

## Reasonable Expectation of Privacy

### *Situations where courts have found reasonable expectation of privacy to be present*

1. **A person's body**
2. **A person's dwelling** (home)
3. **Curtilage** – The area immediately surrounding a dwelling where the dwelling occupant enjoys a reasonable expectation of privacy from government's physical intrusion. Government's physical presence on a dwelling's curtilage is a Fourth Amendment search. Factors that define the extent of a dwelling's curtilage:
  - a. How close it is, or whether it is connected, to the dwelling
  - b. Whether the area is enclosed
  - c. How it is used by the occupant
  - d. Steps taken by the occupant to protect the area from observation by people passing by.
4. **Buildings** that are not dwellings do not have curtilage, but one may have a REP in such structures. Example – A tool shed on the property is protected from government's physical intrusion, but government may walk within inches of the building as long as it is not on the home's curtilage.
5. **Private spaces inside buildings** have REP and are protected by the Fourth Amendment, but a law enforcement officer is free to enter any part of a building that is open to the general public.
6. **Baggage** (purse, backpack, suitcase, etc.): Containers made from see through do not have REP. On the other hand, if a Special Agent cannot determine what is inside a given container without opening it (visual intrusion) or squeezing it (physical intrusion), the contents are protected by a reasonable expectation of privacy.
7. **Conveyances** (car, boat, aircraft, etc.): A driver or passenger has a reasonable expectation of privacy from physical intrusion into his or her vehicle.
8. **Private communications:** Title III of the Omnibus Crime Control and Safe Streets Act of 1968 (the primary Federal "wire tap" law which is found at 18 U.S.C. §§ 2510-2520) imposes limitations on auditory intrusions into private conversations. Title III prohibits any person (not just government agents) from using a device to intercept the contents of a telephonic or electronic communication, as well as any oral conversation protected by REP, without first obtaining a court order or the consent of at least one party to the communication. Title III violations are subject to a \$10,000 civil fine per violation, as well as criminal prosecution.

**Situations in which a person does NOT enjoy a reasonable expectation of privacy:**

1. **Open field:** A location where there is no REP from physical intrusion such as a public parking lot or the land on a large rural parcel located outside of the curtilage of any dwelling house located on private property.
2. **Open view:** An area where there is no REP from visual intrusion such as the contents of the passenger compartment of a motor vehicle visible through the window glass of the automobile while it is stopped at an immigration checkpoint.
3. **Overheard conversation:** A conversation where there is no REP from auditory intrusion such as a conversation between two people on a crowded street corner.
4. **Dog sniff:** A dog sniff of an object does not involve any intrusion; therefore allowing a dog to sniff an object to which it has lawful access is not a search. Dog sniffs of people raise additional issues (intrusion into personal space) and may be considered a search. An alert from a well-trained dog constitutes probable cause to believe there is contraband present.
5. **Abandoned property:** When a person chooses to give up a REP in an object, the courts will declare the object abandoned. Government's physical intrusion into abandoned property will not be a search because no one has a REP in the object. Abandonment must be voluntary (if property is discarded in response to a law enforcement agent's conduct, the agent's conduct must be lawful). Lost property is not abandoned property because you do not know if the person with REP in the object voluntarily discarded the item.
6. **Identification and travel documents:** Identification and travel documents are issued for the purpose of providing information to government officials. Thus, there is no REP in such documents. Looking at a lawfully obtained identification document is not a search. However, our efforts to retrieve identification documents might be considered a search (i.e., reach into a person's pocket to get the person's driver's license). Reading the driver's license is not a search, but the physical intrusion into the person's pocket is a search.

**Consent**

Warrant Required?	Suspicion Required?	Exception Policy	Consent Rule
NO	Zero Suspicion	The search occurs with the approval of the affected party so it is inherently reasonable	<ol style="list-style-type: none"> <li>1. SA may obtain consent that is voluntarily given and given by a person with authority to give consent.</li> <li>2. Consent is voluntarily given if it is the product of a free choice among lawful options.</li> <li>3. Search is limited to scope of consent.</li> </ol>

**Scope:** The person who gives consent sets the scope and duration of the search.  
The consenting party may revoke consent at any time. *See TDR 4A-3 "Ruses."*