



Alexandria Police Department
Directive 2.7



Audio/Video Recording Devices

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2.7.01	POLICY/PURPOSE
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The purpose of this directive is to establish policy regarding the use of recording devices (audio/video) by employees and interactions with citizens using recording devices.

Employees may record conversations or images when such recording is appropriate to the proper performance of their duties, where the recording is consistent with Department policy, and the recording is not made outside the limits of state, federal or constitutional law.

Members of the public, including media representatives, have an unambiguous First Amendment right to record officers in public places, as long as their actions do not interfere with the officer's duties or the safety of officers or others. Officers should assume that they are being recorded at all times when on duty in a public space.

2.7.02	AUTHORITY
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The use of recording devices is governed by the provisions of *Va. Code §19.2-63.1* and requires the approval and knowledge of the Chief of Police or designee, prior to use. Unauthorized possession and use of recording devices by employees under *Va. Code §19.2-63.1* is unlawful and a class 1 misdemeanor.

2.7.03 DEFINITIONS

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

Personal Recording Device- Any audio or video device, individually owned or possessed, that was not issued by the Alexandria Police Department or the City.

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

2.7.04 RESPONSIBILITIES/PROCEDURES**A. General**

1. Recording devices may be used by employees to accurately document circumstances and/or statements made during the performance of their police duties:
 - a. Employees may use devices issued to them, (i.e., iPhones), by virtue of their assignment and approved for official use.
 - b. The use of personal recording devices is prohibited except in exigent circumstances.
 - c. All CIS interview rooms have been equipped with departmental approved audio/visual recording and visual monitoring equipment.
2. The retention of any recording or image made by employees, in their official capacity, is governed by the provisions of the *Virginia Freedom of Information Act*, the *Virginia Public Records Act*, and rules of evidentiary disclosure in criminal and civil court proceedings.
 - a. As such, the status of the employee (not the ownership of the device making the recording) governs the ownership of such recordings. Any recording made or electronic data captured by an employee conducting official law enforcement business, shall be the property of the Department.
 - b. No Department recording(s) shall be given, sent, transferred, or transmitted to any other person or entity unless approved by the Chief of Police or his designee.
 - c. Recordings of a non-evidentiary nature must be maintained in an unedited format for 30 days in accordance with the *Library of Virginia Records Retention and Disposition Schedule*. Non-evidentiary recordings can be erased, without filing the *Certificate of Records Disposal* form (Rm-3).
 - d. Any recording that would be considered evidence shall be maintained in an unedited format and retained following all established rules of evidence.

B. Restrictions on the Use of Recording Devices

1. Surreptitious recording is defined as a covert, clandestine, or secret audio, video, or photographic recording of another person without the knowledge and consent of the person being recorded.
2. Without the permission of the Chief of Police, employees may not surreptitiously record audio, video or images of any other Department employee, or any City employee or official.
3. Employees are not permitted to use any non-department issued body-worn cameras under any circumstance.

C. Use of Recording Devices

1. Anytime a recording device is used, the employee must document the fact that a recording(s) exists in their incident report, as soon as a report is generated for that event.
2. Whenever possible, employees shall record an entire conversation or contact, unless the contact moves into a restricted conversation.
3. If an employee fails to record an entire conversation or contact, the employee will note the failure, with an explanation, on an incident/investigative report. This will not apply if the contact is a non-reportable incident.

2.7.05	CITIZEN'S RECORDING OF POLICE ACTIVITY
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A. Recording of Police Activity

1. When encountering a citizen using a recording device, officers must not threaten, intimidate, or discourage citizens from recording police activities or intentionally block or obstruct recording devices, however, officers are not required to move or position themselves for the convenience of recording.
2. Citizens, who are lawfully in public spaces or locations where they have a legal right to be present, such as their home, place of business, or the common areas of public and private facilities and buildings, have a First Amendment right to record and photograph officers in the public discharge of their duties, subject to legitimate and reasonable legal restrictions.
3. Citizens recording police activities must be conducted in the following manner:
 - a. Persons must maintain a reasonable distance from the officer(s) engaged in enforcement or related police duties.

- b. Persons engaged in recording activities may not obstruct police actions. For example, individuals may not interfere through direct physical intervention, tampering with a witness, or by persistently engaging an officer with questions or interruptions. However, the fact that recording and/or overt verbal criticism, insults, or name-calling may be annoying, does not in itself justify an officer taking corrective or enforcement action or ordering that recording be stopped, as this is an infringement on an individual's right to protected speech.
- c. Persons recording may not unreasonably impede the movement of emergency equipment and personnel or the flow of vehicular or pedestrian traffic.
- d. The actions of the recording party must not jeopardize the safety of officers, victims, witnesses, or third parties and cannot violate the law, or incite others to violate the law.

B. Arrests

- 1. Persons who violate the foregoing restrictions should be informed that they are engaged in prohibited activity and given information on acceptable alternatives, where appropriate, prior to making taking enforcement action.
- 2. An arrest of a person who is recording officers in public must 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 an arrest.
- 3. An arrest of an individual does not provide an exception to the search 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, absent exigent circumstances, requires a search warrant.
- 4. A supervisor or commander should be requested at the scene anytime a situation exists where an individual recording police activity is going to be, or will most likely be arrested, or when recording equipment may be seized.

C. Confiscation of Recording Devices and Media

- 1. The recording equipment of an individual may not be confiscated unless the person has been arrested. Officers may not order a person to show recordings that have been made of enforcement actions or other police operations.
- 2. If there is probable cause to believe that evidence of a serious crime has been recorded, officers should do the following:
 - a. Ask the person in possession of the recording if he or she will consent to voluntarily and temporarily relinquish the recording device or media so that it may be viewed and/or copied as evidence. Absent exigent circumstances,

- officer may not search or seize a recording device without obtaining consent or a warrant.
- b. If an officer or detective believes that exigent circumstances justify a warrantless examination or confiscation of a recording device, the Office of the Commonwealth Attorney should be contacted, if practical.
 - c. Exigent circumstances may exist in the following circumstances:
 - 1. When there is a reasonable belief that the recording will be destroyed, lost, tampered with or otherwise rendered useless as evidence before a warrant can be obtained.
 - 2. When there is a reasonable belief that the immediate viewing of the recording is necessary to prevent death or serious bodily harm of another before a warrant can be obtained.
 - d. Whenever a recording device or media is seized without a warrant, the seized item will be held no longer than reasonably necessary to obtain a warrant.
 - e. Officers must not delete or destroy any of the recordings or photographs located on the recording device or media.

BY AUTHORITY OF:

Earl L. Cook
Chief of Police