



**Homeland
Security**

Privacy Office, Mail Stop 0655

November 13, 2020

SENT VIA EMAIL TO: FOIA@AMERICANOVERSIGHT.ORG

Austin R. Evers
Executive Director
American Oversight
1030 15th Street NW, Suite B255
Washington, DC 20005

RE: FPS Case Number 2020-FPFO-00213

Dear Mr. Evers:

This is the final response to your July 17, 2020, Freedom of Information Act (FOIA) request to the U.S. Department of Homeland Security (DHS). You are seeking:

1. All records reflecting any order, directive, or guidance (including informal direction distributed to your agency's officers, agents, or members) regarding your agency's use of force guidelines, policies, doctrines, or protocols (including, but not limited to, all records specifying circumstances and limitations for the use of force).
2. All records reflecting any order, directive, or guidance (including informal direction distributed to your agency's officers, agents, or members) regarding your agency's rules of engagement (including, but not limited to, all records specifying intervention criteria).
3. All records reflecting any order, directive, or guidance (including informal direction distributed to your agency's officers, agents, or members) regarding the deployment of your agency's officers, agents, or members (including, but not limited to, all records specifying logistical deployment information).
4. All records reflecting any order, directive, or guidance (including informal direction distributed to your agency's officers, agents, or members) regarding the visual or verbal presentation of law enforcement credentials identifying your agency's officers, agents, or members deployed in response to protests or purported civil unrest (including, but not limited to, all records concerning verbal self-identification to members of the public or press, badge display standards or requirements, or name display standards or requirements).

The DHS Privacy Office referred this request to DHS's Federal Protective Service (FPS) for processing and direct response to you. We received your request on July 30, 2020. To provide you with the greatest degree of access authorized by law, DHS has considered your request under

both the FOIA, 5 U.S.C. § 552, and the Privacy Act, 5 U.S.C. § 552a. In this case, a search of DHS's FPS for documents responsive to items 1-3 of your request produced a total of 226 pages. Ten pages originated with the DHS Privacy Office and are referred to that agency for review and direct response to you.

Their contact information is:

The Privacy Office
U.S. Department of Homeland Security
2707 Martin Luther King Avenue SE, Mail Stop 0655,
Washington, D.C. 20528-0655
Email: FOIA@HQ.DHS.GOV

I have determined that seven pages are released in full, 192 pages are withheld in their entirety, and 17 pages are partially releasable pursuant to 5 U.S.C. § 552 (b)(5), (b)(6), (b)(7)(C), (b)(7)(E), and (b)(7)(F), FOIA Exemptions 5, 6, 7C, 7E, and 7F.

Enclosed are 24 pages with certain information withheld as described below:

FOIA Exemption 5 protects from disclosure those inter- or intra-agency documents that are normally privileged in the civil discovery context. The three most frequently invoked privileges are the deliberative process privilege, the attorney work-product privilege, and the attorney-client privilege. After carefully reviewing the responsive documents, I have determined that portions of the responsive documents qualify for protection under the following:

- **Deliberative Process Privilege** - The deliberative process privilege protects the integrity of the deliberative or decision-making processes within the agency by exempting from mandatory disclosure opinions, conclusions, and recommendations included within inter-agency or intra-agency memoranda or letters. The release of this internal information would discourage the expression of candid opinions and inhibit the free and frank exchange of information among agency personnel;
- **Attorney Work-Product Privilege** - The attorney work-product privilege protects documents and other memoranda prepared by an attorney in contemplation of litigation; and
- **Attorney-Client Privilege** - The attorney-client privilege protects confidential communications between an attorney and his client relating to a legal matter for which the client has sought professional advice. It applies to facts divulged by a client to his attorney, and encompasses any opinions given by an attorney to his client based upon, and thus reflecting, those facts, as well as communications between attorneys that reflect client-supplied information. The attorney-client privilege is not limited to the context of litigation.

FOIA Exemption 6 exempts from disclosure personnel or medical files and similar files the release of which would cause a clearly unwarranted invasion of personal privacy. This requires a

balancing of the public's right to disclosure against the individual's right to privacy. The privacy interests of the individuals in the records you have requested outweigh any minimal public interest in disclosure of the information. Any private interest you may have in that information does not factor into the aforementioned balancing test.

FOIA Exemption 7(C) protects records or information compiled for law enforcement purposes that could reasonably be expected to constitute an unwarranted invasion of personal privacy. This exemption takes particular note of the strong interests of individuals, whether they are suspects, witnesses, or investigators, in not being unwarrantably associated with alleged criminal activity. That interest extends to persons who are not only the subjects of the investigation, but those who may have their privacy invaded by having their identities and information about them revealed in connection with an investigation. Based upon the traditional recognition of strong privacy interest in law enforcement records, categorical withholding of information that identifies third parties in law enforcement records is ordinarily appropriate. As such, I have determined that the privacy interest in the identities of individuals in the records you have requested clearly outweigh any minimal public interest in disclosure of the information. Please note that any private interest you may have in that information does not factor into this determination.

FOIA Exemption 7(E) protects records compiled for law enforcement purposes, the release of which would disclose techniques and/or procedures for law enforcement investigations or prosecutions or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.

FOIA Exemption 7(F) permits the government to withhold all information about any individual when disclosure of information about him could reasonably be expected to endanger the life or physical safety of any individual. This exemption also protects physical security at critical infrastructure sites.

As it relates to item 4 of your request, FPS did not locate any responsive records.

While an adequate search was conducted, you have the right to appeal the above withholding and no records determination. Should you wish to do so, you must send your appeal and a copy of this letter, within 90 days of the date of this letter, to: Privacy Office, Attn: FOIA Appeals, U.S. Department of Homeland Security, 2707 Martin Luther King Avenue SE, Mail Stop 0655, Washington, D.C. 20528-0655, following the procedures outlined in the DHS FOIA regulations at 6 C.F.R. Part 5 § 5.8. Your envelope and letter should be marked "FOIA Appeal." Copies of the FOIA and DHS FOIA regulations are available at www.dhs.gov/foia.

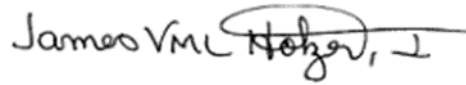
Provisions of the FOIA allow DHS to recover part of the cost of complying with your request. In this instance, because the cost is below the \$25.00 minimum, there is no charge.

You may contact the DHS FOIA Public Liaison at 202-343-1743 or toll free 1-866-431-0486 for any further assistance and to discuss any aspect of your request. Additionally, you have a right to seek dispute resolution services from the Office of Government Information Services (OGIS) which mediates disputes between FOIA requesters and Federal agencies as a non-exclusive

alternative to litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. You may contact OGIS at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

If you need to contact our office again about this matter, please refer to **2020-FPFO-00213**. This office can be reached at FOIA@HQ.DHS.GOV or call 202-343-1743 or toll free 1-866-431-0486.

Sincerely,

A handwritten signature in black ink that reads "James V.M.L. Holzer, J." with a stylized flourish at the end.

James V.M.L. Holzer
Deputy Chief FOIA Officer

Enclosure: Responsive Records (29 pages)

FPS Public Order Training

- FPS Public Order training ensures that government functions are not disrupted by civil unrest or protest activity, while respecting the civil rights of all citizens.
- The educational topics used to prepare FPS officers for mass demonstrations include, First Amendment,

(b)(7)(E)

- First Amendment training educates FPS Officers on;
 - The constitutional protections afforded by peaceful demonstrators to include;
 - Rights of free speech, and peaceful assembly; and
 - The differences between constitutionally protected activities and criminal acts.

(b)(7)(E)

FPS Use of Force Training Specifically Regarding Crowd Control

- FPS law enforcement officers are trained to assess every event independently to determine the tactics that will effectively support and facilitate First Amendment activity and provide public safety.

(b)(7)(E)

From:

(b)(6); (b)(7)(C)

Sent:

16 Jul 2020 00:01:06 +0000

To:

(b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

Cc:

(b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

Subject:

Portland EOC Commander Deployment Schedule

Commanders,

Review the schedule below and let me know if you have any conflicts.

(b)(7)(E); (b)(7)(F)

(b)(6); (b)(7)(C)

District Commander
Federal Protective Service, Region 10
U.S. Department of Homeland Security
400 15th Street SW
Auburn, WA 98001

(b)(6); (b)(7)(C)



Homeland
Security

Warning: This communication, along with any attachments, is covered by federal and state law governing electronic communications and may contain confidential and legally privileged information such as found under 49 CFR 1520 or the Privacy Act of 1974. It should not be communicated to any person, or agency, unless disclosure is in performance of official DHS duties and there exists a valid need to know. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, use or copying of this message is strictly prohibited. If you have received this in error, please reply immediately to the sender and delete this message.

From:

(b)(6); (b)(7)(C)

Sent:

4 Jul 2020 21:04:43 +0000

To:

(b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

Cc:

(b)(6); (b)(7)(C)

Subject:

Portland Deployment

FYI - Based on emergency need - we will be deploying the following individuals to Portland, OR starting today for the next few days.

Please assist them with any travel needs they may have.

(b)(6); (b)(7)(C)

If you have any questions please give me a call.

Sent with BlackBerry Work
(www.blackberry.com)

From: (b)(6); (b)(7)(C)
Sent: 4 Jul 2020 18:02:58 +0000
To: Patterson, Leonard E
Cc: Cline, Richard K
Subject: FW: Additional Assets

Sir,

(b)(6); (b)(7)(C); (b)(5); (b)(7)(E)

Thanks...Happy 4th.

(b)(6); (b)(7)(C)

Deputy Director of Operations
Federal Protective Service
Department of Homeland Security

(b)(6); (b)(7)(C)

From: Tomney, Christopher <christopher.tomney@ice.dhs.gov> (b)(6); (b)(7)(C)

Sent: Saturday, July 4, 2020 1:19 PM

To: (b)(6); (b)(7)(C)

Cc: Cline, Richard K <Richard.K.Cline@ice.dhs.gov> (b)(6); (b)(7)(C)

Subject: RE: Additional Assets

(b)(6); (b)(7)(C); (b)(5); (b)(7)(E)

From

(b)(6); (b)(7)(C)

Sent: Saturday, July 4, 2020 12:59 PM

To: Tomney, Christopher <christopher.tomney>

(b)(6); (b)(7)(C)

Cc: Cline, Richard K <Richard.K.Cline>

(b)(6); (b)(7)(C)

Subject: Additional Assets

Sir,

Hope all is well.

I will be speaking with my team out in Portland to discuss a few points, such as what is next? 1300hrs local.

(b)(5)

(b)(6); (b)(7)(C); (b)(5); (b)(7)(E)

Available to discuss at your convenience.

Vr,

(b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

Deputy Director of Operations
Federal Protective Service
Department of Homeland Security

(b)(6); (b)(7)(C)

FEDERAL PROTECTIVE SERVICE

FPS



Federal Protective Service

(b)(6); (b)(7)(C)

Director of
Communication

(b)(6); (b)(7)(C)

FOR IMMEDIATE RELEASE

July 3, 2020

WASHINGTON D.C. -- Last night witnessed a significant level of escalation in violence against federal property and law enforcement officers in Portland, Oregon. Officers of the Department of Homeland Security's Federal Protective Service and U.S. Customs and Border Protection, as well as officers from the U.S. Marshals Service were assaulted with bottles, rocks, large commercial-grade fireworks and improvised explosives. Additionally, multiple attempts were made to blind officers using laser lights. Incendiary devices were also used and thrown into the Hatfield U.S. Federal Courthouse in an attempt to ignite the building with persons inside.

These actions are illegal and will not be tolerated. Perpetrators of violence and assaults on law enforcement officers and federal property will face arrest and prosecution to the fullest extent of the law.

These acts are not the reflection of peaceful or causal demonstration as protected under the 1st Amendment to the U.S. Constitution. This is simply violence without cause other than to disrupt the lives and create chaos within the city.

The Federal Protective Service and partner law enforcement agencies will continue to protect these federal facilities and will arrest and detain individuals caught in the act of violence against federal officers, personnel or property.

(b)(7)(A)

###

Department of Homeland Security

~~FOR OFFICIAL USE~~ ~~ONLY~~

THE ATTACHED MATERIALS CONTAIN DEPARTMENT OF HOMELAND SECURITY INFORMATION THAT IS "~~FOR OFFICIAL USE ONLY~~" OR OTHER TYPES OF SENSITIVE BUT UNCLASSIFIED INFORMATION REQUIRING PROTECTION AGAINST UNAUTHORIZED DISCLOSURE. THE ATTACHED MATERIALS WILL BE HANDLED AND SAFEGUARDED IN ACCORDANCE WITH DHS MANAGEMENT DIRECTIVES GOVERNING PROTECTION AND DISSEMINATION OF SUCH INFORMATION.

AT A MINIMUM, THE ATTACHED MATERIALS WILL BE DISSEMINATED ONLY ON A "NEED-TO-KNOW" BASIS AND WHEN UNATTENDED, WILL BE STORED IN A LOCKED CONTAINER OR AREA OFFERING SUFFICIENT PROTECTION AGAINST THEFT, COMPROMISE, INADVERTENT ACCESS AND UNAUTHORIZED DISCLOSURE

From: (b)(6); (b)(7)(C)
Sent: 4 Jul 2020 22:54:17 +0000
To: (b)(6); (b)(7)(C)
Subject: RE: Portland Deployment

Yes we do.

Vr/ (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

Deputy Director of Operations
Federal Protective Service
Department of Homeland Security

(b)(6); (b)(7)(C)

From: (b)(6); (b)(7)(C)
Sent: Saturday, July 4, 2020 6:47 PM
To: (b)(6); (b)(7)(C)
Subject: Portland Deployment

Do we have Director's approval for the Portland deployment?

Stay Safe. Stay Healthy!

(b)(6); (b)(7)(C)

Assistant Director for
Law Enforcement Operations
Federal Protective Service
U.S. Department of Homeland Security

(b)(6); (b)(7)(C)



This message (including any attachments) may contain sensitive, but unclassified and/or law enforcement sensitive (LES) information intended for a specific individual and purpose and should be considered ~~for official use only~~. (FOUO) DHS 11042-1 (03/05)

Law Enforcement Authority and Powers

I. PURPOSE

This directive sets forth the law enforcement authority and powers of FPS law enforcement personnel designated under 40 U.S.C. §1315, "*Law Enforcement Authority of Secretary of Homeland Security for Protection of Public Property*" and applies to all Federal law enforcement personnel.

II. SCOPE

- A. This directive applies throughout FPS.
- B. This directive supersedes FPS Directive 15.1.2.1, "*Law Enforcement Authority and Powers*," dated November 30, 2011, and all other previously issued or recognized policies and processes for the Law Enforcement Authority and Powers of FPS personnel designated law enforcement personnel under 40 U.S.C. §1315.

III. AUTHORITIES/REFERENCES

- A. 6 U.S.C. §203, "*Functions transferred.*"
- B. 18 U.S.C. §7, "*Special maritime and territorial jurisdiction of the United States defined.*"
- C. 18 U.S.C. §13, "*Assimilated Crimes Act.*"
- D. 18 U.S.C. §111, "*Assaulting, resisting, or impeding certain officers or employees.*"
- E. 40 U.S.C. §1315, "*Law Enforcement Authority of Secretary of Homeland Security for Protection of Public Property.*"
- F. 42 U.S.C. §§5121-5207, "*Robert T. Stafford Disaster Relief and Emergency Assistance Act.*"
- G. 42 U.S.C. §10501 et seq., "*Emergency Federal Law Enforcement Assistance Act.*"
- H. Federal Law Enforcement Good Samaritan Act, Public Law 105-277.
- I. Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1998, Public Law 105-277.
- J. 41 C.F.R. Part 102, "*Federal Management Regulation.*"
- K. 41 C.F.R. Part 102-74.15, "*What are the facility management responsibilities of occupant agencies?*"

- L. 41 C.F.R. Section 102-74 (Appendix to Part 102-74), "*Facility Management*."
- M. "*Attorney General Guidelines for the Exercise of Law Enforcement Authorities by Officers and Agents of the Department of Homeland Security Under 40 U.S.C. §1315*."
- N. Office of General Counsel Memorandum, Federal Protective Service: Scope of Law Enforcement Authorities under 40 U.S.C. § 1315, March 17, 2010.
- O. Government Accountability Office (GAO), "*Principles of Federal Appropriations Law 4-20*."
- P. Department of Homeland Security (DHS), National Protection and Programs Directorate (NPPD), Delegation Number 17001.101, "*Delegation to the Director for the Federal Protective Service*," May 10, 2016.
- Q. 2 U.S. Op. Legal Counsel 47, "*Federal Bureau of Investigations-Statutory Jurisdiction-Authority of Agents Concerning Non-Federal Offenses*."

IV. DEFINITIONS

- A. **Assimilative Crimes Act (18 U.S.C. §13).** Authorizes the use of state law for acts or omissions occurring on federal property. Three criteria must be met before a state law can be assimilated: (1) the United States must have either exclusive or concurrent jurisdiction, (2) there must be no federal law covering the conduct, and (3) there must be an applicable state law resulting in a criminal violation (misdemeanor or felony).
- B. **Concurrent Jurisdiction.** Jurisdiction in which both the federal and state governments have authority over a geographic area and may prosecute those who violate their respective laws.
- C. **Exclusive Jurisdiction.** A geographic area in which only the Federal Government has jurisdiction. In areas of exclusive jurisdiction, only federal laws apply, but state and local officers have the authority to serve process, such as arrest warrants, resulting from criminal or civil actions that occur outside the area of exclusive jurisdiction.
- D. **Federal Property.** Includes buildings, grounds, and property that are owned, occupied, or secured by the Federal Government (including any agency, instrumentality, or wholly owned or mixed-ownership corporation thereof) and the persons on the property.
- E. **Federal Statutes of General Application.** Statutes enforceable throughout the United States or in any other place where the United States has jurisdiction.
- F. **Proprietary Jurisdiction.** The Federal Government has no special criminal jurisdiction over a geographic area. State laws apply within the proprietary area in the same manner that state laws apply throughout the state or territory. However, federal laws of general application and federal laws and regulations specifically applicable to the geographic area may also apply, e.g., 41 C.F.R. Part 102, "*Federal Management Regulation*."

- G. **Special Maritime and Territorial Jurisdiction.** All lands reserved or acquired for the use of the United States, and under the exclusive or concurrent jurisdiction of the United States. See 18 U.S.C. §7, “*Special maritime and territorial jurisdiction of the United States defined*,” for more specific descriptions of special maritime and territorial jurisdiction.
- H. **Subject-Matter Jurisdiction.** The specific offenses over which FPS has authority granted by statute. FPS subject-matter jurisdiction is general, relating to all federal crimes committed against federal property and/or the people on the property, and all federal crimes committed in the presence of an officer or any felony cognizable under the laws of the United States if the officer has reasonable grounds to believe that the person arrested has committed or is committing a felony.
- I. **Territorial Jurisdiction.** The geographical area over which a government or government entity has power. In the case of FPS, 40 U.S.C. §1315, “*Law Enforcement Authority of Secretary of Homeland Security for Protection of Public Property*,” establishes the territorial jurisdiction as the buildings, grounds, and property that are owned, occupied, or secured by the Federal Government (including any agency, instrumentality, or wholly owned or mixed-ownership corporation thereof) and the persons on the property.

V. RESPONSIBILITIES

- A. The **FPS Director** is responsible for all aspects of this directive and shall ensure agency-wide compliance with this directive.
- B. The **FPS Deputy Directors** and **Assistant Directors of Field Operations (ADFO)** shall ensure respective directorates, divisions and regions comply with this directive.
- C. The **Regional Directors (RD)** shall:
 - 1. Establish liaison with representatives within their region from each United States Attorney’s Office, United States Marshals Service (USMS), the federal judiciary, and other federal, state, and local law enforcement agencies as appropriate;
 - 2. Ensure personnel under their supervision receive annual training in law enforcement authority and jurisdiction applicable to their regions—including relevant state laws (Attachment A); and
 - 3. Monitor and ensure regional law enforcement personnel compliance with this directive.
- D. **Supervisors** shall:
 - 1. Ensure that employees under their supervision adhere to the guidance set forth in this directive; and
 - 2. Provide continual monitoring of employee compliance with this directive through review of police reports and similar documentation.

- E. **All Law Enforcement Personnel** must adhere to the guidance set forth in this directive. FPS Director is responsible for all aspects of this directive and shall ensure agency-wide compliance with this directive.

VI. POLICY AND REQUIREMENTS

- A. All law enforcement personnel shall protect federal property and persons on the property. Law enforcement personnel shall comply with all constitutional, statutory and FPS policy requirements while exercising their law enforcement authorities and powers.
- B. While engaged in the performance of official duties, designated FPS law enforcement personnel may:
1. Enforce federal laws and regulations for the protection of persons and property;
 2. Carry firearms;
 3. Make arrests without a warrant for any offense against the United States committed in the presence of law enforcement personnel, or for any felony cognizable under the laws of the United States if law enforcement personnel have reasonable grounds to believe that the person to be arrested has committed or is committing a felony;
 4. Serve warrants and subpoenas issued under the authority of the United States;
 5. Conduct investigations, on and off the property in question, of offenses that may have been committed against federal property or persons on the property; and
 6. Carry out other activities for the promotion of homeland security as the Secretary of DHS may prescribe.
- C. **Authority on Federally-Owned or -Leased Exclusive, Concurrent, and Proprietary Jurisdiction Property**
1. On exclusive- and concurrent-jurisdiction property, FPS law enforcement personnel are authorized to enforce all federal criminal statutes, federal property regulations, and state and local law as applicable under the Assimilated Crimes Act, 18 U.S.C. §13.
 2. On proprietary jurisdiction property, FPS law enforcement personnel are authorized to enforce federal statutes of general application, federal property regulations, and other agency regulations pertinent to the property in question, and state or local laws as agreed upon or authorized by the state. Any federal criminal statute that includes the language "in the special maritime and territorial jurisdiction" may not be charged on proprietary jurisdiction.
 3. FPS law enforcement officers shall only enforce the regulations of another federal agency (with the exception of GSA regulations) when the other agency requests FPS to enforce their regulations in writing.
- D. **Authority on Non-Federal State Property**
1. Generally, FPS law enforcement personnel have no legal duty or authority to

enforce state or local laws not related to the protection of federal property or persons on the property, except to the extent that enforcement of such laws is necessary for the protection of federal property and is pursuant to an agreement between FPS and the state or local government. Performing such actions could result in criminal charges and civil liability against the officer and civil liability against FPS. Exceptions to this rule include:

- a. On state property not protected by FPS, FPS law enforcement personnel while in the performance of official duties relating to the protection of federal property and persons on the property have the legal authority to take appropriate action related to federal crimes of generality committed in the presence of the officer or any felony cognizable under the laws of the United States if the officer has reasonable grounds to believe that the person arrested has committed or is committing a felony.
 - b. On state property not protected by FPS, FPS law enforcement personnel may enforce state and local laws concurrently with state and local law enforcement officers for the protection of federal property and persons on the property pursuant to an agreement between FPS and the state or local government. The enforcement of state and local laws under this authority require that the violation of the state or local law affects the security and protection of federal property and persons on the property.
 - c. On state property not protected by FPS, FPS law enforcement personnel shall be considered within the federal scope of employment for purposes of the Federal Law Enforcement Good Samaritan Act, Public Law 105-277, if they take reasonable action, including the use of force, to protect an individual in the presence of the officer from a crime of violence; provide immediate assistance to an individual who has suffered or who is threatened with bodily harm; or prevent the escape of any individual who the officer reasonably believes has committed a crime of violence in the presence of the officer.
2. The Department of Justice (DOJ) Office of Legal Counsel has recognized that:
- a. There is no federal authority to respond to state crimes, but officers may have authority granted by the state and in some situations even a legal obligation under state law to act in response to local criminal offenses. A federal officer's protection may be enhanced if he/she is requested to assist by a state officer with jurisdiction.
 - b. Federal law enforcement officers shall not be discouraged from intervening in local crimes of a serious nature, i.e., felonies and violent misdemeanors.
 - c. 18 U.S.C. §111, "*Assaulting, resisting, or impeding certain officers or employees,*" may apply even when the crime in which the officer intervenes is not a federal criminal violation.
 - d. Generally, DOJ may find that, when a federal officer has intervened in a state crime of violence, it is in the government's interest to represent that officer in civil and criminal actions that may arise and that the action is within the scope

of employment. However, each case will be considered on its own merits.

- e. Egregious conduct by the officer or efforts to enforce a minor infraction that is not a serious crime may not be within the scope of employment.
- E. **Authority as a Designated State Peace Officer.** Some states provide peace officer status to specific federal law enforcement agencies, which allows their officers to enforce certain state laws. Although such peace officer status provides authority by the state to enforce state law, actions taken solely under the authority of state law for the sole benefit of the state, as distinguished from agreements between FPS and the state and local government (see VI.D.1.b) that also benefit the Federal Government, may be deemed outside the scope of duty.
- F. **Authority as a Deputized State Law Enforcement Officer.** In cases of major disasters and law enforcement emergencies, FPS law enforcement personnel may be deputized by a state to enforce state and local laws during the aftermath of the major disaster or during a law enforcement emergency. In the case of major disasters, FPS must be reimbursed for the services of deputized FPS law enforcement personnel through the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§5121-5207, or some other fiscal appropriation. In the case of law enforcement emergencies, FPS must be reimbursed through the Emergency Federal Law Enforcement Assistance Act, 42 U.S.C. §10501 et seq., or some other lawful fiscal appropriation.
- G. **Authority During Special Events as Determined by the Secretary of the Department of Homeland Security.** The United States Secret Service is responsible for the coordination and implementation of the operational security plan for National Special Security Events (NSSE) and other special events as designated by the Secretary of DHS. The FPS Director, in coordination with other federal agencies, may assign law enforcement personnel to enforce federal laws during NSSE and other special events as determined by the Secretary of DHS. The FPS Director may also enter into agreements with federal agencies and with state and local governments to obtain authority for law enforcement personnel to enforce federal, state, and local laws concurrently during NSSE and other special events, as determined by the Secretary of DHS. With the exception of NSSE events, participation under this paragraph must be on a reimbursable basis unless the law enforcement functions are necessary or incidental to the protection of federal property and persons on federal property for which FPS already receives funding.
- H. **Authority Under the National Response Framework.** DHS serves as the primary national-level, multi-agency hub to manage domestic incidents under the National Response Framework (NRF). The FPS Director, in fulfilling NRF responsibilities, may assign law enforcement personnel to enforce federal laws at domestic incidents managed under the NRF. The FPS Director may enter into agreements with federal agencies and with state and local governments to obtain authority for law enforcement personnel to enforce federal, state, and local laws concurrently in preparation for or in response to catastrophic incidents as defined by NRF or incidents of similar scope and

magnitude. Any participation under this paragraph shall be on a reimbursable basis unless the law enforcement functions are necessary or incidental to the protection of federal property and persons on the property.

- I. **Authority When Assigned to Federal or State Task Forces, Including FBI Joint Terrorism Task Forces (JTTF).** FPS personnel who are assigned to federal or state task forces and deputized, authorized, or designated to carry out authorities and powers of task force agency members in addition to their authorities under 40 U.S.C. §1315, can carry out authorities and powers of the task force agency only when engaged in task force activities. FPS personnel who are assigned to federal or state task forces are required also to comply with DHS/FPS policies and procedures. Any conflict between DHS/FPS policies and procedures and those of another task force agency's policies and procedures shall be resolved by supervisors at both agencies.
- J. **Authority and Other Duties as Prescribed.** The Secretary of DHS may prescribe additional duties for law enforcement personnel, as necessary, for the promotion of homeland security. These other duties must relate to the protection of federal property and persons on the property pursuant to the authority cited in Section III (N).
- K. **Fiscal Implications of Federal Law Enforcement Activities.** FPS has fiscal authority to expend funds in the performance of its law enforcement and security mission, which is normally governed by the general rule that FPS fee-based funds can be expended only for the necessary expenses related to the protection of federally-owned and -leased buildings and for the operations of FPS.

VII. ATTACHMENT

- A. Law Enforcement Authority and Jurisdiction Field Guide, 2014 Edition.

VIII. QUESTIONS

Address any questions or concerns regarding this directive to the Directives Manager, at FPSpolicy@ice.dhs.gov.



L. Eric Patterson
Director
Federal Protective Service



Date

Department of Homeland Security
National Protection and Programs Directorate
Federal Protective Service
Directive Number: 15.5.1.2
Revision Number: 0
Issue Date: 3/22/2011

Use of Force

Changes

The following changes are effective immediately and will be included as part of the next revision of the directive.

Date	Section	Description of Change
10/13/2016	Entire Directive	The Interim Policy Memorandum, (b)(7)(E) dated October 13, 2016, (attached next under) provides immediate changes to current guidelines and procedures for (b)(7)(E) and identifies changes in management and employee responsibilities. Policy changes and procedures outlined in the Interim Policy Memorandum, (b)(7)(E) are applicable to FPS Directive 15.5.12.2 - (b)(7)(E) FPS Directive 15.5.12.1 - Firearms Policy (with attachment 1 - FPS Firearms and Intermediate Weapons Manual), and FPS Directive 15.5.1.2 – Use of Force (with attachment 1 - FPS Use of Force Manual). These interim changes will be reflected in future revisions to each of these directives and their associated manuals.



Homeland
Security

October 13, 2016

MEMORANDUM FOR: Assistant Directors of Field Operations
Regional Directors
Deputy Regional Directors
Division Directors *AL*

FROM: (b)(6); (b)(7)(C); (k)(2) *13 OCT 2016*
Deputy Director of Operations (Acting)
Federal Protective Service

SUBJECT: Interim Policy Memorandum, (b)(7)(E)

Purpose

This memorandum provides immediate changes to current guidelines and procedures for (b)(7)(E) and identifies changes in management and employee responsibilities.

Scope

- A. These guidelines and procedures apply to all FPS personnel who are authorized to use CEWs.
- B. These guidelines supplement FPS Directives for (b)(7)(E) (15.5.12.2), Firearms (15.5.12.1) and Use of Force (15.5.1.2), and establish additional FPS-specific procedures for the use of (b)(7)(E)

Definitions

The term (b)(7)(E) has been supplanted by (b)(7)(E)
(b)(7)(E)

Classification

(b)(7)(E)

Use of Force

- A. **The following use of force guidance is effective immediately for the employment of CEW's.**

(b)(7)(E)

(b)(7)(E)

Questions concerning this Interim Policy Memorandum should be directed to

(b)(6); (b)(7)(C)

6. POLICY.

6.1 The DHS Use of Deadly Force Policy, July 1, 2004, provides guidelines for the use of force by law enforcement officers and agents of the Department of Homeland Security.

6.2 As an overall guideline, only that force which is both necessary and reasonable may be used in any situation. "Necessary" means some force is required to accomplish one's lawful duty. "Reasonable" means there are facts and circumstances that justify the degree of force to be used in the situation, up to and including deadly force.

6.3

6.4

(b)(7)(E)

6.5

(b)(7)(E) In short, in an emergency, FPS officers are authorized to use whatever firearm or other weapon is available for self-defense or the defense of another person.

6.6 The discharge of firearms against persons or defense from animals constitutes the use of deadly force.

(b)(7)(E)

6.7

6.8

6.9

(b)(7)(E)

6.10

6.11 All incidents involving the discharge of a firearm must be reported. The only exception to this requirement is the discharge of firearms during authorized training while on the

firing line (i.e., practice, qualification, and function testing) when no personal injury occurs.

6.12

(b)(7)(E)

7. RESPONSIBILITIES.

7.1 Firearms and Use of Force Incident Review Committee shall:

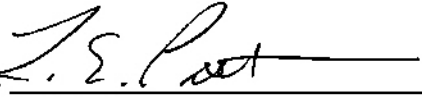
- a. Review reports of all incidents involving firearms, certain and/or specified use-of-force events and enforcement-related officer safety issues;
- b. Review all use-of-force incident reports to determine the applicability of established tactics, training, or policy; and
- c. Establish a permanent FPS Firearms Board of Survey at headquarters that is authorized to effect the relief of the firearms inventory and accountability.

8. PROCEDURES. See FPS Use of Force Manual, December 2010.

9. ATTACHMENT.

9.1 Attachment 1 — FPS Use of Force Manual.

10. NO PRIVATE RIGHT STATEMENT. This directive is an internal policy statement of FPS. It is not intended to, and does not create any rights, privileges, or benefits, substantive or procedural, enforceable by any party against the United States; its departments, agencies, or other entities; its officers or employees; or any other person.

Approved: 
L. Eric Patterson
Director

Date: 3/22/11

Reviewed: _____

Date: _____

Reviewed: _____

Date: _____

From:

(b)(6); (b)(7)(C)

Sent:

8 Jul 2020 20:41:22 +0000

To:

(b)(6); (b)(7)(C)

Cc:

(b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

Subject:

RE: Federal Court Orders impacting crowd control measures in Portland

Thanks (b)(6); (b)(7)(C) We will push this out to participating agencies.

(b)(6); (b)(7)(C)

From:

(b)(6); (b)(7)(C)

Sent: Wednesday, July 8, 2020 1:39 PM

To:

(b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

Cc:

(b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

Subject: RE: Federal Court Orders impacting crowd control measures in Portland

(b)(6); (b)(7)(C); (b)(5); (b)(7)(E)

Attorney Advisor for Federal Protective Service
Office of the General Counsel

(b)(6); (b)(7)(C)

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From: (b)(6); (b)(7)(C)

Sent: Wednesday, July 8, 2020 3:19 PM

To: (b)(6); (b)(7)(C)

Cc: (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

Subject: FW: Federal Court Orders impacting crowd control measures in Portland

Importance: High

(b)(6); (b)(7)(C)

The US Attorney's Office down here is recommending we look at these two TRO to determine if they apply to DHS/DOJ LEO working in Portland.

(b)(5); (b)(7)(E)

Please let us know as soon as you are able what the consensus DHS OGC opinion on this matter is as.

(b)(6); (b)(7)(C); (b)(5)

V/r,

(b)(6); (b)(7)(C)