



**SOUTH COAST BRITISH COLUMBIA
TRANSPORTATION AUTHORITY
POLICE SERVICE**

SEARCH

Effective Date: May 9, 2005
Revised:

POLICY

Legal Requirements

1. Searches will be conducted only when authorized by law.
2. When a search is undertaken without a Warrant, the requirements of specific legislation or common law will be met before the search is executed

Property

3. In relation to searches of property, other than searches of TransLink property, the South Coast British Columbia Transportation Authority Police Service (SCBCTAPS) will notify the Jurisdictional Police Department (JPD) and coordinate participation in a search.

[See also: OD240 – Searches of TransLink Property (TBD)]

Confidentiality

4. Confidential sources or sensitive operational techniques will not be revealed or compromised through the process of obtaining a Search Warrant.

Based On Substantiated Information

5. Searches will not be conducted based solely on an anonymous telephone tip or unsubstantiated information provided by a source of unknown reliability.

Search Participants

6. Participants in a search will be limited to:
 1. the person named in the Warrant, and
 2. other peace officers necessary to conduct the search.
7. The conduct of Service personnel carrying out a search will be of the highest order in terms of conduct, demeanor and respect for the individual and the individual's property.

Owner Present

8. Searches will, wherever possible, be conducted in the presence of the owner, lessee of the property, agent of the owner or lessee or a person whom the Member is satisfied has the authority to represent the owner or lessee.

Discontinuation of Search

9. A search will be discontinued when the grounds or belief no longer exist, the Warrant expires, or the items described in the Warrant are seized.

[See also: OD130 – Seizure]

Damage

10. If damage is caused to premises being searched and the owner or occupant wants to seek restitution, Members will inform the owner or occupant that the process to request restitution is to write a letter to the Chief Officer.

REASONS FOR POLICY

11. To ensure that search, as an aid to an investigation, is carried out in a manner that:
 1. complies with legal requirements, and
 2. will not compromise evidence seized in the search.

PROCEDURES**Searches**

12. S. 8 of the Charter of Rights and Freedoms states “Everyone has the right to be secure against unreasonable search or seizure”.
13. For a search to be reasonable:
 1. the search must be authorized by law,
 2. the law itself must be reasonable, and
 3. the manner in which the search is conducted must be reasonable.

SEARCHES WITHOUT WARRANT**Search Incident to Investigative Detention**

14. For a search to be lawful as an incident to investigative detention, the following two criteria must be satisfied:
 1. a lawful investigative detention based on articulable cause and reasonably justified/necessary, and
 2. search reasonably justifiable and limited in scope to a legitimate protective concern.

The officer must act out of a justifiable fear of personal safety.

Search Incident to Lawful Arrest

[See also: OD080 – Arrests]

15. Common law provides that an officer may search an arrested person, or anything within their control and which is incidental to the offence, without the need for a Warrant.
16. The valid objectives of the search incidental to a lawful arrest include:
 1. ensuring the safety of the police and the public,
 2. obtaining evidence, or
 3. the discovery of evidence related to the arrest which can be used at the arrestee's trial.
17. Where an arrest is unlawful, any search conducted pursuant to that arrest would be itself, unlawful.
18. Subsequent to search, incident to lawful arrest, the Member may seize:
 1. anything with which the arrested party may injure themselves or others,
 2. anything that may aid their escape, and
 3. any evidence to support a contemplated charge.

Search with Consent

19. A Member may, with the person's consent, search that person or anything under their control, including their vehicle and dwelling.
20. To be valid, the consent must be an informed and voluntary consent.
21. The person consenting must be informed of their rights to:
 1. refuse consent, and
 2. withdraw consent at any time.
22. The person consenting must be informed of the consequences of giving such consent:
 1. what will be subject to search,
 2. what is being searched for, and
 3. the consequences if the search is successful.
23. A consent may be rendered invalid where it has been obtained by:
 1. fraud,
 2. a show of authority,
 3. intimidating conduct,
 4. force, or
 5. threats of force.

24. A consent does not confer any special authority beyond that which flows from it:
1. a consent cannot authorize the search for or taking possession of property over which the person consenting has no authority, and
 2. a consent does not authorize a search beyond the defined parameters of the consented search.
25. Consent obtained in writing and signed by the consenting person, while not required by law, may provide clear evidence of an informed and voluntary consent.
26. Where consent is given by a person, but not in writing, the Member should record all of the details of obtaining the consent and subsequent actions in their notebook.
27. Where any person has consented to a search, and subsequently revokes that consent, the Member will discontinue the search.

Search without a Warrant or Consent

28. Search without a Warrant or consent should only be undertaken when circumstances exist that makes obtaining a Search Warrant impractical or impossible and generally falls into two categories:
1. protection of life, or
 2. protection of property (evidence).
29. The reasons for conducting a search without a Search Warrant should be recorded in the Member's notebook in the event that the search is challenged as unreasonable.
30. The Member undertaking this type of search must ensure that:
1. prior to the search, there were reasonable grounds to believe that an offence had been committed and there was evidence to be found at the place of the search,
 2. it was not practicable to obtain prior authorization, and
 3. authority to search exists pursuant to statutory or common-law authority.

[See also: OD240 – Searches-TransLink Property]

Search of a Dwelling House to Preserve Life and Prevent Serious Injury

31. A Member may force entry into private premises to prevent death or serious injury if there is a belief, based on reasonable grounds, that an emergency exists where:
1. the circumstances involve the preservation of the life of someone within the residence or the prevention of serious injury to a person in the residence, and
 2. proper announcement has been made prior to entry, providing it is safe to do so.
Proper announcement is defined as:
 - a. presence,
 - b. authority, and
 - c. purpose.
(i.e. a 911 call received that a person is in distress)

SEARCH WARRANTS

Information to Obtain a Search Warrant

32. To request a Search Warrant, an Information to Obtain a Search Warrant must:

1. be completed,
2. be sworn before a Justice,
3. describe, in detail, an offence known in law,
4. describe the items to be searched for in precise language to ascertain, with accuracy, what is to be seized,
5. adequately and precisely describe the place to be searched, and
6. contain a full and substantial account of the grounds that form the basis of belief:
 - a. reasonable grounds to believe,
 - b. the informant will be required to swear on oath to the truth of the matters and must be able to substantiate them when required by a Justice, and
 - c. use of phrases such as “confidential information or source, confidential information from a reliable source or information from a person in a sensitive position” should be used only to protect the identification of the source.

Supervisory Approval

33. To ensure that all requirements are met before presentation to a Justice, the Information to Obtain a Search Warrant will be examined by a Supervisor.

34. The Supervisor will indicate approval by initialing and dating the file copy of the Information to Obtain a Search Warrant.

Warrant to Search

35. A Search Warrant under the Criminal Code of Canada (CCC) may be issued for any offence described in the CCC or any other Act of Parliament that does not provide specific legislation for obtaining a Search Warrant.

36. If an Act of Parliament has a specific provision authorizing the issuance of a Search Warrant, the specific legislation should be used (e.g., Controlled Drugs and Substance Act (CDSA)).

37. A Warrant to search should correspond in all material respects with the wording on the Information to Obtain a Search Warrant.

Corrections

38. Any corrections to the Warrant to search must be approved, amended and initialed by the issuing Justice, before execution.

SEALING A SEARCH WARRANT

Based On Substantive Grounds

39. Public policy is in favor of openness with respect to judicial acts, therefore, applications for sealing Orders should be based on substantive grounds, justifiable in Court.

40. Substantive grounds will include:

1. the safety and security of confidential human sources would be compromised,
2. the nature and extent of ongoing law enforcement would be compromised,
3. police intelligence gathering techniques would be disclosed thereby endangering future investigations,
4. the interests of innocent persons would be compromised,
5. the protection of privacy,
6. protection of the administration of justice, and
7. Parliament's will to ensure the Search Warrant process is effective in criminal investigations.

Applying To Seal

41. At the time an Information to Obtain a Search Warrant is sworn, the Member swearing the Information should inform the Justice that they will be applying to the Court to seal the Search Warrant and the Information to Obtain a Search Warrant.
42. To facilitate the sealing of Search Warrants, the following guidelines should be considered:
 1. the paragraphs in the “grounds for belief” section of the Information to Obtain a Search Warrant should be numbered to facilitate editing, should a Judge determine that not all paragraphs warrant sealing,
 2. Members should be prepared in advance to provide a list of those paragraphs that they wish sealed,
 3. Members should be prepared to provide specific details of the substantive grounds on which it is believed the release of information would not be in the interests of the public.

Sealed Information Ordered Open

43. Before a Judge’s Order is made to open a sealed information, Members in attendance should request Crown Counsel to adjourn the matter to allow the Member’s Supervisor to consult with Crown Counsel to determine how the matter should be resolved (e.g., stay of proceedings, witness protection).

Immunity from Search

44. Property of diplomatic missions, consular posts, representatives of the United Nations and certain international organizations may enjoy immunity from search.

SEARCH WITH WARRANT

Person in Charge

45. Prior to executing a Search Warrant, Members will obtain the concurrence of the Watch Commander.
46. Under the CDSA, the Member swearing the information is the only one required to be named on the warrant. That same Member or his/her designate will also be the person in charge.

Risk Assessment

47. All Members executing a Search Warrant will be required to conduct a risk assessment, if practicable, prior to entry.
48. The risk assessment will be provided to a Supervisor and will review:
 1. number of residents in the target premises,
 2. their names and descriptions,
 3. criminal record checks of the residents,

4. history of violence of the residents, if any,
5. presence of weapons in the target premise,
6. information provided by informants or other sources,
7. whether surveillance information, informant information or any other information relied upon is recent or dated,
8. results of previous surveillance,
9. expected arrival or departure of other residents,
10. expectation of dangerous circumstances, including the grounds for the expectation,
11. potential for the destruction of evidence,
12. whether the entry should be with or without weapons drawn,
13. whether the circumstances justify the use of extra force in terms of special weaponry or personnel,
14. what factors affect whether entry should be announced or unannounced, and
15. the effect of the use of visible police identification, such as clearly lettered jackets or vests.

Identifiable as Police

49. Members should be visually identifiable as police officers, except where the risk assessment indicates that high visibility could pose a risk to the Members executing the Warrant.

Declared Entry

50. Before entering the place to be searched, Members should make a proper announcement by:
1. making a demand for entry (presence),
 2. identifying themselves as police officers (authority), and
 3. stating the purpose for which entry is demanded.

Undeclared Entry

51. A declared entry will not be required if:
1. entry is necessary to save someone within the premises,
 2. if harm is likely to result to any person, including police,
 3. entry is necessary to prevent the destruction of evidence, or
 4. in fresh pursuit.

Use Of Force

52. A Member may, when acting under a Search Warrant, or other lawful authority, use such force as is reasonably necessary.

[See also: OH020 - Use of Force]

Warrant On Hand

53. The Member must have the Warrant, and a copy of it, in their possession during the search and:

1. produce the Warrant and allow the occupants or owner a reasonable amount of time to examine the document, or
2. leave a copy of the Warrant in a prominent place within the premises if the premises to be searched are unoccupied at the time of the search.

Seizure

54. Police Members may seize:

1. articles described in the Warrant to search, and
2. articles not described in the Search Warrant, pursuant to the CCC, where the Member believes on reasonable grounds that the articles have been obtained by, or used in, the commission of an offence.

[See also: OD130 – Seizure]

Damage

55. Any damage caused, or alleged to have been caused, during a search will be reported to the investigator's Supervisor:

1. the Supervisor will submit a report through the chain of command to the Chief Officer or designate (if the information is included in the occurrence, a copy will suffice),
2. a photograph of the damage must be taken,
3. if there is an immediate need to have the damage repaired (e.g. premise left insecure or door is inoperable), the investigators will notify their immediate Supervisor who may request the damage be repaired, and
4. the Supervisor will hold a de-briefing session at the conclusion of the search.

Unexecuted Warrants

56. An unexecuted Warrant to search should be returned to the issuing Justice for cancellation.

UNANNOUNCED ENTRY/HAZARDOUS SEARCH OF A DWELLING HOUSE**Surveillance**

57. The dwelling or premises where the Search Warrant is to be executed should be kept under surveillance while the Warrant is being obtained.

Police Officer in Charge

58. A Member will be designated as being in charge of the search.

59. In the event that Members are working with other peace officers from an outside agency, and are searching under the authority of their Warrant, the person holding the Warrant will be designated as the police officer in charge.

Approval

60. The Member's Supervisor must approve the search.

61. If the Member's Supervisor is unavailable, the Watch Commander must approve the search.

62. The Supervisor must be advised, before the search, if:

1. the search is to be an unannounced entry,
2. there is evidence that the occupants of the premises to be searched may be violent, or
3. the circumstances may require the assistance of the JPD.

Preparation for Search

63. Prior to the search, the police officer in charge will:

1. prepare an operational plan using the Risk Assessment/Operational Plan form,
2. hold a briefing session to ensure that all Members of the search team are familiar with:
 - a. the operational plan,
 - b. their role in the search,
 - c. any areas of potential danger, and
 - d. areas requiring specific attention.
3. ensure that all Members:
 - a. are wearing body armor,
 - b. can be identified as police officers,
 - c. have the necessary equipment (e.g., exhibit containers, cameras, flashlights) required for the search,
4. designate one Member as the exhibit person, and
5. ensure that the Watch Commander is informed of the search and fully aware of the circumstances.

[See also: AE010 – Strategic Planning]

During The Search

64. During the search, the responsibilities of the police officer in charge will include:

1. producing identification to the occupants involved as soon as practical,
2. producing a copy of the Search Warrant,
3. detaining all occupants of the premises, ensuring that they are all convened in one area until order is established, and
4. ensuring that all persons detained or arrested are advised of the applicable provisions under the “Charter of Rights and Freedoms” and allowed to place a telephone call as soon as practicable.

SEARCH OF PERSONS

General

65. A Member should not depend on another Member to search a detainee but should personally search each person transported.

66. Except in exceptional circumstances, female Members will search female detainees and male Members will search male detainees.

**[See also: OD080 - Arrests, OI010 - Prisoner Transportation,
OI030 - Care and Control of Prisoners]**

Body Search

67. In a body search, the Member may search the prisoner to remove objects which might be used as a weapon or which might have evidentiary value.
68. The body search will be completed on the arrested person:
1. as soon after the arrest as possible,
 2. in order to remove any potential weapons, and
 3. in order to secure any items that may have evidentiary value.
69. A strip search is a thorough search and examination of a person's clothing and body, which will normally require the removal of the prisoner's clothing.
70. A strip search must be conducted in private and only conducted by a person of the same sex.
71. A strip search must only be done when reasonable grounds exist that the detainee is concealing contraband. Conducting a strip search must be viewed in light of a person's dignity and the light in which the Court would view this action, after the fact.
72. Anal or vaginal searches are an intrusion of an individual's privacy and dignity and shall only be used:
1. in cases of considerable significance, and
 2. by a qualified medical practitioner.