

5-04/020.30 - Seizure of Photographic, Video, or Audio Evidence from a Private Citizen or Member of the Press

Except under limited circumstances, Department personnel are prohibited from searching or seizing photographs, video or audio recordings, cameras, recording equipment, or telephones without a warrant.

The following standards shall be adhered to when any film or storage source for photographic, video, or audio recordings is believed to contain photographic, video, or audio evidence relevant to a crime, deputy-involved shooting, in-custody death, or use of force incident.

When the film, tape, or storage source is believed to contain evidence relevant to a deputy-involved shooting, in-custody death, or use of force incident, deputies shall immediately notify a field supervisor who shall seek voluntary consent to view or obtain the film, tape, or storage source from the individual having possession.

Voluntary Consent Obtained

Consent to view or relinquish the film, tape, or storage source believed to contain photographic, video, or audio evidence may not be explicitly or implicitly coerced. If true consent is given, the following standards shall be adhered to:

- Any consent to either view or relinquish any film, tape, or storage source believed to contain photographic, video, or audio evidence shall be in writing or on a Department Electronic Device Search Waiver (SH-R-410ED) form or otherwise memorialized on audio or videotape;
- The scope of the consent shall be dictated by the owner or person in possession of the film, tape, or storage source believed to contain photographic, video, or audio evidence. Consent can be limited to allowing Department personnel to examine the film, tape, or storage source or consent can include allowing the Department to retain the film, tape, or storage source if it is found to contain evidence to the incident in question. Consent shall be limited to looking for information relevant to the particular incident in question;
- Upon receiving consent, the citizen shall be afforded the opportunity to examine the film, tape, or storage source believed to contain photographic, video, or audio evidence with supervisory personnel in order to ascertain evidentiary value;
- In instances where voluntary consent to examine the film, tape, or storage source is given and the film, tape, or storage source does not contain relevant evidence, it shall be immediately returned to the owner, or individual who had possessed it;
- In instances where the film, tape, or storage source is found to contain photographic, video, or audio evidence relative to a specific incident, and the owner or individual in possession of the file, tape, or storage source has consented to its retention by the Department, the owner shall be afforded the opportunity to accompany supervisory personnel to a location where the photographs, videos, or audio can be copied. The original film, tape, or storage source shall be retained by the Department as an item of evidence, and a copy will be given to the citizen; and
- If the evidentiary photographs, video, or audio are contained on a cell phone and the individual consents, the uploading of the digital items can be made through the Department's LASD.org website utilizing the "See Something/Send Something: Digital Witness" portal. A notation shall be made in the Incident Report documenting the fact that the digital media was uploaded to the above site. It is the

responsibility of the handling station or unit to then retrieve the digital items.

Voluntary Consent Not Obtained from Member of the Public

If voluntary consent to view or relinquish the film, tape, or storage source is not obtained, the following standards shall be adhered to. The film, tape, or storage source shall not be seized unless:

- It is believed to contain evidence relevant to a homicide and exigent circumstances exist which indicates that the evidence will be lost absent a seizure of the evidence;
- Department personnel at the rank of commander or higher approves the seizure because it is believed to be of evidentiary value in a felony crime, deputy-involved shooting, in-custody death, or force incident and the exigencies of the situation demand it and there is no other means to guarantee that the contents of the film, or tape, or storage source will be preserved as evidence because it is reasonable to believe that the recording will be destroyed, lost, tampered with, or otherwise rendered useless as evidence before a warrant can be obtained;
- To accomplish an involuntary seizure, Department personnel may temporarily seize the film, tape, or storage source no longer than reasonably necessary to diligently seek a search warrant authorizing the seizure, viewing, and copying of the film, tape, or storage source. Such temporary warrantless seizure may be accomplished only in a situation wherein an immediate seizure of the film, tape, or storage source is the only way to preserve the evidence. Personnel may not search the contents of the property absent a warrant, unless it is objectively reasonable to believe that immediate viewing of the film, tape, or storage source is necessary to prevent death or serious bodily injury to another person before a warrant can be obtained; and
- In all instances, a *Receipt for Seized Property* (SH-CR-624) shall be issued to the individual in possession of the film, tape, or storage source. When the film, tape, or storage source does not contain relevant evidence, it shall be immediately returned to the owner or individual who had possessed it.

Photographs, Video, or Audio Recorded by Members of the Press

Pursuant to Federal statute 42 USC Section 2000aa-(a), it is unlawful for personnel, in connection with an investigation or prosecution of a criminal offense, to search for or seize the work product of a person reasonably believed to have a purpose of disseminating information to the public, such as a reporter, journalist, radio commentator, author, filmmaker, or internet blogger, unless:

- Valid consent has been obtained; or
- A warrant or court order has been obtained; or
- There is reason to believe the immediate seizure of such material is necessary to prevent the death of or serious bodily injury to a human being; or
- There is probable cause to believe the person possessing such materials has committed or is committing the criminal offense to which the materials relate. The criminal offense in question cannot merely be the receipt, possession, communication, or withholding of the work product unless it relates to national defense, classification information, restricted data, or the exploitation of children.

In addition to the requirements set forth in this policy, if Department personnel deem it appropriate to seize film, audio or video tape, and/or photography, audio, or videotaping equipment or storage sources from members of the public with press credentials or members of the public who have identified themselves as press, Department personnel shall immediately notify the Sheriff's Information Bureau and note that fact in the

first report. Seizure of the film, tape, storage source, or equipment in question may then be accomplished in accordance with the following procedures:

- Advise the member of the press of the purpose for the contact or detention;
 - Ask the member of the press whether he or she recorded/captured data relevant to the incident;
 - If the member of the press acknowledges recording/capturing relevant data and voluntarily consents to allow review and/or supply a copy to the Department, personnel shall:
 - Immediately notify his or her supervisor and the Sheriff's Information Bureau;
 - Collect and document receipt of the data; and
 - Document the request and response on an official incident report;
 - If the member of the press acknowledges recording/capturing relevant data and refuses to allow review and/or provide a copy of the recorded/captured relevant data or refuses to state whether they recorded/captured relevant data, Department personnel shall:
 - Immediately notify his or her supervisor;
 - Instruct the member of the press not to destroy, alter, or delete the recorded/captured relevant data;
 - Document the request and refusal on an incident report;
 - Assist in the preparation of appropriate subpoena and/or warrant documents for production of the requested data; and
 - Request the member of the press provide their personal identification, press credentials, and contact information.
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