



The Police Commission

CITY AND COUNTY OF SAN FRANCISCO

June 9, 2023

Dear Chief Scott:

At the meeting of the Police Commission on Wednesday, June 7, 2023, the following resolution was adopted:

RESOLUTION 23-51:

POLICE COMMISSION DIRECTS THE CHIEF OF POLICE TO RESCIND THE SOCIAL MEDIA AND PLAIN CLOTHES BUREAU ORDERS

CINDY ELIAS
President

MAX CARTER-OBERSTONE
Vice President

LARRY YEE
Commissioner

JAMES BYRNE
Commissioner

JESUS YANEZ
Commissioner

KEVIN BENEDICTO
Commissioner

DEBRA WALKER
Commissioner

Sergeant Stacy Youngblood
Secretary

WHEREAS, The San Francisco Charter vests the Police Commission with the authority to promulgate policies governing the Police Department. S.F. Charter § 4.109 (the Police Commission “is empowered to prescribe and enforce any reasonable rules and regulations that it deems necessary to provide for the efficiency of the Department”); and

WHEREAS, These Commission-issued policies—known as Department General Orders (DGOs)—are developed through a public process that solicits recommendations from the Police Department, the Department of Police Accountability, subject matter experts, and members of the public; and

WHEREAS, Conversely, Bureau Orders are issued by the Police Department (not the Commission). They are issued without any notice to or input from the public or the Commission, and do not require consultation with subject matter experts. Since the Commission is vested with policymaking powers for the Police Department (S.F. Charter § 4.109), Bureau Orders cannot conflict with any policies adopted by the Commission or other governing law and should not be used to create new policies.

WHEREAS, In response to a series of high profile incidents that damaged the public’s trust in the Police Department—including police killings of unarmed citizens and a bevy of racist and homophobic text messages exchanged between officers—the United States Department of Justice’s Community Oriented Policing Services division (US DOJ COPS) conducted an extensive investigation into the Police Department’s practices. The investigation culminated in a 413-page report published in 2016.¹ Among its many findings, the report criticized the Police Department’s inappropriate use of “Department Bulletins” to undercut public transparency and circumvent the Commission’s oversight and policy-making authority. The report, for example, concludes that “SFPD’s present use of Department Bulletins is inconsistent with the role and intent of the Police Commission regarding police policy and contributes to a lack of transparency regarding its policies and procedures.” U.S. DOJ COPS Report 149. There are striking and concerning similarities between the use of Department Bulletins as criticized in the US DOJ COPS Report and the current use of Bureau Orders to

¹ Available at: <<https://tinyurl.com/5es5xcfu>>



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promulgate policies in a similar fashion. These mechanisms – whether they are termed Department Bulletins, Bureau Orders or any other name – present serious concerns. Per the US DOJ, these mechanisms “are used as a workaround for the Department General Order [DGO] approval process.” *Id.* 167, 247; *see also id.* 151 (they “are used to avoid internal and external input from stakeholders”); *id.* at 169 (they were “repeatedly renewed ...in place of addressing the issue within the appropriate [DGO]”); and

WHEREAS, While the Police Department has implemented laudable reforms in the wake of the 2016 US DOJ COPS report, the Department’s use of Bureau Orders to undermine the Commission’s rulemaking and oversight authority persists to this day; and

WHEREAS, On April 4, 2023, the Police Department issued a series of identical Bureau Orders—affecting the Field Operations Bureau, Special Operations Bureau, and Investigations Bureau—entitled “Plain Clothes and Undercover Operations Policy” that set out a new policy governing plain clothes officers. Rather than implementing the existing Commission policy on plain clothes officers (DGO 5.08), the Bureau Orders purport to create new policy. Certain provisions of the Bureau Orders conflict with DGO 5.08 and DGO 10.11 (regarding body-worn cameras), while others reach out and address issues beyond the scope of DGO 5.08. The timing of this Bureau Order is particularly troubling given that the Commission is nearing the conclusion of a multi-month process to revise DGO 5.08. Issuing a Bureau Order during the pendency of a DGO revision on the same subject is particularly inappropriate. It undermines the thorough, public DGO revision process and it creates confusion for officers who must follow a new Bureau Order that may differ markedly from both the DGO that will eventually replace it and the DGO that is currently on the books; and

WHEREAS, On April 6, 2023 the Department issued a series of identical Bureau Orders—affecting the Field Operations Bureau, Special Operations Bureau, Investigations Bureau, and Airport Bureau—entitled “Investigative Social Media Accounts” seeking to regulate the investigative use of social media. Like the Plain Clothes Bureau Orders, these orders were also issued during the pendency of a DGO revision process on the same subject. Here again, the timing of events is troubling. The working group on the social media DGO was set to begin on March 7, 2023. On February 24, the Department submitted a request for an extension to begin the working group, citing limited staffing resources. The Commission President approved the request. On March 23, the Department submitted a second request for an extension to commence the working group, again citing staffing issues. This second extension request was also approved by the Commission President. The Social Media Bureau Orders were issued during the pendency of the second extension period to begin the social media working group. Claiming a lack of resources to engage in the DGO process while and utilizing scarce Department resources to publish a series of Bureau Orders on the same topic is a particularly concerning usurpation of the Commission’s policymaking authority;

THEEFORE, BE IT RESOLVED, The Social Media and Plain Clothes Bureau Orders undermine the Commission’s Charter authority regarding the Department General Order process, thereby infringing upon the Commission’s authority and oversight responsibilities; and

FURTHER RESOLVED, The Chief of Police is directed to rescind the Plain Clothes and Undercover Operations Policy Bureau Orders on the date that the Commission enacts revisions to DGO 5.08; and



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FURTHER RESOLVED, the Police Commission hereby initiates the commencement of the DGO development process for new DGO on Investigative Social Media Accounts pursuant to DGO 3.01.04.C.3; as a Commission-led DGO.

FURTHER RESOLVED, The Chief of Police is directed to provide a draft of the Investigative Social Media Accounts DGO to the Commission within 10 days; which will be used by the Commission and posted pursuant to DGO 3.01.04.C.3; the draft will be available for comment from the Chief of Police, the Department of Police Accountability, and members of the public for 30 days after posting; and

FURTHER RESOLVED, The Chief of Police is directed to rescind the Investigative Social Media Accounts bureau orders effective on the date the Commission fully enacts the Investigative Social Media Accounts DGO.

AYES: Commissioners Walker, Yanez (remotely), Benedicto, Vice President Carter-Oberstone, President Elias

NAY: Commissioners Yee and Byrne

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MAX CARTER-OBERSTONE
Vice President
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KEVIN BENEDICTO
Commissioner
DEBRA WALKER
Commissioner
Sergeant Stacy Youngblood
Secretary

Very truly yours,

Sergeant Stacy Youngblood
Secretary of the San Francisco Police Commission

[1211/ks]

cc: Deputy City Attorney Cabrera
Director L. Preston/SFPD Labor Relations
Isabelle Choy/SFPD Labor Relations
Captain D. Toomer/PSPP
Lieutenant E. Altorfer/PSPP
Manager A. Steeves /WDU
Gloria Rosalejos/WDU

Bureau Order

UNIT
INDEX
NUMBER 23-02

DATE
ISSUED 04/04/23

DATE
REVISED 03/23/23

SUBJECT:
Plainclothes and Undercover Operations

ISSUED
TO:
Field Operations Bureau

ISSUED
BY:
**Acting Deputy Chief
Rachel Moran** *RM*

PLAINCLOTHES AND UNDERCOVER OPERATIONS POLICY

PURPOSE:

The purpose of this policy is to provide operational guidelines and tactical considerations for members assigned to the Field Operations Bureau working in a plainclothes or undercover capacity.

The San Francisco Police Department understands that by their nature, situations encountered by members working in plainclothes and undercover capacities are dynamic and no policy can anticipate every conceivable situation or circumstance which members may face. While all police work carries inherent dangers, members are reminded that there are unique risks associated with taking enforcement action while working in a non-uniformed capacity.

In all circumstances, members are expected to exercise sound judgment and critical decision making while upholding the tenets of SFPD's core statement – Safety with Respect.

DEFINITIONS:

"Non-uniform member" is a sworn member who is not wearing the prescribed SFPD uniform. Non-uniformed members are either typically assigned to the Investigations Bureau where their primary duty is to investigate crimes through assigned cases or perform administrative functions for the Department. A member working as a non-uniformed member is not working in a plainclothes or undercover capacity. (e.g. Homicide, SVU, ALU (permits), etc.)

"Plainclothes" is defined as a non-uniformed member who detects crime, conducts investigations, participates in planned operations, conducts surveillance, and directed enforcement. (e.g. Narcotics, CGIC and CVRT Enforcement Teams, station plainclothes team, etc.)

"Undercover," a limited and specific subset of "plainclothes," defined as a sworn member that needs to conceal themselves or change their identity during an assignment to carry out their mission. Undercover members are most commonly deployed in buy-bust or buy-walk operations and robbery/burglary decoy operations.

"Close-cover" is defined as an undercover member who assumes the responsibility of watching another undercover member at a close distance.

“Enforcement action” occurs when members: conduct any detention; arrest; service of an arrest warrant; service of a search warrant for premises, vehicles, or where members are interacting with the public during the service; or any search of one’s person or property. Surveillance is not considered an enforcement action, but members should be cognizant a surveillance operation can quickly transition into enforcement action.

“Exigent circumstances” describe an emergency situation requiring swift action to prevent imminent danger to a person’s life, serious damage to property, escape of a suspect, or destruction of evidence.

“Violent misdemeanor” is any misdemeanor that is assaultive or injurious.

The term member used throughout this policy refers to sworn members of the Department.

WRITTEN OPERATION PLAN:

Prior to taking planned enforcement action, a written plan shall be prepared. A supervisor shall ensure the plan is properly documented and includes at a minimum:

- a primary plan and alternative(s) including planned arrest tactics
- the members assigned to the operation and their respective roles
- location of the operation
- radio frequency
- suspect information, if applicable
- brief summary of information known prior to the commencement of the operation

In the event of time-sensitive incidents, including the need to immediately transition into enforcement action, a verbal operation plan may be communicated to all involved members to expedite their response. However, preparing a written operation plan, documenting the incident, shall be completed as soon as feasible after the conclusion of the enforcement action. If members of a particular unit on-view an incident that is not associated with the core mission of their unit (e.g. CGIC on-views an injury crash) a written plan need not be completed.

When feasible, written plans should be reviewed by the Lieutenant in charge of a Unit prior to the execution of enforcement action. Written plans shall be maintained in a centralized location within each Unit of the Field Operations Bureau.

Written Operations Orders (“op orders”) prepared in anticipation of the service of a search and/or arrest warrant may be used in lieu of a written plan. Written op orders require the approval of the appropriate Commander of the Field Operations Bureau and shall be distributed to the Deputy Chief of Field Operations and the Assistant Chief of Operations.

COMMUNICATION WITH DISPATCH:

When feasible, members operating in a plainclothes capacity shall ensure that dispatch is notified of their location prior to conducting any planned enforcement action within the City and County of San Francisco. If situations are present that preclude members from notifying dispatch prior to the planned enforcement action, members shall ensure that dispatch is notified as soon as practical.

OUT OF COUNTY OPERATIONS:

Outside jurisdictions shall be notified (local platoon commander or dispatch) when members arrive in an outside jurisdiction conducting stationary or static surveillance or any enforcement action.

Additionally, verbal notification to a member's direct supervisor and/or the Unit Lieutenant is required for any out of county surveillance or enforcement action.

Members operating out of county on an enforcement action are encouraged to maintain communications with local law enforcement units operating in the area. If feasible, supervisors should try to include local law enforcement in planned operations.

EQUIPMENT:

Members working in undercover capacity, as defined in this order, are exempt from this equipment (BWC, police tactical response gear, stars, etc.) portion of this order and do not need specific supervisory approval for each operation.

BWC

When conducting surveillance, members working in a plainclothes capacity shall have their BWC accessible at all times, unless a supervisor reasonably determines that an accessible BWC would compromise the surveillance operation and prevent tactical and safety advantages based upon the specific and articulable facts of the case. If a surveillance operation transitions into a situation where enforcement action is likely, members shall affix their BWC and place it in buffering mode unless a supervisor reasonably determines that doing so would compromise the on-going surveillance.

Plainclothes members operating in a directed enforcement assignment shall wear their BWC in buffering mode unless a supervisor reasonably determines that wearing a BWC would compromise the operation.

Plainclothes members shall wear and activate their BWCs during all enforcement action.

Members shall not activate BWC when encountering situations that could compromise the identity of confidential informants and undercover operatives.

In all circumstances described above, the details of why BWCs were not used shall be specifically articulated and documented in the written operational plan, CAD, incident report, or Chronological of Investigation.

POLICE TACTICAL RESPONSE GEAR / OUTER VEST CARRIER / STAR

Members operating in plainclothes capacities shall have either a Police Tactical Response Garment, outer vest carrier, or clearly identifiable law enforcement gear accessible within their vehicle when conducting surveillance, directed enforcement, or enforcement action unless a supervisor reasonably determines that the mere possession of such items would compromise the operation based upon the specific and articulable facts of the case.

Unless a supervisor reasonably determines that the mere possession of a nonvisible Department issued star would compromise the safety of individuals (suspect, public, or

members) involved in the current operation or a future operation, members shall always have a Department issued star on them.

SHOTGUN / RIFLES

When deploying a shotgun or long rifle during the execution of a warrant and/or a high-risk arrest, members shall be in either uniform, a Police Tactical Response Garment, or outer vest carrier.

When feasible, members shall advise dispatch when deploying with a rifle or shotgun.

SUPERVISION DURING ENFORCEMENT ACTION:

Supervisors shall maintain field presence and take an active leadership role in planned enforcement actions.

TRANSITION FROM SURVEILLANCE TO ENFORCEMENT ACTION:

Planned surveillance operations may transition into situations where enforcement action is anticipated (e.g. members conducting surveillance observe a wanted suspect or a crime in progress). Transition from surveillance to enforcement action requires notification to a supervisor and dispatch. Upon notification, a supervisor shall monitor, respond, and take an active leadership role in the enforcement action.

ARRESTS:

When planning the arrest of a suspect, members shall critically consider the circumstances, anticipate fluid situations, and utilize sound tactics. The SFPD recognizes that the use of arrest teams in uniform or clearly identifiable gear often promotes public trust and safety outcomes for individuals involved. The SFPD also recognizes that plainclothes members may be provided with tactical and safety advantages which are forfeited when they are clearly identifiable as police. Such advantages may include the ability to: close the distance before the subject is aware of a police presence, take the subject into custody outside of a vehicle, or reduce the likelihood of a vehicle or foot pursuit. To balance these considerations, the following procedures shall be followed when making arrests:

1. The primary plan for the arrest of a suspect shall be to utilize an arrest team with members in uniform or Police Tactical Response Garments, outer vest carriers, or clearly identifiable law enforcement gear, unless otherwise approved by a Lieutenant.
 - a. A Lieutenant may approve a primary plan to utilize an arrest team with members wearing only BWC and visible Department-issued stars if the decision to do so is reasonable and creates a tactical and safety advantage based on the specific and articulable facts of the case.
2. Plainclothes members may make an arrest with the approval of a supervisor in charge of the operation if a) exigent circumstances exist; and, b) the arrest is for a felony or violent misdemeanor; and, c) the use of a clearly identifiable arrest team is not available or practical. If exigent circumstances are present in cases involving felonies and violent misdemeanors, and the use of a clearly identifiable arrest team is not available or practical, plainclothes members may be used with the approval of the supervisor in charge of the operation. Those plainclothes members shall verbally identify themselves as police officers, display their Department issued star on their outermost garment, and

activate their BWC. Absent imminent danger of death or great bodily injury, when giving commands, members shall first identify themselves as "police."

- a. Members are reminded, and shall be aware, that these situations may contain an additional danger and therefore, this tactic shall only be used when it is deemed appropriate by a supervisor to ensure the effectiveness of the operation, and the safety of the officers, the subject, and the public.
3. Following the initial contact with a subject by members operating without clearly identifiable law enforcement gear, members wearing either uniforms, Police Tactical Response Garments, outer vest carriers, or clearly identifiable law enforcement gear, shall immediately converge and support the initial members in arresting the subject.

Members shall document the specific need to conduct an arrest without uniforms or clearly identifiable law enforcement gear in the written operation plan, an incident report, or a Chronological of Investigation.

CONSIDERATIONS WHEN PLANNING/DECIDING ON ARREST TACTICS:

When planning and or transitioning from a primary to alternative plan during the execution of enforcement actions, team leaders / supervisors shall consider:

- Crime under investigation
 - Does the nature of the crime necessitate immediate apprehension
 - Possibility of destruction of evidence
- Suspect
 - Pose an immediate threat to the public
 - Is the identity of the suspect known
 - Criminal history
 - History of fleeing or fighting with law enforcement
 - History of mental health disorders or substance abuse
 - Does the suspect know or should know they are wanted
 - Can the suspect be taken into custody safely at a later time
- Location
 - Access to vehicles or weapons
 - Geographical consideration
- Possibility of a foot or vehicle pursuit
 - Vehicular/pedestrian traffic
 - Avenues of escape
 - Knowledge of the area
- Risk to public
- The use of BWC, uniformed officers, Police Tactical Response Garments / outer vest carriers

EXEMPTIONS:

Specific units / on-going operations can deviate from this policy with the approval of the Deputy Chief of Field Operations. The approved deviation shall be documented.

Members assigned to work Dignitary Protection or Mayor's Detail are exempt from this policy.

Bureau Order

UNIT
INDEX
NUMBER

23-03

DATE
ISSUED

4/6/23

DATE
REVISED

3/27/23

SUBJECT:

Investigative Social Media Accounts

ISSUED

TO:

Field Operations Bureau

ISSUED

BY:

**Acting Deputy Chief
Rachel Moran**

FIELD OPERATIONS BUREAU – INVESTIGATIVE SOCIAL MEDIA ACCOUNTS

The use of social media in law enforcement related investigations is a valuable tool to the San Francisco Police Department. Social media is used by investigators across the Department, particularly the Investigations Bureau. Information obtained from investigative social media accounts can provide critical evidence in cases involving homicide, human trafficking, missing persons, firearms and firearms-related offenses, narcotics, special investigations, internet crimes, crimes against children, etc.

The law is constantly evolving with the advancement of technology, evolution of social media, the passage of new statutes, and the issuance of state and federal court rulings. SFPD members are responsible for maintaining their familiarity with clearly established rights as determined by case law and when there is a discrepancy with this policy, members shall adhere to the most current California and federal law.

Members shall maintain working knowledge of current law and Department policy specifically as it relates to: the First Amendment and Fourth Amendment of the United States Constitution, CalECPA (California Penal Code sections 1546-1546.4), and DGO 8.10 Guidelines for First Amendment Activity.

The following policies are meant to govern the use of investigative social media accounts. This policy does not affect the access to information or collection of evidence from open-source platforms.

Barring a warrant, exigent circumstances, or approval as outlined within this policy, members shall only access, download, and save open-source information or publicly available material that is posted in a publicly accessible format.

DEFINITIONS:

Social media: Online platforms that facilitate social networking platforms, blogging and/or photo and video-sharing, Podcasts, RSS Feeds or other similar platforms. Social media includes, but is not limited to, proprietary social media sites, applications such as Facebook, Instagram, LinkedIn, Snapchat, MySpace, Twitter, and YouTube as well as collaboration services such as Wikipedia and Blogspot or any emergent social media platform or service now in existence or that become available in the future.

Open-source: For the purpose of this policy, open-source social media is social media content that can be accessed, viewed, and saved by SFPD members or the general public through sources generally available to the public such as Google, Safari, Firefox, etc. This information is available without the creation of a profile or a registration requirement.

Investigative social media account: Social media accounts that are created and maintained by a member of SFPD for the purpose of concealing his or her identify as a law enforcement officer in order to access social media as part of a legitimate law enforcement investigation. Some investigative social media accounts are also undercover accounts.

Undercover account: Investigative social media accounts that will actively engage with a suspect, witness, or victim of an investigation or potential crime in order to gain information. Examples include, but are not limited to: ICAC Unit creating a profile for a “to catch a predator” operation, SVU communicating with a human trafficking victim, or an undercover buy operation.

APPROVAL PROCESS:

The following process is required for approval to use investigative social media accounts and/or undercover accounts.

Investigative social media accounts approval:

Members assigned to the Field Operations Bureau shall write a memo, requesting to use investigative social media accounts, to be reviewed and approved by the Captain within the member’s chain of command.

The memo should include: their current investigative assignment and the reasons why the use of investigative social media accounts is necessary to carrying out their duties.

Approved memos shall be forwarded to the Captain of Strategic Investigations for review and deconfliction, and to log the account consistent with the Oversight and De-Confliction section below.

Approved use of social media accounts applies strictly to a member’s current assignment and is not transferable. Reassigned members shall re-request permission to use investigative social media accounts.

Undercover social media accounts approval:

Members using undercover accounts require approval to use investigative social media accounts as referenced above. Additionally, members need specific written approval from their Captain to create and use an undercover account and must do so in conjunction with a specific

investigation or enforcement operation. Approval shall be forwarded to the Captain of Strategic Investigations.

Exigent circumstances:

In the event of exigent circumstances (an emergency), members may access an investigative social media account or an undercover account without prior approval. In these circumstances, members shall acquire written approval as soon as reasonably possible and shall document the reasons why the use of an investigative social media account and/or undercover account was necessary.

USE OF SOCIAL MEDIA:

Members shall use investigative social media accounts for legitimate law enforcement related purposes only. All other use of investigative social media accounts is strictly prohibited.

On-duty:

Members should access investigative social media accounts while on duty. If a member discovers credible leads or relevant information to another investigative unit, members should forward that information.

If circumstances exist requiring a member to use an investigative social media account while off-duty, members are required to have articulable facts to support its use. Such facts may include: a tip from a confidential informant that needs to be verified, the occurrence of a violent crime, a spike in recent violent crime, specific focus on a high-risk individual, noticeable uptick in violent crime between known groups, etc. If members obtain information that requires immediate action or indicates an on-going public safety concern, members shall provide that information to appropriate on-duty personnel.

If a member discovers evidence that is relevant to a potential law enforcement investigation while off-duty, the member should document it and attempt to verify/re-access that information while next on-duty.

Equipment:

Members shall use only Department or federal law enforcement equipment when accessing investigative social media accounts.

Documentation and preservation of evidence:

Depending on the nature of the investigation and the evidence on social media, members should submit a preservation order and/or obtain a search warrant for evidence observed through the use of investigative social media accounts. CalECPA, as codified in California Penal Code sections 1546-1546.4, sets forth the search warrant requirements for social media content.

For the purposes of evidence collection, chain of custody, and its potential use in court, members shall document where and when any evidence is collected. This documentation may be in a Chronological of Investigation, incident report, or through the use of the Investigative Social Media Account Form.

Use of undercover accounts:

Undercover accounts shall only be used as part of an approved investigation or operation. Members are encouraged to register all undercover accounts with WSIN for the purpose of deconfliction.

Members shall not:

1. Monitor a suspect for non-law enforcement purposes.
2. Use their own personal social media account or personal account information to access social media content for investigations.
3. Create a profile in someone's likeness without their express written or recorded consent.
4. Use an individual's personal account without their express written or recorded consent. If exigent circumstances exist, and written or recorded consent is not possible, members shall document the reasons why in the appropriate Chronological of Investigation or incident report.

BIASED FREE POLICING:

Members are reminded that police action that is biased is illegal and violates the fundamental rights of all individuals guaranteed under the United States Constitution. SFPD is committed to just, transparent, and bias-free policing. DGO 5.17, Bias-Free Policing Policy, applies to all activity members engage in including the use of investigative social media accounts.

CONTINUOUS TRAINING:

Members shall attend training prior to using investigative social media accounts. Given the evolution of case law, Department policy, and emerging technology, members are encouraged to continue to remain up to date on training as it relates to the use of investigative social media accounts.

OVERSIGHT AND DE-CONFLICTION: The Captain of Strategic Investigations, or their designee, shall provide oversight by maintaining a confidential centralized registry of all active investigative and undercover social media accounts used throughout the Department. The registry shall include the investigating member responsible for the account, their approved memo, the date the account was created, social media platform, and account name and password.

On a semiannual basis, the Captain of Strategic Investigations, or their designee, shall conduct a documented review of all accounts to ensure:

1. The member is operating the account pursuant to this order and not in a manner which could be interpreted as biased, unprofessional, or otherwise in violation of Department policy; and
2. The account is being used for a legitimate law enforcement purpose and its continued use is necessary.