

General Order J-16



Subject VIDEO RECORDING OF POLICE ACTIVITY		
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By Order of the Police Commissioner

POLICY

It is the policy of the Baltimore Police Department to ensure the protection and preservation of every person's Constitutional rights.

In furtherance of this policy, no member of the Baltimore Police Department may prevent or prohibit any person's ability to observe, photograph, and/or make a video recording (with or without a simultaneous audio recording) of police activity that occurs in the public domain, so long as the person's location, actions, and/or behavior do not create a legitimate, articulable threat to Officer safety, or an unlawful hindrance to successful resolution of the police activity.

DEFINITIONS

Hindering - The common law criminal misdemeanor of obstructing and hindering a Police Officer in the performance of his/her police duties. The elements of this offense are:

1. The Police Officer is engaged in the performance of an official police action or duty;
2. The accused bystander commits an act, or perhaps an omission, which obstructs or hinders the Police Officer in the performance or completion of that official police action or duty;
3. The accused bystander knew, or should have known, of the Officer's identity as a sworn law enforcement officer (i.e., the Officer was in uniform, was wearing some outermost garment on which the word "POLICE" was printed, etc.);
4. The accused bystander knew, or should have known, that the Officer was engaged in an official police action or duty; and
5. The accused bystander intended to obstruct or hinder the Police Officer by the act or omission described in item 2.

NOTE: Members may refer to Police Commissioner's Memorandum 13-10, "Quality of Life Offenses - Core Legal Elements," page 10, under the section entitled "HINDERING," for additional explanation.

Photographing - The act of capturing and storing a still image, whether in an electronic/digital format, or on any type of light-sensitive film (e.g., traditional 35mm film).

Video Recording - The act of capturing a series of images that, when replayed in succession, reproduce a sequence of activities in motion. Video recordings may be stored on a length of light-sensitive film, a videotape cassette, or in a digital format (e.g., a removable memory card), and may or may not contain a simultaneous audio recording.

Video Recording Device - For the purposes of this General Order, a Video Recording Device includes, but is not limited to, any device capable of capturing a still or moving image(s), regardless of whether or not a simultaneous audio recording is included. Examples may include any of the following devices:

- A cellular telephone of any make, model, or manufacturer, including those devices referred to as “Smart Phones.”
- A Personal Digital Assistant, also known as a Personal Data Assistant or PDA.
- A tablet-style mobile computer, commonly referred to simply as a “tablet,” such as an Apple iPad or a BlackBerry PlayBook.
- Any camera, whether still-photo and/or video, of any make, model, or manufacturer, regardless of whether or not the device is capable of capturing a simultaneous audio recording, and regardless of how the device stores the images it captures.

GENERAL INFORMATION

It is increasingly common for uninvolved bystanders at the scene of police activity to photograph and/or video record the actions of Police Officers and their conduct. Members of the Baltimore Police Department should simply assume that, at any time, a member of the general public is likely to be observing, and perhaps even photographing or video recording, their activities.

As a result, members must understand that any bystander has an absolute right to photograph and/or video record the enforcement actions of any Police Officer so long as the bystander’s actions do not:

1. Place the safety of the bystander, or of any Police Officer(s), witness(es), victim(s), or suspect(s), in jeopardy;
2. Hinder the execution or performance of an Officer’s official duties;
3. Interfere with or violate any section of any law, ordinance, code, or criminal or traffic article;
4. Involve an intrusion into any crime scene, private property, or other location under lawful police control and/or not normally accessible to the general public;
5. Threaten, by words or actions, other persons; or
6. Attempt to incite an immediate breach of the peace or incite others to commit a violation of the law.

In and of themselves, the acts of observing, photographing, and/or making a video recording of any police activity that occurs in a public setting are not criminal offenses. On their own, these acts **DO NOT** constitute probable cause for the arrest of the observer/bystander, and they **DO NOT** provide any justification whatsoever for any member of the Baltimore Police Department, **without a Search and Seizure Warrant** or other appropriate court order, to review, seize, damage, erase, or otherwise inspect the contents of a person’s camera or video recording device.

SPECIAL CIRCUMSTANCES

Nothing in this General Order should be construed by members of the Baltimore Police Department as an elimination of their ability to seek out, collect, or otherwise gather evidence in the course of a criminal investigation.

If an Officer has **probable cause** to believe, or exigent circumstances indicate, that a bystander is in possession of any still photos/images, video recordings, and/or audio/sound recordings that are, or could reasonably be considered, evidence related to a crime and/or the identification of a person involved in a crime, members may take all lawful actions to collect that evidence.

However, members seeking to obtain material contained on a camera or video recording device that is the private property of a bystander must recall that the camera or video recording device, and the bystander who possesses it, enjoy the same Constitutional protections from unreasonable search and/or seizure as they would in any other law enforcement activity or investigation.

Thus, unless the bystander voluntarily consents to: surrendering his/her camera or video recording device; an examination of its contents; and a seizure by a Police Officer of any images or videos contained within it, members **MUST** adhere to the requirements of this Order **AND** to the requirements of General Order J-7, "Search and Seizure Warrants."

REQUIRED ACTION**ROUTINE ENCOUNTERS WITH THE GENERAL PUBLIC****Member**

1. Upon discovery that a bystander is observing, photographing, or video recording the conduct of police activity:
 - 1.1. DO NOT impede or prevent the bystander's ability to continue doing so based solely on your discovery of his/her presence.
 - 1.2. DO NOT seize or otherwise demand to take possession of any camera or video recording device the bystander may possess based solely on your discovery of his/her presence.
 - 1.3. DO NOT demand to review, manipulate, or erase any images or video recording captured by the bystander based solely on your discovery of his/her presence.
 - 1.4. For investigative purposes, be mindful of the potential that the bystander may witness, or capture images/video of events considered at some later time to be material evidence.
2. BEFORE taking any police action which would stop a bystander from observing, photographing, or video recording the conduct of police activity, Officer(s) must have observed the bystander committing some act that falls within one of the six numbered conditions listed in the section of this Order entitled "GENERAL INFORMATION."
3. If it becomes necessary to effect the arrest of a bystander who is or has been observing, photographing, or video recording police activity:

- 3.1. Ensure the arrest is for an unlawful activity or criminal offense (e.g., disorderly conduct, hindering, assault in any degree, etc.).
- 3.2. Notify the appropriate Permanent Rank Supervisor that an arrest of this nature has been made.
- 3.3. Clearly articulate the facts and circumstances that led to the arrest in all subsequent reporting and charging documents.

NOTE: All field reports and charging documents should clearly establish that the arrest was based on probable cause to believe that the bystander had committed, was committing, or was about to commit a criminal offense.

The fact that the bystander had been observing, photographing, and/or video recording police activity DOES NOT constitute probable cause and should never be the reason for any arrest.

4. Do not compromise the integrity of any established crime scene or other secured/restricted area so that a bystander may observe, photograph, or video record police activity.
5. A bystander's desire or intent to observe, photograph, or video record police activity does not entitle him/her to:
 - 5.1. Trespass on private property.
 - 5.2. Place him- or herself in physical danger (e.g., within an area defined by members of the SWAT Team as an "inner perimeter").
 - 5.3. Enter another person's private dwelling, storehouse, etc.
 - 5.4. Enter into or upon any established, marked crime scene.
 - 5.5. Enter into or upon any area not accessible to the general public.
6. In public areas, any form of identification referred to as "press credentials" does not extend any special privileges or access to any individual. Members of the press and members of the general public enjoy the same rights in any area accessible to the general public.
7. No individual is required to display "press credentials" in order to exercise his/her right to observe, photograph, or video record police activity taking place in an area accessible to, or within view of, the general public.

Permanent Rank Supervisor / OIC

1. If possible, respond to any scene where members under your supervision believe that the presence of a bystander who is observing, photographing, and/or video recording their conduct is unlawfully hindering or interfering with the successful execution of their official duties.
2. At any scene where the actions of a bystander who is observing, photographing, and/or video recording police activity are approaching the level of a criminal offense:
 - 2.1. Ensure adequate police attention remains focused on whatever situation originally required a police response.

NOTE: All members should bear in mind that, on rare occasions, they may encounter a person or group of persons who deliberately create hazardous conditions with the intent of provoking an inappropriate police response.

Supervisors shall not allow subordinates under their supervision to become distracted from their professional duties if it is suspected that this type of deliberate provocation is occurring.

- 2.2. If tactically feasible, inform the bystander that his/her actions may, if continued, rise to the level of a criminal offense and could subject him/her to arrest.
- 2.3. If possible, recommend a less-intrusive location to the bystander from which he/she may continue to observe, photograph, or video record the police activity.
3. Coordinate with the appropriate Primary Detective(s) when establishing the limits of any crime scene.

SEIZING A BYSTANDER'S VIDEO RECORDING DEVICE FOR EVIDENTIARY PURPOSES

Member

1. If a bystander is believed to possess any material that is, or could reasonably be considered, evidence related to a crime and/or the identification of a person involved in a crime, you may make a request of the bystander that he/she voluntarily surrender his/her camera, video recording device, etc., into police custody.
 - 1.1. If the individual CONSENTS to your request:
 - 1.1.1. Exercise due care and caution with any of the individual's property or electronic device(s).
 - 1.1.2. Complete a Form 93/56, "Property Receipt," and provide the pink copy to the individual. Retain all other copies.
 - 1.1.3. Provide the individual with the name and contact information of the Officer who took custody of the individual's property.
 - 1.1.4. In the "Property Listing / Evidence Recovered" section of any applicable field report(s), list the item(s) surrendered by the individual and held/submitted as evidence.
 - 1.1.5. Document your request, and the individual's response, in the narrative of applicable field reports and/or charging documents.
 - 1.1.6. DO NOT make any attempt to view, download, or otherwise access any material contained on the device.
 - 1.1.7. Protection of any potential evidence is paramount. Only members of the Cyber and Electronic Crimes Unit may make efforts to access material contained on the device.

NOTE: Upon taking custody of the device, members are strongly encouraged to either remove the device's battery or switch it to a "Power Off" condition. This will aid in preventing any remote access to or deletion of the data or other material stored within it.

1.1.8. Submit the recovered camera, video recording device, etc., in accordance with General Order N-1, "Control of Property and Evidence."

1.2. If the individual REFUSES your request:

1.2.1. In the absence of exigent circumstances, develop the necessary probable cause to support an application for a Search and Seizure Warrant.

1.2.2. Coordinate with the Duty Detective, Cyber and Electronic Crimes Unit, for guidance and technical expertise in the wording and preparation of both Form 02/188, "Application for Search and Seizure Warrant," and any Affidavit(s) submitted in support of your application.

NOTE: During normal working hours, the Cyber and Electronic Crimes Unit may be contacted by calling 443-984-7135. At any other time, the on-call Duty Detective may be contacted via the Shift Commander, Communications Section.

1.2.3. If there is PROBABLE CAUSE to believe that evidence exists on an individual's device, AND there is PROBABLE CAUSE to believe that the evidence is in immediate jeopardy of being tampered with, altered, deleted, or destroyed, you may TEMPORARILY seize the device for safekeeping/preservation of the evidence while the appropriate application(s) for Search and Seizure Warrant(s) are made.

NOTE: Upon taking temporary custody of the device for the purposes of safekeeping/preservation, members are strongly encouraged to either remove the device's battery or switch it to a "Power Off" condition. This will aid in preventing any remote access to or deletion of the data, photographs, etc., stored within it.

1.2.4. DO NOT make any attempt to view, download, or otherwise access any material contained on the device.

1.2.5. Protection of any potential evidence is paramount. Only members of the Cyber and Electronic Crimes Unit may make efforts to access material contained on the device.

1.2.6. Apply for, execute, and return any Search and Seizure Warrant(s) in accordance with General Order J-7, "Search and Seizure Warrants."

1.2.7. Submit the recovered camera, video recording device, etc., in accordance with General Order N-1, "Control of Property and Evidence."

1.2.8. Complete all appropriate field reports.

Permanent Rank Supervisor / OIC

1. Ensure that any camera or video recording device that has been used to photograph and/or video record police activity comes into the custody of the Baltimore Police Department:
 - 1.1. Through the voluntary consent of the individual in possession of the item.
 - 1.2. Through execution of a Search and Seizure Warrant.
 - 1.3. Through some valid exception to the warrant requirement.
2. Permanent Rank Supervisors must provide the review and approval of any application for a Search and Seizure Warrant as required by General Order J-7, "Search and Seizure Warrants."

Duty Detective, Cyber and Electronic Crimes Unit

1. Provide guidance and assistance to members on those occasions when an Application for a Search and Seizure Warrant is made for a camera, video recording device, etc., believed to contain evidence related to a criminal investigation.
 - 1.1. Specific attention should be given to helping those members properly define or describe the various data formats and storage devices they may be seeking in their Warrant Application.
2. Make any appropriate recommendations that may assist in the preservation of data, photographs, video "clips," etc.
3. In the course of a criminal investigation, and/or at the request of a member of the Department, access and download evidentiary materials contained on a device in that member's custody.

COMMUNICATION OF POLICY

Supervisors shall be responsible for communication of this policy to their subordinates, and to ensure their compliance. This Order is effective on the date of publication, is to be read at all roll calls for five consecutive days, and is to be posted on all Departmental Bulletin Boards.