



DEPARTMENTAL
GENERAL
ORDER

H-7

Index as:

Withdrawing, Viewing and Returning
Evidence

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WITHDRAWING, VIEWING, AND RETURNING EVIDENCE

The purpose of this order is to set forth Departmental policy and procedures for withdrawing, viewing, and returning evidence from the Property and Evidence Unit and the Criminalistics Division. For the purpose of this order, the term “members” includes reserve officers.

I. PARTIES AUTHORIZED TO WITHDRAW EVIDENCE FROM THE PEU

The following persons may withdraw evidence from the Property & Evidence Unit (PEU) when such evidence is to be used in court or for another law enforcement purpose:

A. Deputy District Attorney (DDA);

In the event a DDA is unable to withdraw evidence for court, a member or Police Evidence Technician (PET) may be requested by subpoena or court order to withdraw the evidence and deliver it to the designated DDA.

B. District Attorney Investigators (DAI);

C. OPD Investigator (assigned to the case as indicated by LRMS);

D. Internal Affairs Division Investigator assigned to the case;

E. Intelligence Unit Investigator assigned to the case;

F. Use of Force Investigator assigned to the case;

G. Division-level Investigator assigned to the case;

H. Public Information Officer assigned to the case;

I. Oakland Fire Department Arson Investigators;

- J. Authorized personnel assigned by the City Attorney;
- K. Authorized ATF Special Agents;
- L. OPD Rangemasters assigned to render safe and/or perform tests on a specific firearm;
- M. OPD Technician assigned to perform tech work or assist with drying evidence and/or property;
- N. OPD Criminalist assigned to render a firearm safe and/or perform tests or lab work on evidence for a specific case or project;
- O. The party indicated in the “Person to Receive Property” field for the evidence items listed on an authorized Property Release form (TF-1008);and
- P. At the direction of Criminalistics Division personnel, Property and Evidence Unit personnel may package and ship evidence to vendor laboratories for analysis.

NOTE: A Property Release form is a document signed by an OPD investigator or, in his/her absence, the immediate supervisor/commander authorizing a person to receive property for withdrawing, viewing or release¹. A Property Release form is required. This document is essential to track the chain-of-custody for evidence and/or property.

II. WITHDRAWING EVIDENCE FROM THE PEU

- A. PEU staff shall only allow requested evidence to be withdrawn by a party, with proper identification, identified in Part I, A-O.
- B. PEU staff shall advise the requesting party to specify the evidence to be withdrawn and schedule a date/time to receive the evidence.
- C. The Police Property Specialist (PPS) shall ensure a Property Record (336-804) is properly completed by having the person who is withdrawing the evidence sign his/her name, serial number, date, and time in the “Received by” column for each evidence item.

¹ Procedures for evidence and/or property release are enumerated in DGO H-10, PROPERTY CLEARANCE AND DISPOSAL.

- D. In the event a member/PET is requested to withdraw evidence for the DDA for delivery to court, the member/PET shall additionally:
1. Present a court order or subpoena to the PPS indicating the evidence to be withdrawn for use in court;
 2. Complete a Property Release form (TF-1008) to be signed in the field designated "Investigator Authorizing Release" and "Date/Time Issued."

The PPS shall attach a copy of the Property Release to the Property Record, and the original copy shall go with the requested evidence to the DDA.
 3. The member/PET shall ensure a competent authority signs the Property Release in the field designated "Signature of Person Receiving Property" and complete the field designated "Date/Time Released."
 4. The signed original Property Release shall be returned to the PEU to replace the copy, thus transferring the responsibility for the evidence from the member/PET to the DDA (Court).
- E. In the event the withdrawing party has an authorized Property Release for evidence, the PPS shall ensure the receiving party signs the Property Release in the field designated "Signature of Person Receiving Property" and enters the "Date/Time Released."
- F. In the event the DDA/DAI or OPD investigator withdrawing evidence is delivering it to a second party, he/she shall:
1. Complete a Property Release form;
 2. Sign the completed Property Release in the field designated "Investigator Authorizing Release" and complete "Date/Time Issued;"
 3. Provide the PPS with a copy of the Property Release to be attached to the Property Record;
 4. Ensure the person receiving the evidence signs the Property Release in the field designated "Signature of Person Receiving Property" and complete "Date/Time Released;"

5. Return the signed original Property Release to the PEU to replace the copy

NOTE: If the signed original copy of the Property Release is not returned to the PEU, the person withdrawing the evidence shall retain responsibility for the evidence.

III. WITHDRAWING EVIDENCE FROM THE CRIMINALISTICS DIVISION

- A. Criminalistics staff shall only allow the withdrawing of drug or latent print evidence in accordance with established Criminalistics Division policies.
- B. The requesting party shall advise Criminalistics staff of the specific evidence to be withdrawn by “RD Number” (for drugs or latent prints) or “D” Number (for drugs only).
- C. Criminalistics staff shall ensure the appropriate Chain of Custody Form (drug evidence or latent print) is properly completed.
 1. Description of evidence;
 2. Signature of Criminalistics staff releasing evidence;
 3. Signature, serial number and agency of the Requesting Party;
 4. Declaration of Purpose – for drug evidence only;
 5. Date/Time of Release; and
 6. ID Verification – for drug evidence only.
 - a. Law Enforcement Officer: Proper government identification card is required whether or not the party is in uniform or is known to staff;
 - b. All other parties shall be required to present a valid government issued picture identification card (e.g., driver’s license, state ID card, or passport).
- D. In the event a member is requested to withdraw drug evidence for the DDA for delivery to court or a second party, the member shall additionally:
 1. Upon delivery to the DDA or court, complete a Drug Evidence Release Receipt (TF-3356).

The member shall:

- a. Complete the “Declaration” section and sign in the field designated “Signature of Declarant” and “Date Released;”
 - b. Complete all fields in the Release to Court or Second Party section. Ensure a competent authority signs in the field designated “Person Receiving Evidence.”
2. The signed Drug Evidence Release Receipt shall be returned to the Criminalistics Division along with any remaining drug evidence by the end of assignment or tour of duty. After hours, it may be submitted through the drug evidence depository drop box.
- E. A Drug Evidence Release Receipt is not required if the drug evidence is returned, in whole, to Criminalistics.

IV. VIEWING EVIDENCE IN THE PEU

- A. PEU staff shall only allow evidence to be viewed without a Property Release by parties with proper identification, identified in Part I, A-O.
- B. PEU staff shall advise all other parties to do one (1) of the following:
 1. Confer with the DDA/DAI to make arrangements to view evidence; or
 2. Obtain a Property Release from the investigator in charge of the case. The investigator in-charge shall list the evidence items to be viewed and indicate “FOR VIEW ONLY” on the form; or
 3. Obtain a signed memorandum from a division commander/manager authorizing access to view specific evidence on a one-time or on-going basis to include the reason for viewing and the specific scope of work to be done.
- C. PEU Procedures for Viewing.
 1. PEU staff shall advise the requesting party to specify the evidence to be viewed and schedule a date/time to view the evidence.

2. PEU staff shall only allow requested evidence to be viewed by the authorized party with proper identification.
3. The Police Property Specialist (PPS) shall ensure a Property Record (336-804) is properly completed by having all parties viewing the evidence sign his/her name, serial number, date, and time in the "Received by" column for each evidence item and indicate **FOR VIEW ONLY** in the "Returned By" column.
4. In the event the viewing party has an authorized Property Release for viewing evidence, the PPS shall ensure the viewing party additionally signs the Property Release in the field designated "Signature of Person Receiving Property" and enters the date and time in the "Date/Time Released" field.
5. Sealed property and evidence items shall be opened in the presence of PEU personnel for viewing. PEU staff shall wear gloves to prevent contamination. Opening of evidence shall be accomplished in the following manner:
 - a. In the event an evidence package contains more than one (1) item, one additional party shall be present during the opening of the package to conduct an initial inventory of evidence items.
 - b. PEU staff shall document the opening of sealed evidence package(s) on the front of the Property Record by using the issued Property & Evidence Stamp and legibly writing the date opened, his/her name and serial number, witness name and serial number (if applicable), the reason for viewing, and any additional steps taken to view the evidence.
6. The PPS shall remain present during the viewing process.
7. Upon completion of the viewing, the PPS shall reseal the evidence package(s) by placing an OPD seal or tape over the entire length of the packaging opening and writing his/her name or initials, and serial number (or agency and title/position if no serial number) and date across the OPD seal or tape.
8. The PPS shall legibly write the date of the reseal and his/her name and serial number on the Property & Evidence Stamp on the Property Record.

9. If others are officially present during the opening process or for any reason previous to the resealing, their names shall be reflected in the comments section of the Property & Evidence Stamp on the Property Record.

V. VIEWING EVIDENCE IN THE CRIMINALISTICS DIVISION

- A. Criminalistics staff shall only allow viewing of drug or latent print evidence in accordance with established Criminalistics Division policies.
- B. Criminalistics staff shall notify and ascertain whether the DDA/DAI in charge wishes to be present during the viewing of evidence.
- C. The requesting party shall advise Criminalistics staff of the specific evidence to be viewed by "RD Number" And/or "D Number."
- D. Sealed property and evidence items shall be opened and handled only by the Criminalistics staff for viewing.
 1. Criminalistics staff shall document the opening of sealed evidence package(s) and resealing of said evidence in accordance with the provision of Criminalistics Division policy and procedures.
 2. Criminalistics staff shall remain present during the viewing process.

VI. RETURNING EVIDENCE TO THE PEU

- A. When evidence is returned to the PEU, the PPS shall ensure a Property Record is properly completed by having the person who is returning the evidence sign his/her name, serial number, date, and time in the "Returned by" column for each evidence item. The party whose signature appears in the "Received by" column shall no longer be held responsible for the evidence, and the custody of the evidence returns to the PEU.
- B. A Property Release signed by a competent authority for evidence retained by the court shall be promptly returned to the PEU.
- C. Withdrawn evidence not retained by the court shall be promptly returned to the PEU.
- D. Opening shift PEU personnel shall check the "Out to Court File" to determine if withdrawn evidence or a signed Property Release is not returned to the PEU each business day. In the event any evidence or Property Release is still outstanding or unaccounted for:

1. Contact the withdrawing person to ensure return of the evidence or a properly signed Property Release; or
 2. Contact the DDA to verify the evidence was received and the Property Release was signed.
 3. Notify the Police Property Supervisor who shall forward an email to the appropriate Deputy Chief/Manager detailing the actions PEU personnel have taken to account for the evidence from the time the evidence was withdrawn (i.e., document steps in Part VI, D, 1-3 above).
 4. The affected Deputy Chief/Manager shall initiate an inquiry into the missing evidence or Property Release.
- E. Evidence packaging shall be sealed or resealed before evidence is returned to the PEU.
1. If the original seal on the evidence package is broken and the packaging has not been properly resealed, the PPS shall reseat the packaging in accordance with the provisions of Part IV, C, 7 of this order.
 2. The PPS shall be responsible for recording the resealing of evidence package(s) on the Property Record by using the issued Property & Evidence Stamp and legibly writing the date resealed and his/her name and serial number.
 3. The party returning the evidence shall be present during the resealing process and his/her name shall be reflected in the comments section of the Property & Evidence Stamp on the Property Record.

VII. RETURNING EVIDENCE TO THE CRIMINALISTICS DIVISION

A. Drug Evidence

1. Withdrawn drug evidence not retained by the court or released to a second party shall be promptly returned to Criminalistics.
2. In the event drug evidence, in whole or in part, is released to a second party, the withdrawing member shall prepare a Drug Evidence Release Receipt (TF-3356) to document the release and to record the chain of custody.

IMPORTANT NOTE: A Drug Evidence Release Receipt is not required if the drug evidence is returned, in whole, to the Criminalistics Division.

3. Drug evidence packaging shall be sealed or resealed before being returned to Criminalistics.

If the original seal on the drug evidence package is broken the returning party shall reseal the packaging by taping over the entire length of the packaging opening and writing his/her name or initials, and serial number and date across the tape.

4. Return drug evidence and completed Drug Evidence Release Receipt (if applicable) to the Criminalistics Division, Room 608 by end of assignment or tour of duty. After hours it may be submitted through the drug evidence depository drop box.
5. The Criminalistics Division Manager or designee shall conduct a weekly review of drug case files to identify those cases where drug evidence has been withdrawn and not returned and for which no Drug Evidence Receipt has been received.

These cases shall be reported by means of a Gap Report to the Bureau of Field Operations 1 Deputy Chief on a weekly basis for follow-up.

6. Cases shall remain on the Gap Report until the drug evidence is returned or a Drug Evidence Receipt is received.
7. The Gap Report shall be retained by the Criminalistics Division for a period of five (5) years.

B. Latent Print Evidence

Withdrawn latent print evidence not retained by the court or released to a second party shall be promptly returned to Criminalistics Division.

VIII. LOST OR STOLEN EVIDENCE

- A. In the event evidence is lost or stolen while in the custody of a member or employee he/she shall:
 1. Prepare an offense report or other appropriate report as directed by their supervisor documenting the circumstances of the incident;

2. Determine and notify the assigned investigator or, if not assigned, the most appropriate investigative unit; and
3. In the event the evidence withdrawn from the PEU was lost or stolen after being withdrawn from the PEU, notify the Police Property Supervisor.
4. In the event the drug or latent print evidence withdrawn from Criminalistics Division was lost or stolen after being withdrawn, forward a copy of the offense report prepared pursuant to VIII.A.1 above to the BFO 1 Deputy Chief, who shall forward a copy to the Criminalistics Division.

By order of



Sean Whent
Interim Chief of Police

Date Signed: 7-2-13