



CITY OF

**PORTLAND, OREGON**

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December 2, 2008

BENJAMIN HAILE  
616 GUS SALOMON US COURTHOUSE  
620 SW MAIN STREET  
PORTLAND, OR 97205

Re: Seizure of Video Recording Devices

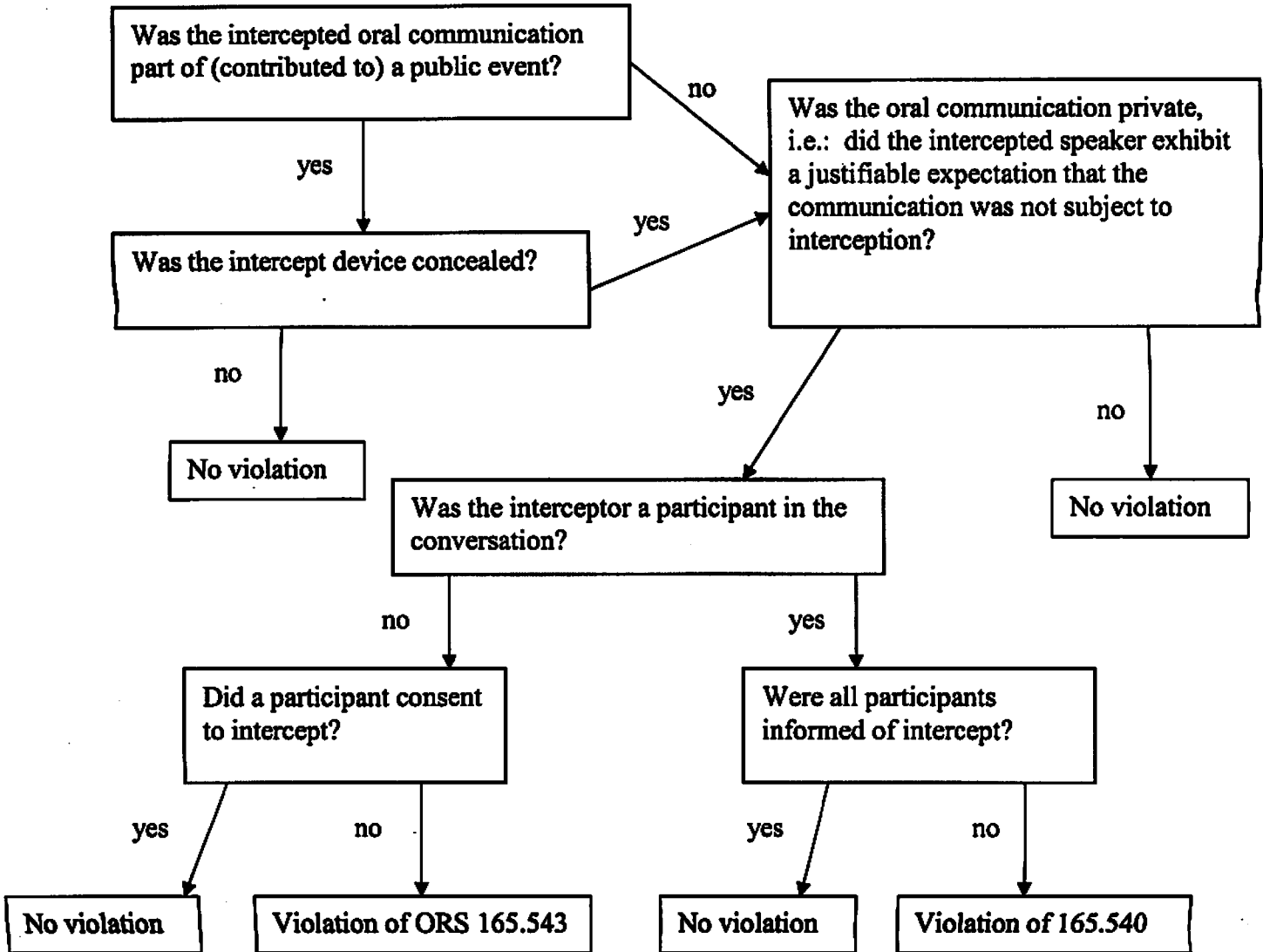
Dear Mr. Haile:

Thank you for your concern about application of Oregon's electronic interception laws to people recording police actions.

The Portland Police Bureau and the City Attorney strive to provide Portland peace officers with guidance and training that help them properly apply the law. Oregon's electronic interception laws are challenging to any reader, and officers have occasionally had difficulty interpreting them. After reviewing the incident involving Mr. Tabor, the Police Bureau has asked the City Attorney to provide refresher training on the interception laws to patrol officers during the upcoming in-service training cycle. The Bureau will also issue a training bulletin on various electronic recording scenarios.

The Police Bureau considered your request that it make a policy statement about seizure of video cameras in its policy documents. However, the Police Bureau has learned that it is impractical, and can be counterproductive, to overburden policy statements with detailed instruction on operational application. While all officers are required by policy to apply the law properly, discussion and specific prohibition of all possible misinterpretations or misapplications of the many laws turns policy statements into impenetrable morasses of detail. Under Chief Sizer, the Police Bureau has endeavored to make its policies more accessible to its employees and the public by removing operational direction and training information from its Manual of Policy and Procedure and placing it in training bulletins or manuals of standard operating procedures. In this situation, the Bureau feels corrective action is best accomplished through a training bulletin and refresher training that provide officers with a general understanding of the law and specific guidance on the few scenarios that have been troublesome. This approach should significantly improve on the 1991 bulletin by providing a more complete description of the law and involving every patrol officer in scenario-based discussion of the law's applications.

Rather than describing the complex electronic eavesdropping laws in narrative form, the Police Bureau will provide officers with the following flow chart:



I would welcome any ideas you might have to make the chart a more useful training tool.

To help officers properly work through scenarios, the Bureau will state its position that today's video cameras and cell phones announce their capability to record sound and can not be considered concealed audio interception devices if they are visible to a participant in a conversation.

The Bureau will present officers with scenarios that illustrate when officers and citizens can and can not justifiably expect their conversations are not subject to electronic interception – both in public property and private property settings. The scenarios will address the legality of

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citizen recording of both police officers and other citizens. The goal of this training will be to impress on officers that the electronic intercept law is violated only when there is surreptitious or unwanted recording under circumstances justifying an expectation that there be no recording.

This management effort will aim to strike the balance found in the law itself. While it is very important that everyone (citizens and officers, alike) know they are protected from intercept when they engage in private conversation, documentation of public behavior is also important. Officers and citizens should feel protected when they engage in private conversation, even in a public place. However, Oregon law and the Portland Police Bureau recognize that recording has come to be expected in our public lives – a fact that even the microphone-shy must accept.

I hope the City's efforts convince Mr. Tabor that the City is willing to address any problems in the application of ORS 165.540. I understand that you will want to see these remedies implemented before making a decision on filing suit. In the meantime, I am glad to talk with you about the training and welcome any suggestions you might have. I also hope that you will bring any continuing or new concerns to my attention before deciding whether to file suit.

Sincerely,



David L. Woboril  
Deputy City Attorney

DLW:cw