Asheville Police Department Policy Manual

Chapter: 5 - Law Enforcement Operations
Policy: 510 - Recording Devices
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Policy 903 - Interviews and Interrogations

Introduction

This directive provides guidelines for the use of all audio and video recording devices by the members of the Asheville Police Department, as well as guidance for situations in which employees are being recorded by members of the public or the media.

Policy Statement

It is the policy of the Asheville Police Department (APD) to establish clear guidelines for the use of audio/video recording devices as well as department response to audio/video recordings of police activity. Members of the public have an unambiguous First Amendment right to record police activities in public places, as long as their actions do not interfere with a department member's duties or safety. Department members should assume that they are being recorded at all times when on duty in a public space.

Definitions

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

Personal Recording Device: any audio or video device, individually owned or possessed, that was not issued by the department or City of Asheville.

Recording: capturing of images, audio, or both, by means of a video camera, cell phone, audio recorder, or other devices.

Rules and Procedures

510.1 General Procedures

A. Department-issued or approved recording devices may be used by department members to accurately document circumstances and/or statements made during the performance of their police duties.

B. Department members may use devices issued to them (e.g., mobile phones) by virtue of their assignment and when approved for official use.

C. All criminal investigation interview rooms have been equipped with department-approved audio/visual recording and visual monitoring equipment. Such equipment must be utilized in accordance with N.C. Gen. Stat. § 15A-211, see Policy 903 - Interviews and Interrogations.

D. The retention of any recording or image made by employees, in their official capacity, is governed by the provisions of the Municipal Records Retention and Disposition Schedules and North Carolina statute.

E. The status of the employee (not the ownership of the device making the recording) governs the ownership of recordings. Any recording made or received by a department member in connection with the transaction of public business will be the property of the department.

F. Any recording that would be considered evidence will be maintained in an unedited format and retained following all established rules of evidence.

510.2 Restrictions on Use of Recording Devices

A. The use of personally owned recording devices in connection with the transaction of department or public business is prohibited except in exigent circumstances.

B. Without the permission of the chief of police, department members may not surreptitiously record audio, video, or images of any other department member, City of Asheville employee, or official.

510.3 Use of Recording Devices

A. Anytime a recording device is used, the department member must document the fact that the recording(s) exist in the incident or other appropriate report.

B. Whenever possible, department members initiating a recording will record the entire conversation or contact.

C. If a department member fails to record an entire conversation or contact, the member will note the failure, with an explanation, on the incident or other appropriate report. This will not apply if the contact is a non-reportable incident.

510.4 Citizen Recording of Police Activity

A. When encountering a citizen using a recording device, department members must not threaten, intimidate, or discourage citizens from recording police activities or intentionally block or obstruct recording devices; however, department members are not required to move or position themselves for the convenience of recording.

B. Citizens, who are lawfully in public spaces or locations where they have a legal right to be present, such as their home, place of business, or the common areas of public and private facilities and buildings, have a right to record and photograph department members discharging their duties, subject only to narrow, legitimate, and reasonable restrictions in accordance with the law.

C. Citizens recording police activities must conduct themselves in the following manner:

1. 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 a department member with questions or interruptions. However, the fact that recording and/or overt verbal criticism, insults, or name-calling may be annoying does not in itself justify a department member taking corrective or enforcement action or ordering that recording be stopped, as this is an infringement on an individual’s right to protected speech.

2. A person's recording may not unreasonably impede the movement of emergency equipment and personnel or the flow of vehicular or pedestrian traffic.

3. The actions of the recording party must not jeopardize the safety of department members, victims, witnesses, or third parties and cannot violate the law or incite others to violate the law.

D. 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 taking enforcement action.

E. An arrest of a person who is recording department members in public must 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 an arrest, and does not, in itself, provide sufficient grounds to sustain a charge of resisting, delaying, or obstructing a public officer pursuant to N.C. Gen. Stat. § 14-223. An arrest of an individual does not provide an exception to the search warrant requirement justifying a search of the individual's recording equipment or media. While equipment may be seized incident to an arrest, downloading, viewing, or otherwise accessing files, absent exigent circumstances, requires a search warrant.

F. A supervisor or watch commander should be requested at the scene anytime a situation exists where an individual recording police activity is going to be, or will most likely be, arrested, or when recording equipment may be seized.

510.5 Confiscation of Recording Devices and Media

A. The recording equipment of an individual may not be confiscated unless the person has been arrested.

B. Department members may not order a person to show recordings that have been made of enforcement actions or other police operations.

C. If there is probable cause to believe that evidence of a serious crime has been recorded, department members should do the following:

1. 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. Absent exigent circumstances, department members may not search or seize a recording device without obtaining consent or a warrant.

2. If a department member believes that exigent circumstances justify a warrantless examination or confiscation of a recording device, the City Attorney should be contacted, if practical.

3. Exigent circumstances may exist in the following circumstances:
    a. When there is a reasonable belief that the recording will be destroyed, lost, tampered with, or otherwise rendered useless as evidence, a warrant can be obtained.
    b. When there is a reasonable belief that the immediate viewing of the recording is necessary to prevent death or serious bodily harm of another, before a warrant can be obtained.
4. Whenever a recording device or media is seized without a warrant, the seized item will be held no longer than reasonably necessary to obtain a warrant and download the recording.
5. Department members must not delete or destroy any of the recordings or photographs located on the recording device or media.

By order of:



Wade Wood
Interim Chief of Police