

# GENERAL ORDER



DISTRICT OF COLUMBIA

<b>Title</b>		
<b>Video Recording, Photographing, and Audio Recording of Metropolitan Police Department Members by the Public</b>		
<b>Topic</b>	<b>Series</b>	<b>Number</b>
<b>OPS</b>	<b>304</b>	<b>19</b>
<b>Effective Date</b>		
<b>July 19, 2012</b>		
<b>Related to:</b>		
GO-PER-201.26 (Duties, Responsibilities and Conduct of Members of the Department)		
GO-SPT-204.01 (Media)		
GO-OPS-304.10 (Police-Citizen Contacts, Stops and Frisks)		

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## I. POLICY

The Metropolitan 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 MPD 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 in Washington, D.C.
1. 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.
  2. Members shall refer to GO-HRC-802.06 (Suspicious Activity Reporting Program) for guidance concerning identification and reporting of suspicious activities.
- 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 [See GO-SPT-204.01 (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 an 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; 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. [See GO-OPS-304.10 (Police-Citizen Contacts, Stops, and Frisks)].
- 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.

1. If a person is photographing or recording police activity from a position that impedes or interferes with the safety of members or their 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. If a person is photographing or recording police activity from a position that impedes or threatens the safety of members of the public, a member shall direct the person to move to a position that will not interfere. However, members shall not order the person to stop photographing or recording.
3. A person's recording of members' activity from a safe distance, and absent any attendant action that obstructs the activity or threatens the safety of the member(s), does not constitute interference.
4. 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.

E. 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.  
See, e.g., *United States v. Scott*, 987 A.2d 1180, 1191 (D.C. 2010).
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 request that the person either:
  - a. Voluntarily provide the device or recording medium (e.g., the memory chip) to the member; or
  - b. Where possible and practicable, and in the presence of the member, voluntarily transmit the images or sound via text message or electronic mail to the member's official government electronic mail account.
  - c. Consent to take possession of a recording device 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 CCN numbers for the evidence obtained, and provide the CCN numbers to the individual;
  - c. In the "Property listing/Evidence Recovered" section of any applicable field report(s), Document the item(s) surrendered by the individual in the PD-81 in accordance with MPD procedures;
  - d. Document the member's request and the individual's response in the narrative of applicable field reports and other documents; and
  - e. Submit the device(s) to the Electronic Surveillance 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 or recording medium, or to electronically transmit the sound and/or images where possible and practicable, and the member believes that exigent circumstances exist insofar as the evidence of criminal activity will be lost absent a seizure of the device, the member shall contact the Watch Commander, Criminal Investigations Division (CID).
  - a. The Watch Commander, CID, or other 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 Watch Commander of the nature of the evidence of criminal acts believed to be contained on the device.
  - c. The Watch Commander, CID, shall, in consultation with the Commander, CID, determine whether exigent circumstances, including the seriousness of the possible crime at issue, permit the seizure of the device without a warrant. 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 exigencies of the circumstances demand it or some other recognized exception to the warrant requirement is present.
  - d. If the Watch Commander, CID, 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 CCN numbers 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. *Illinois v. McArthur*, 531 U.S. 326, 334 (2001).
- F. Viewing/Listening to Evidence on a Camera or Recording Device
1. Absent exigent circumstances, members shall obtain a search warrant before viewing photographs or listening to recordings on a camera or memory chip that has been 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 the Watch Commander, CID, for authorization to review photographs or recordings without a warrant.
  3. The Watch Commander, CID, in consultation with the Commander, CID, may authorize such review without a warrant.
  4. Photographs or recordings that have been seized as evidence and are not directly related to the exigent purpose shall not be reviewed.
- G. 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 under the terms of this order.
- H. 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.

**III. CROSS REFERENCE**

- A. GO-SPT-204.01 (Media)
- B. GO-OPS-304.10 (Police-Citizen Contacts, Stops, and Frisks)
- C. GO-HRC-802.06 (Suspicious Activity Reporting Program)



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