

ELIZABETH POLICE DEPARTMENT GENERAL ORDERS



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SUBJECT: DIPLOMATIC AND CONSULAR IMMUNITY

EFFECTIVE DATE:

September 23, 2020

ACCREDITATION STANDARDS:

3.1.2b, 3.6.4e

BY THE ORDER OF:

Chief Giacomo Sacca

BY AUTHORITY OF:

Police Director Earl J. Graves

SUPERSEDES ORDER #:

PURPOSE The purpose of this general order is to comply with international, federal and state laws concerning the privileges, rights and immunities accorded to duly-accredited diplomatic and consular officials.

POLICY It is the policy of the Elizabeth Police Department to comply with the U.S. Department of State obligations and applicable law with regard to diplomatic officials, consular officials, and legislators.

Diplomatic and consular officers shall be accorded their respective privileges, rights, and immunities as directed by international law and federal statute. These officials should be treated with the courtesy and respect that befit their positions. At the same time, it is a well-established principle of international law that, without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect local laws and regulations.

PROCEDURES

I. DIPLOMATIC IMMUNITY

- A. Diplomatic immunity is a principle of international law that is broadly defined as the freedom from local jurisdiction that is accorded to accredited diplomatic agents and members of their immediate household.
1. The *Vienna Convention on Diplomatic Relations* (1961) contains the current law on the subject of diplomatic privileges and immunities and is incorporated into federal law by the *Diplomatic Relations Act of 1978* ([22 USC § 254](#)).
 2. Ambassadors and ministers are the highest-ranking diplomatic representatives of foreign governments. Other diplomatic titles are minister counselor, counselor, first secretary, second secretary, third secretary, and attaché. These officials are typically headquartered in either Washington, D.C. or in New York City.
 3. The *Vienna Convention on Diplomatic Relations* applies to members of the staff of a foreign diplomatic mission that includes the diplomatic, administrative, technical, and service staffs of foreign embassies in the United States. It does not include consular personnel, whose privileges and immunities are governed by the *Vienna Convention on Consular Relations*; see section II of this general order.
- B. Foreign diplomatic agents and members of their families have full immunity from arrest, detention, or prosecution for any criminal violation unless such immunity is expressly waived by the sending state. The above individuals also enjoy immunity from civil process except in certain actions involving private activities outside their official function.
- C. The administrative and technical staff of a foreign mission and members of their families who are not U.S. nationals or permanent residents of the United States have full immunity from arrest, detention or prosecution for any criminal offense. Such employees enjoy immunity from civil process only for those actions carried out in their official capacity. Family members of these employees are not immune from civil jurisdiction.
- D. Members of the service staff of a foreign diplomatic mission, including drivers, messengers, and security guards, enjoy immunity only for actions carried out in the course of their official duties. Family members of such individuals have no immunity. Private servants of embassy personnel have no immunity.
- E. Associated with this personal diplomatic immunity is the inviolability enjoyed by the premises of the mission of the sending state and the private residence of a diplomatic agent or member of the administrative or technical staff. Such inviolability extends to his or her property, papers and correspondence. Inviolability means secure from violation; impregnable to assault or trespass.

- F. The person claiming immunity or protected status has the responsibility to notify law enforcement personnel of his/her status. Persons with diplomatic or other immunity should have in their possession a picture ID issued by the United States Department of State, Office of Protocol. A passport, visa, license, or diplomatic tag alone is not enough to verify diplomatic immunity.
1. There are three types of identification cards that are 3¾" x 2½" and contain a photograph of the bearer.
 - a. Diplomatic Identification – blue border.
 - b. Official Identification (employees) – green border.
 - c. Consular Identification – red border.
 2. The cards also contain the bearer's name, title, mission, city and state, date of birth, identification number, and expiration date. A United States Department of State seal appears on the front of the card and a brief description of the bearer's immunity is printed on the back.
 3. Upon encountering a person asserting diplomatic immunity, officers have a right to temporarily detain the individual, using reasonable force, until verification of the status and extent of the individual's immunity can be determined.
 4. Diplomatic officials asserting diplomatic immunity should be treated with respect and courtesy in recognition of their diplomatic status.
 5. There may be situations where an individual who has been granted diplomatic privilege or immunity does not have this identification card in his or her possession. In such situations, the officer should verify the individual's diplomatic status by contacting the appropriate point of contact as indicated below.
- G. The desk lieutenant or his/her designee shall verify all claims of diplomatic immunity through the United States Department of State before taking further action. During normal business hours, the desk lieutenant or his/her designee should call the number listed on the back of the individual's U.S. Department of State identification card or contact the Diplomatic Security Command Center, Department of State, 24/7 at 1-866-217-2089 or 1-571-345-3146.
- H. For diplomats enjoying full immunity from detention or arrest, reasonable restraints may be applied in emergency circumstances involving self-defense, public safety, or the prevention of serious criminal acts.
1. This does not mean the individual is subject to arrest, but the officer is expected to preserve public safety, within reasonable limits.
 2. This may at times require the removal of the individual from the scene, a temporary detention, etc. The field supervisor shall be consulted prior to any action, whenever possible.

3. Officers have the right to take any authorized legal action that may be required to prevent property loss, injury, or death, and to preserve the peace, whether or not the subject is claiming diplomatic immunity.
- I. Under the provisions of N.J.S.A. 39: 5-54, whenever a person with diplomatic immunity is stopped by a law enforcement officer who has probable cause to believe that the person has violated N.J.S.A. 2C: 11-5, N.J.S.A. 2C: 12-1c, N.J.S.A. 39: 4-50, N.J.S.A. 39: 4-50.4a or N.J.S.A. 39: 6B-2, or has committed a motor vehicle moving violation, the officer or tour commander shall:
 1. As soon as practicable, the desk lieutenant or his/her designee shall contact the United States Department of State, Diplomatic Security Command Center, 24/7 at 1-866-217-2089 or 1-571-345-3146 to verify the person's status and immunity:
 2. The involved officer shall record all relevant information from the person's driver's license or identification card, including a driver's license or identification card issued by the United States Department of State. The desk lieutenant or his/her designee shall fax copies of all incident reports and complaints to the Diplomatic Security Service, Protective Liaison Division at 1-202-895-3613.
 3. Within five working days after the date of the stop, the records bureau shall forward to the N.J. Motor Vehicle Commission the following information:
 - a. A copy of any citation or other charging document that was issued, if any; and
 - b. An incident report describing the incident if no citation or charging document was issued.
 - c. Forward this information by US Mail to:

Chair & Chief of Administration Motor Vehicle Commission
225 East State Street,
Trenton, N.J. 08666
 4. Officers detaining persons with diplomatic immunity who have been stopped on a suspicion of N.J.S.A. 39: 4-50 are still subject to the provisions of John's Law N.J.S.A. 39: 4-50.22 and N.J.S.A. 39: 4-50.23, and [Attorney General's Directive 2004-1](#) regarding their release and the subsequent release of their vehicle.

II. CONSULAR IMMUNITY

- A. Consular officials are consuls general, vice consuls, deputy consuls and consular agents. They are also official representatives of foreign governments. Consular officials are required to be treated with due respect, and all appropriate steps are to be taken to prevent any attack on their person, freedom, or dignity.

- B. Foreign career consular officials are not liable to arrest or detention pending trial except in the case of a grave crime (indictable arrest that would endanger the public safety), and pursuant to a decision by judicial authority. Their immunity from criminal jurisdiction is limited to acts performed in the exercise of consular functions and is subject to court determination.
- C. Career consular officials can be identified by credentials issued by the U.S. State Department and by other locally issued identification papers. The U.S. State Department credential bears its seal, the name of the officer, title, and the signatures of the Department of State officials.
- D. Often, nationals or permanent residents of the receiving state are appointed and received as honorary consular officials to perform the functions generally performed by career consular officials. Such officials do not receive identification cards from the U.S. State Department, although they may exhibit reduced sized copies of the diplomatic note evidencing recognition by the United States Government. These individuals are not immune from arrest or detention; they are also not entitled to personal immunity from the civil and criminal jurisdiction of the receiving state except as to official acts performed in the exercise of their consular functions.
- E. Appropriate steps must be provided to afford such officials with the protection required by virtue of their official position. In addition, the consular archives and documents of a consular post headed by an honorary consul are inviolable at all times and wherever they may be, provided they are kept separate from other papers and documents of a private or commercial nature relating to the other activities of honorary consuls and persons working with them.
- F. Consular premises used exclusively for the work of the consular post cannot be entered without explicit permission of the head of the consular post, designee, or by the head of the diplomatic mission. This permission may be assumed in the case of fire or other disaster requiring prompt protective action.
- G. The consular archives and documents are inviolable at all times and wherever they may be. The official correspondence of the consular post, meaning all correspondence relating to the consular post and its functions, is likewise inviolable.
- H. When a consular official is stopped for a moving traffic violation, the officer on the scene, upon being advised by the driver that he/she is a consular official and ascertaining that he/she possesses the proper credentials, should exercise discretion based on the nature of the violation and either let him/her go with a warning or issue the appropriate uniform traffic ticket. Mere issuance of a uniform traffic ticket does not constitute arrest or detention in the sense referred to above.
- I. Unless consular officials are considered a serious danger to themselves or others, they should not be physically restrained or subjected to a sobriety test. It should be impressed upon them that the law enforcement official's primary responsibility is to care for their safety and the safety of others.
 - 1. If officers having detained a consular official on a motor vehicle stop have probable cause to suspect that the official is in violation of N.J.S.A. 39:4-50, officers shall take the official into protective custody.

2. Officers shall advise the official that he/she is not under arrest but, is being detained for safety reasons.
 3. The desk lieutenant or his/her designee shall make immediate contact with the official's consul for arrangements to have him/her picked up. Officers may take the person home if the person resides within the City of Elizabeth or a contiguous community.
 4. Officers detaining consular officials who had been stopped on a suspicion of N.J.S.A. 39: 4-50 are still subject to the provisions of John's Law N.J.S.A. 39: 4-50.22 and N.J.S.A. 39: 4-50.23, and [Attorney General's Directive 2004-1](#) regarding their release and the impound and subsequent release of their vehicle.
- J. Family members of a consular official are not entitled to immunity. However, consideration should be given to the special nature of this type of case. A violation should be handled, whenever possible, through the seeking of a complaint. The individual should be released once positive identification is made and the relationship with the consular official is verified. If the relative is a juvenile, the subject should be released to the parent.

III. NOTIFICATION AND REPORTING REQUIREMENTS

- A. All incidents involving persons asserting diplomatic, consular, or legislative immunity or their families must be fully documented in an incident report and forwarded through the chain of command.
- B. In the event that a consular official, employee of, members of their families, or personal staff should become involved in a serious incident, the desk lieutenant or his/her designee should notify the Office of Protocol, Department of State, Washington, D.C. (consular officers 1-202-632-0706, consular employees 1-202-632-0605, off hours 1-202-632-2412).
- C. The Diplomatic Security Command Center, Department of State, is available 24/7 at 1-866-217-2089 or 1-571-345-3146 to assist with any investigation or to make notifications.