



# Colorado Springs Police Department General Order 1551

## Section 15: Recording of Police Activity -- Information and Records

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### **.01 Purpose**

To specify the relationship between members of the police department and those individuals who wish to document their activity in any form, such as audio or video recording.

### **.02 Cross Reference**

[GO 831, Collection of Physical Evidence](#)

[GO 839, Collection and Handling Digital Devices](#)

[GO 1550, Public Information Office and News Media](#)

[GO 743, Search Warrants](#)

### **.03 Discussion**

With the advent of multiple methods of documenting behavior (e.g., audio recording, video recording, note taking, digital pictures, etc.) that are available to the general public, department members may be subjected to the recording of their activity at any time or place while in the performance of their duty. Officers should assume that their activities are being recorded throughout many of their interactions with the community and while in public. The department has a responsibility to allow this recording in the interest of public information and transparency. Federal courts and guidance from the U.S. Department of Justice indicate that there is no applicable law that prevents the recording of police activity by members of the media or general public. Further, federal courts have held in several decisions that the recording of police activity is governed by the First, Fourth, and Fourteenth Amendments to the U.S. Constitution and must be allowed except in very narrow circumstances. Additionally, state law now states that a person has the right to lawfully record any incident involving a peace officer.

### **.04 Policy**

All department members will allow the recording of their activity while on duty. The only exception to this policy is when the person recording is interfering with a peace officer in the performance of his or her duties. Additionally, department members shall not seize or obtain a

recording or a recording device without consent, without a search warrant or subpoena, or without a lawful exception to the warrant requirement. Taking photographs or recording from a public place in and of itself does not constitute suspicious activity. This policy only applies to recordings of police activity.

## **.05 Definitions**

**Recording of Police Activity:** Documenting actions of police officers or department employees in any form (video, audio, manual) by any device available (recorder, cellular phone, electronic device, notepad, etc.).

**Member of the Media:** Those individuals who are readily identifiable as a member of a recognized TV, radio, or newspaper outlet. The CSPD does not issue press passes or other official identification to anyone who designates himself or herself as members of the media.

**General Public:** Those individuals who are not readily identifiable as a member of a recognized TV, radio, or newspaper outlet. While not readily identified as a member of the media, anyone may be a blogger, web site host, an independent producer of news, or freelance contributor to any news gathering agency.

**Evidentiary Recording:** Any digital or other type of photographic image, video or audio record, which goes to proving or disproving criminal activity. To be considered under the purview of this policy, the evidentiary recording must also include police activity.

## **.10 The Right to Record Police Activity**

Recording of police activity is protected under the First Amendment. “Recording of governmental officers engaged in public duties is a form of free speech, through which private individuals may gather and disseminate information of public concern, including the conduct of law enforcement officers.” (U.S. Department of Justice, Civil Rights Division, Letter Re: Christopher Sharp v. Baltimore City Police Department, et. al.). See also C.R.S. § 16-3-311 and § 13-21-128 for state laws allowing people to lawfully record any incident involving a peace officer.

## **.20 Interfering with Police Activity**

Some people recording police activity may do so in a manner that interferes with the performance of an officer’s duties. If officers encounter this situation, they should give a verbal warning to the person making it clear the person is allowed to continue recording and that directs them where they can record or how they can record in a manner that would not interfere with officers.

Criminal charges of interference/obstruction due to the mere act of recording police activity are not appropriate and could result in civil liability claims against CSPD. An individual must commit an overt act of interference or obstruction to warrant arrest on interference/obstruction charges. Overt acts may include physical interference with any police activity, incitement to riot or inciting others to commit criminal acts, or endangering the safety of other bystanders or officers. Standing in the street and interfering with traffic or blocking the rightful passage of bystanders may constitute a criminal act requiring police intervention.

A supervisor must approve any criminal charge in connection with the recording of police activity.

## **.30 Request for Evidentiary Recording or Device**

In no circumstance will a recording be seized from any individual and destroyed, deleted, or damaged in any way. A person has the right to lawfully record any incident involving an officer and to maintain custody and control of that recording and the device used to make the recording. There may be circumstances where a recording contains information of an evidentiary nature and must be preserved by the police. Department members shall not seize or obtain a recording or recording device without consent, a search warrant or subpoena, or without a lawful exception to the warrant requirement. In all circumstances, applicable department policies regarding the retention, disposition, and release of evidence will be followed.

If a department member seeks to obtain a person's device used to record an incident involving a peace officer for evidentiary review, the department member shall first:

- a. Advise the person of his or her name, badge number or other identifying number, and agency name.
- b. Identify the legal reason for which the information is requested; and
- c. Ask if the person will voluntarily provide the officer with a copy of the recording by voluntarily providing the device or immediately transferring the recording to the officer or agency. Department members should make this request if practicable under the circumstances. If the circumstances prevented the department member from making this request, the reason why must be documented in the case report.

## **.33 Obtaining Evidentiary Recordings with Consent and Searching Devices**

If a person verbally consents to the transfer of the device and/or recording, officers must secure written consent with the use of a form called [Electronic Device Search Waiver](#) found on the CSPD intranet home page, under Forms tab, in the Waiver folder.

Upon obtaining consent to recover an evidentiary recording from a mobile device, the officer

has the following options:

- a. Have the data, such as images or videos, sent to the officer electronically from the device
- b. Contact the Digital Forensic Unit (DFU) at 444-7704 and arrange a time for the download to be conducted during business hours 7 am – 5 pm
- c. Have dispatch contact the on-call DFU supervisor and request an immediate response by the DFU to assist with the download of the evidentiary data

If the person voluntarily consents to the transfer of the device, the officer shall limit the search to only the recording that is relevant evidence to the investigation. The device must be returned to the person in a timely manner and must be returned as soon as possible if the person requests it back.

If the person consents to an electronic transfer of the recording, that transfer needs to take place as soon as possible. The electronic transfer should be limited to the relevant recording.

## **.35 Seizing Evidentiary Recordings Without Consent and Searching Devices**

Department members may only seize and search devices containing evidentiary recordings of police activity without the person's consent when they have a search warrant, subpoena, or are using a lawful exception to the search warrant requirement. Please note that with the recent U.S. Supreme Court's decision in *Riley v. California*, officers may not search an arrestee's cell phone under the search incident to arrest exception to the warrant requirement.

The ability to conduct a warrantless search and seizure of electronic devices is allowed in particular exigent circumstances. Exigent circumstances exist when an officer believes it is necessary to save a life or when an officer has a reasonable, articulable, good-faith belief that seizure of the device is necessary to prevent the destruction of the evidentiary recording while a warrant is obtained.

Any search of a cell phone under exigent circumstances must have the exigent circumstances articulated documented in the case report. Absent the existence of such exigent circumstances described above, a search warrant should be obtained prior to any search of a device when the individual has failed to consent to the search.

A supervisor should be present on scene, or if not able to respond, will be at least consulted where any seizure and/or search of any device is either contemplated or completed by officers without consent. After reviewing the legal basis for the seizure of a device with an evidentiary recording of police activity, a supervisor must approve any review or copying of any digital evidence prior to actions being taken by officers to review or copy evidence.

Devices seized in this manner should be placed into evidence on an "Admin Hold" in accordance with [GO 839, Collection and Handling of Digital Devices](#). The item must be accompanied by a [Digital Analysis Request Form](#) located on the Intranet under CSPD Forms or under the Evidence Unit's Page. A Search Warrant must also be obtained within 72 hours

and provided to the Digital Forensic Unit.

## **.40 Documentation and Notifications**

In any case involving the arrest of an individual engaged in the recording of police activity and/or the seizure of a device containing a recording of police activity, a case report will be completed with supplements completed by all involved department employees. In these cases, the Duty Lieutenant will be notified. The Duty Lieutenant will complete a “Not for Media Release” ETACS for these situations.

## **.60 Department Liability for Destruction or Unlawful Seizure of Recording or Recording Device**

A new State law passed in 2015 has provided individuals with a right of recovery against CSPD when an individual attempts to lawfully record an incident involving a CSPD officer(s) and the officer(s) engage in the any type of the following behavior:

- (i) an officer unlawfully destroys or damages the recording or recording device;
- (ii) an officer seizes the recording or recording device without permission, without lawful order of the court, or without other lawful grounds to seize the device;
- (iii) an officer intentionally interferes with the person's lawful attempt to record an incident involving a peace officer;
- (iv) an officer retaliates against a person for recording or attempting to record an incident involving a peace officer; or
- (v) an officer refuses to return the person's recording device that contains a recording of a peace officer-involved incident within a reasonable time period and without legal justification.

If an individual files a complaint regarding one of the circumstances listed above and a court decides the allegation is proven, the court may order CSPD to pay up to \$15,000 in punitive damages to the individual. Additionally this civil remedy does not preclude the person for seeking criminal charges to be filed against an officer for tampering with physical evidence. Officers need to fully understand the procedures and policy regarding the seizure of recordings and recording devices prior to conducting such a seizure.