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November, 2021

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KNOW
YOUR RIGHTS

FILMING & PHOTOGRAPHING POLICE

NOVEMBER, 2021



Knowing your rights is an important tool to help you recognize when your rights have been violated. Asserting your rights in interactions with law enforcement can also help you if you later want to raise these issues in court or through a complaint. Sometimes, however, questioning police actions or verbally insisting on your rights can escalate interactions with law enforcement. Use your best judgment about what you need to do in order to stay safe. We encourage people to trust their instincts to protect their safety, and assert their rights calmly and politely when possible.

The information in this Guide is legal information, not legal advice. If you are looking for legal advice please consult a lawyer.

IS IT LEGAL?

IS IT LEGAL TO FILM THE POLICE IN CANADA?

The *Canadian Charter of Rights and Freedoms*, which is part of Canada's constitution, protects individuals' freedom of expression and guarantees the right to be free from arbitrary police detention, unreasonable searches, and general liberty. Depending on the circumstances, these rights and freedoms could all be invoked to protect individuals' rights to film and photograph on-duty police officers.

There are times, though, when these rights, and in particular the right to film on-duty police officers, can be limited.

If your actions are giving rise to a safety concern – whether it be a risk to your own safety or that of others – a police officer might order you to move. This might include, for example, telling you to step back from an arrest that is taking place, or moving away from a hazard like a fire. These types of safety concerns really should focus on where you are standing – not whether or not you are filming or taking pictures. The police may also order people to move to protect the integrity of an ongoing police investigation.

While it might be legitimate for the police to order you to physically move in certain circumstances, the simple act of filming or photographing will almost never give rise to the same types of concerns. Several court and disciplinary decisions have affirmed that police officers do not have the power to simply order a person to stop filming them, with one ruling affirming that police interference with an individual who is filming and/or photographing police is a “significant abuse of authority.”¹

This means that, while there are situations where police will be able to dictate where people stand, there are very few circumstances when they can legitimately order you to stop photographing or filming on-duty police officers.

As a general rule it is important to follow lawful police orders. If you refuse to follow police orders you might be charged with obstruction – a criminal offence. This doesn't mean you have to help a police officer in their investigation or duties. You have a constitutionally-protected right to silence and, in most circumstances, you do not have any obligation to answer a police officer's questions (for more information about the right to silence please see this [useful resource](#) from Community Legal Education Ontario). But if you intentionally take actions that make it more difficult for a police officer to carry out their duties, including for example photographing an undercover police officer with the intention of identifying them publicly, you may face criminal charges.

¹ *R v Zarafonitis*, 2013 ONCJ 570 at para 26



DOES IT MATTER WHETHER YOU ARE FILMING FROM PUBLIC OR PRIVATE PROPERTY?

Yes and no.

If you are in a public space, such as a sidewalk or public park, you have a right to record an officer while they are executing their duties.

If you are in a private space where the public generally has access – like a shopping mall – there might be general rules about what you can or cannot record that might impact your ability to record a police officer. A hospital is a good example – many hospitals have restrictions on taking video or pictures in order to protect patient privacy. If you start filming in a private space and the person in charge of that space doesn't want you to continue, you might be asked to leave.

If you are filming from a private space – someone's house or backyard for example – you generally need the property owner's permission to be there. That isn't an issue if you're on property that you own or rent. If you're a guest – let's say you're over at your friend's house – the property owner could ask you to stop filming, or leave, if they don't like what you are doing. But that's a decision that the property owner makes – not the police.

CAN A POLICE OFFICER TAKE YOUR PHONE?

In general, a police officer cannot take your phone and search it. There are exceptions to this rule. Here are some of the most common exceptions.

You consent to the police searching your phone

Lots of times, when a police officer asks to search a person's bag or personal property, the person just says yes. Often they think that they don't have a choice. Generally speaking, you do have a choice but if you agree to the search, you have provided your consent, and the police don't need any other legal justification to conduct the search.

If you do not want the police to look at your phone, you should clearly say you do not consent to having your phone searched.

You are being arrested

If you are being arrested, the police can seize your phone and they may be able to do a cursory search of its contents. But they can't force you to tell them your password, and they can't delete anything.

If you are being detained because the police have reasonable grounds to suspect you've been involved in a crime, the police can do a pat down search for safety – but that wouldn't allow them to take or search your phone. For more information on the difference between a detention and an arrest see this [useful resource](#) from Community Legal Education Ontario.

The police have a search warrant

Judges can issue search warrants that include authorizing police to search and seize personal electronic devices like phones. If the police say they have a search warrant you should ask to see it. You may also want to contact a lawyer. You should not physically resist a police search.

Your phone contains evidence of an offence

An officer can take your phone, without a warrant, if the police have reasonable grounds to believe the phone contains evidence of an offence. They can't search it on the spot – in most circumstances they would need a warrant for that – but they can confiscate it. We haven't heard of this actually happening to a person who is filming the police – but we have heard of instances where the police threaten to seize a phone if the person keeps filming. And the possibility does exist that, if the police observe you filming what might turn out to be evidence of a crime – whether it was a crime committed by a civilian (including yourself) or a police officer – the police may be able to take your phone without your consent.



WHAT SHOULD YOU DO IF YOU AREN'T UNDER ARREST BUT THE POLICE ARE TRYING TO TAKE YOUR PHONE?

There have been reported cases of the police telling people that if they do not stop filming or immediately delete a video, the police will seize their phones.

While you almost always have the right to continue filming (as long as you are not obstructing the police), the police may be able to seize your phone if you filmed someone committing a crime. For example, if you are filming the police arresting a person and the police think that the person assaulted a police officer or resisted arrest, the police might say that your video contains evidence of a crime.

If the police ask you to hand over your phone, clearly tell them that you do not consent to them taking or searching your phone. If they insist, you can ask what legal grounds they have for seizing your phone. If they say they have a warrant, you can ask to see it. Don't physically resist if they try to take your phone from you.

If a police officer says that they want your phone because they think it has evidence of a crime, then you can offer to provide your contact information and state you will not delete the video so they can access it once they have a warrant. If the police continue to insist that they can seize your phone, you may consider offering to send the video to the police so that you can keep your phone.

You may want to consider having your videos and photos automatically upload to the cloud or immediately sending them to a friend through an encrypted messaging service after you take them. If you know that the video/photo is saved elsewhere, then it could help to end your interaction with the police if you show them that you have deleted the copy on your phone. Throughout you should keep in mind that lying to the police can lead to criminal charges.

WHAT ARE SOME BEST PRACTICES WHEN RECORDING POLICE?

If police accountability is your main priority, try to capture as much of the event as practicable, including the officer's name and badge number. You can also consider uploading your video or photos, or sending it to a friend via a secure messaging service.

Be aware of your surroundings to ensure that you are not in harm's way. Be attentive to police direction and/or instructions about where to stand – refusing to follow a police order may result in criminal charges. If you think that a police officer is unlawfully trying to stop you from filming, usually the best time to complain about misconduct is later, after it has occurred. Physically resisting the police – even when they are acting unlawfully – can lead to criminal charges and may put your safety at risk.



WHAT SHOULD I DO IF I THINK MY RIGHTS HAVE BEEN VIOLATED?

If you believe that your rights are being violated by the police, it may be best to wait until after the interaction to address the issue. If you feel safe, you should ask questions during the encounter - like whether you are being detained, why they are detaining you, or what grounds they have to search you. To avoid criminal charges and for your own safety, you should not run away from the police if you are being detained or arrested and should not physically resist if they try to search you or seize your property.

You may want to file a complaint with a police oversight body after the incident. Exactly what complaint mechanism you use depends on which police service you had the interaction with. For example, in Ontario you may choose to file a complaint with the Office of the Independent Police Review Director. A form can be filled out and filed online at: www.oiprd.on.ca/complaints/complaints. In Calgary, you would file a complaint with the Calgary Police Commission's Public Complaint Director.

You may also consider getting in contact with a lawyer to provide specific legal advice about your particular situation - this is particularly relevant if you were injured, were detained for a longer period of time, were strip searched, or are facing criminal charges.

SOME KEY CONSIDERATIONS FOR FILMING POLICE

- YOU HAVE A CONSTITUTIONALLY-PROTECTED RIGHT TO FILM ON-DUTY POLICE OFFICERS. BUT YOU SHOULDN'T INTERFERE WITH THEM WHILE THEY ARE EXECUTING THEIR DUTIES, AND IF YOU DO NOT FOLLOW THEIR DIRECTIONS ON WHERE TO STAND YOU MIGHT FACE CRIMINAL CHARGES.
- LOCK YOUR PHONE WITH A PASSCODE RATHER THAN A FINGERPRINT OR FACE ID.
- IF YOU ARE PLANNING ON FILMING POLICE — AT A PROTEST FOR EXAMPLE — CONSIDER USING AN OLD PHONE FOR FILMING — ONE THAT YOU DON'T USE ON A DAILY BASIS. THAT WAY, IF IT IS SEIZED, IT WILL BE LESS DISRUPTIVE TO YOUR LIFE.
- BACK UP CONTENT OR SEND IT TO YOUR FRIENDS (THROUGH AN ENCRYPTED MESSAGING APP) RIGHT AFTER YOU TAKE IT.
- REMEMBER THAT IF THE POLICE ACCESS YOUR VIDEO, IT COULD BE USED AS EVIDENCE IN A CRIMINAL CASE.

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