



Policy 1016

Subject PUBLIC OBSERVATION/RECORDING OF OFFICERS	
Date Published 7 September 2021	Page 1 of 7

By Order of the Police Commissioner

POLICY

Members shall respect, and shall not infringe, the right of all persons to observe and record the actions of law enforcement officers in the public discharge or their duties in all public spaces (including sidewalks, parks, and other locations for lawful public protest), as well as in all other areas in which persons have a legal right to be present (including a person's home or business and common areas of public and private facilities and buildings), so long as the observation or recording does not threaten the safety of any member or any other person and does not physically interfere with the performance of any member's duties. See Policy 804, *First Amendment Protected Activity*, for guidance on respecting and protecting the First Amendment rights of all persons.

The right to observe and record law enforcement officers in the public discharge of their duties, and the right to retain the recorded material free from government intrusion, are protected by the First, Fourth and Fourteenth Amendments to the United States Constitution; Articles 10, 24 and 26 of the Maryland Declaration of Rights; and 42 U.S.C. 2000aa-(b).

DIRECTIVES

1. Members shall permit persons to observe and/or record police activity in all public settings, such as parks, sidewalks, streets, and locations of public protest, and in their homes or businesses, common areas of public and private facilities and buildings, and in any other public or private facility at which the person has a legal right to be present.
2. Members shall allow a person to record their own interaction with police. However, a member may instruct a person to cease recording and put away the recording device when that person is being placed under lawful arrest.
3. Members shall restrict persons, regardless of their intent to video and/or audio record any police activity, from entering any marked and protected crime scene or a restricted area that would normally be unavailable to the general public. Responding members and follow-up investigators will determine who enters or leaves a secure scene, per Policy 1008, *Investigative Operations*.
4. If a person is photographing or recording police activity from a position that threatens the safety of a member or others, or physically interferes with a member's ability to perform their duties, a member shall first inform the person that they are engaged in prohibited activity and then direct the person, where practicable, to move to a position that will not threaten anyone's safety or physically interfere with a member's ability to perform duties. The member shall give the person a reasonable opportunity to comply prior to taking further enforcement action. However, a member shall not order the person to stop photographing or recording, except as described in Section 2 of "Prohibited Actions" below.

- 4.1. Interference consists of conduct, threats, actions, or activities that prevent or hinder members from doing their job. Examples of interference may include, but are not limited to:
 - 4.1.1. Direct physical intervention with a lawful arrest;
 - 4.1.2. Tampering with a witness (including repeatedly instructing a witness being questioned by a member not to respond to the member's questions);
 - 4.1.3. Persistently engaging or attempting to engage a member in conversation while the member is executing their duties;
 - 4.1.4. Inciting bystanders to hinder or obstruct a member in the performance of their duties.
 - 4.1.5. Unreasonably obstructing the movement of emergency equipment and personnel or the flow of vehicular or pedestrian traffic; and
 - 4.1.6. Entering a marked crime scene or an area not accessible to the general public.
- 4.2. Observing or recording police activity, alone, does not constitute interference.
- 4.3. A person's expression of criticism of any police activity, even when observing it or recording it, is not interference so long as that expression does not jeopardize the safety of any member, suspect or bystander, and so long as that expression does not violate the law or incite others to engage in imminent lawless action that is likely to occur. See Policy 804, *First Amendment Protected Activity*.

NOTE: Verbal disagreements, criticism, insults, name calling, or obscene gestures directed at members or others do not in themselves justify a member taking law enforcement action against that person. Whenever possible, de-escalation techniques should be employed. During hostile situations, members should consider, prior to making contact with a person who is photographing or recording, whether initiating contact may incite the person or others.

5. Members must document on their BWC any instance in which they order a person to stop recording police activity that occurs in public because there is a threat to the safety of a member or others, or the recording is compromising legitimate police actions, rescue efforts, or is physically interfering with a member's duties.
 - 5.1. The member must memorialize on the BWC a statement explaining the basis for ordering the person to stop recording.
 - 5.2. When titling this BWC footage, the member shall choose "Ordered to Stop Recording" as one of the categories attached to this footage (more than one category may be selected).
 - 5.3. If the member does not have a working BWC at the time they give the order to stop recording, the member shall document the basis for ordering the person to stop recording on an Administrative Report, Form 95, and submit the Form 95 to the member's supervisor before the completion of the member's tour of duty.

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6. In the event that an incident escalates to where a member determines that a person should be arrested for obstructing or hindering law enforcement while recording police activity, that member must seek approval to make the arrest from the highest-ranking supervisor who is present (at the scene).
7. In areas open to the public, members shall allow any person the same access for photography and recording as is given to the news media, as long as the person has a legal right to be present where they are located.

Prohibited Actions

8. Members shall not tell a person observing, photographing, or recording police activity that the person's actions are not allowed, require a permit, or require a member's consent.
9. Members shall not order that person to cease such activity, unless that activity threatens the safety of a member or others, or physically interferes with a member's ability to perform their duties. A member should direct the person to move to a position that will not physically interfere as a first step, instead of ordering the person to cease recording. If these efforts are unsuccessful, a supervisor shall be consulted.

NOTE: For the purpose of preserving the privacy of another person, such as an injured person or a crime victim, a member may respectfully request that the person who is photographing or recording the other person voluntarily stop photographing or recording. If the person recording or photographing insists on continuing to do so, the member may ask the person they are interacting with whether the person would like to go to a more private location.

10. Members shall not in any way threaten, intimidate or otherwise discourage a person, who is not violating any other law, from observing, photographing or recording a member's enforcement activities.
11. Members shall not demand a person's identification because the person is observing, photographing or recording police activity.
12. Members shall not demand that the person state a reason why the person is observing, photographing or recording police activity.
13. Members shall not stop, detain, search, arrest, issue a citation to, or use force against a person solely because the person is observing, photographing or recording police activity.
14. Members shall not regard observing, photographing, or recording police activity as suspicious conduct on its own. Members may initiate consensual encounters with any person, but the person's refusal to answer questions or speak to the member during a consensual encounter does not provide a basis for ordering a person to stop observing, photographing or recording police activity, nor is it a basis for an investigative stop or search (See Policy 1112, *Field Interviews, Investigative Stops, Weapons Pat-Downs, & Searches*).
15. Members shall not intentionally block or obstruct cameras or recording devices.
16. Members shall not demand to review or erase any image, sound or video recording.

17. Members shall not request or seize a person's camera or recording device for the purpose of deleting, destroying, or otherwise concealing any recorded material, including sounds, images, or videos, which they believe may portray individual members or the Department in a negative light. Concerns of this nature do not provide a basis to request or seize cameras or recording devices.
18. Members shall not retaliate against any person who lawfully exercises the lawful rights to witness, observe, record, comment on, criticize, or peacefully protest police activity, and shall not take any other type of police action in retaliation for the exercise of any of those rights. This includes:
 - 18.1. Ordering persons or groups to disperse;
 - 18.2. Stopping, detaining, searching, arresting, or issuing a citation to any person or group; or
 - 18.3. Threatening to stop, detain, search, arrest, or issue a citation to any person or group.

NOTE: See Policy 804, *First Amendment Protected Activity* for further guidance.

12. Members shall not, under any circumstances, erase or delete, or instruct any other person to erase or delete, any recorded images, videos or sounds from any camera or other recording device that is in the possession of a non-member or that has been voluntarily turned over or seized under the terms of this policy.
13. Members shall not search, seize, or otherwise coerce (implicitly or explicitly) production of recorded images, videos or sounds without obtaining a warrant, unless the person in possession of the recorded material voluntarily provides the recorded material or unless the exigency described in the "Seizure of Evidentiary Video/Audio/Photographs" Section below exists.

Permanent-Rank Supervisor Requirements

14. If a member contacts a supervisor after unsuccessful attempts at directing an observer to move to a position that does not threaten or physically interfere with the member's ability to perform their duties, the supervisor shall determine the best course of action to protect the rights of the observer while ensuring the member is able to perform their duties fully.
15. Supervisors shall ensure that members who have stopped the recording of police activity in public because of legitimate safety or interference concerns have properly ordered the person(s) to stop recording and have properly documented the order and the reasons for the order.

REQUIRED ACTION

Seizure of Evidentiary Video/Audio/Photographs

16. If a member has probable cause to believe that a bystander or witness has captured video, audio or photographic evidence related to a crime on a recording device, the member shall request that the person in possession of that device either (1) voluntarily provide the device or

recording medium (e.g., the memory chip) to the member; or (2) where possible and practicable, and in the presence of the member, voluntarily transmit the evidence, via electronic mail or text message, to the member's official electronic mail account or to the member's Departmental mobile phone.

NOTE: Consent is not considered voluntary when the member asserts their official status and claims a right to the evidence and the person gives the evidence or allows a search because of these assertions. If consent is obtained under duress, threat or intimidation, it is not voluntary and thus not valid.

17. If the person voluntarily provides the recording device or recording medium to the member, the member shall:

17.1. Complete Permission for Search, Form 29, including specifically what item(s) the person is consenting to be searched and/or taken, and indicating if there are any limitations to what the BPD is permitted to search.

NOTE: The property owner has a right to revoke consent at any time. If the person decides to revoke their consent, the member must return the property to the person.

17.2. Give the person the opportunity to review the device or medium prior to handing it over.

17.3. Exercise care and caution with the device or medium.

17.4. Complete a Property Receipt, Form 56, provide the pink copy to the person, and inform the person of the process of retrieving the device/media, per Policy 1401, *Control of Property and Evidence*. Retain all other copies.

17.5. Provide the person with the name and contact information of the member who took custody of the device or medium.

17.6. In the Property Listing/Evidence Recovered section of any applicable field report, list the item(s) surrendered by the person and held/submitted as evidence.

17.7. Document their request, and the person's response, in the narrative of applicable field reports and/or charging documents.

17.8. Refrain from any attempt to view, download, or otherwise access any material contained on the device or medium.

18. If the person declines to voluntarily provide the recording device or to electronically transmit the recorded video, audio or photographic evidence to BPD, if there is probable cause to believe that the recording device or medium contains critical evidence related to a serious crime, and if such evidence is in immediate jeopardy of being tampered with, altered, deleted, or destroyed, then a member may temporarily secure the recording device while a legal subpoena, search warrant, or other valid court order is obtained.

18.1. Members shall not make any attempt to view, download, or otherwise access any material contained on the device or medium without first obtaining a search warrant,

unless a warrantless search is justified by exigent circumstances, such as an immediate threat to public safety.

EXAMPLE: If a person was recording video and caught a fleeing suspect of a violent crime on their video, if the suspect is armed and still at large, and if the suspect's flight poses an immediate threat to public safety, a member may be required to view the video for prompt suspect identification purposes.

- 18.2. Members shall apply for, execute, and return any search and seizure warrant(s) in accordance with Policy 1007, *Search and Seizure Warrants* as soon as reasonably possible with diligent effort.

NOTE: If the subpoena, warrant, or other court order is denied for lack of probable cause, members **shall not** continue to hold the recording device or medium while seeking additional evidence to support the request for subpoena, warrant, or other court order. Instead, members shall return the recording device or medium to the person immediately.

- 18.3. Members shall obtain approval from the Shift Commander within two hours when exigent circumstances have required the warrantless seizure of a recording device or medium. If approval is not obtained, the recording device or medium must be returned to the person immediately.

- 18.4. Members shall submit the recovered device or medium to BPD in accordance with Policy 1401, *Control of Property and Evidence*.

- 18.5. Members shall complete all appropriate field reports.

19. Members shall maintain recording devices and media that are in BPD custody so that they can be returned to the owner intact with all images or recordings undisturbed.
20. Only members of the Special Activities Unit may make efforts to access material contained on a recording device or medium after a subpoena, warrant, or other court order permitting the search and seizure is obtained.

Permanent-Rank Supervisors

21. Supervisors shall approve/deny requests of any warrantless seizures by members of a recording device or medium due to exigent circumstances as soon as practicable, and no later than two hours after the seizure. If reasonably practicable, supervisors shall respond to the scene and assess the situation in person.
22. Supervisors shall ensure that any recording device, recording medium, video recording, audio recording or photograph that comes into BPD custody has only come into custody in one of the following circumstances:

15.1. Through the voluntary consent of the person in possession of the item;

15.2. Through execution of a search and seizure warrant; or

15.3. Through some valid exception to the warrant requirement. See Policy 1112, *Field*

Interviews, Investigative Stops, Weapons Pat-Downs & Searches, 1007, Search and Seizure Warrants. A valid exception could include the seizure for safekeeping of a recording device or medium that appears to be lost, discarded or abandoned.

16. Supervisors shall review and approve/disapprove all applications for search and seizure warrants, as required by Policy 1007, *Search and Seizure Warrants*.

Special Activities Unit Duty Detective Requirements

17. Duty Detectives in the Special Activities Unit (SAU) shall provide guidance and assistance to members on those occasions when an application for a search and seizure warrant is made for a recording device or medium.
 - 17.1. SAU Detectives shall give specific attention to helping those members properly define or describe the various data formats and storage devices they may be seeking in the warrant application.
 - 17.2. SAU Detectives shall make any appropriate recommendations that may assist in the preservation of dates, photographs, video clips, audio clips, etc.
18. In the course of a criminal investigation, and/or at the request of a member of the BPD, an SAU Detective shall access and download evidence contained on a recording device or medium in the member's custody, provided that the member or another member furnishes the Detective either (1) a completed Permission for Search, Form 29, indicating that the owner of the device or medium consented to access or (2) a valid search warrant or other court order explicitly authorizing access.

ASSOCIATED POLICIES

Policy 804, *First Amendment Protected Activity*
Policy 1007, *Search and Seizure Warrants*
Policy 1008, *Investigative Operations*
Policy 1112, *Field Interviews, Investigative Stops, Weapons Pat-Downs, & Searches*
Policy 1401, *Control of Property and Evidence*

RESCISSION

Remove and destroy/recycle Policy 1016, *Citizen Observation/Recording of Officers*, dated 1 July 2016.

COMMUNICATION OF POLICY

This policy is effective on the date listed herein. Each employee is responsible for complying with the contents of this policy.