



ELECTRONIC AND PHOTOGRAPHIC SURVEILLANCE EQUIPMENT

FC No.: 450

Date: 09-07-04

If a provision of a regulation, departmental directive, rule, or procedure conflicts with a provision of the contract, the contract prevails except where the contract provision conflicts with State law or the Police Collective Bargaining Law. (FOP Contract, Article 61)

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I. Policy

The policy of the department is to ensure all electronic and photographic surveillance equipment is used in accordance with existing federal and state statutes. The equipment is to be properly maintained to ensure utmost efficiency. Qualified department employees will receive extensive training to ensure proper use of the equipment. (CALEA 43.1.4, 43.1.6, 51.1.1.d)

II. Duties and Responsibilities

- A. Certain types of electronic and photographic equipment are maintained by the Special Investigations Division (SID). The Director, SID, or designee, will be responsible for the proper security, maintenance, and issuance of the equipment.
- B. To obtain electronic equipment, requesting personnel must contact the Director, SID, or designee. Prior to the release of the equipment, a formal discussion will be held to review legal issues governing the use of the equipment. Questions regarding legal issues will be resolved by the State's Attorney's Office.
- C. Qualified SID personnel will be responsible for installation and maintenance of all equipment used for court authorized communications

intercepts. The Director, SID, or designee, in consultation with case investigators will determine whether SID personnel will be utilized to monitor installed intercept equipment.

III. Personnel

- A. Only officers certified as qualified by the Director, SID, will install the surveillance equipment to be utilized.
- B. When possible, the unit using the equipment will provide qualified personnel from within their unit to operate the equipment.

IV. Equipment

- A. Department electronic and photographic surveillance equipment will be utilized only for the purpose decided upon in the formal discussion described in section II.B. At the conclusion of the requesting unit's operation, all equipment will be returned immediately to SID. The requesting unit will provide proper security for the equipment until it is returned.
- B. Upon the return of the equipment, SID personnel will inspect and inventory the equipment.
- C. Any malfunction that occurs during the use of the equipment will be brought promptly to the attention of SID and will be noted on the property receipt or equipment sign-in log.
- D. Maryland law requires the registration of certain types of audio and video equipment with the Maryland State Police (MSP), Licensing Division. Based on the recommendation of the Montgomery County State's Attorney's Office, this department's policy is to register all audio and video equipment that is capable of intercepting oral communications. This includes all tape recorders and camcorders.
- E. Supervisors are responsible for ensuring registration of equipment used by personnel under their command.

F. Registration of equipment by manufacturer, model number, and serial number can be accomplished by mailing the information to the MSP, Licensing Division (see Appendix A for a sample letter). Equipment should normally be registered within 10 days from the time it comes into possession or control of the department.

G. MSP will provide a written response that lists the newly assigned registration number. The equipment should then be labeled with the registration number. A copy of the MSP response will be forwarded to SID by the officer registering the equipment.

V. **Training**

SID will provide and coordinate all training to qualify officers in the use of surveillance equipment. Training will consist of both mandatory classroom instruction and practical use. Only officers certified as having completed this training will be authorized to use this equipment.

VI. **Videotaping with Audio Communications**

A. Maryland Code, Courts and Judicial Proceedings Article 10, Subtitle 4, makes it illegal for a person to tape record private conversations without the knowledge and express consent of every party to the conversation being recorded. The statutory violation constitutes a felony and any evidence obtained as a result of such a tape recording is inadmissible in any administrative or judicial proceeding. Certain exceptions were created in Section 10-402: "It is lawful under this subtitle for an investigative or law enforcement officer acting in a criminal investigation or any other person acting at the prior direction and under the supervision of an investigative or law enforcement officer to intercept a wire, oral, or electronic communication in order to provide evidence of the commission of the offenses of **murder, kidnapping, rape, a sexual offense in the first or second degree, child abuse, child pornography under § 11-207 or § 11-208 of the Criminal Law Article, gambling, robbery under § 3-402 or § 3-403 of the Criminal Law Article, an arson or burning felony under Title 6, Subtitle 1 of the Criminal Law Article, bribery, extortion, dealing in a controlled dangerous substance, including a violation of § 5-617 or § 5-619 of the Criminal Law Article, a fraudulent insurance act, as defined in Title 27, Subtitle 4 of the Insurance Article, an offense relating to destructive devices under § 4-503 of**

the Criminal Law Article, or any conspiracy or solicitation to commit any of these offenses, or where any person has created a barricade situation and probable cause exists for the investigative or law enforcement officer to believe a hostage or hostages may be involved, where the person is a party to the communication or one of the parties to the communication has given prior consent to the interception."

B. **It is also lawful to intercept an oral communication if:**

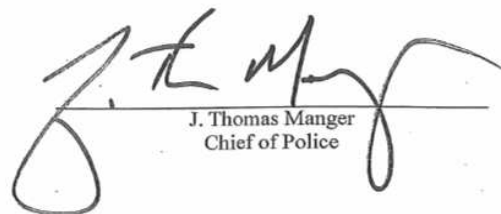
1. **The law enforcement officer initially lawfully detained a vehicle during a criminal investigation or for a traffic violation.**
2. The law enforcement officer is a party to the oral communication.
3. The law enforcement officer has been identified as a law enforcement officer to the other parties to the oral communication prior to any interception.
4. The law enforcement officer informs all other parties to the communication of the interception at the beginning of the communication.
5. The oral interception is being made a part of a videotape recording.

(Note: Items 3 and 4 above do not apply to a third party entering a conversation where those requirements have already been met.)

VII. **Proponent Unit:** Special Investigations Division

VIII. **Cancellation**

This directive cancels Function Code 450, dated 08-16-00.



J. Thomas Manger
Chief of Police