.gov/police/article/482707

Definition:

- **Aggravating Factor:** A circumstance, fact, or influence that may increase the level of discipline recommended.
- **Discipline Guide:** An advisory document used to provide direction to Responsibility Unit Managers, the Police Review Board, the Chief of Police, and the Commissioner in Charge, when determining appropriate discipline.
- **Mitigating Factor:** A circumstance, fact, or influence that may reduce the level of discipline recommended.

Policy:

1. Imposing discipline for sustained allegations of misconduct is necessary to hold members accountable for their conduct and performance. Discipline shall be reasonably predictable and consistent. The appropriate discipline shall be based on the nature of the allegation, with both mitigating and aggravating factors considered in light of a member's disciplinary history. The Portland Police Bureau (PPB) requires members involved in recommending discipline to reference the Discipline Guide when making a determination.

Procedure:

1. Bureau members involved in the disciplinary process shall refer to and acknowledge use of the Discipline Guide in making their recommendations regarding discipline.
 - 1.1. Outside of the PRB, if any members recommend or impose discipline at a level outside the Discipline Guide, they shall provide a written explanation.
 - 1.2. During a PRB, if any voting member recommends discipline at a level outside the Discipline Guide, they shall provide a verbal explanation. The Facilitator shall document the reasoning in the memorandum to the Chief.
 - 1.3. In all cases where the Chief's and Police Commissioner's final discipline is outside of the range recommended by the discipline guide, the Chief and Police Commissioner shall provide an explanation in the final discipline letter of the reason(s) for imposing discipline outside of the recommended range.
2. Professional Standards Division (PSD)/Internal Affairs (IA) shall include a copy of the Discipline Guide when providing case materials for review and findings.
3. PSD and the City Attorney's Office shall review the Discipline Guide on an annual basis to consider any changes to the Discipline Guide, Aggravating Factors, or Mitigating Factors. Any

recommended changes shall be forwarded to the Chief of Police and Commissioner in Charge for review and approval.

4. PSD shall post the Discipline Guide online; however, the Police Review Board Coordinator shall provide a written copy when requested.

338.00, Discipline Guide

Refer:

- DIR 335.00, Discipline Process
- Portland Police Bureau Discipline Guide (~~Appendix A~~) at www.portlandoregon.gov/police/article/482707

Definition:

- Aggravating Factor: A circumstance, fact, or influence that may increase the level of discipline recommended.
- Discipline Guide: An advisory document used to provide direction to Responsibility Unit Managers, the Police Review Board, the Chief of Police, and the Commissioner in Charge, when determining appropriate discipline.
- Mitigating Factor: A circumstance, fact, or influence that may reduce the level of discipline recommended.

Policy:

1. Imposing discipline for sustained allegations of misconduct is necessary to hold members accountable for their conduct and performance. Discipline shall be reasonably predictable and consistent. The appropriate discipline shall be based on the nature of the allegation, with both mitigating and aggravating factors considered in light of a member's disciplinary history. The Portland Police Bureau (PPB) requires members involved in recommending discipline to reference the Discipline Guide when making a determination.

Procedure:

1. Bureau members involved in the disciplinary process shall refer to and acknowledge use of the Discipline Guide (~~See Appendix A~~) in making their recommendations regarding discipline.
 - 1.1. Outside of the PRB, if any members recommend or impose discipline at a level outside the Discipline Guide, they shall provide a written explanation.
 - 1.2. During a PRB, if any voting member recommends discipline at a level outside the Discipline Guide, they shall provide a verbal explanation. The Facilitator shall document the reasoning in the memorandum to the Chief.
 - 1.3. In all cases where the Chief's and Police Commissioner's final discipline is outside of the range recommended by the discipline guide, the Chief and Police Commissioner shall provide an explanation in the final discipline letter of the reason(s) for imposing discipline outside of the recommended range.
2. Professional Standards Division (PSD)/Internal Affairs (IA) shall include a copy of the Discipline Guide when providing case materials for review and findings.
3. PSD and the City Attorney's Office shall review the Discipline Guide on an annual basis to consider any changes to the Discipline Guide, Aggravating Factors, or Mitigating Factors. Any

recommended changes shall be forwarded to the Chief of Police and Commissioner in Charge for review and approval.

4. PSD shall post the Discipline Guide online; however, the Police Review Board Coordinator shall provide a written copy when requested.

DRAFT

#1

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Saturday, September 15, 2018 4:20:46 PM
Last Modified: Saturday, September 15, 2018 4:21:45 PM
Time Spent: 00:00:59

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 338.00 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 338.00 DISCIPLINE GUIDE (previous comments August 2017)

Interestingly, a discussion about the Discipline Guide came up at the City Council hearing on September 5 during the consideration of the Police Review Board ordinance. Commissioner Fritz raised questions about one aspect of the guide and Commissioner Fish admonished her for questioning the guide in a public forum. This seems odd since the Bureau asks for public input, prides itself on community engagement, and has a very unique position in society with regards to its powers and protections. That said, between the last draft and now, four changes were made to this Directive-- one of which was to state "See Appendix A" in reference to the Guide. The online Directives Manual, the version up for public review, and the published final "330 series" all do not contain a link to, or physical copy of the Guide. Due to the overwhelming nature of this set of Directives, PCW is not offering comments on the Guide itself at this time, but noting that it should be easily included on the site and put out for comment with the Second Review of this policy. Through a web search, we found a version of the guide at <https://www.portlandoregon.gov/police/article/482707> .

The other three additions outline how different parties are to report if they propose discipline which is outside of the Discipline Guide: Bureau members in writing, PRB members verbally (recorded by the Facilitator), and the Chief/Commissioner along with the letter imposing discipline. PCW is not opposed to these changes.

We continue to be concerned that discipline can "be modified based on mitigating and/or aggravating factors" (Policy Section 1), when the Guide is supposed to ensure that wildly different punishment isn't being doled out for different officers engaging in the same behavior. However, we still appreciate that those two terms are defined in the Directive, even if vaguely. We suggested that items which should not be considered for mitigating and aggravating factors be listed, using as an example information supervisors know about a person's personal life that have no bearing on their performance as an officer and did not come up in the investigation or review.

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: Friday, March 01, 2019 4:08:34 PM
Last Modified: Friday, March 01, 2019 4:09:26 PM
Time Spent: 00:00:52
IP Address: 97.120.206.243

Page 1

Q1 Please provide feedback for this directive

COMMENTS ON ACCOUNTABILITY, AND OTHER DIRECTIVES FEBRUARY/MARCH 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 February/March . While reviewing ten Directives at once is overwhelming, the Bureau's red-line copies helped point us to the areas that were changed, and since we commented on nine of the policies in September (and the other, on Altered Duty, in November) the process was a bit quicker. That said, part of the ease of review is that the Bureau has barely made any changes to the Directives, so most of our comments still stand. We recognize a few of the changes were made in response to our comments.

We still would like to see the Bureau post comments as they arrive so commenters would be able to build off each others' ideas.

One item we'd like to highlight up front is our suggestion in Directive 338.00 on the Discipline Guide that the Guide itself should be posted for public review and input along with the policy. We have made one recommendation based on the recent case of Sgt. Gregg Lewis but would take a "deeper dive" given a formal opportunity.

As we noted in September, the findings on misconduct allegations are a source of great concern. Not only are there poorly defined allegations for general misconduct cases ("Not Sustained" and "Unfounded" need to be fixed), but in deadly force and non-disciplinary investigations there are only two possible findings-- and those are not even the same as each other ("In Policy/Out of Policy" and "Substantiated/Not Substantiated").

We also noted several times that many Directives refer to the Professional Standards Division (PSD) and/or Captain, while others refer to the Internal Affairs (IA) Captain. Since IA is part of PSD this is confusing, and nothing has been done to clarify the issue.

We once again urge the Bureau to make the review periods at least 30 days on both ends of the rewriting process so organizations who only meet monthly have time to give feedback. In addition to the other advisory committees we have mentioned in the past (BHU Advisory Committee, Training Advisory Council, and Citizen Review Committee), the newly formed Portland Committee on Community Engaged Policing (PCCEP) seems to have too much on its plate to respond quickly to requests for input.

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 338.00 Feedback

DIRECTIVE 338.00 DISCIPLINE GUIDE

The only change to this directive came from PCW's recommendation: The Bureau is adding a link to the actual Discipline Guide. However, the COCL reported that Guide was approved in early 2018, but the version that is posted (which is the same one we linked to in our September comments) is dated 2014. Does this mean there have been no changes to the Guide in almost five years? The case of Sgt. Gregg Lewis, who was fired but briefly reinstated because his violent racist joke only could lead to 120 hours off, shows that the Guide itself should be put forward for public input alongside the Directive. At the very least, a first-time but clearly discriminatory remark such as Lewis' suggestion to "go out and shoot black people" should be able to result in termination.

Here we repeat our previous comment: "We continue to be concerned that discipline can 'be modified based on mitigating and/or aggravating factors' (Policy Section 1), when the Guide is supposed to ensure that wildly different punishment isn't being doled out for different officers engaging in the same behavior." We once again urge the Bureau to better define what are mitigating and aggravating factors. An example we gave as something that should not be able to be used is information supervisors know about a person's personal life that have no bearing on their performance as an officer and did not come up in the investigation or review.

CONCLUSION

PCW again appreciates that the Bureau asks for community comments on its policies, and the few changes that were made in response to our feedback. However, the other common-sense ideas we are putting forward which would lead to a more trustworthy and community-minded police force should not be brushed aside. We are hoping that the once the PCCEP starts making recommendations, the Bureau will engage in public discussions (involving the Committee members and the general public) rather than continuing to go behind closed doors to assess community input. That would show a true commitment to "community engaged policing."

Thank you for your time

--Portland Copwatch

Q2 Contact Information (optional)

Name

Portland Copwatch

Email Address
