Section 50.01 PURPOSE
This policy provides officers 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.

Section 50.02 POLICY

A. The Keene Police Department recognizes that, as public servants, the actions of police officers that occur in a public space are subject to public view and scrutiny. Members of the public, including media representatives, have an unambiguous First Amendment right to record officers in public spaces, as long as their actions do not interfere with the officer's duties or the safety of officers or others.

B. Officers should assume that they are being recorded at all times when on duty in a public space.

Section 50.03 DEFINITIONS

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

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

C. Public Space: Any location that is open and legally accessible to the public. This includes, but is not limited to, places such as parks, public sidewalks, streets, and buildings designated for public use such as libraries and the common areas of government buildings. This also includes the portions of the police department that are open to the public, such as the lobby and unrestricted parking lot.
Section 50.04 PROCEDURES

A. Individuals who are in a place where they have a legal right to be—such as their home, place of business, or any public space—have a right to record things in plain sight or hearing which occur in that place, to include police activity.

B. When encountering an individual who is recording in a public space, officers shall not:
   1. Threaen arrest;
   2. Threaten use of force;
   3. Intimidate; or
   4. Otherwise discourage or interfere with the lawful recording of police activities.

Section 50.05 LIMITATIONS ON THE RIGHT TO RECORD POLICE ACTIONS

The right to record is not absolute, and is subject to legitimate and reasonable legal restrictions. Individuals may not:

A. Trespass on private property; or

B. Put themselves or others in danger; or

C. Enter a marked crime scene; or

D. Interfere with police in the performance of their duties (This includes tampering with evidence or a witness, persistently engaging an officer with questions or interruptions, or impeding emergency responders or vehicle traffic). Verbal criticism of officers does not of itself constitute interference and does not warrant ordering that the recording be stopped; or

E. Enter any area that is not accessible to the general public; or

F. Enter a private dwelling or similar private space without the owner’s permission.

Section 50.06 OFFICER RESPONSE TO INDIVIDUALS WHO ARE RECORDING

A. Wherever possible, officers shall ignore the presence of an individual who is engaged in lawful recording of police activities.
B. An officer who responds to a service call, or who is otherwise drawn into an incident, concerning an individual who is recording shall:

1. Activate his/her body worn camera (BWC) and ensure that it is recording;

2. Inform the individual that the interaction is being recorded, per Keene Police Department policy.

3. Advise the individual if/when they are doing something that is not permitted. The officer shall fully articulate why the action being performed is not permitted.

4. Direct the individual to a location at a reasonable distance where he/she may record.

5. In situations where a criminal investigation must be conducted, designate a reasonable police perimeter. This perimeter must be applied to all individuals equally and the individual who is recording police activity shall not be singled out.

C. 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.

D. Arrest of an individual does not provide an exception to the requirement to obtain a warrant for the search of the individual's recording equipment or media. While recording equipment may be seized incident to an arrest, a search warrant is required to download, view, or otherwise access files on the equipment.

E. Officers shall not destroy or delete audio or video files or recordings, regardless of whether the footage is obtained with a search warrant or bona fide exception to the warrant requirement.

Section 50.07 SEIZURE OF RECORDING DEVICES AND MEDIA

A. Officers shall not seize, or threaten to seize, an individual's recording device as a response to being recorded.

B. Officers shall not order an individual to show recordings that have been made of enforcement actions or other police operations.
C. If an officer has probable cause to believe that evidence of a serious crime has been recorded, he/she shall:

1. Consult a supervisor for direction;

2. Ask the person in possession of the recording if he/she will consent to voluntarily and temporarily relinquish the recording device or media so that it may be viewed and/or copied as evidence. The officer may also ask the individual if they will consent to e-mailing the recording to the Lieutenant or Chief of Police at their government e-mail address; and

3. Under exigent circumstances, where 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 shall be obtained prior to any examination or copying of the recording, and the chain of custody must be clearly documented per department policy.

D. Under exigent circumstances, 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.

E. 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.

Section 50.08 SUPERVISOR RESPONSIBILITIES

Supervisors shall monitor radio traffic and shall respond to any incident where:

A. An individual recording police activity is going to be, or will most likely be, arrested; or

B. When recording equipment may be seized without a warrant or lawful consent.

Section 50.09 IDENTIFICATION OF INDIVIDUALS

Officers shall comply fully with Texas Penal Code Sec. 36.02 while investigating incidents of individuals recording police activity. This statute states:
"FAILURE TO IDENTIFY.
(a) A person commits an offense if he intentionally refuses to give his name, residence address, or date of birth to a peace officer who has lawfully arrested the person and requested the information.
(b) A person commits an offense if he intentionally gives a false or fictitious name, residence address, or date of birth to a peace officer who has:
   (1) lawfully arrested the person;
   (2) lawfully detained the person; or
   (3) requested the information from a person that the peace officer has good cause to believe is a witness to a criminal offense."

A. An individual who has not been lawfully arrested shall not be required or compelled to provide their name, date of birth, or other identification. Officers shall not use the act of recording, in itself, as grounds for detention or arrest of an individual.

B. Officers responding to a call for service may detain an individual for a brief period in order to investigate the call. The individual does not commit an offense merely by refusing to provide identification while detained.

[End of General Order 50]