



UNION CITY POLICE DEPARTMENT

GENERAL ORDER: 2.07

SUBJECT: Mobile Audio and Video Recordings

Date issued: 5/23/2023

Date effective: 5/23/2023

Date of Expiration: Upon Rescinding or Amending

By Order of:
David M. Pernice
Chief of Police

A handwritten signature in blue ink that reads "Chief D. Pernice".

PURPOSE

The purpose of this general order is to establish policies and procedures for the Union City Police Department's use, storage and dissemination of mobile audio and video recording(s).

POLICY

It is the policy of the Union City Police Department that all personnel adhere to the provisions of this general order.

AUDIO AND VIDEO RECORDINGS

This policy establishes guidelines for the use of Mobile Video Recording (MVR) devices installed in department owned patrol vehicles, as well as Body Worn Cameras (BWC) worn by each police officer employed by this department. The use of the MVR and/or BWC has been shown to be a valuable component of police work, assisting in reviewing the actions of a police officer and implementing procedures to allow for the improvement of police officers skill, interpersonal communications, evidence collection, training, and police officer safety.

Audio and Video Recording Procedures

A. Preoperational

1. Police officers shall not use the MVR and/or BWC until receiving proper training and appropriate policy review. Once MVR and/or BWC use is implemented, officers will receive usage, performance deactivation and policy updates.

2. Training shall be conducted in accordance with manufacturer specifications and shall be accompanied by a lesson plan, which shall include:

a. The PA Wiretapping and Electronics Surveillance Control Act, Title 18, Chapter 57. Officer may record any oral communication provided that:

(1) The communication is made in the presence of the law enforcement officer.

(2) The officer is on official duty.

(3) The officer is in uniform or clearly identifiable as an officer.

(4) The officer is using the recording equipment approved under 18 Pa.C.S.A §5706(b)(4) to record the communication.

(5) The officer and department is using and storing secure on site, and off site if use a vendor, audio and/or video recordings as approved by 18 Pa.C.S.A. §5706(b)(5).

b. To deescalate interactions with officers, it is recommended that officers inform the person(s) that the conversation is being intercepted and recorded as soon as reasonably practicable. The preferred statement is, "I am Officer _____ of the Union City Police Department. For the safety of us all, this event is being recorded."

3. At the beginning of each shift, officers shall power on an available BWC and log into the camera with their assigned tag. Officers shall only use the camera that they have assigned to themselves for the shift.

4. At the beginning of each shift, officers shall log into the patrol vehicle's MVR and wireless microphone with their assigned tag.. It is the officer's responsibility to log out at the end of their shift.

B. Background Recording

1. The department MVR and BWC units utilize a background recording function to prevent the loss of digital evidence caused by failure to activate a camera.

2. BWC shall remain powered on for the duration of the shift.

a. Exceptions:

(1) BWC shall be powered off while in court facilities and police departments.

(2) They shall also be powered off when entering restrooms, locker rooms, or other areas where there is a reasonable expectation of privacy.

3. Data obtained through background recording shall only be retrieved for the following reasons:

a. By written request of the recording officer with an explanation as to why the camera system(s) were not activated during the incident.

b. For the purpose of investigating use of force incidents

c. For the purpose of investigating complaints against officers

d. For the purpose of investigating officer-involved shootings and use of force deaths

4. Tampering with, disabling, or otherwise impairing these systems or functions will result in disciplinary action in accordance with departmental policies and disciplinary procedures.

C. Operational Deployment – Activation/Deactivation

1. In the performance of their duties, officers will only use recording equipment approved by the Union City Police Department pursuant to 18 Pa.C.S.A. §5706(b)(4).

2. The use of the MVR and BWC is mandatory for patrol officers if the equipment is available.

- a. Officers will ensure that they are in uniform or clearly identified as a law enforcement officer.
- b. Officers shall ensure that cameras are properly aimed and focused to record an event.
- c. Officers will ensure the MVR is mounted in the patrol vehicle for video recording purposes. Officers will further carry the wireless microphone for the MVR, attached to their person, in the same manner as the BWC. In the case of the BWC, officers are to ensure that the camera is attached to the shirt, exterior vest carrier, or outer most garment.
- d. Only under the most extreme inclement weather conditions may officers cover a BWC. The BWC will remain activated to capture audio recordings of the event.
- e. The MVR and BWC is the responsibility of the assigned officer and shall be used with reasonable care to ensure proper functioning.

3. Activation – Police officers shall utilize the MVR and BWC to record the following types of incidents:

a. The MVR system automatically records an event in the following circumstances:

- (1) When the visual emergency signals are activated.
- (2) When manually activated.

b. The MVR and BWC can be activated manually and shall be initiated by the officer during the following incidents and document the initiation in the narrative of the incident report:

- (1) Upon arrival to the scene of an incident that the officer has been dispatched to investigate.
- (2) Vehicle and pedestrian investigations, including suspected Driving Under the Influence (DUI) investigations.
- (3) Pursuits.
- (4) Vehicle and personal searches, searches incident to arrest and consent searches.

(5) Prisoner and non-custodial transports.

(6) Any situation or incident that the officer, through training and experience, believes should be audibly and/or visually recorded.

(7) Officers should also make every effort to capture reasonable suspicion and probable cause for investigations.

(8) Traffic/criminal enforcement situations.

(9) An in-progress crime involving a criminal or traffic violation.

(10) Any time the use of emergency lights or siren is activated, including a police pursuit or emergency response.

(11) Field interviews, interrogations, or any time the documentation of evidence is applicable.

(12) At any major incident or scene to include a fatal accident, mass disaster or major crime scene.

(13) All self-initiated activity in which an officer would normally notify Erie County Dispatch Center such as, suspicious person(s) and/or activity.

(14) Any contact that becomes adversarial or appears that it could be adversarial after the initial contact.

(15) Any other incident or scene that the police officer determines is appropriate or at the direction of a supervisor.

c. Officers have the discretion on whether to use the BWC when, at the request of the victims, interviewing crime victims in situations involving rape, abuse, or other sensitive matters. Officers will notate these occasions and the reason for not recording the contact on their incident report.

d. Every effort should be made to position the patrol vehicle and MVR camera to capture the arrest, investigation, field test or event while maintaining the safety of officers and civilians. Officers will ensure that the windshield is clean and that windshield wipers remain on during adverse weather conditions for the MVR to operate properly.

- e. When an officer completes a Use of Force Report, except for the dispatch of an animal, the officer will note on the report whether the incident was recorded and by whom.
- 4. Generally, the deactivation of the BWC and MVR shall occur after the officer clears the incident with Erie County Dispatch Center.
- 5. Deactivation – Police officers shall not utilize the MVR or BWC:
 - a. When on station
 - b. When exchanging information with another police officer or criminal justice colleague.
 - c. To surreptitiously record a conversation of any member of this department, during non-work-related activity, regarding interactions solely among employees or to be used or shown for the purpose of ridiculing or embarrassing an employee.
 - d. At the direction of a supervisor.
 - e. During courtroom proceedings.
 - f. Non work-related activity.
 - g. Non-enforcement activities such as directing traffic, protecting crime scenes or an incident of extended duration where emergency lighting is required.
 - h. Non-work-related activity, regarding interactions solely among employees.
 - i. In any location where individuals have a reasonable expectation of privacy, such as a restroom or locker room.
- 6. When interacting with a witness, victim or informant who refuses to cooperate if the BWC and/or MVR is in recording mode, the BWC and/or MVR shall be turned off. If possible, the request should be captured prior to deactivation.
- 7. If an officer fails to activate the BWC and/or MVR to record the entire event or interrupt the recording, the officer shall document the reason in the incident report.
- 8. Should an officer inadvertently capture a privileged or personal communication, the officer will notify a supervisor, using the chain of

command, via department email to request deletion or redaction of the privileged communication.

9. At the end of their shift, officers will dock the BWC and MVR microphone to ensure recordings are downloaded and the devices are charged.

10. Officers are encouraged to inform a supervisor of any recordings that may be of value for training purposes.

11. The MVR or BWC recording, when appropriate and legal, shall not be deactivated once activated until the incident has been completed, unless extraordinary circumstances are present.

a. The termination of a recording prior to the conclusion of an incident may give the impression that the recording was stopped to conceal improper contact.

b. To avoid any appearance of improper conduct, a justification for stopping a recording shall be verbally stated on the recording prior to turning it off.

c. Audio recordings shall not be made of privileged/confidential communications under Title 42 §§ 5914 (spouse), 5942 (media), 5943 (clergy), 5944 (psychiatrists, et al), 5945 (school personnel), 5945.1 (sexual assault counselors), 5945.2 (crime stoppers or similar programs), and 5945.3 (human trafficking caseworkers) unless explicit consent from all parties to the conversation is given.

d. Approval from a supervisor shall be obtained prior to terminating a recording of an active incident, if a supervisor is not on duty then from the senior patrolman on duty.

12. The MVR and BWC shall incorporate the audio/visual portions always unless specifically prohibited from doing so.

13. Police officers shall make audible/visual recordings consistent with this policy, Title 18 Chapter 57 and Title 42 Chapter 67A01 through 67A09.

a. There is no exception of privacy when an oral communication is made in the presence of a uniformed police officer or an otherwise clearly identifiable police officer.

(1) Oral Communication: Is any oral communication uttered by a person possessing an expectation that such communication is not subject to interception under circumstances justifying such expectation. The term does not include:

- i. An electronic communication.
- ii. A communication made in the presence of a law enforcement officer on official duty who is in uniform or otherwise clearly identifiable as a law enforcement officer and who is using an electronic, mechanical or other device which has been approved under 18 Pa.S.C.A. §5706(b)(4) to intercept the communication in the course of law enforcement duties.

(2) As used in this paragraph only, "law enforcement officer" means a member of the Pennsylvania State Police, an individual employed as a police officer who holds a current certification under 53 Pa.C.S.A. Ch. 21 Sub chap. D (relating to municipal police education and training), a sheriff or a deputy sheriff.

b. If an individual is under arrest and placed in the rear seat of the patrol vehicle, the police officer shall, when practical to do so, cause the camera to record the rear of the patrol vehicle to document the individual in custody (if no rear camera exists). This shall be accomplished by ensuring the activation of the MVR remote microphone. If the MVR was activated automatically using emergency lights, the officer shall ensure that the MVR microphone remains operational after the emergency lights are deactivated.

D. Storage of the electronic, mechanical, or other device to make audio recordings or video recordings data and retention schedule.

1. Archived MVR and/or BWC recordings shall be assigned an evidence control number and shall be retained consistent with procedures established for evidence retention.

a. The retention of the archived recording shall follow established chain of custody procedures.

b. The archived recording shall be retained until no longer needed for any judicial proceeding and with the consent of the Erie County District Attorney's Office.

c. Archived recordings can be retained indefinitely for training purposes.

d. The Evidence Custodian will be responsible for destruction of archived recordings whenever there is enough reason to do so.

(1) It will be the responsibility of the police officer who responded or initiated the investigation, which caused the media documentation, to determine if the recording can be destroyed and make a request to the evidence custodian to do so.

2. If MVR and/or BWC recordings are needed for judicial proceedings, other than District Court, only the portion of the incident pertinent to the proceeding shall be duplicated by personnel trained and assigned to provide such recordings for the judicial proceeding.

a. The duplicated recordings shall be used for the judicial proceeding.

b. The original recordings shall be retained by the department as evidence.

c. Documentation shall be made in the evidence management system.

3. MVR and/or BWC recordings uploaded from the patrol vehicle MVR and/or BWC units and are not assigned an evidence control number shall be retained in accordance with departmental policies but no fewer than sixty (60) days.

a. Recordings are required for prosecution, courts, litigation, appeals, or other operations.

b. If an extension is needed for any reason, the requesting police officer shall notify a supervisor, using the chain of command, and explain the reason for the extension request.

c. Video purging shall occur regularly by the MVR and/or BWC software management system, consistent with the retention of data plan.

E. Maintenance of the electronic, mechanical, or other device to make audio recordings or video recordings.

1. The Chief of Police or designee shall ensure the MVR and/or BWC are operated and maintained in accordance with this policy and manufacturer recommendations.
2. The Chief of Police or designee shall ensure that all police officers follow established procedures for the use and maintenance of MVR and/or BWC equipment, evidence and documentation associated with this MVR and/or BWC recording(s).

F. Equipment inspections

1. Police officers using the MVR and/or BWC shall ensure that all required preoperational checks and adjustments are performed at the beginning of their shifts, in accordance with manufacturer recommendations.
 - a. Power to the MVR is activated when the vehicle is started, and power to the BWC is activated when the unit is turned on.
 - b. The MVR wireless microphone for the MVR shall be activated and tested at the beginning of the shift and checked and then deactivated until needed. Power to the microphone shall remain on throughout the shift.
2. Damage or operational problems related to the MVR and/or BWC shall be reported to a supervisor.
3. If the MVR is not operational in an assigned patrol vehicle, this does not cause the vehicle to be placed out of service, however, the Chief of Police or designee shall attempt to assign a police officer to a patrol vehicle with an operational MVR.
4. If a BWC is not operational the Chief of Police or designee shall attempt to assign an operational unit to a police officer until the unit is repaired.

G. Auditing of recorded material

1. The Chief of Police or designee shall ensure that all police officers follow established procedures for the use and maintenance of the MVR and/or BWC equipment, evidence, and documentation procedures associated with this type of recording.

2. The Chief of Police or designee shall randomly review MVR and/or BWC recordings to assist in periodic assessment of police officer performances generally and specifically as it relates to MVR and/or BWC procedures.

3. The Chief of Police or designee shall ensure that all police officers are properly following established procedures for the storage, inventory control, duplication, and documentation of MVR and/or BWC recordings.

H. Process to address malfunctioning equipment

1. Malfunctions, damage, or theft of MVR and/or BWC shall be reported to a supervisor, prior to placing the unit into service. In the case of malfunction or damage the supervisor will determine if the unit shall be placed in service.

2. A subsequent written report shall be submitted to the Chief of Police or designee to include information on the suspected cause(s) of equipment failure or malfunctions, as available, and any recommendations for corrective action.

I. Storage of information collected from audio and/or video recordings

1. The relevant, possessing evidentiary value video files shall be archived to the evidence management system.

2. MVR and/or BWC recordings of evidentiary value shall be archived as evidence. Such situations include:

a. Misdemeanor or felony arrest.

b. An unusual occurrence which could be the basis of civil litigation including, but not limited to:

(1) A Borough vehicle accident involving injury;

(2) A vehicle pursuit;

(3) Fatal or serious injury accident scenes;

(4) Use of force incidents; and

(5) Complaints involving a threat of, or actual complaint against, a police officer.

c. At the discretion of a police officer at any scene of any incident where the officer feels the recording would be beneficial.

d. When recordings need to be secured as evidence, the police officer involved shall submit a notice to the Chief of Police or designee and document the incident to have the video entered into the evidence management system.

e. Video recordings or any portion thereof shall not be removed from evidence for the purpose of reproduction without direction from the Chief of Police or designee, notwithstanding direction set forth in this policy.

3. Department hardware and software authorized for uploading and downloading MVR and/or BWC video feed shall exclusively be used for conducting transfers of data.

J. Access and retrieval of recordings

1. Officers are prohibited from taking any of the following actions:

a. Tampering with an MVR and/or BWC, deleting any recordings, intentionally obscuring the view of the cameras, or muffling the microphone.

b. Using an external device to copy any event that is recorded or displayed by the MVR and/or BWC.

c. Editing, deleting, copying, sharing, or otherwise distributing in any manner an MVR and/or BWC recording without prior written approval of the Chief of Police.

2. Field or post-incident review of recording

a. MVR and/or BWC recordings are for internal departmental operations and evaluations. Recordings shall not be distributed or reviewed outside the department without specific and articulable cause.

(1) Officers will be permitted to review all video footage of an incident including other officers' footage for purposes of:

i. Conducting a criminal investigation and preparing reports;

- ii. Preparing for courtroom testimony or courtroom presentation;
- iii. Preparing a report;
- iv. Assisting another law enforcement agency where a recording may contain pertinent information; and
- v. Assisting the officer in professional development

3. MVR and/or BWC recordings, which depict defendants or other persons who have been recorded in the field, by either audio and/or digital/video media, shall not be permitted to review the recordings in the field or post incident.

4. MVR and/or BWC video at judicial hearings

a. Summary proceedings

(1) Summary proceedings result in a determination of guilt or innocence. The use of the MVR and/or BWC recordings may be allowed when the recordings shows proof of the violation, a substantial element of the violation, or a unique circumstance is present.

(2) Supervisory approval is needed to utilize the MVR and/or BWC recordings at a summary hearing. The police officer shall request in writing to the Chief of Police or designee specifying the need; if approved the Chief of Police or designee will:

- i. Duplicate only the relevant incident from the original recordings.
- ii. The original recording will remain in evidence throughout this process. The duplicate shall be provided to the requesting police officer.
- iii. The duplicate recordings shall only be used for the summary proceeding. The recordings shall then be destroyed after the hearing. If an appeal is made, then an additional copy of the original shall be made.

b. Preliminary hearings

(1) An MVR and/or BWC recording shall not be used at a preliminary hearing without extenuating circumstances being present.

(2) If a police officer feels compelled to utilize the MVR and/or BWC recordings at a preliminary hearing the process for approval and its application are the same as if it were a summary proceeding.

c. The Erie County District Attorney's Office shall be made aware of the existence of the MVR and BWC recordings if the matters are bound over, waived, or appealed to the Court of Common Pleas.

K. Electronic records retention

1. The Chief of Police or designee is responsible for the maintaining of the video server for the storage of MVR and/or BWC videos recordings.

2. The master copy shall be stored as evidence in accordance with current orders for all requests except for training purposes. The recordings will be kept on the designated video server or hard drive, under the control of the Chief of Police or designee, or in the evidence room under the control of the Chief of Police or designee if stored on media.

3. MVR and/or BWC media shall be maintained by the Chief of Police or designee while on the video sever and when the video is downloaded onto media and stored in the evidence room. In capital punishment prosecutions, recordings shall be kept until the Erie County District Attorney's Office approves of its destruction. If not needed for evidentiary purposes, recordings will automatically be deleted from the video server by the system, after the following time frames:

a. Physical Arrests – two years after the date of conviction or acquittal.

b. DUI – two years after the date of conviction or acquittal.

c. Unfounded Investigation – one year after the date of the recording.

d. All Others - 60 days after the date of the recording unless the recording officer requests the data be retained as part of an investigation.

e. Traffic – one year after the date of the recording unless a summary arrest was effectuated. If a summary arrest was effectuated, the recording shall be retained for one year after date of conviction or acquittal.

f. Non Incident – Immediately sent for approval to delete.

g. Any portion of JNET, NCIC, and CLEAN information captured by an MVR and/or BWC will be retained in accordance with their respective policies.

4. All recordings are stored on a secure server or external hard drive and are the property of the Union City Police Department.

5. Requests for deletion of the recording, such as in the event of a personal recording, must be submitted in writing and approved by the Chief of Police or designee. All requests and final decisions will be kept on file.

L. Use of facial recognition software or programs

1. The Union City Police Department does not maintain or use facial recognition software.

M. Statement that a violation of the agency's policy subjects the violator to the agency's disciplinary policy

1. Any police officer who fails to comply with the provisions of this policy may be subject to disciplinary action in accordance with departmental policies.

N. Supervisory responsibilities

1. The Chief of Police or designee will ensure that all officers adhere to this policy.

2. Each officer will ensure that the BWC is stored in the main office and is properly charged. Only officers who have completed training in the MVR and/or BWC and this policy will be permitted and required to use the equipment.

3. The Chief of Police or designee will, randomly review recordings by officers to:

a. Ensure that the MVR and/or BWC are properly maintained and functioning properly.

- b. Ensure that the MVR and/or BWC are being utilized appropriately according to this policy.
 - c. Identify any recordings that indicate additional training or guidance is required.
- 4. The Chief of Police or designee will review the recordings of all officers involved in critical incidents such as, use of force and pursuits.
- 5. The Chief of Police or designee will ensure that all recorded incidents involving Use of Force are properly documented.
- 6. The Chief of Police or designee will determine if any corrective action is necessary from any problems, violations or training issues that arise during the MVR and/or BWC review process.
- 7. The Chief of Police will conduct an annual review of the policy and procedures contained herein and for making recommendations for any necessary amendments thereto.

O. Requests and Procedures for Police Audio and/or Video Recording(s)

- 1. The following is the procedure to address requests for audio and/or video recording(s) made by law enforcement as jurisdiction has been removed from the jurisdiction of the Office of Open Record and the Right-to-Know pursuant to Act 22 of 2017, codified at 42 Pa.C.S.A. §§ 67A01-67A09.
- 2. Definitions: For the purpose of Requests and Procedures for Police Audio and/or Video Recording(s) the following shall apply:
 - a. Confidential Information- Any of the following:
 - (1) The identity of a confidential source;
 - (2) The identity of a suspect or witness to whom confidentiality has been assured; and
 - (3) Information made confidential by law or court order.
 - b. Criminal Offense- For the purpose of this section criminal offense includes any traffic citation arising from a violation of the Pennsylvania Motor Vehicle Code, Title 75; any summary, misdemeanor or felony offense arising from a violation of the Pennsylvania Crimes Code, Title 18, Pennsylvania Motor Vehicle Code, Title 75, the Drug Device and Cosmetic Act, Title

35 or any offense under any Pennsylvania statute which carries a fine, jail time or both.

c. Upon disclosure, the information that would:

- (1) Reveal the institution, progress or result of a criminal investigation;
- (2) Deprive an individual of the right to a fair trial or an impartial adjudication;
- (3) Impair the ability of the Attorney General, a district attorney or law enforcement officer to locate a defendant or co-defendant;
- (4) Hinder the ability of the Attorney General, district attorney or a law enforcement officer to secure an arrest, prosecution or conviction; or
- (5) Endanger the life or physical safety of an individual.

d. Upon disclosure, information that would:

- (1) Reveal the institution, progress or result of an agency investigation;
- (2) Deprive a person of the right to an impartial administrative adjudication;
- (3) Constitute an unwarranted invasion of privacy;
- (4) Hinder an agency's ability to secure an administrative or civil sanction; or
- (5) Endanger the life or physical safety of an individual.

3. Requests: Pursuant to 42 Pa.C.S.A. §67A03 requests for an audio and/or video recording(s) made by this Department shall:

- a. Be submitted within sixty (60) days of the date when the recording was made;
- b. Be in writing, served upon this Department's Open-Records Officer;
- c. Be delivered either in person or via certified mail with proof of service;

d. Include a description of the event that is the subject of the recording(s), which shall specify with particularity the incident or event;

e. The date, time and location of the incident or event;

f. A statement describing the requester's relationship to the incident or event that is subject of the recording; and

g. If the recording(s) occurred inside a residence, the request is to identify each individual who was present at the time the recording was made, unless the identities are not known and not reasonably ascertainable.

4. Review: Pursuant to 42 Pa.C.S.A. § 67A04, if after the review of the audio and/or video this Department determines that the recording(s) contains:

a. Potential evidence;

b. Information pertaining to an investigation or a matter in which a criminal charge is filed;

c. Confidential information or victim information, and the reasonable redaction of the recording(s) would not safeguard potential evidence or information; or

d. Information pertaining to an investigation, confidential information; then,

the Department SHALL deny the request in writing. Any such denial is to state that the reasonable redaction of the recording(s) will not safeguard potential evidence, information pertaining to an investigation, confidential information or victim information.

5. Procedure: Procedure: Pursuant to 42 Pa.C.S.A. § 67A05, upon receipt of a request, this Department will dispose of the request within thirty (30) days of receipt, unless a longer period of time is agreed to between requester and this Department. If this Department does not respond within the thirty (30) day period, the request is deemed denied. Upon receipt of a request, this Department shall preserve the unaltered recording(s) for no less than that period of time to all for this process and any appeals expire.

a. Fees: This Department may establish reasonable fees relating to the cost of disclosure. This Department is permitted

to redact the recording(s) to protect potential criminal evidence, information pertaining to an investigation, confidential information or victim information.

6. Appeals: A requester may appeal this Department's denial or deemed denial of a request to the Court of Common Pleas of Erie County within thirty (30) days of the date of the denial or deemed denial.

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