

413.00 MISCELLANEOUS FIELD OPERATIONS MATTERS

413.14 RECORDING POLICE ACTIVITY

(Added 12-21-17)

- A. **Purpose.** The purpose of this policy is to provide officers with guidance when a member of the public or media records them while on duty. Recording includes photographing, videotaping, audiotaping, or both, by members of the public or the press.
- B. **Policy.** Members of the public, including media representatives, have an unambiguous First Amendment right to record an on-duty peace officer in a public place, as long as their actions do not interfere with the officer's duties or the safety of officer or others. Officers should assume that they are being recorded at all times when on duty in a public space.

C. Definitions

Recording – Capturing of images, audio, or both, by means of a camera, cell phone, audio recorder, or other device.

Media – The storage source for visual or audio recordings, whether by film, analog, or digital means.

Public Space – Includes buildings designated for public use, such as libraries, the open and common areas of government buildings, community shopping malls, and other places of business that are accessible and open to the general public.

D. Procedures

1. Persons who are lawfully in public spaces or locations where they have a legal right to be present – such as home, place of business, or the common areas of public and private facilities and buildings – have a First Amendment right to record anything in plain sight or hearing, to include police activity.
2. Police may not threaten, intimidate, or otherwise discourage or interfere with the recording of police, fire, or EMS public activities. However, the right to record is not absolute and is subject to legitimate and reasonable legal restrictions.
 - a. A reasonable distance must be maintained from the officer(s) engaged in enforcement or other police-related duties.
 - b. Persons engaged in recording activities may not obstruct police actions. For example, individuals may not interfere through direct physical intervention, tampering with a witness, or by persistently engaging an officer with questions or interruptions.
 - 1) The fact that recording and/or overt verbal criticism, insults, or name-calling may be annoying, does not of itself justify an officer taking corrective or enforcement action or ordering that recording be stopped.
 - 2) This is an infringement on an individual's constitutional right to protected speech.
 - c. Recording must be conducted in a manner that does not unreasonably impede the movement of emergency equipment and personnel or the flow of vehicular or pedestrian traffic.
 - d. The safety of officers, victims, witnesses, and third parties cannot be jeopardized by the recording party.

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3. Arrest
 - a. Persons who violate the foregoing restrictions should be informed that they are engaged in prohibited activity and given information on acceptable alternatives, where appropriate, prior to making an arrest.
 - b. Arrest of a person who is recording officers in public shall be related to an objective, articulable violation of the law unrelated to the act of recording. The act of recording does not, in itself, provide grounds for detention or arrest.
 - c. Arrest of an individual does not provide an exception to the warrant requirement justifying search of the individual's recording equipment or media. While equipment may be seized incident to an arrest, downloading, viewing, or otherwise accessing files requires a search warrant. Files and media shall not be altered or erased under any circumstances.
4. Seizure of Recording Devices and Media
 - a. Absent arrest of the recording party, recording equipment may not be seized without a warrant or recognized warrant exception.
 - b. If there is probable cause to believe that evidence of a serious crime has been recorded, an officer should:
 - advise and receive instructions from a supervisor;
 - ask the person in possession of the recording if he or she will consent to voluntarily and temporarily relinquish the recording device or media so that it may be viewed and/or copied as evidence. If consent is provided, search of the device is limited in scope by the person giving consent; and
 - in exigent circumstances, in which it is reasonable to believe that the recording will be destroyed, lost, tampered with or otherwise rendered useless as evidence before a warrant can be obtained, seize the recording device or media under a temporary restraint. A warrant must be obtained in order to examine and copy the recording and the chain of custody must be clearly documented per department policy.
 - c. In exigent circumstances, where it is objectively reasonable to believe that immediate viewing of recordings is necessary to prevent death or serious bodily harm of another before a warrant can be authorized, the recording device or media may be seized and viewed.
 - d. Whenever a recording device or media is seized without a warrant or obtained by voluntary consent, the seized item shall be held in police custody no longer than reasonably necessary for the police, acting with due diligence, to obtain a warrant.
 - e. The device must be returned at the earliest possible time and its owner/operator given instruction on how it can be retrieved. In all cases property receipts shall be provided to the owner.
5. Supervisory Responsibilities. A supervisor shall respond to any incident in which an individual recording police activity is going to be, or will most likely be, arrested or when recording equipment may be seized without a warrant or lawful consent.



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January 5, 2018

Mr. Avi S. Adelman
5620 East Side Avenue
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Via email at Avi@AviAdelman.com

Mr. Adelman:

I am in receipt of your letter dated November 1, 2017. Thank you for your interest in our policy regarding public recording of police. The materials you attached and referenced in your letter were utilized by our department when we recently reviewed and updated the enclosed General Order regarding recording police activity. Members of our department have been active participants in the dialogue concerning this topic generally and through IACP. The policy closely mirrors the IACP Model Policy and you are welcome to utilize it on your website. I hope that it will be of value to other agencies.

Please let me know if there is anything further I may provide regarding this matter.

Sincerely,

Melinda Barlow
Chief Administrative Officer

Encl.

