

GENERAL ORDER



DISTRICT OF COLUMBIA

Title
Interception of Wire or Oral Communications

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GO-SPT-304.04

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Distribution
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Replaces/Rescinds:
General Order 304.4 (Interception or Recording of Wire or Oral Communications); General Order 603.05 (Electronic Surveillance Equipment); TT #09-471-01 (Change to GO-SPT-304.04); Operational Services Memorandum 00-02 (Use of Interception or Recording Devices)

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I. BACKGROUND

There are four acts of Congress which affect the interception/recording of communications, Title III of the Omnibus Crime Control and Safe Streets Act of 1969, the Electronic Communications Privacy Act of 1968, the Communications Assistance for Law Enforcement Act of 1994, and the Anti Terrorism Act of 1996. These Acts define, authorize and regulate the interception or recording of communications.

The contents of this general order complies with the provisions governing the interception of wire or oral communications, as established in D.C. Official Code §23-541 thru 556.

II. POLICY

The policy of the Metropolitan Police Department (MPD) is to adhere to the laws, rules and regulations governing the interception of wire or oral communications in a manner that does not violate an individual's constitutional rights.

III. DEFINITIONS

For the purpose of this directive, the following terms shall have the designated meanings:

1. Wire Communications - any communication made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection, between the point of origin and the point of reception, furnished or operated by any person engaged as a common carrier in providing or operating such facilities.

2. Oral Communications – any oral communications uttered by a person exhibiting an expectation that the communication is not subject to interception under circumstances justifying the expectation.
3. Intercept – means the aural acquisition of the contents of any wire or oral communication through the use of any intercepting device.
4. Intercepting Device – any electronic, mechanical, or other device or apparatus, which can be used to intercept a wire or oral communication other than:
 - a. Any telephone, equipment, or facility, or any component thereof, furnished to the MPD by a communications common carrier in the ordinary course of its business and being used by an investigative or law enforcement officer in the ordinary course of his/her duties.
 - b. A hearing aid or similar device being used to correct subnormal hearing.
5. Electronic Communications – is the transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectric, or photo optical system (e.g., fax, pager, e-mail).
6. One-Party Consent – interception of wire and oral communications by the MPD, without having to obtain court authorization (e.g., when there is the consent of a party whose voice is being intercepted, as in the case of plants, where a store clerk is cooperating with the police or when a member is a party to the conversation).
7. Surveillance and Recording Equipment - any telephone extension, device or bug, whether mechanical, electrical, battery operated, wire or wireless, that will intercept, eavesdrop, monitor, pick-up or record any oral conversation, except that tape recorders are explicitly exempted.

IV. REGULATIONS

- A. Any member making a request to conduct interceptions of wire or oral communications, which is not a one-party consent, must obtain court authorization.
- B. All requests to utilize any electronic surveillance equipment shall be submitted and hand carried to the Commander, Major Narcotics Branch, Special Services Command, on a PD Form 154 (Request for Services of Electronic Surveillance Unit).

Note: Due to extremely sensitive and confidential investigations of police officers conducted by the Office of Professional Responsibility (OPR),

the Assistant Chief of OPR shall be authorized to obtain, maintain, and utilize electronic surveillance equipment for investigations conducted by OPR members in accordance with the procedures enumerated in this directive. Any requests dealing with interception of wire or oral communications by members of OPR shall be submitted to the Assistant Chief of OPR.

V. PROCEDURAL GUIDELINES (CALEA 42.2.1-a & e)

A. Requesting Court Authorization

1. All requests for court authorization to conduct interceptions of wire or oral communications shall be submitted, through channels, to the Assistant Chief, Special Services Command.
2. Requests are to be hand carried to the Assistant Chief, Special Services Command or his/her designee, for approval. Under no circumstances are one-party consent requests to be submitted through departmental mail.
3. With approval of the Special Services Command, members shall submit requests to an Assistant United States Attorney, who may authorize, in writing, a member to make application to the court for an order authorizing the interception of oral or wire communications.
4. Upon completion of all court approved wire or oral interceptions, a report detailing the results obtained from the interception shall be submitted to the Special Services Command.

B. Interceptions or Recordings Not Requiring Court Authorization

1. One-party consent conversations that take place within the District of Columbia may be intercepted, monitored, or recorded by the MPD, without having to obtain court authorization.

2. Routine One-Party Consent Request

When time is not a critical factor, before any member intercepts, records, or listens in on any conversation, utilizing any electronic surveillance equipment or any other aid to the human hearing, without the clearly expressed or implied consent of all parties to such conversation, the member shall obtain prior written authorization from the Assistant Chief, Special Services Command. (CALEA 43.1.4)

3. One-party consent requests shall contain the following:
 - a. Enough information to identify the specific investigation involved. If the investigation is confidential, a control number or

the type of investigation being conducted (e.g., gambling, narcotics) is sufficient;

- b. The type of interception or recording (e.g., oral or telephonic) to be made;
- c. The date(s) the interception or recording is to take place. Under special circumstances, approval may be granted to conduct interceptions or recordings for a period not to exceed 28 days;
- d. The names(s) of the person(s) consenting to have the conversation recorded or intercepted. In the case of undercover officers or special employees, his/her identifying number shall be given; and
- e. The jurisdiction in which the recording or interception is to take place.
 - (1) If the request is for a one-party consent recording or interception in the state of Maryland, the name of the person or agency in that jurisdiction, under whose direction the requesting member shall conduct the operation shall be specified.
 - (2) In the state of Maryland, only Maryland state investigative or law enforcement officers, or any other person acting at the direction or under the direct supervision of a Maryland investigative or law enforcement officer, or any attorney authorized to prosecute or assist in the prosecution of criminal cases in the state of Maryland, are authorized to conduct one-party consent recordings. Authorization can only be given for the investigation of murder, kidnapping, gambling, robbery, bribery, extortion, dealing in controlled dangerous substances, or the conspiracy to commit any of these seven (7) offenses.
 - (3) In the state of Virginia, there are no restrictions concerning the conduct of one-party consent activities. However, members planning to operate in Virginia shall, if time permits, contact their prosecuting Attorney's office to make sure the activity, which is being conducted, meets with their approval. If time is a factor, use the same procedures that apply to operations in the District of Columbia.

C. Emergency One-Party Situations (CALEA 43.1.4)

- 1. During regular business hours, in situations when the progress of an investigation makes it necessary to use surveillance or recording

equipment immediately, an oral request shall be made to the Special Services Command, or designee. The requesting member shall obtain a Special Services Command control number.

2. During non-business hours, in situations when the progress of an investigation makes it necessary to use surveillance or recording equipment immediately, the equipment shall only be used with the approval of the official then in charge of the requesting member's organizational element.

D. After-Action Report

1. Upon concluding a one-party consent operation, authorized as a result of a written request, the member who requested the consent shall prepare a report indicating whether or not the interception or recording was made, providing any information that differs from the original request. This report shall be prepared and submitted to the Special Services Command and shall include the Special Services Command control number.
2. In emergency cases, a report containing the information prescribed in regular one-party consent requests, shall be prepared by the member who requested the consent, and be submitted to the Special Services Command by 0900 hours on the next business day. The report shall contain a statement as to whether or not the interception or recording was made, the reason the one-party consent request was considered an emergency, and shall include the Special Services Command control number.
3. All one-party consent requests for extensions must be submitted within 28 days. If an extension is submitted for approval past the 28th day, it will be disapproved and an after action report shall be required, prior to approval of a new request.
4. Under those special circumstances in which authorization was given to conduct one-party consent recordings or interceptions for up to 28 days, the member requesting the one-party consent, shall prepare a weekly report identifying the conversations recorded or intercepted during the week and submit the report to the Special Services Command.

E. Issuance of Electronic Surveillance Equipment and Request for Services (CALEA 43.1.4)

1. Organizational elements that require surveillance equipment on a continuous basis may arrange for automatic issue of equipment, through the Assistant Chief, Special Services Command. The organizational element shall establish a schedule with the Electronic Surveillance Unit for inspections of the equipment every 90 days.

2. Unless specific authorization has been granted by an official of the Electronic Surveillance Unit, issued equipment shall be returned prior to the expiration of the tour of duty in which issued.
 3. An official of the Electronic Surveillance Unit may grant an extension beyond the expiration of the tour.
 4. Extensions beyond thirty (30) days shall be granted, only upon the submission of written justification, from the element's commanding officer and approval by the Assistant Chief, Special Services Command.
- F. Maintaining Department Owned Surveillance and Recording Equipment
1. All surveillance and recording equipment that is the property of the Metropolitan Police Department shall be registered with the Electronic Surveillance Unit, Special Investigations Division, which shall be operated on a 24-hour, 7-day a week basis.
 2. The Electronic Surveillance Unit shall:
 - a. Store and establish an inventory database to catalogue the surveillance and recording equipment. The database must contain, but is not limited to, the following information: (CALEA 17.5.3)
 - (1) Brand name and type of surveillance or recording equipment;
 - (2) Serial and model number;
 - (3) Date of purchase or acquisition;
 - (4) District or unit where equipment is assigned; and
 - (5) Name of member responsible for maintenance and distribution of equipment.
 - b. Conduct quarterly, documented, inspections of electronic surveillance equipment, for the purpose of maintaining its operational readiness, which includes: (CALEA 17.5.3)
 - (1) Detecting any wear;
 - (2) Abuse;
 - (3) Neglect; and
 - (4) Taking necessary action to correct or repair equipment.

- c. Maintain records of maintenance, to include, any repair costs.
- d. Evaluate and issue the stock of electronic surveillance equipment.
- e. Place all orders, through the Director, Equipment and Supplies Department, for all expendable supplies required to support electronic surveillance equipment.

G. Registration and Use of Privately Owned Surveillance and Recording Equipment

Members shall observe the following registration requirements concerning possession and/or use of privately owned surveillance equipment at Metropolitan Police Department facilities, or in connection with MPD business or investigations:

1. No privately owned surveillance or recording equipment, (other than tape recorders) may be brought into, kept or used on Metropolitan Police Department premises or in connection with department business or investigations, unless it has been registered on a PD Form 298 (Registration of Surveillance and Recording Equipment) with an administrative official of the relevant organizational unit.
2. Privately owned surveillance and recording equipment, which is only temporarily brought into or left at a Metropolitan Police Department facility, for a period of time not to exceed a member's tour of duty, and which is in transit for private purposes, is not subject to registration.
3. Privately owned surveillance and recording equipment shall only be used in connection with MPD business or investigations, by its registered owner, in accordance with this directive or with the explicit approval of the official in command of the relevant organizational unit. The approving official shall ensure that any use is consistent with the guidelines set forth in this order.

H. Supervisory personnel shall ensure that any:

1. Use of surveillance or recording equipment, by members of his/her respective element, is conducted in strict accordance with the provisions of this order.
2. Electronic surveillance equipment assigned to his/her unit, is maintained securely, when not in use, and is inspected prior to and after use.

- I. Command personnel shall ensure that:
 1. All electronic surveillance equipment assigned to the District or unit is properly registered with the Electronic Surveillance Unit, Major Narcotics Branch.
 2. A member of his/her command is specifically assigned the responsibility for the distribution and maintenance of the surveillance equipment.

- J. Assistant Chief of Police, Special Services Command shall:
 1. Submit to the Chief of Police, by the sixth calendar day of January, a report of all recording and surveillance activities for the previous calendar year that did not require court authorization, but were authorized under the provisions of this order.
 2. Ensure that the Electronic Surveillance Unit conducts an annual inventory of all MPD owned surveillance and recording equipment.
 3. Conduct an annual review of all registered privately owned surveillance and recording equipment.

// SIGNED //
Charles H. Ramsey
Chief of Police

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