



National Press Photographers Association, Inc.

The Society of Visual Journalists

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VIA FACSIMILE & EMAIL

September 24, 2012

Chief Art Acevedo
Austin Police Department
715 E. Eighth St.
Austin, TX 78701

RE: Training Bulletin Issued 8/28/12 “Interfering with Public Duties”

Dear Chief Acevedo:

As general counsel for the National Press Photographers Association (NPPA) I write to you with serious concerns regarding your recently issued Training Bulletin captioned “Interfering with Public Duties.”

Aside from being overly broad and vague we believe that this APD policy leaves far too much to the discretion of your officers, whereby they can construe almost anything as “interference.” While First Amendment protections may be subject to reasonable time, place and manner restrictions, the language in this bulletin allows officers to direct others to comply in almost any way they see fit. That is unfortunate because the directive begins in the right spirit by reminding officers “that it is lawful for a person to videotape or photograph a police officer who is in public” and that they “should not tell a person to stop videotaping the officer, or other public servant, as long as the person is not interfering with the public servant’s duties” but then it goes on to allow them to do just that without properly defining “interference.”

In most jurisdictions, such behavior must be in the form of physical interference, not just the kind defined by vague and circular terms such as “interrupts, disrupts, impedes, or otherwise interferes with” whose interpretation may be left to an officer’s sole discretion. Under your department’s rules officers are free to create a chilling effect upon far more speech (photography/recording is deemed a form of speech for First Amendment protections) than is necessary to achieve a substantial government interest – that being actual interference with a police officer in the execution of his duties. We believe that if challenged, such a directive would be deemed to be unconstitutional. Even the LAPD new policy on Suspicious Activity Reporting, which the NPPA along with other groups objected to, includes language that requires officers to articulate facts and circumstances that support probable cause or reasonable suspicion “that the behavior observed is not innocent, but rather reasonably indicative of criminal activity” such as “interference.”

While we note that the bulletin refers to the fact that “it is a defense to prosecution under this section that the interruption, disruption, impediment, or interference alleged consisted of speech only” this will not save the directive from its unconstitutional abridgement of First Amendment rights nor will that clause protect someone from being arrested in the first place. Also if viewed in proper context “speech only” should be interpreted to include photography and recording of police activities in a public forum.

Finally, in its very liberal recitation of “exigent circumstances” it is not surprising that this policy states “a search warrant should be obtained before viewing the recorded images, video, or sound;” when it must actually read “a search warrant must first be obtained before viewing the recorded images, video, or sound (emphasis added).”

As our organization, founded in 1946 with almost 7,000 members, has pointed out to numerous groups and law enforcement agencies – reliance by officers to interfere with and detain those engaged in a lawful activity under color of law is reprehensible. At best, behavior that chills free speech is extremely unprofessional, at worst it is criminal.

This is just the most recent incident in a rash of similar police abuses across the country. NPPA stands ready to work with your department to help develop reasonable and workable policies, practices and training in order to avoid future situations. In the meantime we respectfully request that you revise the language in this bulletin to comport with First Amendment jurisprudence.

Thank you for your attention in this matter. I look forward to your response.

Very truly yours,

Mickey H. Osterreicher

Mickey H. Osterreicher
General Counsel

cc: Sean Elliot, President, *NPPA* (via email)