



## Dallas Police Department General Order

### 331.00 Public Recording of Official Acts

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Special Order No. \_\_\_\_\_ Document Control No. \_\_\_\_\_ Revised \_\_\_\_\_

#### 331.00 PUBLIC RECORDING OF OFFICIAL ACTS

##### 331.01 Policy

It is the policy of the Dallas Police Department to ensure the protection and preservation of every person's Constitutional rights.

In furtherance of this policy, no member of the Dallas Police Department may prevent or prohibit any person's ability to observe, photograph, and/or make a video recording (with or without a simultaneous audio recording) of police activity that occurs in the public domain, so long as the person's location, actions, and/or behavior do not create a legitimate, articulable threat to officer safety, or an unlawful interruption, disruption, impediment, or interference to successful performance of the police officer's duty or exercise of authority. The public's access to information regarding the official business of the Dallas Police Department is of critical importance to effective, transparent government.

##### 331.02 Definitions

**Interference with Public Duties** – A law prohibiting the interruption, disruption, or interference with a peace officer performing a duty or exercising authority imposed or granted by law.

**Photographing** - The act of capturing and storing a still image, whether in an electronic/digital format, or on any type of light-sensitive film (e.g., traditional 35mm film).

**Video/Audio Recording** - The act of capturing a series of images that, when replayed in succession, reproduce a sequence of activities in motion. Video/audio recordings may be stored on a length of light sensitive film, a videotape cassette, or in a digital format (e.g., a removable memory card), and may or may not contain a simultaneous audio recording.

**Video/Audio Recording Device** - For the purposes of this General Order, a Video Recording Device includes, but is not limited to, any device capable of capturing a still or moving image(s), regardless of whether or not a simultaneous audio recording is included. Examples may include any of the following devices:

- A cellular telephone of any make, model, or manufacturer, including those devices referred to as "Smart Phones."
- A Personal Digital Assistant, also known as a Personal Data Assistant or PDA.
- A tablet-style mobile computer commonly referred to simply as a "tablet."
- Any camera, whether still-photo and/or video, of any make, model, or manufacturer, regardless of whether or not the device is capable of capturing a simultaneous audio recording, and regardless of how the device stores the images it captures.

##### 331.03 General Information

It is increasingly common for uninvolved bystanders at the scene of police activity to photograph and/or video/audio record the actions and conduct of police officers. Officers of the Dallas Police Department should simply assume that, at any time, a member of the general public is likely to be observing, and perhaps even photographing or video/audio recording, their activities.

As a result, officers must understand that any bystander has a right to photograph and/or video/audio record the enforcement actions of any police officer so long as the bystander's actions do not:

- A. Place the safety of the bystander, or of any Police Officer(s), witness(es), victim(s), or suspect(s), in jeopardy;
- B. Interrupt, disrupt, impede, or interfere with the execution or performance of an officer's official duties;
- C. Interfere with, or violate any law, ordinance, or code;
- D. Involve an intrusion into any crime scene, private property, or other location under lawful police control and/or not normally accessible to the general public;
- E. Threaten, by words or actions, other persons; or
- F. Attempt to incite an immediate breach of the peace or incite others to commit a violation of the law.

In and of themselves, the acts of observing, photographing, and/or making a video/audio recording of any police activity that occurs in a public setting are not criminal offenses. On their own, these acts DO NOT constitute probable cause for the arrest of the observer/bystander, and DO NOT provide any justification whatsoever for any officer of the Dallas Police Department, without a Search and Seizure Warrant or other appropriate court

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order, to review, seize, damage, erase, or otherwise inspect the contents of a person's camera or video/audio recording device.

### 331.04 Special Circumstances

Nothing in this General Order should be construed by members of the Dallas Police Department as an elimination of their ability to seek out, collect, or otherwise gather evidence in the course of a criminal investigation.

However, officers seeking to obtain material contained on a camera or video/audio recording device that is the private property of a bystander must recall that the bystander in possession of the camera or video/audio recording device enjoys the same Constitutional protections from unreasonable search and/or seizure as they would in any other law enforcement activity or investigation.

If an officer has **probable cause** to believe that a bystander is in possession of any still photos/images, video/audio recordings, and/or audio/sound recordings that are, or could reasonably be considered, evidence related to a crime and the officer reasonably believes an exigent circumstance exists, officers may take all lawful actions to preserve or prevent destruction of that evidence.

Without the bystander's voluntarily consent to surrender his/her camera or video/audio recording device; to an examination of its contents; and to a seizure by a police officer of any images or video/audios contained within it, officers **MUST** adhere to the requirements of this order.

### 331.05 Officer Responsibilities

- A. Upon discovery that a bystander is observing, photographing, or video/audio recording the conduct of police activity:
  1. DO NOT impede or prevent the bystander's ability to continue doing so based solely on the discovery of his/her presence. (including, but not limited to, deliberately shining a flashlight into a camera lens to prevent recording)
  2. DO NOT seize or otherwise demand to take possession of any camera or video/audio recording device the bystander may possess based solely on the discovery of his/her presence.
  3. DO NOT demand to review, manipulate, or erase any images or video/audio recording captured by the bystander based solely on the discovery of his/her presence.
  4. For investigative purposes, be mindful of the potential that the bystander may witness, or capture images/video/audio of events considered at some later time to be material evidence.
- B. BEFORE taking any police action which would stop a bystander from observing, photographing, or video/audio recording the conduct of police activity, officer(s) must have observed the bystander committing some act that falls within one of the six numbered conditions listed in the section of this Order entitled "GENERAL INFORMATION."
- C. If it becomes necessary to effect the arrest of a bystander who is or has been observing, photographing, or video/audio recording police activity:
  1. Ensure the arrest is for an unlawful activity or criminal offense (e.g., interference with public duty, disorderly conduct, assault, etc.).
  2. Clearly articulate the facts and circumstances that led to the arrest in all subsequent reporting and charging documents.
- D. Do not compromise the integrity of any established crime scene or other secured/restricted area so that a bystander may observe, photograph, or video/audio record police activity.
- E. A bystander's desire or intent to observe, photograph, or video/audio record police activity does not entitle him/her to:
  1. Trespass on private property
  2. Place him- or herself in physical danger (e.g., within an area defined by members of the SWAT Team as an "inner perimeter")
  3. Enter another person's private dwelling, storehouse, etc.
  4. Enter into or upon any established, marked crime scene.
  5. Enter into or upon any area not accessible to the general public.
- F. In public areas, any form of identification referred to as "press credentials" does not extend any special privileges or access to any individual. Members of the press and members of the general public enjoy the same rights in any area accessible to the general public.
- G. No individual is required to display "press credentials" in order to exercise his/her right to observe, photograph, or video/audio record police activity taking place in an area accessible to, or within view of, the general public.



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**331.06 Supervisor Responsibilities**

- A. If possible, respond to any scene where officers under your supervision believe that the presence of a bystander who is observing, photographing, and/or video/audio recording their conduct is unlawfully interrupting, disrupting, impeding, or interfering with the successful execution of their official duties.
- B. At any scene where the actions of a bystander who is observing, photographing, and/or video/audio recording police activity rise to the level of a criminal offense:
  - 1. Ensure adequate police attention remains focused on whatever situation originally required a police response.  

**NOTE:** All officers should bear in mind that, on rare occasions, they may encounter a person or group of persons who deliberately create hazardous conditions with the intent of provoking an inappropriate police response. Supervisors shall not allow subordinates under their supervision to become distracted from their professional duties at any time.
  - 2. If tactically feasible, inform the bystander that his/her actions may, if continued, rise to the level of a criminal offense and could subject him/her to arrest.
  - 3. If possible, recommend a less-intrusive location to the bystander from which he/she may continue to observe, photograph, or video/audio record the police activity.
- C. Coordinate with the appropriate primary detective(s) when establishing the limits of any crime scene.

**331.07 Seizing a Bystander's Video/Audio Recording Device for Evidentiary Purposes**

- A. If an officer reasonably believes a bystander possesses any material that is, or could reasonably be considered, evidence related to a crime, the officer may request the bystander voluntarily surrender his/her camera, video/audio recording device, etc., into police custody.
- B. If the individual **CONSENTS** to the request:
  - 1. Exercise due care and caution with any of the individual's property or electronic device(s).
  - 2. Follow the proper consensual search procedure as listed in G.O. 330 "Consensual Search Procedures".
  - 3. **DO NOT** make any attempt to view, download, or otherwise access any material contained on the device.
  - 4. **Protection of any potential evidence is paramount.** Only members of the appropriate investigative unit may make efforts to access material contained on the device.  

**NOTE:** Upon taking custody of the device, officers are strongly encouraged to place the device into airplane mode if so equipped. This will aid in preventing any remote access to or deletion of the data or other material stored within it.
  - 5. Submit the recovered camera, video/audio recording device, etc., in accordance with General Order 321.00, "Evidence and Property."
- C. If the individual **REFUSES** the request:
  - 1. If an officer has probable cause to believe a bystander is in possession of any still photos/images, video/audio recordings, and/or audio/sound recordings that are, or could reasonably be considered evidence related to a crime and there is no reason to believe that the evidence is in immediate jeopardy of being tampered with, altered, deleted, or destroyed, the officer should articulate the facts to support an application for a Search and Seizure Warrant.
  - 2. Coordinate with the appropriate investigative unit to secure a search warrant.
  - 3. If there is **PROBABLE CAUSE** to believe that evidence exists on a bystander's device, **AND** there is **PROBABLE CAUSE** to believe that the evidence is in immediate jeopardy of being tampered with, altered, deleted, or destroyed, the officer may **TEMPORARILY** seize the device for safekeeping/preservation of the evidence while the appropriate application(s) for Search and Seizure Warrant(s) are made.  

**NOTE:** Upon taking temporary custody of the device for the purposes of safekeeping/preservation, officers are strongly encouraged to place the device into airplane mode if so equipped. This will aid in preventing any remote access to or deletion of the data, photographs, etc., stored within it.
  - 4. **DO NOT** make any attempt to view, download, or otherwise access any material contained on the device.
  - 5. Protection of any potential evidence is paramount. Only members of the appropriate investigative unit may make efforts to access material contained on the device after securing a search warrant.
  - 6. Submit the recovered camera, video/audio recording device, etc., in accordance with General Order 321.00, "Evidence and Property."
  - 7. Complete all appropriate field reports.

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- D. The controlling supervisor shall:
1. Ensure any camera or video/audio recording device that has been used to photograph and/or video/audio record police activity comes into the custody of the Dallas Police Department:
    - a. Through the voluntary consent of the individual in possession of the item.
    - b. Through execution of a Search and Seizure Warrant.
    - c. Through some valid exception to the warrant requirement.
  2. Supervisors must provide the review and approval of any application for a Search and Seizure Warrant.
- E. The assigned detective shall apply for, execute, and return any Search and Seizure Warrant(s). Make any appropriate recommendations that may assist in the preservation of data, photographs, video/audio recordings, etc.

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