TRAINING BULLETIN #13-01

“Recording of Official Police Acts”

SAN ANTONIO POLICE TRAINING ACADEMY

APPROVING AUTHORITY: Captain James Flavin
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Recording of Official Police Acts

PURPOSE AND SCOPE

It is the policy of the San Antonio Police Department to protect and preserve every person's constitutional rights. In furtherance of this policy, the department recognizes that members of the general public have First, Fourth, and Fourteenth Amendment rights under the United States Constitution to audio and video record and photograph San Antonio Police Department officers in the discharge of their official duties or while acting in an official capacity. Such recordings, however, may be prohibited or limited by time, place, and manner restrictions if such recordings would interfere with or hinder the successful resolution of an official police activity, or if such recording has the potential to physically harm or endanger the health or safety of any person.

GENERAL INFORMATION AND GUIDANCE

1. The audio and video recording and photographing (hereinafter referred to as "record" or "recording") of governmental agents engaged in public duties is a form of free speech protected by the First Amendment. Private individuals may gather and disseminate information of public concern and interest, including the conduct of law enforcement officers.

   a. Police duties discharged in public settings may include a range of activities, including temporary detentions, searches, custodial arrests and use of force;

   b. Individuals have a right to record in all traditionally public spaces, including sidewalks, streets, public right-of-ways, those parts of government buildings that are open to the public, and locations of public protests. The right to record public officials is not limited to streets and sidewalks, but includes areas where an individual has a legal right to be present, including private homes, businesses and common public areas such as parks;

   c. First Amendment protections extend to recordings made on private property, including an individual recording police activity from his or her home, or other private property where such individual has a right to be present;
d. An individual may be legally restricted from crossing a police barrier, from entering an area that is closed to the public or from entering any area designated as a crime scene, even if these areas are common public areas.

2. Except under limited circumstances, officers will not search, seize, view or listen to any recording device without a warrant. Further, officers shall not threaten, intimidate or otherwise discourage an individual from recording police activities or intentionally block or obstruct recording devices.

   a. Officers will not destroy or damage recording devices, nor will officers delete or erase recordings under any circumstances;

   b. Officers will not deprive individuals of their recordings or their recording devices without first providing sufficient notice and opportunity to object, except incident to a legal arrest, officers may take custody of a recording device for the purposes of safeguarding and inventoring it, following departmental procedures. However, officers may not search, view, listen to, delete, alter or otherwise operate an individual’s recording device incident to arrest, except under the provisions contained within this policy;

   c. Officers shall not inform, order or instruct an individual that recording police activity is prohibited, requires a permit or requires an officer’s consent. Additionally, unless authorized by this policy, officers shall not:

      i. Order individuals to cease such activity;

      ii. Demand an individual’s identification if they refuse to cease recording;

      iii. Demand that an individual give an explanation for engaging in such recording; or

      iv. Detain or threaten an individual with detention or arrest if they refuse to cease recording;

   d. Officers may temporarily detain or question individuals they reasonably believe may have committed, are committing, or are about to commit any criminal offense.

   e. Officers may question and obtain identification from individuals they believe are witnesses to any criminal offense.

3. The right to record police activity is limited only by reasonable time, place, and manner restrictions. An individual who is lawfully present at the location may record police activity unless that individual engages in actions that jeopardize the safety of any person, violates any law or ordinance, or incites others to violate the law.

   a. An individual's speech and actions may be limited if they amount to obstruction of a police officer's investigation. For example, if during the recording of an officer's duties an individual tampers with a witness or persistently engages an officer who is in the midst of his or her duties, an officer may request that individual to cease his or her actions. The following examples, although not exhaustive, are instances where an officer may limit the actions of an individual in his or her recording:
i. If an individual repeatedly instructs or encourages a witness or suspect being questioned by a police officer not to respond to questions;

ii. During a police traffic stop, if an individual is on an active, congested, or busy street or highway, or his or her actions otherwise endanger the individual, other motorists, or the officer;

iii. During an active struggle with any person, a police officer may order an individual who is recording this activity to move away to a safe distance, or to leave the area altogether if circumstances warrant;

iv. During an event where police are engaged in crowd control measures in a public or private place, if an individual is encouraging other persons to defy the legal orders of an officer, an officer may order that individual to leave the immediate area.

b. An individual’s recording of police activity from a safe distance without any attendant action that obstructs, interferes or hinders the police activity or threatens the safety of others does not amount to interference. The mere expression by an individual of criticism of the police or the police activity that is occurring does not amount to interference.

i. When safe and practical to do so, if an individual's actions pose a risk to the safety of any person, officers should attempt to provide ways in which the individual can continue to exercise his or her First Amendment rights while allowing officers to perform their duties.

4. Before an officer takes any significant action involving recording devices, including warrantless search or seizure of a recording device or any arrest for conduct related to the use of recording devices, a police supervisor shall be requested to a scene to approve such actions.

a. Officers shall articulate in their required reports what actions they took and identify the supervisory officers that approved any arrests or seizures;

b. When a supervisory officer is not available to be present at a scene, the supervisor shall make efforts, with the assistance of the police dispatcher, to ensure that any available supervisor makes the scene when an arrest or seizure appears imminent; and

c. Any arrest, search or seizure shall be governed by existing policies and procedures, and any attendant activities, such as property impoundment and prisoner transportation, shall be handled in accordance with such policies.

5. Officers may request an individual’s consent to search, view or listen to recordings.

a. To aid in an investigation or gathering of information, officers may request an individual’s consent to search, view or listen to any recording. Officers will not employ explicit or implicit coercive language or actions, implied threats or covert force to gain such consent. Should an individual refuse to grant consent, an officer will not make repeated requests as such actions may be interpreted as employing implicit, coercive tactics.
b. Warrantless seizures of recording devices are only permitted if an officer has probable cause to believe that the recording device holds contraband or evidence of a crime and exigent circumstances or some other recognized exception to the warrant requirement is present. Any such seizure will be a temporary restraint of the property to preserve evidence until a warrant can be obtained.

i. "Exigent circumstances" means those emergency, unforeseen occurrences, or combination of circumstances which call for immediate action. Exigent circumstances may exist when there is a possibility that important evidence will be lost or destroyed, any person may suffer bodily injury, or any person who may have committed a criminal offense might escape.

ii. The seized recording device will not be held any longer than is reasonably necessary for officers, acting with diligence, to obtain a warrant. Depending on the circumstances including the time of day and day of the week, the length of this temporary seizure may be at least two (2) hours, but should not be more than four (4) hours before a warrant is obtained.

iii. Once seized, officers may not search, view or listen to a recording device without first obtaining a warrant and only under the supervision of the appropriate follow-up unit or administrative office (Chief’s Office, Internal Affairs, Legal Advisor's Office).

6. Individuals enjoy the same rights as the members of the media in any area accessible to the general public, and individuals do not need to display press credentials in order to exercise his or her right to observe and record police activity taking place in an area accessible to or within view of the general public, or any area where such individual has the legal right to be present. At a crime or police scene, officers shall not discourage individuals from recording police activities unless such recording impedes or threatens the safety of any person. In such instances, officers shall direct the individual to move to a safe position or distance.

For further information and guidance, please refer to http://www.justice.gov/ort/ Sources:

Christopher Sharp vs. Baltimore City Police Department, et. al. U.S. Department of Justice, Civil Rights Division

General Order J-16, Video Recording of Police Activity. Baltimore City Police Department.


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Datafiles/Training Bulletins/2013/Recording of Official Police Acts