



## CITY OF PORTLAND, OREGON



### Bureau of Police

Ted Wheeler, Mayor  
Charles Lovell, Chief of Police

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

Integrity • Compassion • Accountability • Respect • Excellence • Service

## Executive Summary Directives 0220.40, Lawsuits and Claims

### **Introduction**

The Portland Police Bureau initiated its review of Directive 0220.40, Lawsuits and Claims, in early 2021. The Bureau posted the directive for First Universal Review in May of 2021 to seek public comments on the directive. The Bureau posted a revised version of the directive for public comment in August of 2021, to seek public comments on the proposed changes.

The Directive was reviewed as part of compliance with the Settlement Agreement with the United States Department of Justice. The City Attorney's Office requested a small number of changes to reflect a change in Oregon Revised Statutes ORS 30.287 relating to legal representation for Public Employees, and to account for a personnel change at the City Attorney's Office to manage incoming legal claims.

### **Public Comments**

The Bureau received few comments during both Universal Review and public comment periods. All comments are included later within this document.

One comment asked about whether the directive allowed Bureau members to sue when injured by a person in custody. This directive does not comment on or establish the scope of liability for the city, but instead on the procedure for processing and addressing legal claims and lawsuits.

Another commentor made several suggestions, including requiring the plaintiff's name to be forwarded by members to the City Attorney's Office. This information is by necessity included in any lawsuit or claim, which is already required to be forwarded by the member under the existing policy.

The same commenter suggested that a reference be made to which directives cover subpoenas and public records requests. While this suggestion is a sensible one, those issues are covered in several directives as well as multiple public records laws, making a comprehensive citation too large and cumbersome to be included in this directive.

Lastly the commenter suggested requiring members threatened with a lawsuit by a member of the public to suggest that they consult an attorney. Because the member and the City are by necessity an interested party in any proposed suit, the Bureau believes it is best practice for an involved member to avoid any discussion of a potential or ongoing lawsuit with other involved parties to avoid any impropriety or the perception of it. As such this suggestion was not adopted.

**The Bureau's Revised Policy**

The revised policy includes minimal changes, reflecting mostly administrative changes in the law and the internal practices of the City Attorney's Office.

The Bureau welcomes further feedback on this policy during its next review.

This directive goes into effect on August 4<sup>th</sup> 2023. Published on July 5<sup>th</sup> 2023.

## **220.40, Lawsuits and Claims**

### **Refer:**

- ORS 30.265 Scope of Liability of Public Body, Officers, Employees and Agents
- ORS 30.287 Counsel for public officer
- Directive 0310.20 Discrimination, Harassment, and Retaliation Prohibited

### **Definitions:**

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

### **Policy:**

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

### **Procedure:**

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

- 1.2. Where the Bureau is named as a defendant but no individual member is named:
    - 1.2.1. The following Bureau members are authorized to accept service when service is made on the Bureau as the named defendant:
      - 1.2.1.1. Precinct front desk staff;
      - 1.2.1.2. Central Precinct administrative support staff;
      - 1.2.1.3. Professional Standards Division (PSD) Lieutenant; or
      - 1.2.1.4. Administrative staff in the Chief's office.
    - 1.2.2. The designated member shall accept service and immediately contact the CAO's Office Paralegal Supervisor to notify them of the service and provide the following information: date of service and method of service (personal service, mail, etc.). The member served shall forward to the CAO any requested documents.
2. Lawsuits Against Individual Bureau Members.
    - 2.1. Responsibilities of members when they are an individually named defendant and are served with legal documents.
      - 2.1.1. This directive pertains only to legal documents that relate to actions the member took during the scope of their employment or duties. Any legal documents in any case unrelated to a member's employment shall be handled at the discretion of the member.
      - 2.1.2. Members shall accept service of legal documents presented or delivered to them while on duty in cases where they are individually named as a defendant if it is related to actions the member took during the scope of their employment or duties.
      - 2.1.3. The member served with legal documents or upon whom service of process has been attempted shall contact the CAO Office Paralegal Supervisor within 24 hours of receipt of service or the attempted service with the following information: name, Oregon Department of Public Safety Standards and Training (DPSST) identification number, date of service, and method of service (personal service, mail, etc.) or method of attempted service.
        - 2.1.3.1. The member shall forward all of the original documents served upon them to the CAO Office Paralegal Supervisor within 96 hours of initial contact. The member may retain a copy for their personal records.
      - 2.1.4. The member served with legal documents shall contact City Risk Management Division (CRMD) within 24 hours of receipt.
        - 2.1.4.1. If requested, the member shall forward to CRMD copies of any legal documents they request.
        - 2.1.4.2. The served member shall submit a written request (email is acceptable) to CRMD for defense and indemnification as soon as practicable, copying the PSD Claims Analyst.
  3. Supervisor Responsibilities.
    - 3.1. If a member is in the field when a process server seeks to serve the member, the supervisor shall call in that member out of the field to accept service, if call load and staffing allow. If the member is unable to return to the Bureau facility at that time, the supervisor shall inform the server of the next date and time the member is expected to be at the facility.

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

## 220.40, Lawsuits and Claims

### Refer:

- ORS §30.265 Scope of Liability of Public Body, Officers, Employees and Agents
- ORS §30.287 Counsel for public officer; when public funds not to be paid in settlement; effect on liability limit; defense by insurer
- Directive 0310.20 Discrimination, Harassment, and Retaliation Prohibited

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  - 2.1.3. The member served with legal documents or upon whom service of process has been attempted shall contact the CAO Office ~~Paralegal Supervisor~~~~Administrator~~ within Supervisor within 24 hours of receipt of service or the attempted service with the following information: name, Oregon Department of Public Safety Standards and Training (DPSST) identification number, date of service, and method of service (personal service, mail, etc.) or method of attempted service.
    - 2.1.3.1. The member shall forward all of the original documents served upon them to the CAO Office ~~Paralegal Supervisor~~~~Administrator~~ within ~~72-96~~ hours of initial contact. The member may retain a copy for their personal records.
  - 2.1.4. The member served with legal documents shall contact City Risk Management Division (CRMD) within 24 hours of receipt.
    - 2.1.4.1. If requested, the member shall forward to CRMD copies of any legal documents they request.
    - 2.1.4.2. The served member shall submit a written request (email is acceptable) to CRMD for defense and indemnification as soon as practicable, copying the PSD Claims Analyst.

## 3. Supervisor Responsibilities.

- 3.1. If a member is in the field when a process server seeks to serve the member, the supervisor shall call in that member out of the field to accept service, if call load and staffing allow. If the member is unable to return to the Bureau facility at that time, the

supervisor shall inform the server of the next date and time the member is expected to be at the facility.

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  - 6.1. When discussing any complaint, claim, tort claims notice, summons, or any other legal document with any process server, complainant, plaintiff, or member of the public, members shall not:
    - 6.1.1. Inform a person that the City will award compensation for injury or loss.
    - 6.1.2. Discuss the facts of any case or state an opinion on potential liability.
  - 6.2. When police action results in damage to privately owned property, members shall write a police report and supervisors shall ensure the report goes CRMD.
  - 6.3. When a member becomes aware of any significant potential for a claim or lawsuit, and a police report would not otherwise be required, they shall write a report and include the known details of the incident, the names of all involved officers and other witnesses. The member shall forward a copy of the report to the CRMD.



# #1

**COMPLETE**

**Collector:** Web Link 1 (Web Link)  
**Started:** Sunday, August 29, 2021 3:47:41 PM  
**Last Modified:** Sunday, August 29, 2021 3:48:10 PM  
**Time Spent:** 00:00:29

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**Q1**

Please provide feedback for this directive

## 0220.40 Directive Feedback (2UR)

### COMMENTS ON PROFILING, BYSTANDER, CONDUCT AND WEAPONS DIRECTIVES AUGUST 2021

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

It is strange commenting on Bureau policies in the wake of the fifth Portland Police shooting of 2021, meaning that in the first eight months of this year shootings are up by 250% over 2020. However, in the interest of getting the comments in before the August 31 deadline, below are Portland Copwatch's comments on the ten Directives posted for review in August (<http://www.portlandoregon.gov/police/59757>). We were pleased to see at least one substantive change made that responded to an earlier comment on the Bias Based Policing Directive, one or two other positive changes, and a few other edits which did not go far enough, along with the usual slew of suggestions we made which were roundly ignored.

We have noted before that asking community members, particularly those of us who are volunteers, to review so many policy proposals in a 30 day window is not always manageable. This work was made easier for us because we have made comments on all ten Directives previously.

It almost goes without saying at this point but we hope one day the Bureau will add letters to section headings (Definitions, Policy, Procedure) so that there are not multiple sections with the same numbers, and to number the individual Definitions. Our comments below refer to the Procedure Section unless otherwise noted.

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#### DIRECTIVE 220.40 LAWSUITS AND CLAIMS (previous comments May 2021)

Several suggestions we have made on this Directive have still not been adopted.

What Directive Covers Subpoenas and Public Record?: The Definition of "Legal Documents" says that subpoenas and public records requests are covered under "a separate Directive" but that Directive is not named.

Include Plaintiff's Name: We continue to suggest that the Plaintiff's name should be one of the items an officer has to forward to the City Attorney's office along with other required information (Section 2.1.3).

Officers Should Suggest People Contact an Attorney: We also repeat our suggestion that if a community member tells an officer they want to sue for an action that officer took, the officer should suggest contacting an attorney. A previous version of the Directive instructed officers to tell the civilian to contact the City, which could complicate a person's legal efforts. The current Directive is mostly silent on what happens if a community member who wants to sue talks to the offending officer, though it does tell the officers not to discuss the facts or possible outcomes of legal actions (Section 6.1).

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#### CONCLUSION

Once again, we appreciate that the Bureau keeps asking for community comment. We find that often there are anonymous commenters who appear to be police officers raising similar questions to those we pose, which is a good sign. While there are some good steps forward in a few of the August Directives, some changes are not strong enough and many of our common sense ideas are again nowhere to be seen. We wrote before about how the institution of police could be transformed somewhat by the implementation of the Active Bystander policy, but there are still foundational issues that perpetuate racism, violence and unequal application of the law which the Bureau and the City need to address.

Thank you again for your time  
dan handelman and other members of  
Portland Copwatch

**Q2**

Contact Information (optional - your name will be visible on PPB's website)

Name

**Portland Copwatch**

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# #1

**COMPLETE**

**Collector:** Web Link 1 (Web Link)  
**Started:** Tuesday, May 04, 2021 8:32:56 AM  
**Last Modified:** Tuesday, May 04, 2021 8:34:21 AM  
**Time Spent:** 00:01:24

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## Q1

Please provide feedback for this directive

Can Police Officers who've been attacked by persons that the city of Portland had in custody but released file claims against the City of Portland then?

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## Q2

Contact Information (optional - your name will be visible on PPB's website)

Name **A Concerned Citizen**

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#2

COMPLETE

**Collector:** Web Link 1 (Web Link)  
**Started:** Monday, May 17, 2021 2:22:12 PM  
**Last Modified:** Monday, May 17, 2021 2:22:39 PM  
**Time Spent:** 00:00:26

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## Q1

Please provide feedback for this directive

### COMMENTS ON PROFILING, LAWSUITS, AND EMPLOYEE DIRECTIVES MAY 2021

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

Below are Portland Copwatch's comments on the Directives posted for review in May (<http://www.portlandoregon.gov/police/59757>). We continue to believe the Bureau would do well to explain up front any changes that are being proposed when sending out the existing policies. Portland Copwatch was able to go through the "Executive Summary Archives" for the four policies listed to find out what changes were made by the PPB after the last reviews (<https://www.portlandoregon.gov/police/73919>). Those summaries also include the Bureau's unsatisfying rationale for rejecting some of the previous public comments. We have also recommended having public meetings to discuss these policies so the Bureau could hear more community voices. It seems that particularly as the City reviews the Bias Based Policing/Racial Profiling Directive in the post-George Floyd era, such a dialogue would be an obvious step.

Because another Directive posted along with these four, on Management of Criminal Intelligence Files, has a due date of early June, we will comment on that policy separately. This again raises the issue that the Bureau should make the review periods for all Directives at least 30 days on both ends of the process to encourage feedback from organizations who only meet monthly, including your own advisory groups.

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

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### DIRECTIVE 220.40 LAWSUITS AND CLAIMS (previous comments May 2019)

First, we thank the Bureau for adding the Directive on Retaliation to the "Refer" section of this policy (per our suggestion), since it is very important to prohibit officers from discouraging or retaliating against civilians who file or threaten to file lawsuits.

However, other suggestions we made were not fixed.

Citation Needed: The Definition of "Legal Documents" says that subpoenas and public records requests are covered under "a separate Directive" but that Directive is not named.

Forwarding Information: We suggested that the Plaintiff's name should be one of the items an officer has to forward to the City Attorney's office along with other required information (Section 2.1.3).

Talk to an Attorney, Not to "the Hand": We also suggested that if a community member perceives harm and tells an officer they want to sue, the officer should suggest contacting an attorney prior to filing such a claim. A previous version of the Directive had instructed officers to tell the civilian to contact the City. The current Directive is mostly silent on what happens if a community member who wants to sue talks to the offending officer. It does tell the officers not to discuss the facts or possible outcomes of legal actions (Section 6.1).

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## CONCLUSION

PCW continues to appreciate the opportunity to comment on Bureau policies, and the occasional responses to our comments in the

## 0220.40 Directive Feedback (1UR)

form of actual changes made or explanations of why our ideas were dismissed. We continue to encourage more dialogue to help foster faster and more substantive changes to respond to the obvious disconnect between many in the community and the police who are supposed to protect and serve them.

Thank you again for your time  
--dan handelman and other members of  
--Portland Copwatch

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### Q2

Contact Information (optional - your name will be visible on PPB's website)

Name **Portland Copwatch**

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