



MILWAUKEE POLICE DEPARTMENT

STANDARD OPERATING PROCEDURE

755 – RECORDING OF POLICE ACTIVITY

GENERAL ORDER: 2014 – 54
ISSUED: August 1, 2014

EFFECTIVE: August 1, 2014

REVIEWED/APPROVED BY:
Captain Regina Howard
DATE: July 16, 2014

ACTION: Creates SOP

WILEAG STANDARD(S): 8.1.2,
11.1.6, 11.1.7, 11.2.1

755.00 PURPOSE

This policy provides police members with guidance for dealing with situations in which they are being recorded, to include video recording, audio recording, or both, by members of the public, including media representatives.

755.05 POLICY

The public, including media representatives, have an unambiguous First Amendment right to record police officers in public places, as long as their actions do not interfere with an officer's duties or the safety of officers or others. Police members should assume that they are being recorded at all times when on duty.

755.10 DEFINITIONS

A. RECORDING

Capturing of visual images, audio, or both, by means of a video 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.

755.15 PROCEDURES (WILEAG 8.1.2, 11.1.6, 11.1.7, 11.2.1)

A. Persons who are lawfully in public spaces or locations where they have a legal right to be present (such as their home, place of business, or the common areas of public and private facilities and buildings) have a First Amendment right to record things in plain sight or hearing, to include police activity. Police members may not threaten, intimidate, or otherwise discourage or interfere with the recording of police activities. However, 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 police member(s) engaged in enforcement or related police duties.

2. Persons engaged in recording activities may not obstruct police actions. For example, individuals may not interfere through direct physical intervention, tampering with a witness, or by persistently engaging a police member with questions or interruptions. The fact that recording and/or overt verbal criticism, insults, or name-calling may be annoying, does not justify a police member taking enforcement action or ordering that recording be stopped, as this is an infringement on an individual's right to protected speech.
3. Recording 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 police, victims, witnesses, and third parties cannot be jeopardized by the recording party.

B. Arrest

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 (e.g., moving persons to a less-intrusive location) prior to making an arrest. Whatever the resolution, protecting the constitutional rights of citizens will remain paramount to citing or arresting for minor infractions.
2. Arrest of a person who is recording police members in public shall be related to an objective, articulable violation of the law unrelated to the act of recording. The act of recording does not provide grounds for detention or arrest.
3. Arrest of an individual does not provide an exception to the warrant requirement justifying search of the individual's recording equipment or media. While equipment may be seized incident to an arrest, downloading, viewing, or otherwise accessing files requires a search warrant.
4. Any files and/or media coming to the attention of a police member shall not be deleted, erased or tampered with under any circumstances. Violation of this directive may constitute a violation of First, Fourth and Fourteenth Amendments.

C. Confiscation of Recording Devices and Media

1. Absent arrest of the recording party, recording equipment shall not be confiscated. Additionally, police members shall not order an individual to show recordings that have been made of enforcement actions or other police operations.
2. If there is probable cause to believe that evidence of a serious crime has been recorded, the police member should:
 - a. Advise and receive instructions from a police supervisor;

- b. Ask 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; and
 - 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 temporarily confiscated. A warrant must be obtained in order to examine and copy the recording and the chain of custody must be clearly documented.
3. 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.
 4. Whenever a recording device or media is seized without a warrant or obtained by consent, the seized item shall be held in department custody no longer than reasonably necessary 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.

D. Supervisory Responsibilities

A police supervisor should be summoned to any incident in which an individual recording police activity is going to be, or will most likely be, arrested or when recording equipment may be seized without a warrant or lawful consent.



EDWARD A. FLYNN
CHIEF OF POLICE