



MEMPHIS POLICE DEPARTMENT

201 POPLAR
MEMPHIS TENNESSEE 38103



Policy and Procedure Information and Updates

SERIAL: 37-13 *T. Armstrong 12/17/13* DATE: December 17, 2013
FROM: Director T. Armstrong TO: All Personnel
SUBJECT: PUBLIC RECORDINGS

PURPOSE:

To introduce MPD Policy and Procedures Manual Chapter II Section 14: Public Recordings.

ACTION:

I. POLICY

The Memphis Police Department (MPD) recognizes that members of the general public have a First Amendment right to video record, photograph, and/or audio record MPD members while members are conducting official business or while acting in an official capacity in any public space, unless such recordings interfere with police activity.

II. REGULATIONS

- A. Members are reminded that photography, including videotaping, of places, buildings, structures and events are common and lawful activities. If a person is taking photographs or recording from a place where he or she has a right to be, members are reminded that this activity by itself does not constitute suspicious conduct.
- B. In areas open to the public, members shall allow bystanders the same access for photography as is given to members of the news media. Members shall be aware that:
 1. A bystander has the same right to take photographs or make recordings as a member of the media, as long as the bystander has a legal right to be present where he or she is located.
 2. A bystander has the right under the First Amendment to observe and record members in the public discharge of their duties.
 3. Public settings include, e.g., parks, sidewalks, streets, and locations of public protests; but that protection extends also to an individual's home or business, common areas of public and private facilities and buildings, and any other public or private facility at which the individual has a legal right to be present.

4. The fact that a bystander has a camera or other recording device does not, however, entitle the bystander to cross a police line, to enter an area that is closed to the public, or to enter any area designated as a crime scene.
- C. As long as the photographing or recording takes place in a setting at which the individual has a legal right to be present and does not interfere with a member's safety, members **shall not** inform or instruct people that photographing or recording of police officers, police activity or individuals who are the subject of police action (such as a *Terry* stop or arrest) is not allowed, requires a permit, or requires the member's consent. Additionally, members **shall not**:
1. Order that person to cease such activity;
 2. Demand that person's identification;
 3. Demand that the person state a reason why he or she is taking photographs or recording;
 4. Detain that person;
 5. Intentionally block or obstruct cameras or recording devices by direct physical means (i.e. place hand over recording device); or
 6. In any way threaten, intimidate or otherwise discourage an individual from recording members' enforcement activities.

NOTE: Members may ask questions during the course of a contact, but members are reminded that there is no justification for ordering a person to stop or requiring that they answer unless the member reasonably suspects that a person has committed, is committing, or is about to commit any crime.

- D. Members are reminded that the public does not have a right to interfere with police activity. Interference consists of conduct, threats, actions or activities that prevent or hinder, or purport to prevent or hinder, members from doing their job. Note the following actions:
1. If a person is photographing or recording police activity from a position that impedes or interferes with the safety of the public or members, or with a member's ability to perform their duties, a member may direct the person to move to a position that will not interfere. However, a member shall not order the person to stop photographing or recording.
 2. A person's recording of members' activity from a safe distance, absent any action that obstructs the activity or threatens the safety of the member(s), does not constitute interference.
 3. A person has the right to express criticism of the police activity being observed. 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 violate the law, the expression does not constitute interference.

III. Digital Evidence Recovery

A. Evidence on a Camera or Recording Device: Probable Cause

1. Probable cause exists where the known facts and circumstances are such that a reasonable member in the same situation would believe that evidence of a crime will be found.
2. If a member has probable cause to believe that a camera or other recording device contains images or sounds that are evidence of criminal acts, the member shall:
 - a. Request that the person voluntarily provide the device to include recording medium (e.g., removable media, memory card) to the member; or
 - b. Detain the person if they refuse to provide the recording device, and notify a supervisor following the steps outlined below in (4.).

Note: Consent to take possession of a recording device and/or medium must be given voluntarily. A member shall not, implicitly or explicitly, coerce consent to take possession of any recording device or any information thereon.

3. If the person provides the device or recording medium to the member, the member shall:
 - a. Exercise due care and caution with any of the individual's property or electronic device(s);
 - b. Obtain a report or memo number for the evidence obtained, and provide the number to the individual;
 - c. In the "Property listing/Evidence" section of any applicable field report(s), document the item(s) surrendered by the individual;
 - d. Document the member's request and the individual's response in the narrative of the field reports, take photos of the device to include any damage to the device and attach it to the report in InformRMS, obtain a "Consent to Search" for the device, and tag the device and form in the Property and Evidence Room;

Note: A "Consent to Search" is only applicable when the owner is present during the data extraction to allow him to withdraw consent; otherwise, the assigned investigator must obtain a warrant to view any evidence located on the device.

- e. Submit the report information and evidence number to the Sex Crimes/ ICAC Unit to access any relevant material as quickly as practicable. Members shall not attempt to view, download, or otherwise access any material contained on the device.
4. If the individual declines to voluntarily provide the device and/or recording medium and the member believes that exigent circumstances exist in so far as the evidence of criminal activity will be lost absent a seizure of the device, the member shall contact their immediate supervisor.
 - a. The immediate supervisor, or higher ranking official with supervisory authority over the member, must be present at the scene before a member takes any significant action involving a person's use of a recording device. This includes warrantless search or seizure of a camera or recording device, or an arrest.

- b. The member shall inform the supervisor of the nature of the evidence of criminal acts believed to be contained on the device.
- c. The supervisor shall determine whether exigent circumstances, including the seriousness of the possible crime at issue, permit the seizure of the device without a warrant. The Bureau or GIB supervisor should be consulted when necessary. Warrantless seizure is permissible only when:

- (1) There is probable cause to believe that the property holds contraband or evidence of a crime; and
- (2) The exigent circumstances demand it, or some other recognized exception to the warrant requirement is present.

Note: If the supervisor determines that the device or media contains evidence of improper police behavior, the supervisor will notify the Station or Bureau Commander for IAB notification.

- d. If the supervisor finds that exigent circumstances permit the seizure of the device without a warrant, approval shall be given to the member for the seizure.
 - e. The member shall obtain and provide the report number to the individual possessing the device.
 - f. Any such seizure must be a temporary restraint intended only to preserve evidence until a warrant can be obtained.
 - g. The appropriate Bureau will author and request a search warrant based on the facts presented and will notify Sex Crimes/ ICAC Unit of the report information and property receipt number for the seized property.
5. Officers should not attempt to view the material, but should take measures to place a cellular phone in airplane mode to prevent remote wiping of the memory of the device.

B. Viewing/Listening to Evidence on a Camera or Recording Device

- 1. Absent exigent circumstances or a signed "Consent to Search" for a device, members shall obtain a search warrant before viewing photographs or listening to recordings on a camera or media storage device (i.e. memory card or DVD) that has been voluntarily provided or seized as evidence.
- 2. In exigent circumstances, where there is reason to believe that an immediate search of the seized material is necessary to prevent death or serious injury, members shall contact their immediate supervisor, for authorization to review photographs or recordings without a warrant. Again, the Bureau/ GIB supervisor should be consulted when necessary.
- 3. The recordings should be downloaded as soon as possible by Sex Crimes/ICAC investigators for evidentiary purposes.
- 4. Photographs or recordings that have been seized as evidence and are not directly related to the exigent purpose shall not be reviewed.

C. Return of Property to Owner

- 1. The Sex Crimes/ ICAC Unit will review the data on the phone and provide the relevant video or photographs to the respective bureau.

2. Sex Crimes investigators will return the device or media to the Property and Evidence room and the respective bureau will be responsible for releasing the property and contents back to its owner.
3. If the owner is present for a signed "Consent to Search" request, the investigator can release the device to the owner after the download is complete.

D. DR 141 PUBLIC RECORDINGS

- A. Members shall not, under any circumstances, erase or delete, or instruct or require any other person to erase or delete, any recorded images 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 for law enforcement purposes, unless such recordings are considered contraband and cannot be returned.
- B. Members shall maintain cameras and other recording devices that are in Department custody so that they can be returned to the owner intact with all images or recordings undisturbed in a timely manner.

This policy has been reviewed by the Accreditation team and does not conflict with any CALEA Standards.

Distribution "A"