



GENERAL ORDER

DURHAM POLICE DEPARTMENT
DURHAM, NC

NUMBER:

4084

DISCLOSURE & RELEASE OF LAW ENFORCEMENT RECORDINGS

Effective Date: 02/20/2017

INTRODUCTION

The Durham Police Department complies with [N.C.G.S. § 132-1.4A](#) which governs the disclosure and release of law enforcement agency recordings. This general order establishes policies and procedures for those recordings not addressed in G.O. [4064 In-car Cameras](#) or G.O. [4083 Body-worn Cameras](#).

DEFINITIONS

Disclose or Disclosure: To make a recording available for viewing or listening to by the person requesting disclosure, at a time and location chosen by the Durham Police Department. This term does not include the release of a recording.

Personal Representative: A parent, court appointed guardian, spouse or attorney of a person whose image or voice is in the recording. If a person whose image or voice is in the recording is deceased, the term also means the personal representative of the estate of the deceased person; the deceased person's surviving spouse, parent, or adult child; the deceased person's attorney; or the parent or guardian of a surviving minor child of the deceased.

Recording: A visual, audio, or visual and audio recording captured by a body –worn camera, a dashboard camera, or any other video or audio recording device operated by or on behalf of the Department or its personnel when carrying out law enforcement responsibilities. This term does not include video or audio recordings of interviews with suspects or witnesses or regarding a Department internal investigation. Specific examples of recordings include (but may not be limited to) audio/video obtained from:

- Body-Worn Cameras, see [G.O. 4083](#)
- In-Car Cameras, see [G.O. 4064](#)
- Surveillance conducted for criminal investigations or intelligence,
- Building security
- Training

Release: To provide a copy of a recording.

RETENTION

Recordings not governed by [G.O. 4064](#) and [G.O. 4083](#) must be stored on departmental server(s) or other appropriate storage medium controlled by the Department for a minimum of thirty (30) calendar days.

DISCLOSURE AND RELEASE

All recordings are the property of the Department.

Any recordings regarding agency internal investigations, or interviews of suspects or witnesses, constitute personnel or criminal investigation records respectively, and are not public record, pursuant to [N.C.G.S. §160A-168 and §132-1.4](#). Such records are open to inspection, copying, and dissemination in accordance with these statutes or as otherwise required by law.

All other recordings are governed by [N.C.G.S. §132-1.4A](#). These recordings may only be disclosed or released in accordance with the below provisions.

Internal Disclosure and Release

A recording shall be disclosed or released to the City Manager and/or Deputy City Manager(s), and attorneys assigned to the City Attorney's Office, as requested by such individuals for administrative purposes.

A recording may be disclosed or released within the Department for an administrative, training, or law enforcement purpose.

Disclosure and Release to a District Attorney

A recording must be disclosed or released to a district attorney:

- For review of potential criminal charges;
- In order to comply with discovery requirements in a criminal prosecution;
- For use in criminal proceedings in district court; or
- Any other law enforcement purpose.

Disclosure and Release to Another Law Enforcement Agency

A recording may be disclosed or released to another law enforcement agency for law enforcement or training purposes.

Disclosure Pursuant to a Written Request

Besides those disclosures mandated or permitted above, any other disclosure of recordings must be pursuant to a written request made to the Chief of Police. The written request may, but is not required to be, on a form provided by the Department. All written requests must include the date and approximate time of the activity captured in the recording, or other identification of the activity with reasonable particularity to sufficiently identify the recording to which the request refers.

Only the following persons are authorized to receive disclosure of a recording pursuant to a written request:

- A person whose image or voice is in the recording;
- A personal representative of an adult person whose image or voice is in the recording, if the adult person has consented to the disclosure;
- A personal representative of a minor or of an adult person under lawful guardianship whose image or voice is in the recording;
- A personal representative of a deceased person whose image or voice is in the recording; or
- A personal representative of an adult person who is incapacitated and unable to provide consent to disclosure.

Due to the short period of time in which the Department must respond to such requests, any member receiving a written request shall immediately deliver the request by personal delivery or email to the Professional Standards

Division. The Commander of the Professional Standards Division or his/her designee will immediately request a copy of the recording from the custodian of the recording and/or his/her chain of command. The custodian of the recording or his/her chain of command will provide the recording as soon as possible, but absent extenuating circumstances communicated to the Professional Standards Division Commander, no later than one business day after receiving the request from the Professional Standards Division. The recording will be reviewed by the Professional Standards Commander or his/her designee within the Professional Standards Division, along with the affected officer(s)' Assistant Chief, Deputy Chiefs, and/or Chief of Police, who will determine if disclosure to the requesting party will be allowed or denied and, if allowed, whether any redactions will occur. The following factors may be considered in making this decision:

- Whether the person requesting disclosure of the recording is a person authorized to receive disclosure;
- Whether the recording contains information that is otherwise confidential or exempt from disclosure or release under State or federal law;
- Whether disclosure would reveal information regarding a person that is of a highly sensitive personal nature;
- Whether disclosure may harm the reputation or jeopardize the safety of a person;
- Whether disclosure would create a serious threat to the fair, impartial, and orderly administration of justice; and
- Whether confidentiality is necessary to protect either an active, inactive, or potential, internal or criminal investigation.

Unless otherwise agreed to by the requesting party, within 3 business days of the Department's receipt of a written request for disclosure, the Commander of the Professional Standards Division or, in his/her absence, his/her designee, must either disclose the recording or notify the requesting party of the Department's decision not to disclose the recording and the reason(s) for such denial.

If a written request for disclosure is granted, only those portions of the recording relevant to the person's request may be disclosed. A person who receives disclosure is prohibited from recording or copying the recording.

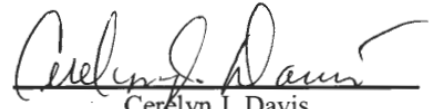
If a written request for disclosure is denied, or if disclosure has not been provided more than 3 business days after a request is made, the person seeking the disclosure may appeal to superior court. The Chief of Police, Department personnel whose image or voice is in the recording, and the District Attorney must be notified of the appeal and given an opportunity to be heard. Any member receiving notice that a petition for disclosure has been filed shall immediately notify the police attorney or, in his/her absence, other staff of the City Attorney's Office. A judge may issue an order for disclosure if the court finds that the Department abused its discretion in denying the request. Any order issued pursuant to this procedure may not direct release of the recording.

Release Pursuant to a Court Order

Besides those releases mandated or permitted as described above, any other release of a recording must be pursuant to a court order. Any person seeking release of a recording, including the Department and its members, must petition the superior court for an order to release a recording. Any member seeking release of a recording pursuant to a court order shall make a request through the member's chain of command to the Chief of Police. The Chief of Police must be given notice and an opportunity to be heard when a petition is filed by a person authorized to receive disclosure for release to such a person. If the petition is filed by a person not authorized to receive disclosure, or seeks release to any person other than a person authorized to receive disclosure, the Chief of Police, Department personnel whose image or voice is in the recording and the District Attorney must be given notice and an opportunity to be heard. Only portions relevant to the request may be ordered released.

EDITING OR REDACTION OF LAW ENFORCEMENT RECORDINGS

The disclosure or release of recordings may require editing or redaction to limit or prevent dissemination of information that may compromise an ongoing investigation, reveal the identity of juveniles, victims, witnesses, etc. Any editing or redaction of recordings requires a court order or prior approval by the Chief of Police or his/her designee. At the direction of the Chief of Police or his/her designee, the IT Manager will coordinate the redaction of the required portions of the designated recording.


Cerelyn J. Davis
Chief of Police