



# CLEVELAND DIVISION OF POLICE

## GENERAL POLICE ORDER



EFFECTIVE DATE: JANUARY 1, 2023	CHAPTER: 4- Field Operations	PAGE: 1 of 4	NUMBER: 4.08.05
SUBJECT: INTERACTIONS WITH CITIZENS WHO ARE RECORDING POLICE ACTIVITY			
CHIEF: <i>Dornat A. Drummond, Chief</i>			

**PURPOSE:** To provide guidance to members handling situations in which they are being recorded by the public or the media, including photographing, video recording, and/or audio recording.

**POLICY:** It is the policy of the Cleveland Division of Police to be fully transparent and open to public scrutiny and to support the First Amendment rights of individuals, including media representatives, to record officers in a public or private setting where the individuals have a legal right to be present, as long as their actions do not interfere with the duties of the officers or the safety of the officers or others. Individuals have a right under the Fourth Amendment against illegal search and seizure of their recording devices.

**DEFINITIONS:**

**Public Space** - any place where an individual has a legal right to be present including streets, sidewalks, public parks, homes, or businesses in which the individual is lawfully present, and common areas of public and private facilities and buildings.

**Recording** - the act of capturing images, audio, and/or video, or both by means of a recording device.

**Recording Device** - any device that captures images, audio, and/or video of events in real time, including but not limited to cellular/smart phones, tablets, computers, cameras, video cameras, digital cameras, tape recorders, and other similar items.

**Recording Medium** - any data storage device where the images, audio, and/or video of events that have been captured by a recording device are stored (e.g., memory chips, computers, smart phones, cloud services, tablets, etc.).

**PROCEDURES:**

I. General Guidelines

- A. Individuals who are lawfully in a public space or a location where they have a legal right to be present (i.e., their home, vehicle, place of business, common areas of public and private facilities, etc.) have a First Amendment right to recording police activities.
  - 1. Objects/events in plain sight or hearing, including police activity, may be recorded.
  - 2. Members may not threaten, intimidate, or otherwise discourage or interfere with the recording of police activities. For example, members shall not demand a person’s identification because the person is observing, photographing, or recording police activity. Members shall not stop, detain, search, arrest, issue a citation to, or use force against a person solely because the person is observing, photographing or recording police activity.

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- B. The right to recording is not absolute and may be subject to legitimate and reasonable legal restrictions, as follows:
1. Recording parties may not physically jeopardize the safety of officers, themselves, or other persons to make a recording (e.g., by unreasonably impeding the movement of emergency equipment and personnel or unreasonably obstructing the flow of vehicular or pedestrian traffic).
  2. Recording parties may not verbally obstruct lawful police activity (e.g., by witness tampering or persistently trying to engage a member with questions or interruptions that prevent or hinder a member from doing their job). Speech is not obstructive just because it is loud, offensive, or expresses criticism of police or police activity.
  3. Members must not enforce the restrictions on recording identified immediately above (I.B.1. and 2.) as a pretext to stop recording police activities.
- C. When the public's right to the recording of police activities is outweighed by public safety concerns specified above, members must proceed as follows:
1. Members must first inform the recording party that they are engaged in prohibited activity unrelated to the act of recording and specify the nature of the prohibited activity (e.g., blocking traffic, instructing a witness how to answer an officer's questions). Members must give the recording party a reasonable opportunity to comply before taking further enforcement actions. When feasible, such warnings should include specific directions for individuals who wish to lawfully record without interfering (e.g., ask them to step to the curb or outside the crime scene; or ask the recording party to stop coaching the witness).
  2. Members must document on a wearable camera system any instance in which they request or order a person to stop recording police activities and must include an explanation of the basis for the request or order. In the event that no working wearable camera system is available, a member shall explain the circumstances on a Form 1 to be submitted to the member's supervisor before the completion of the member's tour of duty.
  3. In the event that a member determines that a recording party should be cited or arrested for violating legitimate and reasonable legal restrictions specified above, the member must first obtain approval from a supervisor after explaining the facts and circumstances to a supervisor and recording the explanation on the member's wearable camera system or, if no wearable camera system is available, completing a Form 1 to be submitted to the member's supervisor before completion of the member's tour of duty.
  4. The citing or arrest of a recording party does not provide an exception to the warrant requirement justifying the search of the individual's recording equipment or media. While equipment may be seized incident to an arrest, the downloading, viewing, or otherwise accessing files requires a search warrant. Files and media shall not be altered, deleted, or erased under any circumstances.

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## II. Guidelines for Handling of Evidence on a Recording Device

- A. Citizens have a high expectation of privacy in the contents of cellular phones and other recording devices. Members must have the expressed consent of the owner or must obtain a search warrant before conducting any type of viewing or search of such devices, unless in the rare, exigent circumstance where there is an immediate threat to public safety requiring viewing of content captured by a recording party. The following guidelines shall be followed:
1. If there is a reasonable basis to believe that a citizen's recording device is evidence of a crime or contains evidence of a crime; other than evidence already captured by the member's wearable camera system, the member shall immediately inform a supervisor. Examples would be when a bystander's recording device captures images of an active shooter or a suspect in a crowd.
  2. In the presence of a supervisor, members may seek the consent of the recording party to access the recording or recording device, as follows:
  3. Members must document on a wearable camera system whenever they ask a reporting party to access a recording or the recording device. In the event that no working wearable camera system is available, members shall document the circumstances on a Form 1 and submit the Form 1 to the member's supervisor before the completion of the member's tour of duty.
  4. Consent must be given voluntarily. Members shall not, implicitly or explicitly, coerce consent to take possession of any recording device or the information it may contain.
    - a. Members first should ask the recording party to share the recording via airdrop, text, or email to the members' City-provided accounts.
    - b. If the recording party does not agree to share the recording via airdrop, text, or email, members may ask for expressed consent to take possession of the device.
    - c. If the recording party declines both of these requests, members may ask permission to use their own recording devices (i.e., cell phone or wearable camera system) to videotape the footage from the recording party's device.
- B. When the individual refuses each of the above requests, if the member's on-scene supervisor determines that there is probable cause to believe that the recording device or medium contains critical evidence related to a serious crime, and if such evidence is in immediate jeopardy of being tampered with, altered, deleted, or destroyed, then a member may temporarily secure the recording device while a legal subpoena, search warrant, or other valid court order is obtained. The recording device shall be properly logged in as personal property.

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1. The recording device's seizure must be no longer than reasonably necessary for the member, acting with diligence, to obtain a warrant to seize the recording.
  2. Members shall not make any attempt to view, download, or otherwise access any material contained on the recording device or medium without first obtaining a search warrant unless a warrantless search is justified by an immediate threat to public safety, such as a fleeing violent fugitive whose image is captured only on the recording device. Members are cautioned that such exigent circumstances will be rare and that obtaining a search warrant should be considered a requirement for accessing and retaining a citizen's recording device without the citizen's expressed consent.
- C. Members shall not seek to view content other than the recording of the police activities or evidence of the crime. In all circumstances, no content is sought, viewed, downloaded, or copied other than the recording of the police activities or evidence of the crime.

**THIS ORDER SUPERSEDES ANY PREVIOUSLY ISSUED DIRECTIVE OR POLICY FOR THIS SUBJECT AND WILL REMAIN EFFECTIVE UNTIL RESCINDED OR SUPERSEDED.**