I. PURPOSE

The purpose of this policy is to provide officers with guidance for dealing with situations in which they are being recorded, to include videotaping, audiotaping, or both, by members of the public or the media.

II. POLICY

It shall be the policy of the Division of Police that members of the public, including media representatives, have an unambiguous First Amendment right to record officers in public places, 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.

It shall also be the policy of the Division of Police to foster a positive image to the community that it serves. As technology becomes more prevalent and readily available, many citizens may choose to audio and/or video record police activities (e.g. traffic stops, arrests, crime scenes, etc.) Recording may be done on still and video cameras, cell phones (including smart phones), PDA’s, tablets, audio recorders or any other device capable of recording. This activity is legal with certain limitations and Division employees shall not prohibit the public or media from audio and/or video recording police activities as long as these legal requirements are met.

III. DEFINITIONS

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

Media: The storage source for visual or audio recordings, whether by film, analog or digital means. This includes memory cards/chips capable of storing the recorded media.

Enforcement Action: For the purposes of this policy, enforcement action includes, but is not limited to, arrest, detention, the seizure of the recording equipment, the deletion of the audio and/or video recording, damaging the equipment or threatening, intimidating, discouraging or coercive conduct aimed at ending the recording or blocking or otherwise obstructing the ability to record without a proper law enforcement objective.

IV. PROCEDURES

Persons who are lawfully in public spaces or locations where they have legal right to be present 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.

Division employees shall not prohibit the recording of law enforcement activity or take enforcement action under circumstances where the person making the recording has the legal right to be present in the area where he or she is located.

A. Recording law enforcement activities from an area where the subject is lawfully present does not constitute an offense. Public locations include, but are not limited to, the following:

1. Parks
2. Sidewalks
3. Streets
4. Locations of public lawful civil disturbances or demonstrations
5. An individual’s home or business
6. Common areas of public and private facilities or buildings
7. Any other public or private facility or building at which the individual has a legal right to be present

B. Division employees shall not:

1. Demand the individual’s identification and/or have him or her state a reason why he or she is taking photographs or recording.
2. Take enforcement action by using intimidation or coercion to end the recording.
3. Block or obstruct the individual’s ability to record from an area where he or she has a legal right to be present.
4. Discourage the individual from continuing the recording, including the use of threats, intimidation or coercion.
5. Erase, delete, tamper with or otherwise corrupt a recording held by an individual.

C. The right to record is not absolute and is subject to legitimate and reasonable legal restrictions, as follows:

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.
   a. Individuals may not interfere through:
1. Direct physical intervention

2. Tampering with a witness

3. Persistently engaging an officer with questions or interruptions.
   b. Individuals may not enter a clearly marked crime scene without authorization.

3. Recordings 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.

D. 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 right to protected speech.

V. ARREST

Arrests or issuance of citations to persons recording police activities must be performed with caution in order to avoid civil litigation, potential public criticism, and the possible escalation of incidents in public places. This is particularly the case during demonstrations in which arrests can trigger increased tension, heightened emotions, and violence.

Arrests of individuals who are recording police activities must be based on factors that are unrelated to the act of recording alone. Recording of the police does not, of itself, establish legal grounds for arrest, issuance of citations, or other actions to restrict such recordings.

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.

3. When an officer is considering taking enforcement action, such as an arrest or the seizure of a recording device, the officer shall contact his or her supervisor for direction.
   a. A supervisor who reasonably believes that the individual’s conduct is approaching a criminal offense shall seek the voluntary cooperation of him or her to move to a location where his or her actions will not interfere but he or she will still be able to record the event.

4. Arrest of an individual does not provide an exception to the warrant requirement justifying search of the individual’s recording equipment or media.
a. While equipment may be seized [for safe keeping] incident to an arrest, downloading, viewing, or otherwise accessing files requires a search warrant.

b. Files and media shall not be erased, deleted, tampered with or otherwise corrupted under any circumstances.

VI. CONFISCATION OF RECORDING DEVICES AND MEDIA

A court order or warrant is always preferable prior to conducting a search or seizure. Warrantless searches and seizures are presumptively illegal and, in case of searches and seizures protected under the First, Fourth, and Fourteenth Amendments to the Constitution, solid grounds must be established prior to taking such actions.

Officers and supervisors shall keep in mind that there is a heightened reasonableness requirement when officers seek to seize items protected by the First Amendment, including recordings under this policy. As a result, more facts and circumstances and a greater government interest must be present before officers and supervisors should consider such a seizure.

1. Absent arrest of the recording party, recording equipment may not be confiscated.

2. Officers may not order an individual to show recordings that have been made of enforcement actions or other police operations.

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

   a. Request assistance from a supervisor.

   b. The supervisor shall seek the consent of 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.

   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 confiscated under a temporary restraint.

4. A warrant must be obtained in order to examine and copy the recording and the chain of custody must be clearly documented per Division policy.

5. 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 confiscated and viewed.

6. Whenever a recording device or media is seized without a warrant or obtained by 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.
7. When a seizure of the recording or recording device is authorized by law:

   a. The device must be returned at the earliest possible time and its owner/operator given instruction on how it can be retrieved.

      1. The device shall be maintained in custody only as long as necessary to allow the appropriate investigator to seize the necessary recording from the device in order to support the admissibility of the recording into evidence.

      2. The device shall ordinarily be returned to its lawful owner within 72 hours, unless otherwise authorized by a court.

   b. Upon return of the device to its lawful owner, the recording itself shall remain intact.

8. Without exception, police may not destroy or delete audio and video recordings whether they are obtained with a warrant or through a bona fide exception to the warrant requirement.

VII. SUPERVISORY RESPONSIBILITIES

A supervisor should be summoned to any incident in which an individual’s recording equipment may be seized without a warrant or lawful consent.