



CITY OF PORTLAND, OREGON



Bureau of Police

Ted Wheeler, Mayor

Danielle M. Outlaw, Chief of Police

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Directive 635.20, Community Member Observation of Police Executive Summary

Introduction

The Portland Police Bureau created Directive 635.20 in 2016 to establish guidelines for Bureau members who encounter community members utilizing electronic recording devices to document their performance of various law enforcement activities. The Bureau initiated its review process in early 2018 and received minimal feedback during the two universal review and public comment periods. The Policy Development Team reviewed the comments and, in the end, decided to keep the directive largely intact.

Public Comments

The Bureau conducted the first and second universal review and public comment periods in February and August, respectively. Among the comments were concerns regarding the establishment of reasonable distance between the public and a location with ongoing law enforcement activity; seizing devices; viewing content on a seized device; and destroying or erasing content found on a device once it's been seized.

Establishing reasonable distance

Community concern over this issue is not without merit; however, the Bureau determined it to be operationally infeasible to direct officers to provide observers with specific measurable distances at a scene (i.e., an officer directing observers to stand ten feet away). Rather, the directive highlights examples of what may be considered interference to both guide members in their decision-making and inform community members in this context. The Bureau did modify section 2.1. to include preventing members from increasing distance for the sole purpose of discouraging observers from recording and also makes clear that members may establish a reasonable distance to protect the privacy and safety of involved parties.

Seizing devices

The Bureau does not condone or authorize the seizure of personal property without legitimate legal justification and/or immediate safety concerns. While some community members want the Bureau to emphasize the rarity of seizing devices in the directive, the directive is designed to provide guidance to members on the requirements for legally and appropriately seizing a community member's recording device. Nonetheless, seizing an electronic recording device from a community member observer is a rare occurrence and the Bureau acknowledges the impact of doing so.

Viewing media content on seized devices

One commenter requested that the Bureau explicitly state in the directive that members are restricted to viewing and duplicating only media content relevant to the incident in which a person is arrested and charged with a crime. Legally, Bureau members are not allowed to view media content on a seized device carte blanche. A search warrant establishes the parameters of what can be seized as evidence.

Erasing or deleting content on a seized device

When an electronic recording device is seized, the Bureau processes the content on the device for evidence. The Bureau does not erase original content or delete parts of recordings on a seized device unless it has been directed to do so by a judge.

The Bureau's Revised Policy

The Policy Development Team made minimal revisions to the directive. In section 2.3, the Bureau added a new subsection 2.3.1. to address when it would be appropriate for a member to seize a recording prior to notifying a supervisor. In section 3.2, the Bureau incorporated information to include guidance on how members would obtain consent to seize a device from a voluntary community member and when members must notify their supervisor after seizing a device. The Bureau also removed a clause that originally allowed Bureau members to seize a recording if an individual was arrested and charged with a crime because it was overly broad.

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

This directive will become effective on March 1, 2019.

Published on 1/30/19

635.20, Community Member Observation of Police

Refer:

- ORS §165.540(5)(b)(A)-(D) Obtaining contents of communications
- ORS §161.015 General Definitions
- DIR 631.35, Press/Media Relations
- DIR 650.00, Search, Seizures, and Inventories
- DIR 652.00, Search Warrants
- DIR 660.10, Property and Evidence Procedures

Definitions:

- Faraday bag: A bag that ensures portable digital devices are secure from any external interceptions, and prevents remote wiping of information, tracking, and bugging.
- Media: Storage source for visual or audio recordings, whether by film, analog, or digital means.
- Recording: Capturing of visual images, or sounds, including spoken words that are normally audible, or both, by means of a video camera, cell phone, audio recorder, or other device.
- Seizure: Significant interference with a person's possessory or ownership interests in property.

Policy:

1. This policy provides guidelines for handling situations in which members of the public observe, photograph, video or audio record members of the Portland Police Bureau performing official duties. Members should assume they are being audio or video recorded at all times when on duty in a public place.
2. All persons have rights under state and federal law to observe and record police officers performing official duties, so long as that person's actions do not interfere with the member's duties or the safety of members or others, are consistent with reasonable restrictions, do not amount to criminal trespass, or otherwise violate the law.
3. Persons may observe or record from any public place or any private property where the person has the legal right to be present. However, this directive does not give any person permission to impede the flow of vehicular or pedestrian traffic or to disregard reasonable restrictions. Members shall not prohibit or intentionally interfere with lawful observations or recordings except as provided in this directive. Any recordings that are deemed to be evidence of a crime or relevant to an investigation shall only be collected, seized, or viewed in accordance with this directive and state and federal law.

Procedure:

1. Observing or Recording Law Enforcement Activity.

- 1.1. The right of persons to observe or record law enforcement activity is not absolute and is subject to reasonable time, place, and manner restrictions. Examples of such time, place, and manner restrictions include, but are not limited to:
 - 1.1.1. Establishing a perimeter beyond which persons may not go;
 - 1.1.2. Requiring a person to keep a specified amount of distance between themselves and the persons or objects they seek to observe or film; or
 - 1.1.3. Requiring a person to observe or record from a location that does not interfere with police operations; or
- 1.2. While observing or recording, persons cannot interfere with law enforcement activity. Examples of interference may include, but are not limited to:
 - 1.2.1. Intentional and persistent attempts to distract or communicate with a witness or suspect with whom the police are speaking or engaging;
 - 1.2.2. Direct physical intervention or breaching the specified amount of distance established by a member;
 - 1.2.3. Repeated attempts to engage a member with questions or interruptions, thereby dividing the attention of the member to the matter at hand;
 - 1.2.4. Intentionally impeding the movement of emergency equipment or personnel;
 - 1.2.5. Inciting others to violate any law or any lawful command; or
 - 1.2.6. Any action by the person that jeopardizes the safety or security of a member, victim, witness, suspect, or third party.
2. Member Response.
 - 2.1. Members may require a person recording police activities to maintain a reasonable distance from that police activity. Members shall consider the totality of the circumstances regarding the particular police activity in establishing a reasonable distance. Members shall not establish or increase a distance for the sole purpose of discouraging or interfering with the lawful recording or observation of police activities. Members are allowed to establish a distance that reasonably protects the privacy of any verbal communication between or among members, victims, witnesses, suspects, or third parties for their safety and the safety of members and others.
 - 2.2. Whenever practical, members should give clear and concise warnings to persons recording police activities when the person's behavior is unlawful. Accompanying the warnings, whenever practical, a member should give clear directions on what a person can do to be compliant and continue recording. For example, rather than simply directing a person to "clear the area," a member should advise the person from where or at what distance the person may continue lawfully recording or observing the law enforcement activity.
 - 2.3. In the event a person's observation or recording continues to interfere with law enforcement activities or a member believes that the recording(s) may contain evidence of or information concerning the commission of a Measure 11 offense, when practical, the on-scene member shall request that a supervisor respond to the scene.
 - 2.3.1. Under exigent circumstances, a member may take action to stop a community member from recording prior to communicating with their supervisor and shall

document in their report articulable reasons for doing so. Members will notify a supervisor as soon as practical after the exigency is resolved.

3. Seizing and Viewing Recordings.

3.1. Members may not order or coerce a person to show them recordings that have been made of law enforcement activities. But members may ask persons for consent to seize and view recordings.

3.2. Seizing recordings and media.

3.2.1. Members may seize recording devices and media if:

3.2.1.1. The person recording consents to the seizure;

3.2.1.1.1. A member obtaining consent shall have the person consenting fill out the written voluntary consent form and attach it to their report; or

3.2.1.2. Exigent circumstances exist to seize the recording device or media. Exigent circumstances require probable cause to believe the recording device or media contains evidence of or information concerning the commission of a Measure 11 offense, and the member must objectively believe that immediate seizure is necessary to prevent the destruction or tampering of such evidence contained on the recording device or media. The fact a recording device or media is capable of being deleted does not by itself create an exigency justifying a seizure.

3.2.1.2.1. Members shall inform their supervisor of their action to seize a device as soon as practical.

3.2.1.3. If there are no exigent circumstances, but there is probable cause to believe the recording device or media contains evidence of or information concerning the commission of a Measure 11 offense, the member must contact the Multnomah County District Attorney's Office and request it to issue a *Subpoena Duces Tecum* to seize the recording device or media.

3.2.2. Members should protect seized recording devices and media from remote access, such as through the use of a Faraday bag, to ensure legal viewing at a later time.

3.3. Viewing recordings or information contained on recording devices and media.

3.3.1. Members may view recordings or information contained on seized devices and media if:

3.3.1.1. The person recording consents to the viewing;

3.3.1.2. The person recording possesses the recording device when arrested and is charged with a crime, and the member obtains a search warrant based on probable cause to view and duplicate the recording device's media; or

3.3.1.3. Exigent circumstances exist requiring the immediate viewing, for example, to prevent death or serious physical injury to a person.

3.4. The owner of any surrendered or seized device or media must be given a property receipt.

3.5. All instances of viewing and/or seizing recordings should be documented in an appropriate police report.

4. Return of Recording Device.

- 4.1. The recording device and its media should be held in police custody no longer than reasonably necessary for the police to obtain and execute a search warrant. The recording device and its media should then be returned promptly to the device's owner in accordance with Directive 660.10, Property and Evidence Procedures.

History:

- Originating Directive Date: 10/21/2016
- Last Revision Signed: 1/30/2019
 - Effective Date: 3/1/2019
- Next Review Date: 3/1/2021

635.20₂ Community Member Observation of Police

Refer:

- ORS §165.540(5)(b)(A)-(D) Obtaining contents of communications
- ORS §161.015 General Definitions
- DIR 631.35₂ Press/Media Relations
- DIR 650.00₂ Search, Seizures, and Inventories
- DIR 652.00₂ Search Warrants
- DIR 660.10₂ Property and Evidence Procedures

Definitions:

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- Media: Storage source for visual or audio recordings, whether by film, analog, or digital means.
- Recording: Capturing of visual images, or sounds, including spoken words that are normally audible, or both, by means of a video camera, cell phone, audio recorder, or other device.
- Seizure: Significant interference with a person's possessory or ownership interests in property.
- ~~Faraday bag: A bag that ensures portable digital devices are secure from any external interceptions, and prevents remote wiping of information, tracking, and bugging.~~

Policy:

1. This policy provides guidelines for handling situations in which members of the public observe, photograph, video or audio record members of the Portland Police Bureau performing official duties. Members should assume they are being audio or video recorded at all times when on duty in a public place.
2. All persons have rights under state and federal law to observe and record police officers performing official duties, so long as that person's actions do not interfere with the member's duties or the safety of members or others, are consistent with reasonable restrictions, do not amount to criminal trespass, or otherwise violate the law.
3. Persons may observe or record from any public place or any private property where the person has the legal right to be present. However, this ~~Directive~~ directive does not give any person permission to impede the flow of vehicular or pedestrian traffic or to disregard reasonable restrictions. Members shall not prohibit or intentionally interfere with lawful observations or recordings except as provided in this ~~Directive~~ directive. Any recordings that are deemed to be evidence of a crime or relevant to an investigation shall only be collected, seized₂, or viewed in accordance with this ~~Directive~~ directive and state and federal law.

Procedure:

1. Observing or Recording Law Enforcement Activity:
 - 1.1. The right of persons to observe or record law enforcement activity is not absolute and is subject to ~~legitimate and~~ reasonable time, place, and manner restrictions. Examples of such time, place, and manner restrictions include, but are not limited to:
 - 1.1.1. Establishing a perimeter beyond which persons may not go;
 - 1.1.2. Requiring a person to keep a specified amount of distance between themselves and the persons or objects they seek to observe or film; or
 - 1.1.3. Requiring a person to observe or record from a location that does not interfere with police operations; or
 - 1.2. ~~Beyond the act of~~While observing or recording, persons ~~may not~~cannot interfere with law enforcement activity. Examples of interference may include, but are not limited to:
 - 1.2.1. Intentional and persistent attempts to distract or communicate with a witness or suspect with whom the police are speaking or engaging;
 - 1.2.2. Direct physical intervention or breaching the specified amount of distance established by a member;
 - 1.2.3. Repeated attempts to engage a member with questions or interruptions, thereby dividing the attention of the member to the matter at hand;
 - 1.2.4. Intentionally impeding the movement of emergency equipment, or personnel;
 - 1.2.5. Inciting others to violate any law or any lawful command; or
 - 1.2.6. Any action by the person that jeopardizes the safety or security of a member, victim, witness, suspect, or third party.
2. Member Response:
 - 2.1. Members may require a person recording police activities to maintain a reasonable distance from that police activity. Members shall consider the totality of the circumstances regarding the particular police activity in establishing a reasonable distance. Members shall not establish ~~any or increase a~~ distance for the sole purpose of discouraging or interfering with the lawful recording or observation of police activities. Members are allowed to establish a distance that reasonably protects the privacy of any verbal communication between or among members, victims, witnesses, suspects, or third parties for their safety and the safety of members and others.
 - 2.2. Whenever ~~practicable~~practical, members should give clear and concise warnings to persons recording police activities when the person's behavior is ~~unlawful~~. Accompanying the warnings, whenever ~~practicable~~practical, a member should give clear directions on what a person can do to be compliant and ~~should be specific enough to allow compliance.~~continue recording. For example, rather than simply directing a person to "clear the area," a member should advise the person from where or at what distance the person may continue lawfully recording or observing the law enforcement activity.
 - 2.3. In the event a person's observation or recording continues to interfere with law enforcement activities or a member believes that the recording(s) may contain evidence

of or information concerning the commission of a Measure 11 offense, when ~~practicable~~practical, the on-scene member ~~should~~shall request that a supervisor respond to the scene. ~~Realizing that often times these are dynamic situations and actions must be taken immediately, when reasonable, members should wait for the supervisor to arrive before taking enforcement action or seizing any recording device or media.~~

2.3.1. Under exigent circumstances, a member may take action to stop a community member from recording prior to communicating with their supervisor and shall document in their report articulable reasons for doing so. Members will notify a supervisor as soon as practical after the exigency is resolved.

3. Seizing and Viewing Recordings:-

3.1. Members may not order or coerce a person to show them recordings that have been made of law enforcement activities. ~~But~~ members may ask persons ~~to~~for consent to ~~seizure~~seize and ~~viewing of~~view recordings.

3.2. Seizing recordings and media:-

3.2.1. Members may seize recording devices and media if:

3.2.1.1. The person recording consents to the seizure;

3.2.1.1.1. ~~The~~A member obtaining consent shall have the person ~~recording possesses the recording device when~~consenting fill out the ~~person is arrested~~written voluntary consent form and ~~charged with a crime~~attach it to their report; or

3.2.1.2. Exigent circumstances exist to seize the recording device or media. Exigent circumstances ~~requires~~require probable cause to believe the recording device or media contains evidence of or information concerning the commission of a Measure 11 offense, ~~and~~ the member must objectively believe that immediate seizure is necessary to prevent the destruction or tampering of such evidence contained on the recording device or media. ~~The~~ fact a recording device or media is capable of being deleted does not by itself create an exigency justifying a seizure.

~~3.2.1.1.2.~~3.2.1.2.1. Members shall inform their supervisor of their action to seize a device as soon as practical.

~~3.2.1.2.~~3.2.1.3. If there are no exigent circumstances, but there is probable cause to believe the recording device or media contains evidence of or information concerning the commission of a Measure 11 offense, the member must contact the Multnomah County District Attorney's Office and request it to issue a *Subpoena Duces Tecum* to seize the recording device or media.

3.2.2. Members should protect seized recording devices and media from remote access, such as through the use of a Faraday bag, to ensure legal viewing at a later time.

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- 3.3.1.2. The person recording possesses the recording device when arrested and is charged with a crime, and the member obtains a search warrant based on probable cause to view and duplicate the recording device's media; or
 - 3.3.1.3. Exigent circumstances exist requiring the immediate viewing, for example, to prevent death or serious physical injury to a person.
 - 3.4. The owner of any surrendered or seized device or media must be given a property receipt.
 - 3.5. All instances of viewing and/or seizing recordings should be documented in an appropriate police report.
- 4. Return of Recording Device:
 - 4.1. The recording device and its media should be held in police custody no longer than reasonably necessary for the police to obtain and execute a search warrant. The recording device and its media, ~~including the content of the recording,~~ should then be returned promptly to the device's owner in accordance with Directive 660.10, Property and Evidence ~~Procedure~~Procedures.

Directive 635.20 Feedback

1st Universal Review: 2/15/18-3/17/18

#1

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Tuesday, March 13, 2018 12:49:24 PM
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Page 1

Q1 Please provide feedback for this directive

Comments on Copwatching and Employee Information System Directives, March 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, Citizen Review Committee and the Portland Police Bureau:

Below are our comments on some of the Directives posted for review in February 2018 (at <http://www.portlandoregon.gov/police/59757>). We turned in our comments on the Training Directive before the March 2 deadline, and will send our comments on Crowd Control separately as they are quite extensive.

Portland Copwatch (PCW) spoke directly with Chief Outlaw about the timeline issue for examining policies. We are glad to see that the "Directives Directive" 010.00 now gives 30 days to comment on the proposed changes from the Bureau. However, this comes at the expense of cutting the first comment period down from 30 to 15 days. For groups like ours, the Citizen Review Committee and others who only meet once a month it is still a very short time to examine lengthy policies in a meaningful way. We remind the Bureau that once the Portland Committee on Community Engaged Policing (PCCEP) is up and running, even if they meet twice a month it is unlikely they can meet 15-day turnarounds, much less 30 day ones.

PCW continues to believe the Bureau should add letters to section headings (Definitions, Policy, Procedure) to avoid having multiple sections with the same numbers, and return to its earlier practice of numbering each Definition, for easier cross-referencing.

Our comments below refer to the Procedure section unless otherwise noted.

DIRECTIVE 635.20 COMMUNITY MEMBER OBSERVATION OF THE POLICE

We last commented on Directive 635.20, referring to it as the "Copwatching Directive," when it was created in January 2016 in response to modifications made to ORS 165.540.

We acknowledge that the Bureau made two of the changes PCW suggested:

--changing the name from "Citizen Observation of the Police" to "Community Member Observation of the Police" so as not to imply immigrants may not video officers;

and

--moving into the Policy Section a sentence about people's right to record officers in a public place, or private place the person is allowed to be (was in Procedure 1.1.1 as a restriction, now in Policy 3).

Directive 635.20 Feedback

However, despite a lot of other changes, this Directive falls short of needed clarifications.

We suggested that Section 1 on "Observing or Recording Law Enforcement Activity," should continue to build on the right of persons to video police officers, then list rare exceptions rather than stating the right "is not absolute" (1.1). We outlined the main concern with all the restrictions:

"ORS 162.540 specifically states violations [cited by officers] would only be for trespassing or for violations of Interfering with a Police Officer as defined in ORS 162.247. This statute only talks about a person attempting to stop an officer from performing lawful duties with regards to another person, or refusing to obey a 'lawful order' (a part of the statute that is written too vaguely, but that is another issue)."

Though the Bureau is allowed to make narrower definitions to further protect rights, as we encouraged and was done with the Bias Based Policing Directive, it is not allowed to eliminate rights that are enshrined in state law. Therefore, we continue to object to the variations under Section 1.2 outlining "interference," which are very broad and subjective. Even though the Bureau tried to clarify the previous term "tamper with a witness" by re-phrasing it as "communicate with a witness" (1.2.1), these exceptions give way too much discretion to officers that can be abused. Similarly, "breaching the reasonable distance established by [an officer]" has been changed to "breaching the specified amount of distance established" (1.2.2) without explaining to officers what a reasonable distance might be. Officers can "establish a perimeter" and "keep a specified amount of distance" in Sections 1.1.1 and 1.1.2, and may not establish the distance for the "sole purpose" of discouraging recording in 2.1. Asking a videographer to move ten blocks away from a police action is not reasonable. No change was made to clarify the term "action[s] by the person that jeopardize safety or security" (1.2.6). As we wrote before, "It seems they will just include these concepts in their police reports to justify violating the spirit of the Directive [and shut down copwatchers]."

Section 3.2.1.2 (formerly 4.2.1.1) now allows officers to take a camera into their possession "when the person is arrested and charged with a crime." This encourages officers to come up with bogus charges to grab people's cameras. Language about probable cause and seriousness of offenses should be added to discourage and prohibit retaliatory and other improperly motivated arrests (even if that language exists in other Directives).

Section 1.2.4 was rewritten, but rather than clarify, as we suggested, that a person should not be considered to be interfering with traffic if the police themselves have already blocked the street, instead the line now says a person is in violation if they "intentionally" impede emergency equipment or personnel. It is refreshing, however, that the words about the "flow of citizen traffic or pedestrians" has been cut from this Section.

We applauded the old Directive's Section 1.1.2, which read "While the recording itself and/or overt criticism, insults or name-calling may be frustrating, those acts alone do not rise to the level of interference with law enforcement activity." We noted that section did not belong in the restrictions. Rather than move it to the Policy or another Procedure section, the Bureau cut this important qualifier.

Section 2.2 still only asks officers to give warnings to observers "whenever practicable" and if the observation is "unlawful," which doesn't apply to the various exceptions carved out above that do not violate the law. That said, we continue to support the Bureau instructing officers that stating "clear the area" is not a sufficient direction for a person to stand at a safe distance and continue recording.

We also asked for the Directive to clearly state-- in as many places as reasonable-- that seizing a recording device/video should be an incredibly rare occasion. While there is some improvement to the instructions around seizure-- the requirement to call in a supervisor if there is evidence of a Measure 11 offense (not just a vague reference to "evidence") in 2.3, and getting a subpoena from the District Attorney if there are no exigent circumstances driving a seizure in 3.2.1.4. However, we note here that Section 3.2.1.3 conflicts with 2.3 as the officer's seizing a camera in the later section does not require a supervisor's ok. In fact, the entire section on Supervisor Responsibility has been cut. As such, an old Section (previous 3.2) calling for the Supervisor to record the action of officers seizing video (which we humorously noted should not be done with the civilian's equipment) is now gone.

While we believe that requirement should be re-inserted, PCW is glad that the Bureau removed the old section asking the supervisor to "explain alternatives for persons who wish to express concern about the conduct of Bureau members, such as how and where to file a

Directive 635.20 Feedback

complaint." That was very patronizing and not appropriate, though we did suggest that at the end of an encounter officers should let people know how to file a complaint.

Here is another suggestion we made that the Bureau ignored: "Section [4]3.3.1.2 about viewing video and duplicating it should restrict police to only viewing/copying relevant footage, rather than all video contained in the device, since the suspicion is only based on the incident at which the officers were present. In addition, the officers whose potential misconduct was taped should not be the same officers who handle video that potentially incriminates them, as that is a serious conflict of interest."

We also asked that the Directive explicitly prohibit the destruction or erasure of any part of a recording that is seized; this is partially achieved in Section 4.1 which states the recording device and media "including the content of the recording" (newly added language) must be returned to the person. It would still be better to spell out that officers shall not erase part or all of any of the video, especially, as noted above, since it may contain evidence of their misconduct on the original scene. The addition of a protection against the device being remotely accessed (with a "Faraday bag," in Section 3.2.2, expanding on old section 4.2.1.2.1) may prevent unwanted destruction, but it will also limit videographers who may want to copy their video for their own use. We suggest further examination about the right of the copwatcher to access their own video even if it is legally taken into police custody.

Finally, we pointed to a policy adopted in Atlanta, GA which calls for termination of officers who interfere with community members' right to observe/record: <http://dangrossmanlaw.com/atlanta-residents-have-right-to-video-police> We continue to urge PPB to adopt a similar policy.

CONCLUSION

Portland Copwatch appreciates the ability to comment but continues to believe that more progress can be made if there is more of a dialogue rather than a one-way filtered system of comments going to the police. Since other people's comments are not published until the stage when community input is no longer solicited, the Bureau gets to pick and choose what it thinks are the most important or relevant changes. Community members seeing each others' ideas can lead to more of a sense of what matters outside the four walls of Central Precinct. One day, perhaps such discussions will take place at PCCEP meetings, but that process still seems months away from development.

Thank you for the opportunity to comment

Portland Copwatch

Q2 Contact Information (optional)

Name

Portland Copwatch

Email Address

copwatch@portlandcopwatch.org

Directive 635.20 Feedback

2nd Universal Review: 8/15/18-9/14/18

#1

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Wednesday, August 15, 2018 3:21:00 PM
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Page 1

Q1 Please provide feedback for this directive

Thank you PPB! I'm guessing this info. from you and City Hall is going to garner a lot of community support and appreciation from those of us who live in the downtown core these past 15 years. Bravo/Brava Portland, The City That Works!

Q2 Contact Information (optional)

Name
Email Address
Phone Number

#2

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Thursday, August 16, 2018 10:22:58 AM
Last Modified: Thursday, August 16, 2018 10:31:20 AM
Time Spent: 00:08:22

Page 1

Q1 Please provide feedback for this directive

I am a full-time working photojournalist for mainstream media publications. In my capacity as a photojournalist I am politically and socially neutral. A small part of my activity includes covering politically-fraught events on the street. I have many years' experience in such coverages.

With regard to time/place/manner restrictions in 1.1.1 and 2.1, please consider inserting directives to officers stating that "minimum practicable distances" (to safeguard officers and involved community members) be requested.

Concerning 2.3.1, preventing recordings, or seizing equipment, consider inserting language that directs members to understand that such preventing or seizing is a rare event, a last resort, and that the presumption of right is on the community member, not the member. Consider also mandatory review of all such preventions/seizures; consider also inserting a 'For Example' statement about what such an exigent circumstance might consist of. Thank you.

Q2 Contact Information (optional)

Name

Email Address

Phone Number

#3

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Thursday, September 13, 2018 2:40:48 PM
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Page 1

Q1 Please provide feedback for this directive

Comments on Copwatching Directive, 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 our comments on the Copwatching Directive aka 635.20 Community Member Observation of Police, posted in mid-August (at <http://www.portlandoregon.gov/police/59757>). We will send comments on the 17 Directives posted for review Sept. 1 shortly, but our immediate comments on those are (a) they were sent out on the Saturday of a 3-day weekend, with no extension on time for review, and (b) 17 is a lot of Directives to review at one time.

PCW continues to believe the Bureau should add letters to section headings (Definitions, Policy, Procedure) to avoid having multiple sections with the same numbers, and return to its earlier practice of numbering each Definition, for easier cross-referencing.

Our comments refer to the Procedure section unless otherwise noted.

We made comments on this Directive in January 2016 and March 2018.

This policy has only a few tweaks, with most of our previous comments not leading to any change. In one place a phrase Portland Copwatch praised the Bureau for adding in the last version was deliberately removed .

We wrote extensively about the Directive needing to "explicitly prohibit the destruction or erasure of any part of a recording that is seized." We noted that the then-revised Section 4.1 stated the recording device and media "including the content of the recording" (which was the added phrase) must be returned to the person. It is astonishing that the PPB is proposing to remove those words from this policy.

We still believe the PPB should spell out that officers shall not erase part or all of any of the video, especially since it may contain evidence of officer misconduct on the original scene. We also wrote that the protection against the device being remotely accessed (with a "Faraday bag," in Section 3.2.2) may prevent unwanted destruction, but it will also limit videographers who may be able to copy their video for their own use. We repeat our suggestion to further examine the right of the copwatcher to access their own video even if it is legally taken into police custody.

On the other hand, the Bureau seems to have heeded our concern about Section 3.2.1.1.1, which would allow officers to take a camera into their possession "when the person is arrested and charged with a crime." The new version gets rid of that concept entirely, instead saying a person can give consent for a seizure in writing. This needs to be accompanied by clear statements that there is no punishment for denying officers' requests.

Here are the other comments we made that did not get incorporated, some of them in either 2016 or 2018. Most of this is word-for-word

Directive 635.20 Feedback

from our March comments:

--We suggested that Section 1 on "Observing or Recording Law Enforcement Activity," should continue to build on the right of persons to video police officers, then list rare exceptions rather than stating the right "is not absolute" (1.1). We outlined the main concern with all the restrictions:

"ORS 162.540 specifically states violations [cited by officers can] only be for trespassing or for violations of Interfering with a Police Officer as defined in ORS 162.247. This statute only talks about a person attempting to stop an officer from performing lawful duties with regards to another person, or refusing to obey a 'lawful order' (a part of the statute that is written too vaguely, but that is another issue)." Parts of the Directive seem to inappropriately expand on the law.

--Though the Bureau is allowed to make narrower definitions to further protect rights, as we encouraged and was done with the Bias Based Policing Directive, it is not allowed to eliminate rights that are enshrined in state law. Therefore, we continue to object to the variations under Section 1.2 outlining "interference," which are very broad and subjective. Even though the Bureau tried to clarify the previous term "tamper with a witness" by re-phrasing it as "communicate with a witness" (1.2.1)--and, in the new version, by adding "distract or communicate"-- these exceptions give way too much discretion to officers that can be abused. Similarly, the phrase "breaching the specified amount of distance established" (1.2.2) is used without explaining to officers what a reasonable distance might be. Officers can "establish a perimeter" and "keep a specified amount of distance" in Sections 1.1.1 and 1.1.2, and may not establish the distance for the "sole purpose" of discouraging recording in 2.1. Asking a videographer to move two blocks away from a police action is not reasonable. No change was made to clarify the term "action[s] by the person that jeopardize safety or security" (1.2.6). The PPB instead in August 2018 has added to 2.1 that moving people away can be done to protect the officers' or others' safety. As we wrote before, "It seems they will just include these concepts in their police reports to justify violating the spirit of the Directive [and shut down copwatchers]." Many years ago, Portland City Code defined a reasonable distance away from officers as 10 feet, but at some point that code was revised and no specific guideline is given. Perhaps various distances can be suggested depending on the level of safety and other issues officers need to consider.

--Section 1.2.4 still does not clarify, as we suggested, that a person should not be considered to be interfering with traffic _if the police themselves have already blocked the street_. The line says a person is in violation if they "intentionally" impede emergency equipment or personnel, but doesn't address the redundancy/absurdity of accusing someone of blocking traffic that is already stopped.

--We still wonder why the Bureau still has not reinserted the 2016 Directive's Section 1.1.2, which read "While the recording itself and/or overt criticism, insults or name-calling may be frustrating, those acts alone do not rise to the level of interference with law enforcement activity." This was inexplicably cut out of the 2018 version.

--Section 2.2 still only asks officers to give warnings to observers "whenever practical" if the observation is "unlawful," which doesn't apply to the various exceptions carved out above that do not violate the law. We continue to support the Bureau instructing officers that stating "clear the area" is not a sufficient direction for a person to stand at a safe distance and continue recording.

--We also asked for the Directive to clearly state-- in as many places as reasonable-- that seizing a recording device/video should be an incredibly rare occasion. While there are some useful instructions around seizure-- the requirement to call in a supervisor if there is evidence of a Measure 11 offense in 2.3, and getting a subpoena from the District Attorney if there are no exigent circumstances driving a seizure in 3.2.1.3. However, we note here that Section 3.2.1.3 conflicts with 2.3 as the officer's seizing a camera in the later section does not require a supervisor's ok. In fact, there is still not a section on Supervisor Responsibility, which was cut from the 2016 version. An old Section (previous 3.2) called for the Supervisor to record the action of officers seizing video (which we noted should not be done with the civilian's equipment); that requirement is still missing.

--Another suggestion we made that the Bureau ignored:

"Section 3.3.1.2 about viewing video and duplicating it should restrict police to only viewing/copying relevant footage, rather than all video contained in the device, since the suspicion is only based on the incident at which the officers were present. In addition, the officers whose potential misconduct was taped should not be the same officers who handle video that potentially incriminates them, as that is a serious conflict of interest."

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Finally, we pointed to a policy adopted in Atlanta, GA which calls for termination of officers who interfere with community members' right to observe/record:

<http://dangrossmanlaw.com/atlanta-residents-have-right-to-video-police>

We continue to urge PPB to adopt a similar policy.

CONCLUSION

Portland Copwatch still appreciates being able to comment on these Directives, but finds it doubly troubling to be ignored in some places and then have our praise of the Bureau turned into a reason to cut important policies. We noticed that nobody other than Portland Copwatch made comments last time this Directive was posted, which further supports our idea of having more of a dialogue about this than a dumping of draft policies where the community cannot hear each other's thoughts. We write this as Council is gearing up to affirm members of the PCCEP, which is charged with looking at Bureau policies; we continue to hope the PPB will truly try to engage the community (as PCCEP's name implies) rather than cutting our already short 15-day comment period down by releasing drafts on holidays.

Thank you for the opportunity to comment

Portland Copwatch

Q2 Contact Information (optional)

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Portland Copwatch

Email Address

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#4

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Friday, September 14, 2018 9:17:00 PM
Last Modified: Friday, September 14, 2018 9:23:59 PM
Time Spent: 00:06:58

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Q1 Please provide feedback for this directive

This directive should address what is permissible content to view on a seized device. Only media pertaining to the incident at hand should be allowed to be viewed unless given explicit permission from the owner of the device. An editor should take another pass at this for a couple grammatical corrections.

Q2 Contact Information (optional)

Respondent skipped this question
