



# SOUTH MIAMI POLICE DEPARTMENT

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| <b>GENERAL ORDER NUMBER:</b> 18.12   | <b>DATE OF ISSUE:</b><br>October 20, 2012 | <b>EFFECTIVE DATE:</b><br>May 14, 2014 | <b>NUMBER OF PAGES:</b><br>09  |
| <b>CFA STANDARD:</b> None  |   | <b>NEW ( ) RESCINDS (X)</b>            | <b>By Order Of:</b><br><br><br><b>Rene Landa,</b><br><b>CHIEF OF POLICE</b> |
| <b>SUBJECT:</b><br>Seizure & Search Of Portable Video<br>And Photo Recording Devices<br>ADMINISTRATION |   | <b>AMENDS (X) OTHER ( )</b>            |  |

**CFA STANDARDS:** None.

**SECTIONS:**

- 18.12.1      **General Procedures**
- 18.12.2      **Non-Sworn Employees**
- 18.12.3      **Initial Stop of an Individual (Non-Media)**
- 18.12.4      **Consent to Search or Seize Recording Devices of an Individual (Non-Media)**
- 18.12.5      **Non-consensual Seizure of Recording Devices of an Individual (Non-Media)**
- 18.12.6      **Initial Stop of Media**
- 18.12.7      **Supervisory Notification**
- 18.12.8      **Supervisor's Responsibilities**
- 18.12.9      **Impounding of Property**
- 18.12.10     **Prohibited Actions**

**RESCINDS:** All existing orders in conflict.

**PURPOSE:** To provide guidelines and procedures for investigation, seizure, and searching of portable video and photo recording devices which contain data of evidentiary value pertaining to a criminal act, and to ensure that that the members of this Department act in a way that is prudent and lawful with regard to these devices.

**SCOPE:** All departmental personnel.

**POLICY:** It shall be the policy of the South Miami Police Department that the seizure and searching of portable video and photo recording devices shall be governed by Constitutional and statutory laws as well as Departmental Investigatory Policies.

**DEFINITIONS:**

**I Phone:** a line of smartphones designed and marketed by Apple Inc.

**Ipad:** a line of tablet computers designed and marketed by Apple Inc., primarily as a platform for audio-visual media including books, periodicals, movies, music, games, apps and web content. Its size and weight fall between those of contemporary smartphones and laptop computers.

**Jump Drive:** A USB flash drive.

**Memory:** The electronic holding place for instructions and/or data; may also be referred to as a “SIM card.”

**Memory card:** A memory card or flash card is an electronic flash memory data storage device used for storing digital information. They are commonly used in many electronic devices, including digital cameras, mobile phones, and laptop computers. They are small, re-recordable, and able to retain data without power. Examples include CompactFlash, Memory Stick, Micro Secure Digital (SD) Card, Miniature Secure Digital (SD) Card, MultiMediaCard (MMC), Secure Digital (SD) Card, SmartMedia, and Xd Picture Card.

**Probable Cause:** Knowledge of facts and circumstances that would warrant an officer of reasonable caution to believe that a person has committed a crime or that evidence of a crime will be found at a certain place.

**Personal Digital Assistant (PDA):** Devices usually containing phone, address lists, photographs and other data; and may also be referred to a “smart phones” and “tablet computers.”

**Portable Video and/or Photo Recording Device:** Any device capable of capturing still photographs and/or video/audio recordings (e.g. cell phones, smart phones, tablet computers, digital and analog cameras, digital and analog video recorders, etc.)

**Removable Media:** Disks, CDs, DVDs, cartridges and flash drives that store data and can be easily removed.

**Removable Media Card:** Small data storage media which are more commonly found in other digital devices such as smart phones, tablet computers, cameras, and PDAs.

**Search Warrant:** An order, in writing, issued by a judge, directing a law enforcement officer to search a particular area, device, person, conveyance, or structure for contraband, fruits of a crime, or other evidence.

**Smartphone:** a mobile phone built on a mobile operating system. Smartphones combine the functions of a personal digital assistant (PDA) with a mobile phone. Current models added the functionality of portable media players, compact digital cameras, pocket video cameras, and GPS navigation units to form one multi-use device; high-resolution touch screens and web browsers that display standard web pages as well as mobile-optimized sites. High-speed data access is provided by Wi-Fi and Mobile Broadband.

**Tablet:** A tablet computer, or a tablet, is a mobile computer, larger than a mobile phone or personal digital assistant, integrated into a flat touch screen and primarily operated by touching the screen rather than using a physical keyboard. It often uses an onscreen virtual keyboard, a passive stylus pen, or a digital pen.

**Thumb Drive:** A USB flash drive.

**USB:** Universal Serial Bus interface or port.

**USB flash drive or USB Storage Device:** Small storage devices, powered by and accessed using a device's USB ports. They may store large volumes of data files. They are easily removed, transported and concealed.

## **PROCEDURES:**

### **18.12.1 General Procedures:**

- A. The Department recognizes that the taking of photographs and/or videos by private citizens and media personnel is permitted within areas open to general public access and occupancy.
- B. A civilian may video record or photograph a police employee's activities as long as they:
  - 1. Remain at a reasonable distance;
  - 2. Do not interfere with the employee's duties and responsibilities;
  - 3. Do not create a safety concern for the employee, person detained, or other persons.

### **18.12.2. Non-Sworn Employees:**

- A. Non-sworn employees are prohibited from seizing a person's portable video and photo recording devices.

### **18.12.3 Initial Stop of an Individual (Non-Media):**

- A. When a sworn employee stops an individual who is reasonably believed to have recorded/captured data of evidentiary value pertaining to a criminal act the employee shall:
  - 1. Announce his/her authority and identity. Non-uniform sworn employees shall identify themselves by prominently displaying Departmental credentials;
  - 2. Advise the individual of the purpose of the stop;
  - 3. Ask the individual whether he recorded/captured data relevant to the incident;
  - 4. Request the individual provide their personal identification and contact information;
- B. The stop shall last no longer than necessary to affect its purpose. Brevity is important in determining whether or not a stop is reasonable. A prolonged stop may be warranted if the employee reasonably and diligently pursues investigative means to determine whether he/she possesses data that may have evidentiary value, and to confirm the person's identity.

#### **18.12.4**

#### **Consent to Search or Seize Recording Devices of an Individual (Non-Media):**

- A. Sworn employees may ask an individual for consent to a search and/or seizure of a portable photo and/or video recording device to determine if data of evidentiary value pertaining to a criminal act is present.
  - 1. The employee's supervisor shall be notified immediately after any seizure and prior to any search of the device.
    - a. The supervisor shall determine whether an immediate search is warranted or a GIU detective should respond.
  - 2. If a consensual seizure occurs, the property shall be inventoried and documented by the seizing sworn employee pursuant to SMPD General Orders.
  - 3. Authorization to search the device shall be documented by the seizing sworn employee on a "Consent to Search Form" or Offense Incident Report.
    - a. The seizing sworn employee shall accurately and completely document the basis for the seizure and findings of the search in an "Offense Incident Report."

#### **18.12.5**

#### **Non-consensual Seizure of Recording Devices of an Individual (Non-Media):**

- A. When there is probable cause to believe that the portable video and/or photo recording device depicts visual and/or audio items pertaining to a criminal act, the device may be seized without consent if exigent circumstances exist.
  - 1. The most common type of exigent circumstance is the imminent destruction of evidence. Two requirements must be met for this exigency to exist:
    - a. Sworn employees must have probable cause to believe destructible evidence exists;
    - b. Sworn employees must have reason to believe the evidence might be destroyed if they delay taking action until a subpoena/search warrant is issued.
  - 2. The sworn employee's supervisor shall be notified immediately after any seizure, and the supervisor shall respond to the scene.
  - 3. No search of the device shall be conducted until a subpoena/search warrant is issued unless there is reason to believe that the immediate search of such materials is necessary to prevent the death of, or serious bodily injury to, a human being.

4. A sworn employee's response to an individual's resistance to a non-consensual seizure shall be in compliance with SMPD General Orders regarding a Use of Force.
5. The seizing sworn employee shall accurately and completely document the basis for the seizure in an Offense Incident Report.
5. If a non-consensual seizure occurs, the property shall be inventoried and documented by the seizing sworn employee pursuant to SMPD General Orders regarding Property and Evidence.
6. An on-duty or on-call CID supervisor shall be notified of the seizure, and shall assign a detective to be responsible for preparation of an application for subpoena/search warrant.

#### **18.12.6**

#### **Initial Stop of Media:**

- A. When a sworn employee stops a media photographer/videographer who is believed to have recorded/captured data of evidentiary value pertaining to a criminal act the sworn employee shall:
  1. Announce his authority and identity. Non-uniform sworn employees shall identify themselves by prominently displaying Departmental credentials;
  2. Advise the media person of the purpose of the stop;
  3. Ask the media person whether he/she recorded/captured data relevant to the incident; If the media person acknowledges recording/capturing relevant data and agrees to allow review and/or supply a copy to the Department, the sworn employee shall:
    - a. Immediately notify his supervisor;
    - b. Collect and document receipt of the data pursuant to SMPD General Orders.
    - c. Document the request and response on an Offense Incident Report.
  4. If the media person 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, the sworn employee shall:
    - a. Immediately notify his supervisor;
    - b. Instruct the media person not to destroy, alter or delete the recorded/captured relevant data;
    - c. Document the request and refusal on a Offense Incident Report;
    - d. Assist CID to prepare appropriate subpoena and/or warrant documents for production of the requested data.

- B. The stop shall last no longer than necessary to effect its purpose. Brevity is important in determining whether or not a stop is reasonable. A prolonged stop may be warranted if the employee reasonably and diligently pursues investigative means to determine whether he possesses data that may have evidentiary value, and to confirm the person's identity.
- C. Sworn employees shall not seize portable video and photo recording devices from media personnel unless they are under arrest or otherwise directly involved in the criminal act.
  - 1. A warrantless search of portable video and/or photo recording devices seized incident to the direct involvement or arrest of media personnel is prohibited unless there is reason to believe that the immediate search of such materials is necessary to prevent the death of, or serious bodily injury to a person.

**18.12.7 Supervisory Notification:**

- C. The employee's supervisor shall be notified immediately after the seizure of a portable video and/or recording device, whether consensual or non-consensual, and advised of:
  - 1. The totality of the circumstances surrounding the stop and seizure;
  - 2. The type of device seized;
  - 3. The status of the person from whom the device was seized (e.g. detained, arrested, etc.).

**18.12.8 Supervisor's Responsibilities:**

- A. The Supervisor shall:
  - 1. Immediately respond to the scene;
  - 2. Ensure the totality of the circumstances surrounding the stop and seizure as conveyed by the sworn employee are warranted, appropriate, and in compliance with this General Order.
    - a. If the supervisor determines the stop and seizure is appropriate, he shall determine whether an immediate search of the portable video and/or photo recording device by the sworn employee is warranted.
    - b. If the supervisor determines that the seizure is not appropriate, he/she will ensure that:
      - 1) The portable video and/or photo recording device is immediately returned and the person detained is made whole.
        - a) The supervisor shall ensure these findings are documented in a staff notification.

- c. Ensure that the seizing sworn employee documents the circumstances and actions taken on a “Case Report/Offense Incident Report”.
3. Ensure that all required documentation is completed;
4. Ensure that proper evidence handling protocols are followed;
5. Ensure that CID has been notified;
6. Ensure that a “Response to Resistance Report” is completed if necessary;
7. Ensure that any questions or concerns regarding the appropriateness of the stop and/or seizure shall be immediately directed to the next supervisory level in the chain-of-command;
8. Ensure that the Public Information Officer is notified if necessary.

**18.12.9 Impounding of Property:**

- A. Whenever a sworn employee impounds any portable video or photo recording device, the employee shall complete a Property Receipt.

**18.12.10 Prohibited Actions:**

- A. Employees shall not order or participate in the destruction of portable video and photo recording devices.
- B. Employees shall not order or participate in the erasure, deletion or destruction of digital, analog or film evidence.
- C. Employees shall not impede a person’s right to photograph or video record an event unless that person’s actions:
  1. Endanger the safety of the public, employees, or property;
  2. Interfere with an active crime scene; or
  3. Create a reasonable safety concern.

**18.12.10 Statutory Limitations and Liability:**

- A. Pursuant to federal statute, 42 USC Section 2000aa-6, it is unlawful for a sworn officer or employee, in connection with an investigation or prosecution of a criminal offense, to search for or seize the work product of a media photographer/videographer, unless:
  1. There is reason to believe that the immediate seizure of such materials is necessary to prevent the death of, or serious bodily injury to, a human being; or
  2. There is probable cause to believe that the person possessing such materials has committed or is committing the criminal offense to which the materials relate.

- a. A search or seizure of the work product is prohibited when the offense is merely the withholding of such material.
- B. Sworn officers and employees may be held personally liable in an action for civil damages for violation of federal statute, 42 USC Section 2000aa-6.