

NOPD CONSENT DECREE MONITOR
NEW ORLEANS, LOUISIANA



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Deputy Superintendent Danny Murphy
Compliance Bureau, New Orleans Police Department
714 Broad Street
New Orleans. LA 70119

Dear Superintendent Murphy:

This letter constitutes confirmation that the Office of Consent Decree Monitor ("OCDM") has reviewed and provided comments on the revised Chapter 1.2.10 – Public Recording of Police Officers. The OCDM has no objection to the policy as revised.

We believe that the revised Chapter 1.2.10 – Public Recording of Police Officers, incorporates all requirements of the Consent Decree and sets forth clear and appropriate rules to guide officer conduct. We will continue to assess the adequacy of this policy following its implementation. If we identify any concerns following implementation, we will present those concerns to you and the Department of Justice. Additionally, we note that, pursuant to the Consent Decree, NOPD has agreed to review and revise policies and procedures as necessary upon notice of a significant policy deficiency. We also note NOPD's obligation to review this policy after a year of implementation to ensure it "provides effective direction to NOPD personnel and remains consistent with the Agreement, best practices, and current law." Consent Decree at ¶ 8.

We appreciate your team's effort, cooperation, and responsiveness throughout this process.
Very truly

Very truly yours,

David L. Douglass
For SHEPPARD MULLIN RICHTER & HAMPTON LLP*
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CC: HONORABLE SUSIE MORGAN (VIA ELECTRONIC MAIL)
EMILY GUNSTON, DEPARTMENT OF JUSTICE (VIA ELECTRONIC MAIL)



NEW ORLEANS POLICE DEPARTMENT OPERATIONS MANUAL

CHAPTER: 1.2.10

TITLE: PUBLIC RECORDING OF POLICE OFFICERS

EFFECTIVE:

REVISED:

PURPOSE

The purpose of this Chapter is to provide guidance for officers in dealing with situations in which they are being recorded, to include photographing, videotaping, audiotaping, or both, by members of the public or the press.

POLICY STATEMENT

1. Members of the public, including media representatives, have an unambiguous First Amendment right to record police officers in the public discharge of their duties. The right to record is not limited to public streets and sidewalks; it includes areas where individuals have a legal right to be present, including an individual's home or business, or other private property where the person has a right to be or is legally present. The seizure and/or destruction of these recordings without a warrant or due process may also violate the individual's Fourth and Fourteenth Amendment rights.
2. Members of the press and members of the general public enjoy the same rights in any area accessible to the general public. No individual is required to have or to display "press credentials" in order to exercise the right to observe, photograph, or record police activity taking place in an area accessible to, or within view of, the general public.
3. Officers should assume that they are being recorded at all times when on duty in a public place.
4. Any allegations that a recording may contain evidence of wrongdoing by an officer shall be immediately communicated to a supervisor who shall secure the recording and notify PIB who will make the scene and assume custody and control of the recording and follow the guidelines of **Chapter 84.1 – Evidence and Property, Chapter 83.1 – Collection and Preservation of Evidence, and Chapter 83.2 – Computers and Digital Evidence.**

DEFINITIONS:

Definitions relevant to this Chapter include:

Recording—Capturing of images, audio, or both by means of a camera, cell phone, audio recorder, or other device.

Media—The storage source for visual or audio recordings, whether by film, analog, or digital means.

OFFICER'S RESPONSIBILITIES

5. Officers are prohibited from threatening, intimidating, or otherwise discouraging any individual from photographing or recording police officers in the public discharge of their duties.
6. Officers must not intentionally block or obstruct cameras or recording devices in any manner unless it is to protect the privacy or identity of victims, witnesses, or undercover officers.
7. Officers are prohibited from deleting recordings or photographs and from damaging or destroying recording devices/cameras under any circumstances.

RESTRICTIONS

8. A person may record/photograph public police activity unless the person engages in actions that:
 - (a) Jeopardize the safety of the officer(s), victims, witnesses, third parties, the suspect(s), or others in the vicinity;
 - (b) Jeopardize the integrity of the crime scene;
 - (c) Violate the law; or
 - (d) Incite others to violate the law.
9. Examples of such restrictions include but are not limited to:
 - (a) Persistently engaging or attempting to engage an officer in conversation while the officer is executing his/her duties;
 - (b) Interfering through direct physical intervention with a lawful arrest;
 - (c) Tampering with a witness;
 - (d) Inciting bystanders to interfere with, hinder, or obstruct an officer in the performance of his/her duties;
 - (e) Unreasonably impeding the movement of emergency equipment and personnel or the flow of vehicular or pedestrian traffic;
 - (f) Trespassing on private property;
 - (g) Entering a private dwelling or similar private space without the owner's permission;
 - (h) Entering a marked crime scene; and
 - (i) Entering any area not accessible to the general public.
10. An individual's recording/photographing of police activity from a safe distance without any attendant action intended to obstruct the activity or threaten the safety of others does **not** amount to interference.
11. A person's expression of criticism of the police (or the police activity being observed) does **not**, by itself, constitute interference.
12. The First Amendment protects a significant amount of verbal criticism and challenge directed at police officers.
13. The fact that recording and/or overt verbal criticism, insults, or name-calling may be annoying does **not**, of itself, justify an officer taking corrective or enforcement action or ordering that recording be stopped, as this is an infringement on an individual's constitutional right to protected speech. Even foul expressions of disapproval towards

police officers are protected under the First Amendment.

** The U.S. Supreme Court has held that “a properly trained officer may reasonably be expected to exercise a higher degree of restraint” than the average citizen when it comes to reacting to insults or “fighting words.”*

** Courts have given First Amendment protection to persons who made obscene gestures and yelled profanities at police officers, and they have prohibited the police from interfering with such speech.*

SEIZURE OF EQUIPMENT

14. Where an officer has a reasonable belief that a bystander or witness has captured a recording of critical evidence related to a serious crime, the officer shall:
 - (a) Consult, if possible, with a supervisor;
 - (b) Ask the recording person if he/she will consent to lend the recording medium to the officer temporarily so that it can be viewed; and
 - (c) Request if the recording person will e-mail the recording to the officer at his/her government e-mail address.
15. If the recording person does not agree to share the recording, he/she may not be pressured, threatened, or intimidated to gain compliance. Officers shall not seize or otherwise coerce production of recorded sounds or images without obtaining a warrant or order an individual to destroy such recordings.
16. If the recording person does not agree to share the recording and the officer has reasonable cause 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 seized under a temporary restraint. The warrantless seizure of material protected by the First Amendment and Fourth Amendment (photos, videos, etc.) will be strictly scrutinized by a court. In ordinary circumstances, the seizure of cameras or recording devices without a warrant will not be reasonable. Cameras or recording devices will not be seized without a warrant unless:
 - (a) Officers have probable cause to believe that critical evidence of a serious crime is contained on/in the camera or recording device;
 - (b) Officers first have explained the circumstances and have unsuccessfully attempted to get the consent of the person in possession of the recording device;
 - (c) The seizure of the camera/recording device is for no longer than reasonably necessary for the officer, acting with due diligence, to obtain a warrant to seize the evidence; and
 - (d) Supervisory approval has been granted for the seizure.
17. Unless and until a warrant to search the device has been obtained, an officer will not search the device or attempt to view the recording without the recording person's consent.

RESPONSES BY OFFICERS BEING RECORDED

18. Some appropriate police responses to being recorded are:
 - (a) Informing the recording party that he/she has a right to record but there are some restrictions.
 - (b) Advising the recording party if he/she is doing something that is not permitted.
 - (c) Directing the recording party to a location at a reasonable distance where he/she can record.

- (d) Designating a reasonable police perimeter. This perimeter MUST be applied to all individuals equally, and the recording party should not be singled out.

ARREST

19. Persons who violate the foregoing restrictions should be informed that they are engaged in prohibited activity and given information on acceptable alternatives, when appropriate, prior to making an arrest.
20. Arrest of a person who is recording officers 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, in itself, provide grounds for detention or arrest.
21. 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. Files and media shall not be altered or erased under any circumstances.

SUPERVISORY RESPONSIBILITIES

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