



# CONCORD POLICE DEPARTMENT

## STANDARD OPERATING PROCEDURE

### RECORDING OF POLICE ACTIVITY

<b>GENERAL ORDER: 09.13</b>	<b>CREATED:</b> December 22, 2015	<b>ISSUE DATE:</b> December 22, 2015
<b>ACTION:</b> Creates new general order		<b>EFFECTIVE DATE:</b> January 9, 2016

#### **09.13.0**     **PURPOSE**

This purpose of this General Order is to provide officers with guidance when dealing with situations in which they are being recorded, to include video recording, audio recording, or both, by the public, including the media.

#### **09.13.1**     **POLICY**

The public, including media representatives, have an unambiguous First Amendment right to record police officers in public places, as long as their actions do not interfere with an officer's duties or the safety of officers or others. Officers should assume that they are being recorded at all times when on duty.

Officers should exercise restraint and should not resort to charging for offenses such as resist, obstruct and delay or disorderly conduct as a means of preventing someone from exercising the right to record members performing their official duties.

#### **09.13.2**     **DEFINITIONS**

##### A. RECORDING

The capturing of visual images, audio, or both, by means of a video camera, cell phone, audio recorder, or other device.

##### B. MEDIA

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

#### **09.13.3**     **LEGAL CONSIDERATIONS**

- A. Persons 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 First Amendment right to record things in plain sight or hearing, to include police activity. Officers may not threaten, intimidate, or otherwise discourage or interfere with the recording of police activities.
  1. A reasonable distance must be maintained from the officer(s) engaged in enforcement or related police duties.

2. Persons engaged in recording activities may not resist, obstruct or delay 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. The fact that recording and/or overt verbal criticism, insults, or name-calling may be annoying, does not justify an officer taking enforcement action or ordering that recording be stopped, as this is an infringement on a person's right to protected speech.
3. 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.
4. The safety of police, victims, witnesses, and third parties cannot be jeopardized by the recording party.

#### **09.13.4     ARREST CONSIDERATIONS**

- 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 (e.g., moving persons to a less intrusive location) prior to making an arrest. Whatever the resolution, protecting the constitutional rights of citizens will remain paramount to citing or arresting for minor infractions.
- B. An arrest of a person who is recording police activities in public must relate to an objective, articulable violation of the law unrelated to the act of recording. The act of recording, in and of itself, does not provide grounds for detention or arrest.
- C. An arrest of a person does not provide an exception to the warrant requirement justifying search of the person's recording equipment or media. While equipment may be seized incident to an arrest, downloading, viewing, or otherwise accessing files may require a search warrant.
- D. Any files and/or media coming to the attention of an officer shall not be deleted, erased or tampered with under any circumstances. Violation of this directive may constitute a violation of First, Fourth and Fourteenth Amendments.

#### **09.13.5     CONFISCATION OF RECORDING DEVICES AND MEDIA**

- A. Absent arrest of the recording party, recording equipment shall not be confiscated. Any recordings that are deemed to be evidence of a crime or relevant to an investigation will only be collected or seized lawfully. Additionally, officers shall not order a person to show recordings that have been made of enforcement actions or other police operations.
- B. If there is probable cause to believe that evidence of a crime has been recorded, the officer should:
  1. Advise and receive instruction from a supervisor;

2. 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;
  3. 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, the recording device or media may be temporarily confiscated. A warrant must be obtained in order to examine and copy the recording and the chain of custody must be clearly documented.
- C. In exigent situations 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 confiscated.
- D. Whenever a recording device or media is seized without a warrant or obtained by consent, the seized item shall be held in department custody no longer than reasonably necessary to obtain a warrant. The device must be returned at the earliest possible time and its owner/operator given instruction on how it can be retrieved.

#### **09.13.6 OFFICER RESPONSIBILITIES**

- A. Officers should promptly request a supervisor to respond to the scene whenever it appears that anyone recording activities may be interfering with an investigation or it is believed that the recording may be evidence. If practicable, officers should wait for the supervisor to arrive before taking enforcement action or seizing any cameras or recording media.
- B. Whenever practicable, officers or supervisors should give clear and concise warnings to individuals who are conducting themselves in a manner that would cause their recording or behavior to be unlawful. Accompanying the warnings should be clear directions on what an individual can do to be compliant; directions should be specific enough to allow compliance. For example, rather than directing an individual to clear the area, an officer could advise the person that he/she may continue observing and recording from the sidewalk across the street.
- C. If an arrest or other significant enforcement activity is taken as the result of a recording that interferes with law enforcement activity, officers shall document in a report the nature and extent of the interference or other unlawful behavior and the warnings that were issued.

#### **09.13.7 SUPERVISOR RESPONSIBILITIES**

- A. A supervisor should be summoned to any incident in which a person 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. The supervisor should review the situation with the officer and:
1. Request any additional assistance as needed to ensure a safe environment.

2. Take a lead role in communicating with persons who are observing or recording regarding any appropriate limitations on their locations or behavior.
3. When practicable, allow adequate time for persons to respond to requests for a change of location or behavior.
4. Ensure that any enforcement, seizure or other actions are consistent with this policy and constitutional and state law.
5. Explain alternatives for persons who wish to express concern about the conduct of officers, such as how and where to file a complaint.



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