

JENNIFER MORLEY, PH.D.
PRESIDENT
jennifermorley@tampabay.rr.com

JAMES MICHAEL SHAW, JR.,
ESQ.
LEGAL PANEL CHAIR
jshaw@butler.legal



October 19, 2018

Via First Class Mail

Kim Bogart
Chief of Police
6739 Adams St.
New Port Richey, Florida 34652

AMERICAN CIVIL
LIBERTIES UNION OF
FLORIDA, GREATER TAMPA
CHAPTER

4023 N. ARMENIA AVE.
SUITE 450
TAMPA, FL 33607
WWW.ACLUFL.ORG

Re: *Florida Security of Communications Act inquiry*

Dear Chief Bogart:

We are writing for clarification of your Department's policy regarding the enforcement of the Florida Security of Communications Act, Fla. Stat. §§ 934.01-934.50. We also write to encourage your Department, if it has not already, to adopt the policies of several Florida law-enforcement agencies to not arrest or otherwise harass citizens who make audio or video recordings of the conduct of police officers while interacting with members of the public.

As a general matter, the law is well settled, in Florida and other jurisdictions within the Eleventh Circuit, that audio and video recording of law-enforcement officers is constitutionally protected speech, subject only to reasonable time, place, and manner restrictions. Specifically, the Eleventh Circuit has held that the "First Amendment protects the right to gather information about what public officials do on public property, and specifically, a right to record matters of public interest." *Smith v. City of Cumming*, 212 F.3d 1332, 1333 (11th Cir. 2000).

Sections 934.03(1)(a) and (4) of the Communications Act provide that, "any person who . . . intentionally intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept any wire, oral, or electronic communication" is guilty of a third-degree felony. Florida state and federal courts have interpreted these provisions as only applying to

instances “where the speaker must have an actual subjective expectation of privacy, along with a societal recognition that the expectation is reasonable.” *Bacon v. McKeithen*, No. 5:14-CV-37-RS-CJK, 2014 WL 12479640, at *3 (N.D. Fla. Aug. 28, 2014) (rejecting police officers’ reliance on Florida’s wiretapping statute in arresting plaintiff who recorded traffic stop on grounds that officers had no reasonable expectation of privacy in open area with bystanders and patrol car camera running). *See also Crocker v. Beatty*, No.17-13526, 2018 WL 1573350 (11th Cir. Apr. 2, 2018) (affirming denial of deputy sheriff’s summary-judgment motion on grounds that officer violated plaintiff’s Fourth Amendment rights by confiscating cell-phone recording of car-crash scene on major highway).

In *McDonough v. Fernandez-Rundle*, the Eleventh Circuit ruled that the Communications Act did not apply to a plaintiff’s recording of a sit-down meeting with police officials because the officials “failed to exhibit the expectation of privacy the statute requires.” 862 F.3d 1314, 1319 (11th Cir. 2017). Specifically, the defendants never stated the meeting was confidential, did not prohibit the taking of notes, and did not have any rules posted prohibiting any such recording. *Id.* The court further noted that its interpretation of the wiretapping statute was firmly grounded on Florida state-court decisions. *Id.* at 1320 (citing *State v. Inciarrano*, 473 So. 2d 1272 (Fla. 1985); *Shapiro v. State*, 390 So. 2d 344 (Fla. 1980); *State v. Smith*, 641 So. 2d 849 (Fla. 1994); *Dep’t of Ag. & Consumer Serv. v. Edwards*, 654 So. 2d 628 (1st DCA 1995)).

In *Ballance v. City of Greenacres*, 502008CDA012194XXXXMB (Fla. 15th Jud. Cir. Filed Apr. 30, 2008), a Palm Beach County Circuit Court issued a declaratory judgment declaring that “Chapter 934 of the Florida Statutes does not prohibit the audiotaping of oral communications by public officials, without their consent, while performing their official duties in public places.” The court explained: “The public is entitled to be on the public street, and, as a result, the activities and communications of the police are public and not private. If other people are free to hear the police officer’s communications during the course of doing his duties on the public street, then no subjective expectation of privacy is reasonable and Chapter 934 does not bar anyone from intercepting these communications via audiotape recorder.”

The above is just a sampling of the extensive case law affirming the constitutional right to make audio and video recordings of law-enforcement officers carrying out their official duties while interacting with the public.

Therefore, we request a copy of any policy related to your Department's enforcement of the Communications Act. If the Department does not have a policy, we welcome the opportunity to work with your office in developing one that models, and perhaps even improves upon, the policies adopted by police departments in other cities and counties.¹

We respectfully request your written response to our inquiry within sixty days, and feel free to contact James Michael Shaw, Jr., Esq., at 813-594-5603 with any questions you have.

Sincerely,

AMERICAN CIVIL
LIBERTIES UNION OF
FLORIDA, GREATER TAMPA
CHAPTER

Jennifer Morley, Ph.D.
President, ACLU of Florida, Greater Tampa Chapter

James Michael Shaw, Jr., Esq.
Legal Panel Chair, ACLU of Florida, Greater Tampa Chapter

cc: Office of the State Attorney for the Sixth Judicial Circuit

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PRESIDENT
T/ 813.416.4786
jennifermorley@tampabay.rr.com



JAMES MICHAEL SHAW, JR.,
ESQ.
LEGAL PANEL CHAIR
T/ 813.594.5603
jshaw@butler.legal

October 19, 2018

Via First Class Mail

Gerard DeCanio
Chief of Police
6333 Ridge Rd.
Port Richey, Florida 34668

AMERICAN CIVIL
LIBERTIES UNION OF
FLORIDA, GREATER TAMPA
CHAPTER

4023 N. ARMENIA AVE.
SUITE 450
TAMPA, FL 33607
WWW.ACLUFL.ORG

Re: *Florida Security of Communications Act inquiry*

Dear Chief DeCanio:

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As a general matter, the law is well settled, in Florida and other jurisdictions within the Eleventh Circuit, that audio and video recording of law-enforcement officers is constitutionally protected speech, subject only to reasonable time, place, and manner restrictions. Specifically, the Eleventh Circuit has held that the "First Amendment protects the right to gather information about what public officials do on public property, and specifically, a right to record matters of public interest." *Smith v. City of Cumming*, 212 F.3d 1332, 1333 (11th Cir. 2000).

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PRESIDENT
T/ 813.416.4786
jennifermorley@tampabay.rr.com



JAMES MICHAEL SHAW, JR.,
ESQ.
LEGAL PANEL CHAIR
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jshaw@butler.legal

October 19, 2018

Via First Class Mail

Ray Velboom
Chief of Police
38030 Meridian Ave.
Dade City, Florida 33525

AMERICAN CIVIL
LIBERTIES UNION OF
FLORIDA, GREATER TAMPA
CHAPTER

4023 N. ARMENIA AVE.
SUITE 450
TAMPA, FL 33607
WWW.ACLUFL.ORG

Re: *Florida Security of Communications Act inquiry*

Dear Chief Velboom:

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PRESIDENT
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JAMES MICHAEL SHAW, JR.,
ESQ.
LEGAL PANEL CHAIR
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jshaw@butler.legal

October 19, 2018

Via First Class Mail

Derek Brewer
Chief of Police
6118 8th Street
Zephyrhills, Florida 33542

AMERICAN CIVIL
LIBERTIES UNION OF
FLORIDA, GREATER TAMPA
CHAPTER

4023 N. ARMENIA AVE.
SUITE 450
TAMPA, FL 33607
WWW.ACLUFL.ORG

Re: *Florida Security of Communications Act inquiry*

Dear Chief Brewer:

We are writing for clarification of your Department's policy regarding the enforcement of the Florida Security of Communications Act, Fla. Stat. §§ 934.01-934.50. We also write to encourage your Department, if it has not already, to adopt the policies of several Florida law-enforcement agencies to not arrest or otherwise harass citizens who make audio or video recordings of the conduct of police officers while interacting with members of the public.

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James Michael Shaw, Jr., Esq.
Legal Panel Chair, ACLU of Florida, Greater Tampa Chapter

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JENNIFER MORLEY, PH.D.
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JAMES MICHAEL SHAW, JR.,
ESQ.
LEGAL PANEL CHAIR
T/ 813.594.5603
jshaw@butler.legal



October 19, 2018

Via First Class Mail

The Honorable Chris Nocco
Pasco County Sheriff
8700 Citizen's Drive
New Port Richey, Florida 34654

AMERICAN CIVIL
LIBERTIES UNION OF
FLORIDA, GREATER TAMPA
CHAPTER

4023 N. ARMENIA AVE.
SUITE 450
TAMPA, FL 33607
WWW.ACLUFL.ORG

Re: *Florida Security of Communications Act inquiry*

Dear Sheriff Nocco:

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October 19, 2018

Via First Class Mail

The Honorable Al Nienhuis
Hernando County Sheriff
18900 Cortez Blvd.
Brooksville, Florida 34601

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instances “where the speaker must have an actual subjective expectation of privacy, along with a societal recognition that the expectation is reasonable.” *Bacon v. McKeithen*, No. 5:14-CV-37-RS-CJK, 2014 WL 12479640, at *3 (N.D. Fla. Aug. 28, 2014) (rejecting police officers’ reliance on Florida’s wiretapping statute in arresting plaintiff who recorded traffic stop on grounds that officers had no reasonable expectation of privacy in open area with bystanders and patrol car camera running). *See also Crocker v. Beatty*, No.17-13526, 2018 WL 1573350 (11th Cir. Apr. 2, 2018) (affirming denial of deputy sheriff’s summary-judgment motion on grounds that officer violated plaintiff’s Fourth Amendment rights by confiscating cell-phone recording of car-crash scene on major highway).

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The above is just a sampling of the extensive case law affirming the constitutional right to make audio and video recordings of law-enforcement officers carrying out their official duties while interacting with the public.

Therefore, we request a copy of any policy related to your Department's enforcement of the Communications Act. If the Department does not have a policy, we welcome the opportunity to work with your office in developing one that models, and perhaps even improves upon, the policies adopted by police departments in other cities and counties.¹

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Sincerely,

AMERICAN CIVIL
LIBERTIES UNION OF
FLORIDA, GREATER TAMPA
CHAPTER

Jennifer Morley, Ph.D.
President, ACLU of Florida, Greater Tampa Chapter

James Michael Shaw, Jr., Esq.
Legal Panel Chair, ACLU of Florida, Greater Tampa Chapter

cc: Office of the State Attorney for the Fifth Judicial Circuit

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JENNIFER MORLEY, PH.D.
PRESIDENT
T/ 813.416.4786
jennifermorley@tampabay.rr.com

JAMES MICHAEL SHAW, JR.,
ESQ.
LEGAL PANEL CHAIR
T/ 813.594.5603
jshaw@butler.legal



October 19, 2018

Via First Class Mail

George B. Turner
Chief of Police
City of Brooksville Police Department
201 Howell Ave.
Brooksville, Florida 34601

AMERICAN CIVIL
LIBERTIES UNION OF
FLORIDA, GREATER TAMPA
CHAPTER

4023 N. ARMENIA AVE.
SUITE 450
TAMPA, FL 33607
WWW.ACLUFL.ORG

Re: *Florida Security of Communications Act inquiry*

Dear Chief Turner:

We are writing for clarification of your Department's policy regarding the enforcement of the Florida Security of Communications Act, Fla. Stat. §§ 934.01-934.50. We also write to encourage your Department, if it has not already, to adopt the policies of several Florida law-enforcement agencies to not arrest or otherwise harass citizens who make audio or video recordings of the conduct of police officers while interacting with members of the public.

As a general matter, the law is well settled, in Florida and other jurisdictions within the Eleventh Circuit, that audio and video recording of law-enforcement officers is constitutionally protected speech, subject only to reasonable time, place, and manner restrictions. Specifically, the Eleventh Circuit has held that the "First Amendment protects the right to gather information about what public officials do on public property, and specifically, a right to record matters of public interest." *Smith v. City of Cumming*, 212 F.3d 1332, 1333 (11th Cir. 2000).

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Sincerely,

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LIBERTIES UNION OF
FLORIDA, GREATER TAMPA
CHAPTER

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President, ACLU of Florida, Greater Tampa Chapter

James Michael Shaw, Jr., Esq.
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JENNIFER MORLEY, PH.D.
PRESIDENT
T/ 813.416.4786
jennifermorley@tampabay.rr.com

JAMES MICHAEL SHAW, JR.,
ESQ.
LEGAL PANEL CHAIR
T/ 813.594.5603
jshaw@butler.legal



October 19, 2018

Via First Class Mail

The Honorable Chad Chronister
Hillsborough County Sheriff
P.O. Box 3371
Tampa, Florida 33601-3371

AMERICAN CIVIL
LIBERTIES UNION OF
FLORIDA, GREATER TAMPA
CHAPTER

4023 N. ARMENIA AVE.
SUITE 450
TAMPA, FL 33607
WWW.ACLUFL.ORG

Re: *Florida Security of Communications Act inquiry*

Dear Sheriff Chronister:

We are writing for clarification of your Department's policy regarding the enforcement of the Florida Security of Communications Act, Fla. Stat. §§ 934.01-934.50. We also write to encourage your Department, if it has not already, to adopt the policies of several Florida law-enforcement agencies to not arrest or otherwise harass citizens who make audio or video recordings of the conduct of police officers while interacting with members of the public.

As a general matter, the law is well settled, in Florida and other jurisdictions within the Eleventh Circuit, that audio and video recording of law-enforcement officers is constitutionally protected speech, subject only to reasonable time, place, and manner restrictions. Specifically, the Eleventh Circuit has held that the "First Amendment protects the right to gather information about what public officials do on public property, and specifically, a right to record matters of public interest." *Smith v. City of Cumming*, 212 F.3d 1332, 1333 (11th Cir. 2000).

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Sincerely,

AMERICAN CIVIL
LIBERTIES UNION OF
FLORIDA, GREATER TAMPA
CHAPTER

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T/ 813.416.4786
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JAMES MICHAEL SHAW, JR.,
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T/ 813.594.5603
jshaw@butler.legal

October 19, 2018

Via First Class Mail

Brian Dugan
Chief of Police
One Police Center
411 N. Franklin Street
Tampa, Florida 33602

AMERICAN CIVIL
LIBERTIES UNION OF
FLORIDA, GREATER TAMPA
CHAPTER

4023 N. ARMENIA AVE.
SUITE 450
TAMPA, FL 33607
WWW.ACLUFL.ORG

Re: *Florida Security of Communications Act inquiry*

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LIBERTIES UNION OF
FLORIDA, GREATER TAMPA
CHAPTER

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President, ACLU of Florida, Greater Tampa Chapter

James Michael Shaw, Jr., Esq.
Legal Panel Chair, ACLU of Florida, Greater Tampa Chapter

cc: Office of the State Attorney for the Thirteenth Judicial Circuit

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PRESIDENT
T/ 813.416.4786
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JAMES MICHAEL SHAW, JR.,
ESQ.
LEGAL PANEL CHAIR
T/ 813.594.5603
jshaw@butler.legal



October 19, 2018

Via First Class Mail

Charlie Vazquez
Chief of Police
Tampa International Airport Police Department
P.O. Box 22287
Tampa, Florida 33622-2287

AMERICAN CIVIL
LIBERTIES UNION OF
FLORIDA, GREATER TAMPA
CHAPTER

4023 N. ARMENIA AVE.
SUITE 450
TAMPA, FL 33607
WWW.ACLUFL.ORG

Re: *Florida Security of Communications Act inquiry*

Dear Chief Vazquez:

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Legal Panel Chair, ACLU of Florida, Greater Tampa Chapter

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PRESIDENT
T/ 813.416.4786
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JAMES MICHAEL SHAW, JR.,
ESQ.
LEGAL PANEL CHAIR
T/ 813.594.5603
jshaw@butler.legal

October 19, 2018

Via First Class Mail

Kenneth R. Albano
Chief of Police
11250 N. 56th Street
Temple Terrace, Florida 33617

AMERICAN CIVIL
LIBERTIES UNION OF
FLORIDA, GREATER TAMPA
CHAPTER

4023 N. ARMENIA AVE.
SUITE 450
TAMPA, FL 33607
WWW.ACLUFL.ORG

Re: *Florida Security of Communications Act inquiry*

Dear Chief Albano:

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The above is just a sampling of the extensive case law affirming the constitutional right to make audio and video recordings of law-enforcement officers carrying out their official duties while interacting with the public.

Therefore, we request a copy of any policy related to your Department's enforcement of the Communications Act. If the Department does not have a policy, we welcome the opportunity to work with your office in developing one that models, and perhaps even improves upon, the policies adopted by police departments in other cities and counties.¹

We respectfully request your written response to our inquiry within sixty days, and feel free to contact James Michael Shaw, Jr., Esq., at 813-594-5603 with any questions you have.

Sincerely,

AMERICAN CIVIL
LIBERTIES UNION OF
FLORIDA, GREATER TAMPA
CHAPTER

Jennifer Morley, Ph.D.
President, ACLU of Florida, Greater Tampa Chapter

James Michael Shaw, Jr., Esq.
Legal Panel Chair, ACLU of Florida, Greater Tampa Chapter

cc: Office of the State Attorney for the Thirteenth Judicial Circuit

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JENNIFER MORLEY, PH.D.
PRESIDENT
T/ 813.416.4786
jennifermorley@tampabay.rr.com



JAMES MICHAEL SHAW, JR.,
ESQ.
LEGAL PANEL CHAIR
T/ 813.594.5603
jshaw@butler.legal

October 19, 2018

Via First Class Mail

Ed Duncan
Chief of Police
1 Police Place
P.O. Box 4709
Plant City, Florida 33566

AMERICAN CIVIL
LIBERTIES UNION OF
FLORIDA, GREATER TAMPA
CHAPTER

4023 N. ARMENIA AVE.
SUITE 450
TAMPA, FL 33607
WWW.ACLUFL.ORG

Re: *Florida Security of Communications Act inquiry*

Dear Chief Duncan:

We are writing for clarification of your Department's policy regarding the enforcement of the Florida Security of Communications Act, Fla. Stat. §§ 934.01-934.50. We also write to encourage your Department, if it has not already, to adopt the policies of several Florida law-enforcement agencies to not arrest or otherwise harass citizens who make audio or video recordings of the conduct of police officers while interacting with members of the public.

As a general matter, the law is well settled, in Florida and other jurisdictions within the Eleventh Circuit, that audio and video recording of law-enforcement officers is constitutionally protected speech, subject only to reasonable time, place, and manner restrictions. Specifically, the Eleventh Circuit has held that the "First Amendment protects the right to gather information about what public officials do on public property, and specifically, a right to record matters of public interest." *Smith v. City of Cumming*, 212 F.3d 1332, 1333 (11th Cir. 2000).

Sections 934.03(1)(a) and (4) of the Communications Act provide that, "any person who . . . intentionally intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept any wire, oral, or electronic communication" is guilty of a third-degree felony. Florida

state and federal courts have interpreted these provisions as only applying to instances “where the speaker must have an actual subjective expectation of privacy, along with a societal recognition that the expectation is reasonable.” *Bacon v. McKeithen*, No. 5:14-CV-37-RS-CJK, 2014 WL 12479640, at *3 (N.D. Fla. Aug. 28, 2014) (rejecting police officers’ reliance on Florida’s wiretapping statute in arresting plaintiff who recorded traffic stop on grounds that officers had no reasonable expectation of privacy in open area with bystanders and patrol car camera running). *See also Crocker v. Beatty*, No.17-13526, 2018 WL 1573350 (11th Cir. Apr. 2, 2018) (affirming denial of deputy sheriff’s summary-judgment motion on grounds that officer violated plaintiff’s Fourth Amendment rights by confiscating cell-phone recording of car-crash scene on major highway).

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The above is just a sampling of the extensive case law affirming the constitutional right to make audio and video recordings of law-enforcement

officers carrying out their official duties while interacting with the public. Therefore, we request a copy of any policy related to your Department's enforcement of the Communications Act. If the Department does not have a policy, we welcome the opportunity to work with your office in developing one that models, and perhaps even improves upon, the policies adopted by police departments in other cities and counties.¹

We respectfully request your written response to our inquiry within sixty days, and feel free to contact James Michael Shaw, Jr., Esq., at 813-594-5603 with any questions you have.

Sincerely,

AMERICAN CIVIL
LIBERTIES UNION OF
FLORIDA, GREATER TAMPA
CHAPTER

Jennifer Morley, Ph.D.
President, ACLU of Florida, Greater Tampa Chapter

James Michael Shaw, Jr., Esq.
Legal Panel Chair, ACLU of Florida, Greater Tampa Chapter

cc: Office of the State Attorney for the Thirteenth Judicial Circuit

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JENNIFER MORLEY, PH.D.
PRESIDENT
T/ 813.416.4786
jennifermorley@tampabay.rr.com

JAMES MICHAEL SHAW, JR.,
ESQ.
LEGAL PANEL CHAIR
T/ 813.594.5603
jshaw@butler.legal



October 19, 2018

Via First Class Mail

The Honorable William O. Farmer, Jr.
Sumter County Sheriff
1010 North Main Street
Bushnell, Florida 33513-5044

AMERICAN CIVIL
LIBERTIES UNION OF
FLORIDA, GREATER TAMPA
CHAPTER

4023 N. ARMENIA AVE.
SUITE 450
TAMPA, FL 33607
WWW.ACLUFL.ORG

Re: *Florida Security of Communications Act inquiry*

Dear Sheriff Farmer:

We are writing for clarification of your Department's policy regarding the enforcement of the Florida Security of Communications Act, Fla. Stat. §§ 934.01-934.50. We also write to encourage your Department, if it has not already, to adopt the policies of several Florida law-enforcement agencies to not arrest or otherwise harass citizens who make audio or video recordings of the conduct of police officers while interacting with members of the public.

As a general matter, the law is well settled, in Florida and other jurisdictions within the Eleventh Circuit, that audio and video recording of law-enforcement officers is constitutionally protected speech, subject only to reasonable time, place, and manner restrictions. Specifically, the Eleventh Circuit has held that the "First Amendment protects the right to gather information about what public officials do on public property, and specifically, a right to record matters of public interest." *Smith v. City of Cumming*, 212 F.3d 1332, 1333 (11th Cir. 2000).

Sections 934.03(1)(a) and (4) of the Communications Act provide that, "any person who . . . intentionally intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept any wire, oral, or electronic communication" is guilty of a third-degree felony. Florida state and federal courts have interpreted these provisions as only applying to

instances “where the speaker must have an actual subjective expectation of privacy, along with a societal recognition that the expectation is reasonable.” *Bacon v. McKeithen*, No. 5:14-CV-37-RS-CJK, 2014 WL 12479640, at *3 (N.D. Fla. Aug. 28, 2014) (rejecting police officers’ reliance on Florida’s wiretapping statute in arresting plaintiff who recorded traffic stop on grounds that officers had no reasonable expectation of privacy in open area with bystanders and patrol car camera running). *See also Crocker v. Beatty*, No.17-13526, 2018 WL 1573350 (11th Cir. Apr. 2, 2018) (affirming denial of deputy sheriff’s summary-judgment motion on grounds that officer violated plaintiff’s Fourth Amendment rights by confiscating cell-phone recording of car-crash scene on major highway).

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The above is just a sampling of the extensive case law affirming the constitutional right to make audio and video recordings of law-enforcement officers carrying out their official duties while interacting with the public.

Therefore, we request a copy of any policy related to your Department's enforcement of the Communications Act. If the Department does not have a policy, we welcome the opportunity to work with your office in developing one that models, and perhaps even improves upon, the policies adopted by police departments in other cities and counties.¹

We respectfully request your written response to our inquiry within sixty days, and feel free to contact James Michael Shaw, Jr., Esq., at 813-594-5603 with any questions you have.

Sincerely,

AMERICAN CIVIL
LIBERTIES UNION OF
FLORIDA, GREATER TAMPA
CHAPTER

Jennifer Morley, Ph.D.
President, ACLU of Florida, Greater Tampa Chapter

James Michael Shaw, Jr., Esq.
Legal Panel Chair, ACLU of Florida, Greater Tampa Chapter

cc: Office of the State Attorney for the Fifth Judicial Circuit

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JENNIFER MORLEY, PH.D.
PRESIDENT
T/ 813.416.4786
jennifermorley@tampabay.rr.com



JAMES MICHAEL SHAW, JR.,
ESQ.
LEGAL PANEL CHAIR
T/ 813.594.5603
jshaw@butler.legal

October 19, 2018

Via First Class Mail

Roger D. Odom
Chief of Police
P.O. Box 649
Center Hill, Florida 33514

AMERICAN CIVIL
LIBERTIES UNION OF
FLORIDA, GREATER TAMPA
CHAPTER

4023 N. ARMENIA AVE.
SUITE 450
TAMPA, FL 33607
WWW.ACLUFL.ORG

Re: *Florida Security of Communications Act inquiry*

Dear Chief Odom:

We are writing for clarification of your Department's policy regarding the enforcement of the Florida Security of Communications Act, Fla. Stat. §§ 934.01-934.50. We also write to encourage your Department, if it has not already, to adopt the policies of several Florida law-enforcement agencies to not arrest or otherwise harass citizens who make audio or video recordings of the conduct of police officers while interacting with members of the public.

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Sincerely,

AMERICAN CIVIL
LIBERTIES UNION OF
FLORIDA, GREATER TAMPA
CHAPTER

Jennifer Morley, Ph.D.
President, ACLU of Florida, Greater Tampa Chapter

James Michael Shaw, Jr., Esq.
Legal Panel Chair, ACLU of Florida, Greater Tampa Chapter

cc: Office of the State Attorney for the Fifth Judicial Circuit

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JENNIFER MORLEY, PH.D.
PRESIDENT
T/ 813.416.4786
jennifermorley@tampabay.rr.com



JAMES MICHAEL SHAW, JR.,
ESQ.
LEGAL PANEL CHAIR
T/ 813.594.5603
jshaw@butler.legal

October 19, 2018

Via First Class Mail

The Honorable Grady Judd
Polk County Sheriff
1891 Jim Keene Blvd.
Winter Haven, FL 33880

AMERICAN CIVIL
LIBERTIES UNION OF
FLORIDA, GREATER TAMPA
CHAPTER

4023 N. ARMENIA AVE.
SUITE 450
TAMPA, FL 33607
WWW.ACLUFL.ORG

Re: *Florida Security of Communications Act inquiry*

Dear Sheriff Judd:

We are writing for clarification of your Department's policy regarding the enforcement of the Florida Security of Communications Act, Fla. Stat. §§ 934.01-934.50. We also write to encourage your Department, if it has not already, to adopt the policies of several Florida law-enforcement agencies to not arrest or otherwise harass citizens who make audio or video recordings of the conduct of police officers while interacting with members of the public.

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Sincerely,

AMERICAN CIVIL
LIBERTIES UNION OF
FLORIDA, GREATER TAMPA
CHAPTER

Jennifer Morley, Ph.D.
President, ACLU of Florida, Greater Tampa Chapter

James Michael Shaw, Jr., Esq.
Legal Panel Chair, ACLU of Florida, Greater Tampa Chapter

cc: Office of the State Attorney for the Tenth Judicial Circuit

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JENNIFER MORLEY, PH.D.
PRESIDENT
T/ 813.416.4786
jennifermorley@tampabay.rr.com

JAMES MICHAEL SHAW, JR.,
ESQ.
LEGAL PANEL CHAIR
T/ 813.594.5603
jshaw@butler.legal



October 19, 2018

Via First Class Mail

Chris Nelson
Chief of Police
2 Bobby Green Plaza
Auburndale, Florida 33823

AMERICAN CIVIL
LIBERTIES UNION OF
FLORIDA, GREATER TAMPA
CHAPTER

4023 N. ARMENIA AVE.
SUITE 450
TAMPA, FL 33607
WWW.ACLUFL.ORG

Re: *Florida Security of Communications Act inquiry*

Dear Chief Nelson:

We are writing for clarification of your Department's policy regarding the enforcement of the Florida Security of Communications Act, Fla. Stat. §§ 934.01-934.50. We also write to encourage your Department, if it has not already, to adopt the policies of several Florida law-enforcement agencies to not arrest or otherwise harass citizens who make audio or video recordings of the conduct of police officers while interacting with members of the public.

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Sincerely,

AMERICAN CIVIL
LIBERTIES UNION OF
FLORIDA, GREATER TAMPA
CHAPTER

Jennifer Morley, Ph.D.
President, ACLU of Florida, Greater Tampa Chapter

James Michael Shaw, Jr., Esq.
Legal Panel Chair, ACLU of Florida, Greater Tampa Chapter

cc: Office of the State Attorney for the Tenth Judicial Circuit

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JENNIFER MORLEY, PH.D.
PRESIDENT
T/ 813.416.4786
jennifermorley@tampabay.rr.com



JAMES MICHAEL SHAW, JR.,
ESQ.
LEGAL PANEL CHAIR
T/ 813.594.5603
jshaw@butler.legal

October 19, 2018

Via First Class Mail

Joe Hall
Chief of Police
450 N. Broadway Ave.
Bartow, Florida 33830

AMERICAN CIVIL
LIBERTIES UNION OF
FLORIDA, GREATER TAMPA
CHAPTER

4023 N. ARMENIA AVE.
SUITE 450
TAMPA, FL 33607
WWW.ACLUFL.ORG

Re: *Florida Security of Communications Act inquiry*

Dear Chief Hall:

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As a general matter, the law is well settled, in Florida and other jurisdictions within the Eleventh Circuit, that audio and video recording of law-enforcement officers is constitutionally protected speech, subject only to reasonable time, place, and manner restrictions. Specifically, the Eleventh Circuit has held that the "First Amendment protects the right to gather information about what public officials do on public property, and specifically, a right to record matters of public interest." *Smith v. City of Cumming*, 212 F.3d 1332, 1333 (11th Cir. 2000).

Sections 934.03(1)(a) and (4) of the Communications Act provide that, "any person who . . . intentionally intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept any wire, oral, or electronic communication" is guilty of a third-degree felony. Florida state and federal courts have interpreted these provisions as only applying to

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Sincerely,

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FLORIDA, GREATER TAMPA
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James Michael Shaw, Jr., Esq.
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JENNIFER MORLEY, PH.D.
PRESIDENT
T/ 813.416.4786
jennifermorley@tampabay.rr.com



JAMES MICHAEL SHAW, JR.,
ESQ.
LEGAL PANEL CHAIR
T/ 813.594.5603
jshaw@butler.legal

October 19, 2018

Via First Class Mail

Larry M. Holden
Chief of Police
16 Bay Street West
Davenport, Florida 33837

AMERICAN CIVIL
LIBERTIES UNION OF
FLORIDA, GREATER TAMPA
CHAPTER

4023 N. ARMENIA AVE.
SUITE 450
TAMPA, FL 33607
WWW.ACLUFL.ORG

Re: *Florida Security of Communications Act inquiry*

Dear Chief Holden:

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Sincerely,

AMERICAN CIVIL
LIBERTIES UNION OF
FLORIDA, GREATER TAMPA
CHAPTER

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JENNIFER MORLEY, PH.D.
PRESIDENT
T/ 813.416.4786
jennifermorley@tampabay.rr.com

JAMES MICHAEL SHAW, JR.,
ESQ.
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T/ 813.594.5603
jshaw@butler.legal



October 19, 2018

Via First Class Mail

Gary Hester
Chief of Police
35400 Highway 27
Haines City, Florida 33844-1507

AMERICAN CIVIL
LIBERTIES UNION OF
FLORIDA, GREATER TAMPA
CHAPTER

4023 N. ARMENIA AVE.
SUITE 450
TAMPA, FL 33607
WWW.ACLUFL.ORG

Re: *Florida Security of Communications Act inquiry*

Dear Chief Hester:

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AMERICAN CIVIL
LIBERTIES UNION OF
FLORIDA, GREATER TAMPA
CHAPTER

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President, ACLU of Florida, Greater Tampa Chapter

James Michael Shaw, Jr., Esq.
Legal Panel Chair, ACLU of Florida, Greater Tampa Chapter

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JENNIFER MORLEY, PH.D.
PRESIDENT
T/ 813.416.4786
jennifermorley@tampabay.rr.com



JAMES MICHAEL SHAW, JR.,
ESQ.
LEGAL PANEL CHAIR
T/ 813.594.5603
jshaw@butler.legal

October 19, 2018

Via First Class Mail

Jeffrey M. O'Dell
Chief of Police
8 N. Stewart Ave.
Kissimmee, Florida 34741-5463

AMERICAN CIVIL
LIBERTIES UNION OF
FLORIDA, GREATER TAMPA
CHAPTER

4023 N. ARMENIA AVE.
SUITE 450
TAMPA, FL 33607
WWW.ACLUFL.ORG

Re: *Florida Security of Communications Act inquiry*

Dear Chief O'Dell:

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FLORIDA, GREATER TAMPA
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President, ACLU of Florida, Greater Tampa Chapter

James Michael Shaw, Jr., Esq.
Legal Panel Chair, ACLU of Florida, Greater Tampa Chapter

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JENNIFER MORLEY, PH.D.
PRESIDENT
T/ 813.416.4786
jennifermorley@tampabay.rr.com



JAMES MICHAEL SHAW, JR.,
ESQ.
LEGAL PANEL CHAIR
T/ 813.594.5603
jshaw@butler.legal

October 19, 2018

Via First Class Mail

Art Bodenheimer
Chief of Police
190 N. Seminole Ave.
Lake Alfred, Florida 33850

AMERICAN CIVIL
LIBERTIES UNION OF
FLORIDA, GREATER TAMPA
CHAPTER

4023 N. ARMENIA AVE.
SUITE 450
TAMPA, FL 33607
WWW.ACLUFL.ORG

Re: *Florida Security of Communications Act inquiry*

Dear Chief Bodenheimer:

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The above is just a sampling of the extensive case law affirming the constitutional right to make audio and video recordings of law-enforcement officers carrying out their official duties while interacting with the public.

Therefore, we request a copy of any policy related to your Department's enforcement of the Communications Act. If the Department does not have a policy, we welcome the opportunity to work with your office in developing one that models, and perhaps even improves upon, the policies adopted by police departments in other cities and counties.¹

We respectfully request your written response to our inquiry within sixty days, and feel free to contact James Michael Shaw, Jr., Esq., at 813-594-5603 with any questions you have.

Sincerely,

AMERICAN CIVIL
LIBERTIES UNION OF
FLORIDA, GREATER TAMPA
CHAPTER

Jennifer Morley, Ph.D.
President, ACLU of Florida, Greater Tampa Chapter

James Michael Shaw, Jr., Esq.
Legal Panel Chair, ACLU of Florida, Greater Tampa Chapter

cc: Office of the State Attorney for the Tenth Judicial Circuit

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JENNIFER MORLEY, PH.D.
PRESIDENT
T/ 813.416.4786
jennifermorley@tampabay.rr.com

JAMES MICHAEL SHAW, JR.,
ESQ.
LEGAL PANEL CHAIR
T/ 813.594.5603
jshaw@butler.legal



October 19, 2018

Via First Class Mail

Michael Teague
Chief of Police
P.O. Box 126
Lake Hamilton, Florida 33851

AMERICAN CIVIL
LIBERTIES UNION OF
FLORIDA, GREATER TAMPA
CHAPTER

4023 N. ARMENIA AVE.
SUITE 450
TAMPA, FL 33607
WWW.ACLUFL.ORG

Re: *Florida Security of Communications Act inquiry*

Dear Chief Teague:

We are writing for clarification of your Department's policy regarding the enforcement of the Florida Security of Communications Act, Fla. Stat. §§ 934.01-934.50. We also write to encourage your Department, if it has not already, to adopt the policies of several Florida law-enforcement agencies to not arrest or otherwise harass citizens who make audio or video recordings of the conduct of police officers while interacting with members of the public.

As a general matter, the law is well settled, in Florida and other jurisdictions within the Eleventh Circuit, that audio and video recording of law-enforcement officers is constitutionally protected speech, subject only to reasonable time, place, and manner restrictions. Specifically, the Eleventh Circuit has held that the "First Amendment protects the right to gather information about what public officials do on public property, and specifically, a right to record matters of public interest." *Smith v. City of Cumming*, 212 F.3d 1332, 1333 (11th Cir. 2000).

Sections 934.03(1)(a) and (4) of the Communications Act provide that, "any person who . . . intentionally intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept any wire, oral, or electronic communication" is guilty of a third-degree felony. Florida state and federal courts have interpreted these provisions as only applying to

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Sincerely,

AMERICAN CIVIL
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FLORIDA, GREATER TAMPA
CHAPTER

Jennifer Morley, Ph.D.
President, ACLU of Florida, Greater Tampa Chapter

James Michael Shaw, Jr., Esq.
Legal Panel Chair, ACLU of Florida, Greater Tampa Chapter

cc: Office of the State Attorney for the Tenth Judicial Circuit

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JENNIFER MORLEY, PH.D.
PRESIDENT
T/ 813.416.4786
jennifermorley@tampabay.rr.com



JAMES MICHAEL SHAW, JR.,
ESQ.
LEGAL PANEL CHAIR
T/ 813.594.5603
jshaw@butler.legal

October 19, 2018

Via First Class Mail

Christopher Velasquez
Chief of Police
133 E. Tillman Ave.
Lake Wales, Florida 33853

AMERICAN CIVIL
LIBERTIES UNION OF
FLORIDA, GREATER TAMPA
CHAPTER

4023 N. ARMENIA AVE.
SUITE 450
TAMPA, FL 33607
WWW.ACLUFL.ORG

Re: *Florida Security of Communications Act inquiry*

Dear Chief Velasquez:

We are writing for clarification of your Department's policy regarding the enforcement of the Florida Security of Communications Act, Fla. Stat. §§ 934.01-934.50. We also write to encourage your Department, if it has not already, to adopt the policies of several Florida law-enforcement agencies to not arrest or otherwise harass citizens who make audio or video recordings of the conduct of police officers while interacting with members of the public.

As a general matter, the law is well settled, in Florida and other jurisdictions within the Eleventh Circuit, that audio and video recording of law-enforcement officers is constitutionally protected speech, subject only to reasonable time, place, and manner restrictions. Specifically, the Eleventh Circuit has held that the "First Amendment protects the right to gather information about what public officials do on public property, and specifically, a right to record matters of public interest." *Smith v. City of Cumming*, 212 F.3d 1332, 1333 (11th Cir. 2000).

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We respectfully request your written response to our inquiry within sixty days, and feel free to contact James Michael Shaw, Jr., Esq., at 813-594-5603 with any questions you have.

Sincerely,

AMERICAN CIVIL
LIBERTIES UNION OF
FLORIDA, GREATER TAMPA
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President, ACLU of Florida, Greater Tampa Chapter

James Michael Shaw, Jr., Esq.
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JENNIFER MORLEY, PH.D.
PRESIDENT
T/ 813.416.4786
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JAMES MICHAEL SHAW, JR.,
ESQ.
LEGAL PANEL CHAIR
T/ 813.594.5603
jshaw@butler.legal

October 19, 2018

Via First Class Mail

Larry Giddens
Chief of Police
219 N. Massachusetts Ave.
Lakeland, Florida 33801-4972

AMERICAN CIVIL
LIBERTIES UNION OF
FLORIDA, GREATER TAMPA
CHAPTER

4023 N. ARMENIA AVE.
SUITE 450
TAMPA, FL 33607
WWW.ACLUFL.ORG

Re: *Florida Security of Communications Act inquiry*

Dear Chief Giddens:

We are writing for clarification of your Department's policy regarding the enforcement of the Florida Security of Communications Act, Fla. Stat. §§ 934.01-934.50. We also write to encourage your Department, if it has not already, to adopt the policies of several Florida law-enforcement agencies to not arrest or otherwise harass citizens who make audio or video recordings of the conduct of police officers while interacting with members of the public.

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AMERICAN CIVIL
LIBERTIES UNION OF
FLORIDA, GREATER TAMPA
CHAPTER

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President, ACLU of Florida, Greater Tampa Chapter

James Michael Shaw, Jr., Esq.
Legal Panel Chair, ACLU of Florida, Greater Tampa Chapter

cc: Office of the State Attorney for the Tenth Judicial Circuit

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JENNIFER MORLEY, PH.D.
PRESIDENT
T/ 813.416.4786
jennifermorley@tampabay.rr.com



JAMES MICHAEL SHAW, JR.,
ESQ.
LEGAL PANEL CHAIR
T/ 813.594.5603
jshaw@butler.legal

October 19, 2018

Via First Class Mail

Charlie Bird
Chief of Police
125 N. Lake Silver Drive, NW
Winter Haven, Florida 33881

AMERICAN CIVIL
LIBERTIES UNION OF
FLORIDA, GREATER TAMPA
CHAPTER

4023 N. ARMENIA AVE.
SUITE 450
TAMPA, FL 33607
WWW.ACLUFL.ORG

Re: *Florida Security of Communications Act inquiry*

Dear Chief Bird:

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