

Chapter 128
Citizen Recordings

Discussion: The Hattiesburg Police Department (HPD) recognizes that members of the general public may video record, photograph, and/or audio record HPD officers while conducting official business or while acting in an official capacity in any public space, unless such recordings interfere with police activity.

128.1.1 Procedures

- A. Photographing and recording in general are common and lawful activities.
- B. In areas open to the public, HPD officers shall allow for photography and recording. HPD officers shall be aware that:
 - 1. All persons may take photographs or make recordings as long as the person has a legal right to be present where he or she is located.
 - 2. Any person(s) may observe and record police officers in the public discharge of their duties.
 - 3. Public settings include, e.g., parks, sidewalks, streets, and locations of public property. Protection extends also to an individual's home or business, common areas of public and private facilities and buildings, and any other public or private facility at which the individual has a legal right to be present to include aerial photography.
 - 4. Persons may also record their own interactions with police officers.
 - 5. The fact that a person has a camera or other recording device does not, however, entitle the person to cross a police line, to enter an area that is closed to the public, or to enter any area designated as a crime scene.
- C. As long as the photographing or recording takes place in a setting where the individual has a legal right to be present and does not interfere with a HPD officer's safety, officers shall not inform or instruct people that photographing or recording police, police activity or individuals who are the subject of police action (such as a Terry stop or an arrest) are not allowed; require a permit; or require the consent of a HPD Officer. Additionally, HPD officers shall not:
 - 1. Order that person to cease such activity;
 - 2. Demand that person's identification;

3. Demand that the person state a reason why he or she is taking photographs or recording;
4. Detain that person solely for recording police activity.
5. Intentionally block or obstruct cameras or recording devices;
6. Demand to review or erase any images or recordings; or
7. In any way threaten, intimidate or otherwise discourage an individual from recording police activities.

NOTE: HPD officers may ask questions during the course of a contact, but are reminded that there is no justification for ordering a person to stop or requiring that they answer unless the officer reasonably suspects that a person has committed, is committing, or is about to commit any crime. The normal response of personnel, equipment, establishing a crime scene, inner and outer perimeters, and protective coverings used for evidence preservation are not considered blocking or obstructing regarding voyeuristic video and photography.

- D. HPD officers are reminded that the public does not have a right to interfere with police activity. Interference consists of conduct, threats, actions or activities that prevent or hinder, or purport to prevent or hinder, officers from doing their job. Individuals may not interfere through physical intervention or tampering with a witness. Recordings must be conducted in a manner that does not unreasonably impede the movement of emergency equipment and personnel or the flow of vehicular or pedestrian traffic. Observing or recording police activity, alone, does not constitute interference.
1. If a person is photographing or recording police activity from a position that impedes or interferes with the safety of HPD officers or their ability to perform their duties, an officer may direct the person to move to a position that will not interfere. However, officers shall not order the person to stop photographing or recording.
 2. A person has the right to express criticism of the police activity being observed. So long as that expression does not jeopardize the safety of any HPD officer, suspect or bystander; and so long as that expression does not violate the law or incite others to violate the law, the expression does not constitute interference.

E. Evidence on a Camera or Recording Device

1. The Fourth Amendment provides the right to be free from unreasonable searches and seizures of both person and property. HPD officers may not request or seize an individual's camera or recording device for the purposes of deleting, destroying, or otherwise concealing information.
2. Probable cause exists where the known facts and circumstances are such that a reasonable police officer in the same situation would believe that evidence of a crime will be found.
3. If a HPD officer has probable cause to believe that a camera or other recording device contains images or sounds that are evidence of criminal acts, the officer shall request that the person either:
 - a. Voluntarily (without coercion or threats) provide the device or recording medium (the memory chip, disk, drive or other portable memory) to the HPD officer; or
 - b. Where possible and practicable, and in the presence of the HPD officer, voluntarily transmit the images or sound via text message or electronic mail to the officer 's official or other official government electronic mail account; or
 - c. Allow the officer to record or download the recording on to storage medium in possession of the officer.
4. If the person voluntarily provides the camera or recording device to a HPD officer, the officer shall:
 - a. Exercise due care and caution with the individual's property or electronic device(s);
 - b. Document the receipt of the individual's property or electronic device immediately following the exchange. HPD officers should utilize a standardized "Property Receipt Form" for this purpose, provide the individual with a signed acknowledgement of such receipt, and retain all other copies.
 - c. Accurately list the item(s) surrendered by the individual and held/submitted as evidence on agency forms where there is a section provided specifically for "Property or Evidence". Photographs should be taken of the item(s) surrendered.
 - d. Provide the individual with the name and contact information of

- the HPD officer who took custody of the individual's property;
- e. Document the HPD officer's request for the items and the individual's response, in the narrative of applicable field reports and/or charging documents.
 - f. Protection of any possible evidence is paramount. Only officers with a need relevant to the investigation may make efforts to access material contained on the device.
5. HPD officers may not seize the recording or recording device unless sufficient exigent circumstances exist to justify a warrantless seizure. HPD officers must evaluate the sufficiency of exigent circumstances as they would for any other type of evidence.
6. If the person declines to voluntarily provide the camera or recording device, or to electronically transmit the sound and/or images where possible and practicable, or allow for other reasonable data transfer and there is probable cause to believe that the evidence is in immediate jeopardy of being tampered with, altered, deleted, or destroyed, a HPD 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. In this circumstance, the officer shall:
- a. Apply for, execute, and return any Search and Seizure Warrant(s) in accordance with department policies, federal law, and the laws of the State of Mississippi.
 - b. Submit the recovered camera, video recording device, etc., in accordance with department policies, federal law, and the laws of the State of Mississippi.
 - c. Complete all appropriate field reports.
 - d. DO NOT make any attempt to view, download, or otherwise access any material contained on the device at the time of the seizure.
 - e. Protection of any potential evidence is paramount. Only officers with a need relevant to the investigation may make efforts to access material contained on the device.
- F. HPD officers shall not, under any circumstances, erase or delete, instruct or require any other person to erase or delete, any recorded images or sounds

from any camera or other recording device that is in an individual's possession, or that has been voluntarily turned over or seized.

- G. HPD officers shall maintain cameras and other recording devices that are in Department custody, for the purpose of retrieving recorded media, so that they can be returned to the owner intact with all images or recordings undisturbed.

128.1.2 Ranking/Supervising Officer Duties

- A. Ensure that any camera or video recording device that has been used to photograph and/or video record police activity comes into the custody of the HPD:
 - 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.
- B. Provide guidance and assistance to members on those occasions when an Application for a Search and Seizure Warrant is made for a camera, video recording device, etc., believed to contain evidence related to a criminal investigation.
- C. In the course of a criminal investigation, and/or at the request of a HPD officer, a supervisor may access and download evidentiary materials contained on a device in the HPD's custody.
- D. Supervisors shall be responsible for communication of this policy to their subordinates, and to ensure their compliance. Supervisors also must set the example for their subordinates by acting appropriately when observed or recorded in public and by disciplining the subordinate or advising the appropriate individual(s) in the Department with disciplinary authority about any subordinate's violation of this policy.