

14.215 PHOTOGRAPHING, VIDEO AND AUDIO RECORDING OF DEPARTMENT PERSONNEL BY MEMBERS OF THE PUBLIC

Reference:

Procedure 12.700, Search Warrants/Consent to Search
 Procedure 12.701, Electronic Search Warrants
 Glik v. Cunniffe, 655 F.3d 78 (2011)
 Reichle v. Howards, 132 S. Ct. 2088 (U.S. 2012)
 Illinois v. McArthur 531 U.S. 326, 334 (2001)
 United States v. Scott, 987 A.2d 1180, 1191(D.C. 2010)
 State v. Smith, 124 Ohio St. 3d 163, 169 (2009)
 ORC 149.43 – Public Records
 ORC 2911.21 – Criminal Trespass
 ORC 2917.01 – Inciting to Violence
 ORC 2917.11 – Disorderly Conduct
 ORC 2917.13 – Misconduct at Emergency

Definitions:

Public Settings – Includes but is not limited to: parks, sidewalks, streets and locations of public gatherings or protests.

Record(ing) -- The act of taking photographs, video recording, or audio recording.

Probable Cause – Where the known facts and circumstances are such that a reasonable person in the same situation would believe evidence of a crime will be found.

Purpose:

To acknowledge and protect the Constitutional and legal rights of citizens to photograph, videotape and make audio recordings, including recordings of Cincinnati Police Department personnel.

Policy:

The Department recognizes that members of the general public have a First Amendment right to photograph, video record and/or audio record in any public setting or on private property, in any common area of a public or private facility where a person is permitted to be. This right includes the recording of Department personnel while they are conducting official business or while acting in an official

capacity, unless such recordings unlawfully interfere with police activity. Officers should assume that a member of the general public is likely to be observing and possibly recording their activities at all times.

Information:

Recording of people, places, buildings, structures, and events is a lawful activity and shall not be restricted by Department personnel. Recording in places where a person is permitted to be is not by itself suspicious conduct.

In areas open to the public, members of the general public enjoy the same rights given to members of the news media. No person is required to have or to display “press” credentials in order to exercise the right to record events, including police activity.

The warrantless seizure of material protected by the First Amendment (photos, videos, etc.) will be strictly scrutinized by a court. In ordinary circumstances, the seizure of cameras or recording devices without a warrant will not be considered reasonable.

Procedure:

A. Responding to Citizen Recording Incidents

1. When an officer observes a citizen taking photographs or video/audio recording, the officer **shall not**:
 - a. Order the citizen to cease recording;
 - b. Demand the citizen’s identification;
 - c. Demand that the citizen provide a reason for recording;
 - d. Detain a citizen solely for recording or for investigation of a recording;
 - e. Intentionally block or obstruct recording devices;
 - f. In any way threaten, intimidate or otherwise discourage an individual from recording.
2. Department personnel **shall not** erase or delete, or request or order any person to erase or delete any recorded images or sounds from any camera or other recording device that is in possession of any person, or that has been seized or voluntarily turned over.

3. Department personnel shall not tell people that recording police officers or police activity is not allowed, requires a permit, or requires an officer's consent.
- B. Recording Incidents Causing Interference or Imposing a Safety Risk
1. Engaging in photography, video or other recording does not grant a citizen the right to interfere with police activity.
 - a. If a citizen is recording from a position that threatens public safety, imposes a risk to the safety of an officer, or interferes with an officer's ability to perform their duties, an officer shall direct the citizen to move to a position that will not interfere or where the safety risk is lessened.
 - 1) Officers shall not order the person to stop recording.
 2. A person's recording of police activity from a safe distance, without any action to obstruct the activity or to threaten the safety of an officer, does not constitute interference as set forth in paragraph B.1.a. above.
 3. Citizens have the right to express criticism of police activity being observed. The expression **does not** constitute interference as set forth in paragraph B.1.a. above, as long as:
 - a. The expression does not jeopardize the safety of any City personnel, suspect, or bystander; AND
 - b. The expression does not incite others to violate the law.
- C. Recording Incidents on Private Property
1. Being on private property where an individual is not otherwise permitted to be, does not automatically give a citizen the right to engage in recording.
 2. If an individual engages in recording activity on private property without permission of the property owner or management, the management or property owner may request the individual leave the premises.
 - a. If the individual refuses to leave the premises after they have been requested to do so they may be in violation of ORC Section 2911.23, Criminal Trespass.

D. Handling of Evidence on a Camera or Recording Device

1. Citizens have a high expectation of privacy to the contents of cellular phones and other recording devices. An officer must have the consent of the owner, or must obtain a search warrant before conducting any type of search upon the contents of such devices.
2. If an officer has probable cause to believe a camera or other recording device contains images or sounds that are evidence of a crime, the officer shall immediately request a supervisor respond. A supervisor must be present at the scene before an officer takes any action involving a person's use of a recording device. This includes a request for voluntary consent to search, or seizure of a camera or recording device. Upon arrival of the supervisor, the officer may request the person either:
 - a. Voluntarily provide the electronic device or recording medium (e.g., the memory chip) to the officer.
 - b. Where possible and practical, and in the presence of the officer, voluntarily transmit the images or sound via electronic mail to the officer's official Department electronic mail account.
 - c. Allow the officer to take possession of the recording device or medium and process it as evidence with the owner(s) consent.
 - 1) Consent must be given voluntarily.
 - 2) The officer shall not, implicitly or explicitly, coerce consent to take possession of any recording device or information it may contain.
 - d. Allow the officer to use a Department-issued recording device (e.g., digital camera, recorder or MVR) to copy the initial sound, image, or video recording to process as evidence.
 - 1) Personal electronic devices may be used by Department personnel only as a last resort. These devices may be considered public record under ORC Section 149.43 and subject to discovery.
 - 2) Officers who use a personal recording device to record pictures, audio and video evidence while on duty will not delete or alter the recording in any way.

3. If the person voluntarily provides the device or recording medium, the officer shall:
 - a. Complete a Form a 601, Consent to Search Without a Warrant, in accordance with Procedure 12.700, Search Warrants/Consent to Search.
 - b. Complete a Form 330, Property Receipt, obtain a signature from the person who provided the property and issue a copy of the Form 330 to them.
 - c. Exercise due care and caution while handling the person's property or electronic device(s).
 - e. Not attempt to view, download, or otherwise access any material contained on the device, absent exigent circumstances.
 - f. Transport the device to the Criminal Investigations Section (CIS) Criminalistics Squad or Regional Electronics Computer Investigations (RECI).
 - 1) All forensic examinations of audio devices, cell phones, Blackberries and other similar devices shall be conducted by Criminalistics Squad.
 - 2) All forensic examinations of stored electronic computer data or hard drive based mediums are conducted by RECI.
 - g. Obtain a search warrant pursuant to Procedure 12.701, Electronic Search Warrants.
4. If the individual refuses to voluntarily provide the device or recording medium, or to electronically transmit the recording or allow a copy to be made, and the officer has probable cause to believe the evidence of a crime will be lost absent an immediate seizure of the recording device:
 - a. The on-scene supervisor will notify a command officer or Night Inspector who will assess the situation and determine whether exigent circumstances exist to permit the seizure of the device without a warrant.
 - 1) Cameras or recording devices will not be seized without a warrant unless a command officer or Night Inspector determines one of the following circumstances exist:

- a) Officers have probable cause to believe an immediate search of the seized material is necessary to prevent death or serious injury.
 - 1] Depending on the type of device, the officer will immediately respond to Criminalistics Squad or RECI, who will access the device and retrieve the evidence.
 - b) Officers have probable cause to believe critical evidence of a crime is contained on/in the recording device and:
 - 1] Officers have explained the circumstances and have been unsuccessful in gaining the voluntary consent of the person in possession of the recording device.
AND
 - 2] The seizure of the recording device is for no longer than reasonably necessary for the officer, acting with diligence, to obtain a warrant to seize the evidence contained within it.
 - c) Some other recognized exception to the search warrant requirement is present.
 - 1] Any such seizure must be a temporary restraint intended only to preserve evidence until a warrant can be obtained.
 - a] Photographs, videos, or recordings that have been seized as evidence and are not directly related to the exigent circumstance will not be viewed until a search warrant has been obtained.
- b. The City Solicitor's Office may be contacted for further instructions at 352-3334 during normal business hours.
- 1) After normal business hours the Emergency Communications Center (ECC) Supervisor at 263-8119 can provide a phone number to contact Solicitor's Office personnel.

5. Viewing/Listening to Evidence on a Recording Device
 - a. Absent exigent circumstances, officers must obtain a search warrant in accordance with Procedure 12.701, Electronic Search Warrants before viewing any photographs, videos, or listening to any recordings on a camera or memory chip that has been seized as evidence.
 - b. Officers who view or listen to a recording on a citizen's recording device, or conduct a forensic examination of the same, shall undertake reasonable efforts to ensure only materials that constitute potential evidence are accessed. Officers will refrain from examining any materials not relevant to the investigation.