

Board on Public Safety Standards and Training
Executive Committee Meeting
Minutes
March 15, 2011

The Executive Committee of the Board on Public Safety Standards and Training held a telephonic meeting on March 15, 2011, at the Public Safety Academy in Salem, Oregon. Chair Andrew Bentz called the meeting to order at 1:50 p.m.

Board Members Present:

Andrew Bentz, Chair of the Board on Public Safety Standards and Training
Todd Anderson, Chair of the Corrections Policy Committee
Jeff Martin, Chair of the Private Security/Investigators Policy Committee

DPSST Staff:

Eriks Gabliks, Director of the Department of Public Safety Standards and Training (DPSST)
Marilyn Lorange, Standards and Certification Program Supervisor
Linsay Bassler, Compliance Coordinator
Tammera Hinshaw, Executive Assistant to Director



Chair's Administrative Announcement

“This is a public meeting, subject to the public meeting law and it will be tape recorded.”

1. Minutes of February 10, 2011, meeting

To see complete text of the meeting minutes, please go to the Executive meeting minutes of February 10, 2011, which can be found at:

http://www.oregon.gov/DPSST/BD/Policy_Committee_Minutes/EC_Minutes/Exec21011.pdf

Todd Anderson moved to accept the minutes as presented. Jeff Martin seconded the motion. The motion carried with a unanimous vote.

2. *OAR 259-025-0000 – Proposed Rule (see addendum A)

Public Records Requests

Linsay Bassler reviewed the rule change for the committee.

Jeff Martin moved to approve OAR 259-025-0000 to be filed as proposed language with the Secretary of State as a proposed rule and as a permanent rule if no comments are received. Todd Anderson seconded the motion. The motion carried with a unanimous vote.

There was consensus of the committee that the rule would not cause a significant fiscal impact on small business.

3. Budget Update – Eriks

Director Gabliks reviewed the recent DPSST budget presentation at the legislature's Public Safety Subcommittee of Ways and Means. Eriks felt the presentation was well received and he also shared an area of concern. The DOC Audit Program was part of the first 5% reduction primarily because it was the newest program added to DPSST and it served a single organization, but also because DPSST wanted to preserve the ability to provide basic training programs for all the other disciplines at the agency. As a result of the budget testimony, there was concern of both legislative members and constituents about the DOC Audit Program being lost. The Ways & Means Committee understood the reasoning, but asked that DPSST go back and look at our operations to see if there is somewhere else the reductions could be taken. The DPSST Leadership Team met and proposed giving up a vacant office specialist and supervisor position, and to make up the balance, the Background Investigator position in Human Resources and the remainder through services and supplies. The workload for the Background Investigator would be picked up by supervisors or through other employees. Director Gabliks asked the Executive Committee to allow DPSST to substitute these positions in order to take DOC Audit Program off the table. Todd Anderson said that having been there for the discussion, he believes this would be a good move. The Executive Committee of the Board supported the change.

4. Legislative Update

DPSST is continuing to go forward with legislation introduced by the Oregon Department of Corrections that would update the definition of Corrections Officer in Oregon Revised Statute (ORS). The change would also benefit larger county corrections organizations. There are no concerns with the bill and it should continue to move through the process.

There was a bill heard yesterday afternoon that would allow community colleges to have police departments if they chose. This bill was in front of the Education Committee and was brought forward by Lane Community College. The bill had a hearing but follow-up discussion with the proponents indicates that the bill is not ready for movement this session.

The Tribal Peace Officer Powers bill will be up next Thursday morning. DPSST is only a small piece of that. The larger discussion is about tort liability protection and reciprocity with the tribes and sheriffs.

The University Police bill is coming up next Thursday as well. Director Gabliks will keep the committee informed as things progress. This one of a number of bills introduced on this issue this session and believed to be the one that will be used by the University of Oregon to seek the creation a police department. DPSST staff has been communicating with the Oregon University System and the Oregon Association of Police Chiefs (OACP) on this bill. OACP has established a work group that is addressing a number of concerns with the proposed legislation.

The first hearing has taken place for a bill that allows DPSST Private Security Program to no longer regulate people who are truly volunteers. No amendments were needed and it is scheduled for a work session next week.

Director Gabliks testified last week in front of the House Judiciary Committee on Representative Fredricks Use of Force bill that would require DPSST to do a study of use of force and the impacts on the communities and organizations. Representative Fredricks was very clear in his

testimony that that is a Portland issue. Director Gabliks gave an update on what this organization has done with chiefs and sheriffs and state police, as well as the impact of Senate Bill 111 passed in a previous session, and believes that issue is done.

Chair Bentz inquired as to whether Director Gabliks had heard anything about the bill sponsored by the representative out of Klamath Falls about giving California law enforcement police authority in Oregon. Director Gabliks responded that we haven't been contacted. He spoke the chief who asked for the bill to be introduced. It's a non-issue for DPSST. It says, as long as those people are commissioned in their state, they can respond when requested on mutual aid. Oregon currently has language with Washington State that allows Oregon agencies to go to Washington, if requested, and they're considered fully commissioned peace officers. This would do the same thing with adjoining states. The issue with the police chief was simply that there are times that he has no county sheriff's deputies to call nor state troopers on duty, but just across the line in California, there are about ten people who would come over if needed, but currently they're unable to come because they don't have any authority in the state. Todd Anderson added that he was present at the hearing and both Sheriff Wolfe and John Powell testified on the bill and this is one of those that look like the horse is already out of the barn. Apparently this is done in many other states, but the testimony was that this law would supersede MOUs and cause a lot of issues. Sheriff Wolfe has already had MOU's for the same type of thing. Representative Gerard seems to have the votes for this. DPSST hasn't been asked to testify and it doesn't currently impact DPSST, but will monitor it.

Jim Essam of the Private Security/Investigator Policy Committee has asked to add language to one of the bills for Private Security that would allow or require fire alarm monitors to be licensed in this state. DPSST has no opposition to that, but since it hasn't been through the policy committee and the Board has not taken action on it, he (Mr. Essam) is working on this independently and he has been advised of same. DPSST is neutral on the subject.

5. Board and Committee Agendas

Director Gabliks explained that there have been several requests from the media to include the agencies on the public notices and agendas for officers appearing in front of the committees for revocation and denial. Director Gabliks asked for Executive Committee's input on the subject. The Executive Committee members had no concerns from the committee as this is public information.

6. Electronic Board Packet Proposal

The DPSST Business Services Division has priced out what the Board packets are costing to produce and mail. It is significant. Director Gabliks asked about the possibility of keeping the committee packets as they are, but for the Board packet, he proposed sending the members the staff summary with the committee discussion and making all the supporting documents available to the Board members on a secure webpage in order to thin down the size of the book and reduce the cost. If a member wanted to look at a specific item, we would make it available electronically instead of printing everyone the same book. Todd Anderson agreed that with an executive summary and the ability to look electronically if he had a question, would be fine. Jeff Martin agreed, but wondered if the information being available on a website would meet the requirement that the Board receive all information. Marilyn explained that it is not a statutory requirement, but it is part of what DOJ has talked to us about in the contested case hearing process, that both the policy committees and the Board have the same records to review. Really,

all we're doing is placing the responsibility on the committee members to go to the webpage and look electronically at everything that is of concern to them rather than having a hard copy before discussion. This will save thousands of dollars over a biennium.

7. S & C Update (see addendum B)

Marilyn Lorance presented the information to the committee. DPSST is staying focused on state-wide minimum standards.

8. *APCO/NENA Grant Requests

Director Gabliks apologized for not getting it on the agenda, but there have been three requests for grants from the Oregon APCO/NENA which represents the 9-1-1 community. They have requested grants in the amount of \$15,000 for Tactical Dispatch training, \$13,000 for Peer Support classes they're going to offer across the state for 9-1-1 operators, and \$13,500 for Stress Management and Dealing With Difficult Callers training in a number of locations across the state.

Todd Anderson move to grant the three training requests. Jeff Martin seconded the motion. The motion carried with a unanimous vote.

9. Next Meeting – May 12, 2011 at 1:30 p.m.

There being no further business to bring before the committee, the meeting was adjourned at 2:30 p.m.

ADDENDUM A

Department of Public Safety Standards and Training Memo

Date: March 10, 2011
To: Executive Committee
From: Linsay Bassler
Rules Coordinator
Subject: OAR 259-025-0000 – Proposed Rule
Public Record Requests

Issue: The Oregon Public Records law and Attorney General's Public Records and Meetings Manual allows for a public body to establish fees "reasonably calculated" to reimburse the public body for the actual cost of providing public records if the amount and manner of calculating the fees are made available to the public. DPSST's rule on record request procedures and fees was reviewed to ensure compliance with this requirement. This proposed update would remove language referring to obsolete practices and establish a more comprehensive fee schedule, taking into consideration the labor and materials needed to fulfill a request. Language will be added that allows the Department to withhold records until payment is received. The rule would also be reorganized for clarity.

The following revised language for OAR 259-025-0000 contains recommended additions (**bold and underlined**) and deletions (~~strikethrough text~~).

259-025-0000

Department Fees and Public Records Requests

(1) All information in the custody of ~~the Director of~~ the Department of Public Safety Standards and Training (Department) will be disclosed or protected from disclosure in accordance with ORS Chapter 192 and other applicable state and federal laws.

(2) ~~As used in this rule, the following definitions apply:~~

(a) ~~"Certified copies" means, photocopies, that on the date copied, are true and accurate copy of the original record. The Department cannot certify as to any subsequent changes or manipulation of the record.~~

(b) ~~"Research" means the compilation or retrieval of information:~~

~~(A) That is not readily and immediately available from a single source or a group of related sources; or~~

~~(B) For which a search is required before the requested information can be located.~~

Records Request Procedure

~~(3 2) A request for photocopies, facsimile (fax) copies, electronically distributed (e-mail) copies and certifications of public records that are on file with the Department must be made in writing.; **Submission may be** made by **mail**, fax, ~~or by e-mail~~, or in person ~~by e-mail~~. (a) The request must **include**:~~

~~(A a) Include **The name, and address, and telephone number** of the person requesting the public record;~~

~~(B) Include telephone number of the person requesting the public record; and~~

~~**(b) The date the request is being made; and**~~

~~(C c) **An Adequate describe description of** the record(s) **being** requested including subject matter; and approximate creation date(s) when applicable.~~

~~(b) The request should:~~

~~(A) Be dated;~~

~~(B) Identify or be signed by the person requesting the public record; and~~

~~(C) Indicate a date by which the records are being requested.~~

~~(4 3) The Department will respond to the **acknowledge records** requests in a reasonable amount of time. (a) In its response, the Department will:~~

~~(A) Acknowledge the request **Indicate if they are in possession of the requested records**;~~

~~**(B) Identify the requested records that are exempt from disclosure under current Public Records Law;**~~

~~(B C) Provide an estimate of the expected cost of meeting the request; **and**~~

~~**(D) Identify an estimated date by which the information will be provided;**~~

~~(C) Identify any requested records that may be exempt from disclosure; and~~

~~(D) Identify the estimated date by which the information will be provided.~~

(b 4) The regular duties of the Department will not be ~~neither~~ interrupted nor interfered with because of time or effort required to respond to the records requests.

Records Request Fees

(5) Unless otherwise provided by statute or other administrative rule, **the Department may charge fees for recovering actual costs of:**

(a) Fees for in-stock publications, pamphlets or outlines will be as listed below:

(A) 1-10 pages—\$5.00;

(B) 11-25 pages—\$7.50;

(C) 26-50 pages—\$10.00;

(D) 51-100 pages—\$15.00;

(E) Over 100 pages—\$15.00 plus twenty-five cents (\$.25) per page for each additional page over 100.

(b) Documents other than publications will be charged at the rate of \$5.00 for the first 1-10 pages and \$.50 for each additional page.

(a) Staff time to research, locate, review, redact, compile and copy records;

(b) All material and media; and

(c) Postage, where applicable, fees will be calculated as follows:

(6) Basic records requests requiring less than 10 minutes of staff time to compile and provide electronically will be charged a flat rate of \$5.

(7) Records requests that require no redacting and are copied and provided to the requestor in paper form will be charged at the rate of \$5 for the first 1-10 pages and \$.50 for each additional page.

(6) The Department may charge fees for recovering actual costs of staff time;

(a) For locating, compiling, making available for inspection and delivering public records; and

(b) Researching and documenting information.

(7 8) No charge will be made **There will be no charge** for furnishing normal and necessary records or publications to public safety officers; or public safety agencies.

(9) The Department may require payment in advance.

Other Fees

(8 10) The Department may charge for the use of facilities at the Public Safety Academy.

(9 11) The Department may charge replacement cost for lost or damaged keys, equipment, or meal cards.

Stat. Auth.: ORS 181.640 & 703.230

Stats. Implemented: ORS 181.640 & 703.230

ACTION ITEM 1: Determine whether to approve filing the proposed language for OAR 259-025-0000 with the Secretary of State as a proposed rule.

ACTION ITEM 2: Determine whether to approve filing the proposed language for OAR 259-025-0000 with the Secretary of State as a permanent rule if no comments are received.

ACTION ITEM 3: Determine whether there is a significant fiscal impact on small businesses.

HEADLINES

NEWS

Another Agency Sides with Dismissed Cop Trying to Get Badge Back by Denis C. Theriault

THE STATE AGENCY that oversees Oregon cops has come down against Portland's dismissal of Ron Frashour, the officer who shot and killed a suicidal Aaron Campbell last year, clearing Frashour of "gross misconduct" and allowing him to remain certified for police work.

The ruling by the Department of Public Safety Standards and Training (DPSST), issued in mid-January and obtained through a records request, is a loss for Portland police brass who argued Frashour's firing was "for cause" and should keep him from working for other police agencies and security firms in the state.

It also marks the second time since his firing that a state agency has sided against the city about further punishment for Frashour. The *Mercury* reported this month that the state employment department decided to award Frashour unemployment insurance ["The Check Is in the Mail," News, Feb. 10], despite the city's attempt to deny him \$500 a week in benefits.

Frashour, backed by the Portland Police Association, is fighting to get his job back. Hearings in front of a neutral labor arbitrator are now scheduled for September, sources confirm. And although DPSST's ruling was based on state code and not on the nuances of Portland's use-of-force policy, it offers perhaps the best hint yet at how that labor arbitrator might decide.

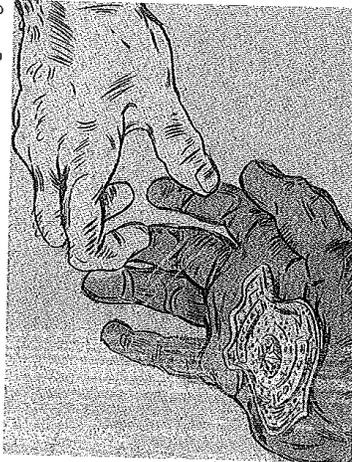
"You now have had three neutral bodies take a look at this case," said one observer following the case, who was also counting the Multnomah County grand jury that criticized the bureau in Campbell's January 26, 2010 shooting but did not indict Frashour. "And all of them, admittedly applying their own rule, have found that Ron Frashour did nothing wrong."

When investigating whether to strip an officer's certification, DPSST's rubric includes five main categories: dishonesty, incompetence, misuse of authority, disregard for the rights of others, and gross misconduct.

Even before studying hundreds of pages of case documents posted on the police bureau's website—including Chief Mike Reese's discipline letter outlining Frashour's troubled past—state analysts Roger Eaton and Lorraine Anglemier concluded that only the last two might apply to

Frashour's case. And then they cleared him of those, too—deciding Frashour's decision to shoot Campbell wasn't a "gross deviation" from what a "reasonable professional" would have done in the same situation.

To buttress their ruling, Eaton and Anglemier quoted heavily from another document: the grand jury letter that cleared Frashour of criminal wrongdoing.



"If you train a police officer to do something, and he does it... you can't fire him."

In that letter, grand jurors said they found Frashour "credible and honest" and that he "genuinely believed" Campbell was armed and reaching for a weapon before Frashour opened fire.

"We found nothing inconsistent with the ultimate factual and legal conclusions reached by the grand jury," Eaton and Anglemier write in their ruling.

Neither the city attorney's office nor the police bureau would comment. Daryl Turner, president of the Portland Police Association, cheered the decision but stopped short of calling it a decisive element in the upcoming arbitration.

"He did nothing wrong," says Turner. "He followed the

policy and the procedures of the Portland Police Bureau. So far things have turned out how we'd hoped, but it's just one of the factors that may be considered" in arbitration.

The police union has long insisted Frashour was justified in shooting Campbell—even though Campbell was likely reacting to a beanbag another cop fired at his back, not reaching for a gun he didn't have. Chief Reese's discipline letter noted that Frashour never considered that possibility, saying that oversight violated bureau policy requiring officers to consider the "totality of circumstances" before using deadly force.

Campbell's family has filed a separate civil lawsuit against Frashour, the city, and three other cops involved in the shooting.

Martin Henner, the arbitrator who controversially overturned Officer Douglas Erickson's dismissal after a non-fatal shooting in 1993, said city policy and how well an officer has been trained to follow that policy—not rulings by other bodies—ought to guide whoever hears Frashour's case.

"If you train a police officer to do something, and he does it," he said, "you can't fire him for doing what he was trained to do."

Erickson was the first Portland cop dismissed over the use of deadly force. He fired 22 shots at an armed man, Gerald F. Gratton Jr., who ran from police officers after they boarded a TriMet bus to arrest him. In an argument that neither a grand jury nor then-Chief Charles Moose found terribly compelling, Erickson said he thought Gratton might take hostages.

"In a way I was sorry, because I had serious doubts he would be a good police officer," Henner says, remembering that Erickson's discipline letter—like Frashour's—mentioned other acts of questionable conduct. "But my job was to figure out whether, under the collective bargaining agreement, they had good cause to terminate him."

Adds Portland Copwatch's Dan Handelman, "It'd be nice to see Frashour decertified. But he's not an officer in Portland right now, and hopefully he'll stay not an officer in Portland. And that was one of the goals of the movement demanding accountability for what happened." ■