



## Video Recording of Police Activity

### .01 Policy

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

No member of the Bladensburg Police Department may prevent or prohibit any person's ability to observe, photograph, 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 behavior do not create a legitimate, articulable threat to Officer safety, or an unlawful hindrance to successful resolution of the police activity.

### .02 Terms

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

The Police Officer is engaged in the performance of an official police action or duty;

1. 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;
2. 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 work "Police" was printed, etc.);
3. The accused bystander knew, or should have known, that the Officer was engaged in an official police action or duty; and,
4. The accused bystander intended to obstruct or hinder the Police Officer by the act or omission described in paragraph 2.

**Lawful Order:** To be a "lawful order," the order must be made to prevent a disturbance of the public peace. Also, if the order is intended to stop the noise being made by the subject, then the order must be limited to the loudness of the subject's speech ("Stop shouting.") rather than its content ("Stop cursing or I will arrest you.").

**Photographing:** The act of capturing and storing a still image whether in an electronic/digital format, or on any type of light-sensitive film (i.e., 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 any length of light-sensitive film, a videotape cassette, or in a digital format (i.e., 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 the make, model, or manufacturer, including those devices known as Smart Phones;
- A Personal Digital Assistant, also known as a Personal Data Assistant or PDA;
- A tablet-type mobile computer, commonly referred to simply as a "tablet," such as an Apple iPad, Blackberry, or Play Book; and,
- Any camera, whether still-photo 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.

### .03 Governing Legislation and Reference

**Governing Legislation:**

United States Constitution, Amendment 1-Freedom of Religion, Press, Expression. (Ratified 12/15/1791).

United States Constitution, Amendment 4-Search and Seizure. (Ratified 12/15/1791).

*Christopher Sharp v. Baltimore City Police Department, et al.*, U.S. D.Md., Civil Action No. 11-cv-02888-BEL (March 2012).

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*Simon Glik v. City of Boston, et al.*, US Court of Appeals, 1st Cir. (Decided August 2011).

*Andre Devon Arthur v. State*, Court of Special Appeals, (Decided July 2010).

*Gerald Thomas Titus, Jr. v. State*, Court of Appeals (Decided September 2011).

Forms:

Request for Computer Analysis (Form PG 4549).

Consent to Search (Form #638).

Search and Seizure Warrant (Form PG 837A-E).

### .04 Procedure

#### A. General

It is increasingly common for uninvolved bystanders at the scene of police activity to photograph or video record the actions of Police Officers and their conduct. Members of the Bladensburg 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 or video record the enforcement actions of any Police Officer so long as the bystander's actions do not:

- Place the safety of the bystander or of any Police Officer(s), witness(es), victim(s), or suspect(s), in jeopardy;
- Hinder the execution or performance of an Officer's official duties;
- Interfere with or violate any section of any law, ordinance, code, or criminal or traffic article;
- Involve an intrusion into any crime scene, private property, or other location under lawful police control or not normally accessible to the general public;
- Threaten, by words or actions, other persons; or,
- 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, 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, and they DO NOT provide any justification whatsoever for any member of the Bladensburg 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.

#### B. Special Circumstances

Nothing in this General Order should be construed by members of the Bladensburg 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 or images, video recordings, or audio/sound recordings that are, or could reasonably be considered, evidence related to a crime 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.

Unless the bystander voluntarily consents to: surrendering his or 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 Search and Seizure Warrants.

#### D. Routine Encounters with the General Public

##### Member Responsibility

Upon discovery that a bystander is observing, photographing, or video recording the conduct of police activity:

- **DO NOT** impede or prevent the bystander's ability to continue doing so based solely on your discovery of his or her presence;

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- 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 or her presence;
- DO NOT demand to review, manipulate, or erase any images or video recording captured by the bystander based solely on your discovery of his or her presence; and,
- For investigative purposes, be mindful of the potential that the bystander may witness, or capture images or video of events considered at some later time to be material evidence.

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."

If it becomes necessary to effect the arrest of a bystander who is or has been observing, photographing, or video recording police activity:

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

**All 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, or video recording police activity DOES NOT constitute probable cause and should never be the reason for any arrest.**

DO NOT compromise the integrity of any established crime scene or other secured or restricted area so that a bystander may

observe, photograph, or video record police activity.

A bystander's desire or intent to observe, photograph, or video record police activity does not entitle him or her to:

- Trespass on private property;
- Place him or herself in physical danger (i.e., within an area defined by members of the Emergency Services Team as an "Inner perimeter");
- Enter another person's private dwelling, storehouse, etc.;
- Enter into or upon any established, marked crime scene; or,
- Enter into or upon any area not accessible to the general public.

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.

No individual is required to display "press credentials" in order to exercise his or her right to observe, photograph, or video record police activity taking place in an area accessible to, or within view of, the general public.

### Supervisor Responsibility

If possible, respond to any scene where members believe that the presence of a bystander who is observing, photographing, or video recording their conduct is unlawfully hindering or interfering with the successful execution of their official duties.

At the scene where the actions of a bystander who is observing, photographing or video recording police activity are approaching the level of a criminal offense:

- Ensure adequate police attention remains focused on whatever situation originally required a police response.

**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.**

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**Supervisors shall not allow subordinates to become distracted from their professional duties, if it is suspected that this type of deliberate provocation is occurring;**

- If tactically feasible, inform the bystander that his or her actions may, if continued, rise to the level of a criminal offense and could subject him or her to arrest; and
- If possible, recommend a less-intrusive location to the bystander from which he or she may continue to observe, photograph, or video record the police activity.

Coordinate with the appropriate Primary Investigator when establishing the limits of any crime scene.

### E. Seizing Photographic or Video Device for Evidentiary Purposes

#### **Member Responsibility**

if a bystander is believed to possess any material that is, or could reasonably be considered, evidence related to a crime or the identification of a person involved in a crime, the member may make a request of the bystander that he or she voluntarily surrender his or her camera, video recording device, etc., into police custody.

#### **If the Individual Consents**

- Exercise due care and caution with any of the individual's property or electronic device(s);
- Complete Consent to Search and Property Receipt forms and provide a copy to the individual;
- Provide the individual with the name and contact information of the Officer who took custody of the individual's property;
- In the property listing section of applicable report(s), list the item(s) surrendered by the individual and held or submitted as evidence;
- Document your request, and the individual's response, in the narrative of applicable reports or charging documents;
- DO NOT make any attempt to view, download, or otherwise access any

material contained on the device; and,

- Protection of any potential evidence is paramount. Only members of a Computer Forensics Unit may make efforts to access material contained on the device,

**Upon taking temporary custody of the device for the purposes of safekeeping or 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 or photographs stored within it; and**

- Complete all appropriate reports.

#### **Supervisor Responsibility**

Ensure that any camera or video recording device that has been used to photograph or video record police activity comes into the custody of the Bladensburg Police Department:

- Through the voluntary consent of the individual in possession of the item;
- Through execution of a Search and Seizure Warrant; or,
- Through some valid exception to the warrant requirement.

Supervisors must provide the review and approval of any application for a Search and Seizure Warrant as required by law.

#### **Investigator's Responsibilities**

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.

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.

Make any appropriate recommendations that may assist in the preservation of data, photographs, or video clips.

In the course of a criminal investigation, or at the request of a member of the Department, assist in submitting evidentiary materials to the appropriate forensic laboratory.

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### F. Communication of Policy

Supervisors shall be responsible for communication of this policy to their subordinates, and to ensure their compliance.

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HISTORY: Adopted July 1, 2012

This General Order supersedes all other orders and memoranda in conflict therewith.

Authority:

A handwritten signature in black ink, appearing to read "Charles L. Owens". The signature is stylized with large, flowing loops.

Charles L. Owens  
Chief of Police