



Chapter: Member Conduct and Authority
Subject: 02-19 – Recording Police Activity
Effective: December 28, 2022
Supersedes: N/A
Distribution: Department Members

PURPOSE: This Order provides enforcement members with guidance for dealing with situations in which they are being recorded, to include photographing, videotaping, audiotaping, or both, by members of the public or the press.

Members of the public, including media representatives, have an unambiguous First Amendment right to record enforcement members in public places, so long as their actions do not interfere with the enforcement member's duties or threaten the safety of enforcement members or others.

02-19-1 POLICY:

It is the policy of this department that all members shall respect, and shall not infringe, the right of all persons to observe and record the actions of enforcement members in the public discharge of their duties in public places, as well as in all other areas in which persons have a legal right to be present, so long as the observation or recording does not threaten the safety of any enforcement member or any other person and does not interfere with the performance of an enforcement member's duties. Enforcement members should assume that they are being recorded at all times when on duty in a public space.

Enforcement members shall not take adverse action against a person engaged in constitutionally protected speech if the protected speech was a substantial or motivating factor in the decision to take adverse action and doing so is likely to chill a person of ordinary firmness from continuing to engage in such protected speech.

02-19-2 DEFINITIONS:

- A. Recording: Capturing of images, audio, or both, by means of a 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.

02-19-3 PROCEDURES:

- 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. Members may not threaten, intimidate, or otherwise

discourage or interfere with the recording of police activities. However, the right to record is not absolute and is subject to legitimate and reasonable legal restrictions, as follows:

- (1) A reasonable distance must be maintained from the enforcement member(s) engaged in enforcement or related police duties.
- (2) 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. The fact that recording and/or overt verbal criticism, insults, or name-calling may be annoying, does not of itself justify an enforcement member taking corrective or enforcement action or ordering that recording be stopped, as this is an infringement on an individual's constitutional 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 officers, victims, witnesses, and third parties cannot be jeopardized by the recording party.

B. Arrest

- (1) 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.
- (2) Arrest of a person who is recording enforcement members 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.
- (3) 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.

C. Seizure of Recording Devices and Media

- (1) Absent arrest of the recording party, recording equipment may not be seized. Additionally, enforcement members may not order an individual to show recordings that have been made of enforcement actions or other police operations.
- (2) If there is probable cause to believe that evidence of a serious crime has been recorded, an enforcement member should:
 - a. Advise and receive instructions from a supervisor.
 - b. Ask the person in possession of the recording if they will consent to voluntarily and temporarily relinquish the recording device or media so that it may be viewed and/or copied as evidence; and
 - c. 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 seized 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.

- (3) 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 seized and viewed.
- (4) Whenever a recording device or media is seized without a warrant or obtained by voluntary consent, the seized item shall be held in evidence no longer than reasonably necessary for the enforcement member, acting with due diligence, 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. In all cases property receipts shall be provided to the owner.

D. Supervisory Responsibilities

- (1) A supervisor should be summoned 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.

DIRECTOR

Annual Review Responsibility:	Transparency and Accountability Division
Accreditation Standards:	CALEA 1.1.2