



BEL AIR POLICE DEPARTMENT

**MANUAL OF OPERATIONS
POLICIES AND PROCEDURES**

**LEO F. MATRANGOLA
CHIEF OF POLICE**

CHAPTER 16

TITLE: RECORDING POLICE ACTIVITY

EFFECTIVE DATE: NOVEMBER 22, 2013

NO. PAGES: 5

AUTHORIZED BY:

Chief Leo F. Matrangola

16-101: Policy

It is the policy of the Bel Air Police Department to ensure the protection and preservation of every person's Constitutional rights, including the First Amendment right to free speech, which includes gathering information about matters of public concern.

Members of the Bel Air Police Department may not prevent or prohibit any person's ability to peaceably observe or record police activity that occurs in public, or where the person recording otherwise has the right to be.

Members will not, except with a Search and Seizure Warrant or other appropriate court order, review, seize, or otherwise inspect the contents of a person's records or recording device.

Members will not, under any circumstance, seek to damage or delete any Recording Device or Recording.

Members should assume that, at any time, a member of the general public is likely to be observing and perhaps even recording their activities.

16-102: General Information

The act of observing or recording official police activity does not violate either the Maryland or Federal wiretap laws.

On its own, the act of observing or recording official police activity which occurs in public or where the person who is observing or recording has the right to be, and does not obstruct official police actions and duties, is permissible under the law.

The acts of observing and/or recording any police activity occurring in public or where the person has the right to be are not criminal offenses.

Definitions

Audio Recording – The act of recording sounds, including spoken words and ambient noises. Audio recordings may be stored on magnetic tape, an audio cassette, or in digital

RECORDING POLICE ACTIVITY

format (e.g., a removable memory card), and may or may not contain a simultaneous video recording.

Record – The output of recording. Examples include photographs (digital or film), digital video or audio clips, audio cassettes, and handwritten or typed notes.

Recording - The act of capturing information, such as by photographing, audio recording, video recording, writing, typing and drawing.

Recording Device – For the purposes of this Policy, a recording Device includes any device capable of capturing sound, words, still images, or moving images, regardless of whether the device can record sound and images simultaneously.

Examples include any of the following devices:

- Cell phones
- PDA (Personal Data Assistant)
- A digital recording device
- A tablet style mobile computer
- Any camera

Photographing - The act of capturing and storing a still image, whether in an electronic/digital format, or on any type of light sensitive film (e.g., traditional 35mm film).

Video Recording – The act of capturing a series of images that, when replayed in succession, reproduce a sequence of activities in motion. Video recordings may be stored on a length of light sensitive film, a videotape cassette, or in a digital format (e.g., a removable memory card), and may or may not contain a simultaneous audio recording.

16-103: Directive Response to Individuals Observing or Recording

Upon discovery that a bystander or person involved in a police encounter is observing or recording the conduct of police activity a member **will not**:

- Impede or prevent the person's ability to continue observing or recording.
- Demand to review, manipulate, or erase any images or video recordings captured.
- Detain, arrest, or cite (or threaten to detain, arrest, or cite) any person whom you would not detain, arrest, or cite if the person were not observing or recording police activity.

Members of the press and members of the general public enjoy the same rights in any area accessible to the general public.

RECORDING POLICE ACTIVITY

Members of the press are not required to display "press credentials" in order to exercise his/her right to observe or record police activity.

16-104: Interference with Police Activity

The First Amendment protects the right of individuals to record police activity. Individuals are not, however, entitled to interfere with police activity by obstructing or hindering members in the performance of their official duties.

Note: The observing or recording of police activity, alone, does not constitute interference.

Examples of interference include;

- Tampering with a witness
- Persistently attempting to engage an officer performing his/her duties, or taking other actions with the intent and effect of preventing members from attending to their official duties.

When practicable, members should first ask the person to change locations or stop the interfering activity before taking any other appropriate actions regarding that individual.

16-105: Other Actions beyond Observing or Recording Police Activity

While individuals have a constitutional right to observe and record police activity, a person's desire or intent to observe or record police activity does not entitle him/her to:

- Trespass on private property.
- Place him or herself in physical danger (e.g., within an area defined by members of a SRT team as an "inner perimeter").
- Place the safety of any person at the scene in jeopardy.
- Engage in criminal activity.
- Intrude into any crime scene, private property, or other location under lawful police control and/or not normally accessible to the general public
- Threaten by words or actions, or other persons: or
- Attempt to incite an immediate breach of the peace or incite others to commit a violation of the law.

16-106: Arrest for Acts beyond Observing or Recording Policy Activity

If a member believes that it has become necessary to affect the arrest of a person who is or has been observing or recording police activity, the member will:

Ensure the arrest is for a unlawful activity or criminal offense and not based solely on your discovery of his/her presence.

Notify the appropriate Supervisor as soon as safe and practical, that an arrest has been made or is being contemplated.

RECORDING POLICE ACTIVITY

Clearly articulate the facts and circumstances that led to the arrest in all subsequent reporting and charging documents.

Note: That a person had been observing or recording police activity **DOES NOT** constitute probable cause and should never be the reason for any arrest. No member shall detain or threaten a person with arrest as a way to prevent the person from continuing to observe or record the member.

16-107: Record or Recording Device for Evidentiary Purposes

If a member has probable cause to believe that an individual possesses any record or recording device that contains evidence related to a crime and/or the identification of a person involved in a crime, the member may ask the person to voluntarily surrender the record or recording device into police custody, or to voluntarily submit the images or sound via text message or email to the member's official government email account.

Voluntary Consents:

- Exercise due care and caution with the individuals property.
- Complete a Property Receipt.
- Provide the individual with the name and contact information of the member who took custody of the individual's property.
- Complete an Evidence Sheet.
- Document your request, and the individual's response, in the narrative of all pertinent reports.
- Complete an Authorization to Search and Seize Property Report.
- **DO NOT** attempt to view, download, or otherwise access any material contained in the record or recording device, unless exigent circumstances exist where the recording may provide immediate suspect / suspect vehicle description involved in a serious crime currently being investigated.

To safeguard evidence contained on the record or recording device, only those persons, possessing evidence collection/retrieval training, should make efforts to view, download, or otherwise access material contained in the record or recording device.

Refusals:

Seize the device, if sufficient exigent circumstances exist to justify a warrantless seizure as you would for any other type of evidence.

Exercise due care and caution with the individuals property.

The warrantless seizure must be predicated on the existence of exigent circumstances and probable cause to believe that the recording or recording device contains evidence of a crime, and not on the fact that the recording is of police activity.

Any warrantless seizure of this nature must be temporary in nature, followed by successful application for a Search and Seizure Warrant or by the prompt return to the individual of the intact recording and/or recording device.

RECORDING POLICE ACTIVITY

Consult with members of the Criminal Investigation Division for guidance and technical expertise in the wording and preparation of both the Application for your Search and Seizure Warrant, and any Affidavit(s) submitted in support of your application.

In the absence of exigent circumstances, members may not immediately seize or search the recording or recording device and must develop the necessary probable cause to support an application for a Search and Seizure Warrant.

16-108: Directive for Supervisors

If possible, respond to any scene where officers under your supervision believe that the presence of a person who is observing or recording their conduct is otherwise unlawful.

Ensure that any record or recording device that has been used to record police activity, comes into the custody of the Bel Air Police Department;

- Through the voluntary consent of the individual in possession of the item.
- Through execution of a Search and Seizure Warrant; or
- Through a legal warrantless seizure, necessitated by exigent circumstances, and followed promptly by an application for a Search and Seizure Warrant.

The review of any application for a search and seizure warrant will be handled in the same manner as directed in current policy.

Nothing in this policy should be construed as to prevent a reasonable member from protecting themselves or others from imminent or immediate harm.