


<b>FAIRFAX COUNTY POLICE DEPARTMENT</b>  <b>GENERAL ORDER</b>	<b>SUBJECT:</b> <b>PUBLIC RECORDING OF POLICE ACTIVITY</b>		<b>NUMBER:</b> <b>607</b>
	<b>EFFECTIVE DATE:</b> August 11, 2022	<b>REVIEW:</b> August 2025	
<b>RESPONSIBLE ENTITY:</b> Patrol Bureau			<input type="checkbox"/> New Directive <input checked="" type="checkbox"/> Replaces: 603.1 <input type="checkbox"/> Revised:
<b>ACCREDITATION STANDARDS:</b>	CALEA 83.2.5 VLEPSC		

I. PURPOSE

The purpose of this General Order is to outline guidelines and procedures for officers who encounter individuals recording ongoing police activities.

II. POLICY

The Fairfax County Police Department (FCPD) is committed to the safeguarding of all individual civil liberties and protections, to include [the First, Fourth, and Fourteenth Amendments](#) of the United States Constitution. Recording police activity is a protected form of speech, through which individuals may gather and disseminate information of public concern, to include the conduct of law enforcement officers in the public discharge of their duties. Individuals recording police activity shall not be subjected to illegal searches and seizures of their recording devices and are entitled to due process in advance of any deprivation of their property except under rare circumstances. Officers should assume they are being recorded at all times, and shall never prevent, prohibit, or interfere with the ability of any individual to observe or record police activity that occurs within the public domain except as otherwise provided in this General Order. This General Order only applies in circumstances where an individual is recording police activity.

III. DEFINITIONS

- A. Probable Cause: Facts and circumstances which, taken together with rational inferences therefrom, would lead a prudent person to believe that a crime is being, has been, or is about to be committed and that a particular person committed it or that evidence of a crime is in a particular place to be searched.
- B. Public Domain: Any place where an individual has a legal right to be present. This includes streets, sidewalks, public parks, homes, or businesses in which the individual is lawfully present, and common areas of public and private facilities.
- C. Recording: Images, audio, and/or video captured on a recording device.

- D. **Recording Device:** Any device that captures images, audio, and/or video of events in real time. This includes, but is not limited to, smart phones, tablets, computers, video cameras, cameras, digital cameras, and audio recorders.
- E. **Recording Medium:** A data storage device where images, audio, and/or video of events captured by a recording device are stored. The most common form of data storage is a memory chip but may include any storage device where the recordings have been stored or downloaded to, including, but not limited to, a computer, a smart phone, cloud services, and a tablet.

#### IV. **PUBLIC RECORDING OF POLICE ACTIVITY GENERAL PROCEDURES**

- A. Except as otherwise provided in this General Order, officers shall not prevent, prohibit, or interfere with any individual's ability to observe or record police activity occurring within the public domain. Individuals may record police activity from streets, sidewalks, and other areas where they have the right to be present.
- B. Officers shall not threaten, intimidate, order to stop recording, or otherwise attempt to discourage any individual from recording police activity, nor detain an individual for the sole reason that they are recording police activity.
- C. Officers shall not intentionally block or obstruct any recording device being utilized by an individual to record police activity, to include placing their hand over the lens of the device. This does not restrict officers from using partitions to protect the integrity of a crime scene.
- D. Officers shall not, under any circumstances, delete any recording from an individual's recording device or medium nor intentionally damage the device.
- E. **Members of the Press:** Members of the press and the general public have similar rights in the public domain. No individual shall be required to display "press credentials" in order to exercise the right to observe or record police activity in an area accessible to, or within view of, the general public. In accordance with the [Code of Virginia](#), media representatives may enter, at their own risk, any area closed where life, limb, or property may be endangered, provided such entry does not in any way directly hinder police investigations or otherwise obstruct ongoing medical or law enforcement operations.
- F. **Exceptions:** Individuals who wish to record police activity in the public domain may not directly interfere with police activity, jeopardize public safety in a manner necessitating officer action, violate the law, or incite others to violate the law. Where an individual's actions directly interfere with police operations, they should be directed to a public domain location where that interference no longer occurs. Examples of inference include, but are not limited to, the following:
  - 1. Intentionally distracting an officer discharging their lawful authority, while in

close proximity to them, in a manner that causes reasonable concern from the officer for their safety or the safety of others.

2. Intentionally placing oneself between an officer and another individual being questioned or arrested for purposes of intentionally hindering the officer.
3. Inciting bystanders or others to hinder or otherwise obstruct an officer.
4. Crossing crime scene tape or compromising crime scene integrity.

**Note:** An individual's mere vocal expression of criticism of police operations, to include the use of profane language, does not constitute interference.

- G. **Criminal Arrests:** Where an officer makes a custodial arrest or issues a criminal summons to an individual and it was known or later discovered the individual was recording the officer or police activity, the arresting officer shall notify their first-line supervisor who will respond to the scene to review all circumstances of the arrest. Where a criminal summons is issued, the individual should be informed they are free to leave and may not be detained until the supervisor responds. Officers may turn off recording devices and secure them incident to custodial arrests only. Officers may not search the device incident to arrest without (1) owner consent, (2) a search warrant, or (3) exigent circumstances.
- H. **Traffic Summons:** Where an officer issues a traffic summons to an individual and it was known or later discovered the individual was recording the officer, they shall notify their first-line supervisor, who is not required to respond to the scene.
- I. **Documentation:** Officers shall document the facts and circumstances surrounding the arrest of any individual recording police activity in an incident report in the current Records Management System (RMS). Supervisors shall review these reports and forward them to their commanders and the Public Affairs Bureau (PAB).

V. RECORDINGS THAT CAPTURE EVIDENCE OF A CRIME

- A. Where an officer develops probable cause to believe a recording device or medium contains a recording that directly captures evidence of a crime, they may lawfully obtain the recording or device in furtherance of their investigation.
- B. **Voluntary Compliance:** The officer shall first politely request, and never by threat or intimidation tactics, that the individual voluntarily provide them with either the original recording device or medium or send a copy of the recording to the officer via county e-mail, Evidence.com, or the officer's Department-issued cell phone. For recording copies, officers should take reasonable precautions to prevent potential virus infections of county electronic equipment.

C. **Non-Consensual Seizures**: Officers may seize recording devices or mediums in those circumstances where probable cause exists to believe that a device contains recorded evidence of a crime, and the individual in possession of the device or medium refuses to provide a copy or the device to the officer.

1. **Procedures for Non-Consensual Seizures**: The following procedures shall be adhered to for non-consensual seizures of recording devices or mediums:
  - a. Articulable facts must establish that probable causes exists to believe the recording device or medium contains recorded evidence of a crime, **and**
  - b. There is probable cause to believe the recorded evidence is in immediate jeopardy of being tampered with, altered, deleted, or destroyed, **and**
  - c. The individual refuses to allow officer access to the recorded evidence.
2. Prior to seizing any recording device or medium without consent, officers shall consider the totality of the circumstances, to include the severity of the recorded crime, ability to prosecute, and whether involuntary seizure is the most prudent way to obtain the recorded evidence. Any seizure of a device or mediums shall be temporary until a search warrant can be obtained and the item(s) of evidence safely recovered.
3. Any force used to obtain the recording device or medium shall be objectively reasonable and in accordance with [FCPD General Order 540, Use of Force](#).
4. Seizing officers shall promptly notify their first-line supervisor who will immediately respond to review the circumstances surrounding the seizure. Whenever possible, officers shall consult with their supervisor prior to seizing a recording device or medium that contains recorded evidence of a crime.
5. **Procedures After Non-Consensual Seizures**: The following procedures shall be followed for any seizure of a recording device or medium:
  - a. Officers shall consult with the Cyber Forensics Division through the Police Liaison Commander for guidance on securing the seized item to prevent the possibility of remote access. Absent exigent circumstances, officers shall not view, examine, or manipulate the recording device or medium.
  - b. Absent exigent circumstances, officers shall obtain a search warrant prior to viewing any item on a recording device or medium seized as evidence.
  - c. Officers shall only view that recorded evidence that constitutes potential evidence of the crime for which the device or medium was seized.
  - d. Officers shall only seize the recording device or medium for such time as

reasonably necessary to obtain a search warrant and obtain the recorded evidence contained therein.

- e. All seized recording devices or mediums shall be maintained in the same conditions while in custody as they were when originally seized.
- D. All obtained recording devices or mediums shall be handled in accordance with FCPD [General Order 612](#), Property and Evidence, and Standard Operating Procedure [04-018](#), Digital Imaging Procedures.
- E. **Documentation:** Officers shall document in an incident report the facts and circumstances surrounding either voluntarily release or seizure of a record device. Supervisors shall ensure the device was obtained in accordance with Department policy and training, and forward the report to their commanders, PAB, and the Office of the Commonwealth's Attorney.

## VI. LEGAL REFERENCES

- A. [Illinois v. McArthur](#), 531 U.S. 326 (2001)
- B. [Riley v. California](#), 134 S. Ct. 2473 (2014)
- C. [Statement of Interest of the United States, Sharp v. Baltimore City Police Dept., et al.](#), No. 1:11-cv-02888 (D. Md. Jan. 10, 2012).
- D. [Va. Code Ann. § 15.2-1714](#), Establishing police lines, perimeters, or barricades.

General Order 607 becomes effective on the above date and rescinds all previous rules and regulations pertaining to the subject.

ISSUED BY:



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Chief of Police

APPROVED BY:



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County Executive