MEMORANDUM
Dallas County Sheriff’s Department
Office of Administration

Date : August 20, 2019
To : All Personnel
From : Maria L. Garza, Executive Chief Deputy, Office of Administration
Subject : Special Order 2019-8-20.

The following Special Order is an addition to the 2019 General Orders, Chapter 9.3: Public Recordings of Official Acts. Please advise all affected personnel under your command of this Special Order.

I. Purpose

This policy provides employees with guidance for dealing with situations in which they are being recorded, to include photographing, videotaping, audiotaping, or both, by members of the public or the press. It is the policy of the Dallas County Sheriff’s Department to ensure the protection and preservation of every person’s Constitutional rights.

II. Policy

Members of the public, including media representatives, have a First Amendment right to record employees in public places where an individual has a right to be present, as long as their actions do not interfere with the officer’s duties or the safety of officers or others. Officers should assume that they are being recorded at all times when on duty in a public space. Reasonable time, place and manner restrictions may be placed on recording in public places.

In furtherance of this policy, no member of the Dallas County Sheriff’s 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 interrupt, disrupt, impede, or otherwise interfere with a peace officer while the peace officer is performing a duty or exercising authority imposed or granted by law. The public’s access to information regarding the official business of the Dallas County Sheriff’s Department is of critical importance to effective, transparent government.
III. Definitions

**Recording:** Capturing of images, audio, or both, by means of a camera, cell phone, audio recorder, or other device.

**Media:** The storage source for visual or audio recordings, whether by film, analog, or digital means.

**Interference with Public Duties** – A person commits an offense if the person with criminal negligence interrupts, disrupts, impedes, or otherwise interferes with a peace officer while the peace officer is performing a duty or exercising authority imposed or granted by law. (Section 38.15, Texas Penal Code)

**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/Audio Recording** – The act of capturing a series of images that, when replayed in succession, reproduce a sequence of activities in motion. Video/audio 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/Audio 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:

1. A cellular telephone of any make, model, or manufacturer, including those devices referred to as “Smart Phones.”

2. A Personal Digital Assistant, also known as a Personal Data Assistant or PDA.

3. A tablet-style mobile computer commonly referred to simply as a “tablet.”

4. 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.

IV. Procedures

A. Persons who are lawfully in public spaces or locations where they have a legal right to be present—such as their home, place of business, or the common areas of
public and private facilities and buildings—have a First Amendment right to record things in plain sight or hearing, to include police activity. Police may not threaten, intimidate, or otherwise discourage or interfere with the recording of police activities. However, the right to record is not absolute and is subject to reasonable time, place and manner restrictions, including but not limited to the following restrictions:

1. A reasonable distance must be maintained from the officer(s) engaged in enforcement or related police duties.

2. Persons engaged in recording activities may not obstruct police actions. For example, individuals may not interfere through direct physical intervention, tampering with a witness, or by persistently engaging an officer with questions or interruptions. The fact that recording and/or overt verbal criticism, insults, or name-calling may be annoying, does not of itself justify an officer taking corrective or enforcement action or ordering that recording be stopped, as this is an infringement on an individual’s constitutional right to protected speech.

3. Recording must be conducted in a manner that does not unreasonably impede the movement of emergency equipment and personnel or the flow of vehicular or pedestrian traffic.

4. The safety of officers, victims, witnesses, and third parties cannot be jeopardized by the recording party.

B. Arrest

1. Persons who violate the foregoing restrictions should be informed that they are engaged in prohibited activity and given information on acceptable alternatives, where appropriate, prior to making an arrest.

2. Arrest of a person who is recording officers in public shall be related to an objective, articulable violation of the law unrelated to the act of recording. The act of recording does not, in itself, provide grounds for detention or arrest.

3. Arrest of an individual does not provide an exception to the warrant requirement justifying search of the individual’s recording equipment or media. While equipment may be seized incident to an arrest, downloading, viewing, or otherwise accessing files requires a search warrant. Files and media shall not be altered or erased under any circumstances.
C. Seizure of Recording Devices and Media

1. Absent arrest of the recording party, recording equipment may not be seized. Additionally, officers may not order an individual to show recordings that have been made of enforcement actions or other police operations.

2. If there is probable cause to believe that evidence of a serious crime has been recorded, an officer should:

   a. Advise and receive instructions from a supervisor;

   b. Ask the person in possession of the recording if he or she will consent to voluntarily and temporarily relinquish the recording device or media so that it may be viewed and/or copied as evidence; and

   c. In exigent circumstances, in which it is reasonable to believe that the recording will be destroyed, lost, tampered with or otherwise rendered useless as evidence before a warrant can be obtained, the recording device or media may be seized under a temporary restraint. A warrant must be obtained in order to examine and copy the recording and the chain of custody must be clearly documented per department policy.

3. In exigent situations where it is objectively reasonable to believe that immediate viewing of recordings is necessary to prevent death or serious bodily harm of another before a warrant can be authorized, the recording device or media may be seized and viewed.

4. Whenever a recording device or media is seized without a warrant or obtained by voluntary consent, the seized item shall be held in police custody no longer than reasonably necessary for the police, acting with due diligence, to obtain a warrant. The device must be returned at the earliest possible time and its owner/operator given instruction on how it can be retrieved. In all cases property receipts shall be provided to the owner.

D. Supervisory Responsibilities

A supervisor should be summoned to any incident in which an individual recording police activity is going to be, or will most likely be, arrested or when recording equipment may be seized without a warrant or lawful consent.

E. General Information

It is increasingly common for uninvolved bystanders at the scene of police activity to photograph and/or video/audio record the actions and conduct of police officers. Officers of the Dallas County Sheriff’s Department should simply assume at any time a
member of the general public is likely to observe, and perhaps even photograph or video/audio record their activities. As a result, officers must understand any bystander may have a right to photograph and/or video/audio record the enforcement actions of any police officer so long as the bystander’s actions do not interrupt, disrupt, impede, or otherwise interfere with a Peace Officer while the Peace Officer is performing a duty or exercising authority imposed or granted by law.

The 2019 General Orders will remain in effect and can be found on the Dallas County website, www.dallascounty.org, under Dallas County Intranet. You can click on Dallas County Intranet and find the Dallas County Sheriff’s Department link. The General Orders will be listed on the index. Please advise all officers under your command of this Special Order and be sure that this memo is posted and read at all detail meetings for the next four days. All personnel are required to sign for this memo acknowledging that they have read it and/or heard it read, and fully understand the contents thereof. If there are any questions concerning the content of this memo, ask your immediate supervisor.

Maria L. Garza
Executive Chief Deputy
Office of Administration
August 22, 2019

Certified Mail No. 7009 0820 0000 2781 053

Office of the Attorney General
Open Records Division-
Education and Enforcement
P.O. Box 12548
Austin, TX 78711-2548

RE: Complaint of Avi S. Adelman

Dear Sir/Madam:

On August 21, 2019, the Dallas County Sheriff’s Office received notice of a Public Information Act complaint by Avi. S. Adelman. See attached Exhibit 1. On June 28, 2019, Mr. Adelman had requested any general orders/directives/department policy related to the concept of the public right of photography. On June 28, 2019, the Sheriff’s Department did not have any records responsive to his request because it did not have any general orders/directives/department policy relating to the public right of photography. Mr. Adelman was advised by email that we had no records responsive to his request. However, on August 20, 2019, the Sheriff’s Department adopted a special order on the right to photograph employees. Even though this document would technically not be subject to Mr. Adelman’s public information request because it was created after the request, we are releasing it to him in good faith compliance with his request. A copy of the new policy is attached to this letter along with the certification that you require. We have no other records responsive to Mr. Adelman’s request.

This should resolve this complaint. Please contact me if you need any further information.

Sincerely,

Elizabeth Lutton
Legal Advisor
Attachments

Certified Mail No. 7009 0820 0000 2781 0541

Mr. Avi S. Adelman
5620 Eastside Avenue
Dallas, Texas 75214