

Public's Fourth Amendment Right

Nearly all seizures and searches of recording devices require a court order or warrant in accordance with the Fourth Amendment.

- ▶ Without exception, video recordings may not be destroyed or deleted whether they are obtained with a warrant or a bona fide exception to the warrant requirement.
- ▶ In some unusual situations, probable cause may exist to believe that a recording device contains evidence of a serious crime.
- ▶ After consulting with a supervisor if feasible, the officer can ask the recording person whether he or she will consent to lend the recording medium to the officer temporarily so that it can be viewed. In addition, the officer can ask whether the person will e-mail the recording to the officer at his or her government e-mail address.
- ▶ If the recording party does not agree to either of these options, he or she may not be pressured, threatened, or intimidated to gain compliance.
- ▶ If the person does not agree to the foregoing options and there is probable cause to believe that immediate seizure and search of the recording device is necessary to prevent death or serious bodily harm, the recording party may be detained briefly and a supervisor summoned to determine whether the search can be conducted without a warrant.

Key Points to Remember

- ▶ In the majority of situations, individuals have a First Amendment right to audio and video record police who are conducting business in public.
- ▶ Officers should always assume that they are being recorded when in a public space.
- ▶ Officers may not seize recording devices or recording media without a warrant except in narrowly defined exigent circumstances.
- ▶ Officers may not arrest individuals for the act of recording.
- ▶ Officers should develop a suitable response that will deflect any negative reactions, such as acknowledging the individual's First Amendment right to record and asking whether he or she would like to speak to a supervisor.

For More Information

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Public Recording of Police



COPS
Community Oriented Policing Services
U.S. Department of Justice



Public's Right to Record

Recording the actions and activities of police officers in the performance of their public duties is a form of speech, protected by the First Amendment to the U.S. Constitution, through which individuals may gather and disseminate information of public concern.

This right is extended to video and audio recording of any police activity performed in public or where an individual otherwise has a legal right to be present. In effect, the public has the same rights to record police activities as the press.

What is "Public Space"?

Public space includes locations that are open and legally accessible to the public, such as parks, beaches, and streets. It also includes buildings designated for public use, such as libraries, the open and common areas of government buildings, and community shopping malls or other places of business that are accessible and open to the general public.



Restrictions on Public Recordings

While the public has a broad-based right to record police activities, that right is not absolute. It is subject to some narrowly defined limitations. For example, the public cannot

- ▶ trespass on private property;
- ▶ put themselves or others in physical danger;
- ▶ enter a private dwelling or similar private space without the owner's permission;
- ▶ enter a marked crime scene;
- ▶ enter any area not accessible to the general public;
- ▶ materially interfere with police in the performance of their duties. (This interference may include tampering with a witness, persistently engaging an officer with questions or interruptions, or impeding emergency responders or motor vehicle traffic. Verbal criticism does not of itself justify an officer ordering that recording be stopped.)

Arrests of individuals who are recording police activities must be based on factors that are unrelated to the act of recording. Recording the police does not, of itself, establish legal grounds for arrest, issuance of citations, or taking other actions to restrict such recordings.



Appropriate Police Responses to Being Recorded

- ▶ Informing the recording party that he or she has a right to record, but there are some restrictions
- ▶ Advising the recording party if he or she is doing something that is not permitted
- ▶ Directing the recording party to a location at a reasonable distance where he or she can record
- ▶ Designating a reasonable police perimeter; this perimeter must be applied to individuals equally and the recording party should not be singled out