

Policy

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Austin Police Department

Austin PD Policy Manual
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Public Recording of Official Acts

302.1 PURPOSE AND SCOPE

The Austin Police Department recognizes that members of the general public have a First Amendment right to video record, photograph, and/or audio record APD officers while they are conducting official business or while acting in an official capacity in any public space, unless such recordings interfere with police activity.

302.2 INTERACTION WITH COMMUNITY

(a) Officers are reminded that photography, including videotaping, of places, buildings, structures and events are common and normally lawful activities.

1. If a person is taking photographs or recording from a place where he or she has a right to be, officers are reminded that this activity by itself does not constitute suspicious conduct.

(b) In areas open to the public, officers shall allow bystanders the same access for photography as is given to members of the news. Officers shall be aware that:

1. A bystander has the same right to take photographs or make recordings as a member of the media, as long as the bystander has a legal right to be present where he or she is located.

2. A bystander has the right under the First Amendment to observe and record officers in the public discharge of their duties.

3. Public settings include parks, sidewalks, streets, and locations of public protests; but that protection extends also to an individual's home or business, common areas of public and private facilities and buildings, and any other public or private facility at which the individual has a legal right to be present.

4. The fact that a bystander has a camera or other recording device does not, however, entitle the bystander to cross a police line, to enter an area that is closed to the public, or to enter any area designated as a crime scene.

(c) As long as the photographing or recording takes place in a setting at which the individual has a legal right to be present and does not interfere with an officer's safety or lawful duties, officer's shall not inform or instruct people that photographing or recording of police officers, police activity or individuals who are the subject of police action (such as a Terry stop or an arrest) is not allowed; requires a permit; or requires the officer's consent. Additionally, officers shall not:

1. Order that person to cease such activity;

2. Demand that person's identification;

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3. Demand that the person state a reason why he or she is taking photographs or recording;

4. Detain that person;

5. Intentionally block or obstruct cameras or recording devices; or

6. In any way threaten, intimidate or otherwise discourage an individual from recording officer's enforcement activities.

(d) Nothing in this policy prohibits officers from questioning or detaining individuals they reasonably suspect have committed, are committing, or are about to commit any crime.

(e) Officers are reminded that a person commits an offense if the person with criminal negligence interrupts, disrupts, impedes, or otherwise interferes with a peace officer while the peace officer is performing a duty or exercising authority imposed or granted by law.

1. If a person is photographing or recording police activity from a position that impedes or interferes with the safety of officers or their ability to perform their duties, an officer may direct the person to move to a position that will not interfere. However, an officer shall not order the person to stop photographing or recording.

2. If a person is photographing or recording police activity from a position that impedes or threatens the safety of members of the public, the officer shall direct the person to move to a safe position. However, officers shall not order the person to stop photographing or recording.

3. A person's recording of officer's activity from a safe distance, and absent any attendant action that obstructs the activity or threatens the safety of the officers, does not constitute interference.

4. A person has the right to express criticism of the police activity being observed. As long as that expression does not jeopardize the safety of any officer, suspect or bystander; and so long as that expression does not violate the law or incite others to violate the law, the expression does not constitute interference.

(f) Evidence on a Camera or Recording Device

1. If an officer has probable cause to believe that a camera or other recording device contains images or sounds that are evidence of criminal acts, the officer shall request that the person either:

(a) allow the officer to listen to or view the recording

(b) Voluntarily provide the device or recording medium (e.g., the memory chip) to the officer; or

(c) Where possible and practicable, and in the presence of the officer, voluntarily transmit the images or sound via electronic mail to the officer's official government electronic mail account.

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(d) Consent to view or take possession of a recording device or medium must be given voluntarily and in accordance with APD policy 306.4 Consent to Search.

2. If the person provides the device or recording medium to the officer, the officer shall:

(a) Exercise due care and caution with any of the individual's property or electronic device(s);

(b) Enter the item into evidence

(c) Document the officer's request and the individual's response in the narrative of the report

(d) Contact the on-call Detective responsible for the highest charge and notify them of the media evidence. Officers shall not attempt to view, download, or otherwise access any material contained on the device.

3. If the individual declines to voluntarily provide the device or recording medium, or to electronically transmit the sound and/or images where possible and practicable, and the officer believes that exigent circumstances exist insofar as the evidence of criminal activity will be lost absent an immediate seizure of the device, the officer shall take control of the device and contact a supervisor

(a) The Supervisor shall, in consultation with the officer, determine whether exigent circumstances permit the seizure of the device without a warrant. Warrantless seizure is permissible only when:

1. There is probable cause to believe that the property holds contraband or evidence of a crime; and

2. The exigencies of the circumstances demand it or some other recognized exception to the warrant requirement is present.

(g) Viewing/Listening to Evidence on a Camera or Recording Device

1. Absent exigent circumstances, officers shall obtain a search warrant before viewing photographs or listening to recordings on a camera or memory chip that has been seized as evidence.

2. In exigent circumstances, where there is reason to believe that an immediate search of the seized material is necessary to prevent death or injury, officers shall contact a supervisor for authorization to review photographs or recordings without a warrant.

3. Photographs or recordings that have been seized as evidence and are not directly related to the exigent purpose shall not be reviewed.

(h) Officers shall not, under any circumstances, erase or delete, or instruct or require any other person to erase or delete, any recorded images or sounds from any camera or other