



TACOMA POLICE DEPARTMENT

Legal Directive



SUBJECT: Photos/Audio and Video Recordings of Officers

Directive #: LD 11-005
Approved By: Chief Ramsdell

Date: May 18, 2011
Effective: Immediately

An officer may encounter citizens taking photographs or making audio or video recordings of the officer in the field. Often, such videos can appear on YouTube or similar websites. This Legal Directive provides guidance as to how an officer should deal with such situations.

Generally, it is permissible for a citizen to take photographs or make video recordings of events occurring in public. Although the Washington Privacy Act (chapter 9.73 RCW) prohibits recording private conversations, courts have held that the Act does not apply to recording communications that police officers make “in the course of performing their official and public duties”¹ or to soundless video recordings or photography.²

Similarly, a person may take photographs of infrastructure such as bridges, ships in port, power transmission lines, and other critical infrastructure. An officer should treat such situations as any “suspicious person” call and make a social contact with the photographer and attempt to gather information. However, an officer may not prevent a person from taking such photographs or demand that the person turn over film or erase digital photos. An officer should follow departmental policy in reporting information gathered from such contacts to the Regional Intelligence Group.

Although a citizen may record the public activities of police officers, an officer retains the authority to control a crime scene or investigation.³ Thus, police may restrict how closely a citizen may approach the scene of an investigation if that restriction is necessary to assure a thorough investigation or to assure the safety of suspects, victims, witnesses, bystanders, or the officers themselves. Before arresting a person for obstructing in regard to interfering with the scene of an investigation, it is best if multiple warnings are given (multiple warnings can be given in a short space of time) and if the officer briefly explains why the person has to move to another location.

Requiring a citizen to move away from a scene should be based on objectively reasonable factors. Factors to consider include:

- (1) Officers are outnumbered;
- (2) Noisy and confused scene;
- (3) Unruly behavior by suspects, witnesses, or bystanders such as threats or throwing things (particularly repeated threats or actions);
- (4) Lighting conditions and hiding places nearby that could conceal potential assailants;

¹ *State v. Flora*, 68 Wn.App. 802, 845 P.2d 1355, 1357 (1992).

² *Haymond v. Department of Licensing*, 73 Wn.App. 758, 761, 872 P.2d 61 (1994); *State v. Raymer*, 61 Wn.App. 516, 519, 810 P.2d 1383, review denied, 117 Wn.2d 1022, 818 P.2d 1098 (1991).

³ *City of Seattle v. Abercrombie*, 85 Wn.App. 393, 399, 945 P.2d 1132, review denied, 133 Wn.2d 1005 (1997) (“The ability of police officers to restrict public access to a crime scene serves a significant government interest both in facilitating a thorough investigation and assuring the safety of everyone at the scene, including bystanders, any suspects, and officers.”).

- (5) Knowledge that bystander, witness, or suspect is violent or has possessed weapons in the past;
- (6) Erratic behavior/intoxication/apparent mental health issues, particularly if the behavior is aggressive or threatening;
- (7) Refusal to follow orders such as keeping hands in view;
- (8) Multiple witnesses, victims, and/or suspects present;
- (9) Need for confidential communication with witness or victim;
- (10) Suspect at large;
- (11) Type of scene, crime occurred very recently;
- (12) Other factors if you can explain why it required action taken to control scene.

Approved By:

Donald Ramsdell
Chief of Police

By Jon Walker, Legal Advisor

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