

East Grand Forks Police Department In-Car Cameras and Body-Worn Cameras

Directive: 41.3.8

Reference: RSFLEA 41.3.8, MN Statute 13.825

Authorized by: _____
Michael S. Hedlund, Chief of Police

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Purpose: To establish uniform guidelines for the operation of all Mobile Video Recorders (MVR's) including In-Car Cameras (ICC's) and Body-Worn Cameras (BWC's) by officers of the East Grand Forks Police Department including the use, management, access, storage, retrieval and retention of audio-visual media recorded by MVR systems.

Policy: The primary use of MVR's is for the purpose of collecting evidence to be used in the prosecution of persons who violate the law and to provide objective information concerning police/citizen contacts in accordance with the law. The use of MVR's is intended to enhance the Department's mission by accurately documenting contacts between officers of the Department and the public.

Scope: This Directive applies to all sworn officers of the East Grand Forks Police Department. This policy does not apply to surreptitious recording devices used in undercover operations. The Chief of Police or his/her designee may supersede this directive by providing specific instructions for the use of MVR's by individual officers or for specific events or assignments.

Definitions:

- I. Activate – Any process that causes the MVR system to transmit or store audio-visual signals.
- II. Audio Recording – Any media that captures and records audio signals.
- III. Mobile Video Recorders (MVR's) – Any system that captures audio-visual signals that is capable of installation in a vehicle or that is worn by a law enforcement officer and that includes at a minimum a camera, microphone and recorder.
- IV. In-Car Camera (ICC) – A camera mounted in a patrol vehicle that records and stores audio and video.

- V. Body Worn Camera (BWC) – A camera worn on an individual officer’s person that records and stores audio and video.
- VI. Portable Recording Systems – A device worn by a peace officer that is capable of both video and audio recordings of an officer’s activities and interactions with others or collecting digital multimedia evidence as part of an investigation. (Per MN Statute 13.825 – Portable Recording Systems) – Also referred to as Body Worn Cameras (BWCs).
- VII. Digital Evidence – MVR files, including photographs, audio recordings and video footage, captured by a MVR and stored digitally.
- VIII. MGDPA – Minnesota Government Data Practices Act - Minnesota Statutes Chapter 13.
- IX. Peace Officer Discipline Procedures Act - Minnesota Statutes Section 626.89.
- X. MVR Administrator – East Grand Forks Police Department employee, who assigns, tracks and maintains MVR equipment, oversees needed repairs or replacement of equipment through the vendor, controls user rights and access, and acts as a liaison with the vendor. Also responsible for the training of East Grand Forks Police Officers on the use of the MVR’s.
- XI. Records Retention Schedule – The General Records Retention Schedule for Minnesota Cities.
- XII. Redact – Means to blur video or distort audio so that the identity of the subject in a recording is obscured sufficiently to render the subject unidentifiable.
- XIII. Law Enforcement-Related Information – Information captured or available for capture by use of a MVR that has evidentiary value because it documents events with respect to a stop, arrest, search, citation or charging decision.
- XIV. Evidentiary Value – Information that may be useful as proof in a criminal prosecution, related civil or administrative proceeding, further investigation of an actual or suspected criminal act, or in consideration of an allegation against a law enforcement agency or officer.
- XV. General Citizen Contact – An informal encounter with a citizen that is not and does not become law enforcement-related or adversarial, and a recording of the event would not yield information relevant to an ongoing investigation. Examples would include, but are not limited to, assisting a motorist by providing direction or summoning a wrecker.
- XVI. Adversarial – A law enforcement encounter with a person that becomes confrontational, during which at least one person expresses anger, resentment, or hostility toward the other, or at least one person directs toward the other verbal conduct consisting of arguing, threatening, challenging, swearing, yelling or shouting. Encounters in which a citizen demands to be recorded or initiates their own recording are considered adversarial.
- XVII. Unintentionally Recorded Footage – MVR recordings that result from an officer’s inadvertence or neglect in operating an officer’s MVR(s), provided that no portion of the resulting recording has evidentiary value. Examples include, but are not limited to, unintentional recordings of station house locker rooms, restrooms, and recordings where the officers were engaged in conversations of a non-business, personal nature with the expectation that the conversation was not being recorded.
- XVIII. Official Duties – The officer is on duty and performing authorized law enforcement services on behalf of this agency.

Objectives:

The East Grand Forks Police Department has adopted the use of MVR's to accomplish the following objectives:

- I. To enhance officer safety.
- II. To document statements and evidence during the course of an incident.
- III. To enhance the officer's ability to document and review statements and actions for both internal reporting requirements and for courtroom preparation/presentation.
- IV. To preserve visual and audio information for use in current and future investigations.
- V. To provide a tool for self-critique and field evaluation during training.
- VI. To enhance the public trust by preserving factual representations of officer-citizen interactions in the form of recorded media.
- VII. To assist with the defense of civil actions against the officers and the City of East Grand Forks.
- VIII. To assist with the training and evaluation of officers.

Procedures:

I. Officer Responsibilities

- A. Officer safety shall be the primary consideration for the use and activation of the MVR system. Officers who are assigned a patrol vehicle with an ICC or issued a BWC will, as part of their uniform, wear and/or activate the MVR consistent with this Directive. Prior to going into service each officer shall properly equip him/herself to record audio and video in the field. The exception is if the officer's/patrol vehicle's MVR is not functioning and the MVR Administrator and/or on-duty supervisor has been notified.
- B. At the start of each shift, officers will confirm that the MVR system(s) is/are operational in accordance with manufacturer's recommendations and department operating procedures and training.
- C. At the end of each shift the officer will follow the established policies and procedures for documenting and retaining any recorded media.
- D. Any time an officer reasonably believes that a recorded contact may be beneficial in a non-criminal matter (e.g. a hostile contact); the officer should promptly notify a supervisor of the existence of the recording.
- E. Malfunctions, damage, loss or theft of MVR equipment shall be immediately reported to the on-duty supervisor and the MVR administrator (via e-mail if they are not on duty).
- F. BWC's shall not be worn unless officers are engaged in work specifically for the East Grand Forks Police Department.
- G. Officers may only use Department issued MVRs and recording devices in the performance of official duties for this agency or when otherwise performing authorized law enforcement services as an employee of this department.
- H. While MVR's are intended to be used by officers working in the Patrol function, police investigators may use MVR's if they will enhance the ability for to conduct an investigation and MVR equipment is available.

II. Supervisor Responsibilities

- A. Supervisors shall ensure that officers are trained in the proper use of the MVRs and are using their MVR equipment per policy.
- B. Supervisors should determine corrective action for non-functioning MVR equipment.
- C. When an incident arises that requires the immediate retrieval of the recorded media (e.g. a serious crime scene, officer involved shootings, department involved crashes), a supervisor shall respond to the scene and ensure that the MVR data is properly uploaded.
- D. If a vehicle with a non-functioning MVR is placed into service the on-duty supervisor must notify the MVR administrator.
- E. At least on a monthly basis, supervisors shall conduct limited random reviews of MVR recordings of the officers on their shift to ensure that the equipment is operating properly and that officers are using the devices appropriately and in accordance with policy and to identify any area in which additional training or guidance is needed.

III. Activation of the MVR

- A. This Directive is not intended to describe every possible situation in which the MVR system may be used, although there are many situations where their use is appropriate. An officer may activate the system(s) any time the officer believes its use would be appropriate and/or valuable to document an incident.
- B. Officers shall activate their ICCs for all emergency responses. If possible, the Department shall configure ICCs to record when the vehicle's emergency lights and/or siren are activated.
- C. An officer shall activate the MVR system(s) (both ICCs and BWCs as appropriate), if practical and without comprising the safety of the officer or the public, in the following circumstances:
 - 1. All field contacts involving actual or suspected criminal conduct, including but not limited to:
 - a. Traffic Stops (To include, but not limited to, traffic violations, stranded motorist assistance and all crime interdiction stops).
 - b. Priority responses.
 - c. Vehicle pursuits.
 - d. Suspicious vehicles.
 - e. Arrests.
 - f. Vehicle searches.
 - g. During the execution of search warrants, arrest warrants, Fourth Amendment waiver searches or consent searches in which the officer is looking for evidence or contraband.
 - h. Physical or verbal confrontations or use of force situations.
 - i. Prisoner transports.
 - j. Non-custody transports.
 - k. Suspicious person checks.
 - l. DWI investigations including field sobriety tests.
 - m. Taking statements or information from a suspect or witness (officers should make a point to record any admonishments - e.g. Miranda Warnings - prior to the start of the interview/interrogation).

- n. Medical incidents responded to by members of the Department. Officers should cease recording if they determine that the situation will not produce information of evidentiary value.
- 2. All self-initiated activities in which an officer would normally notify EGFPD Dispatch about their activities.
- 3. Any call for service involving a crime where the MVR may aid in the apprehension and/or prosecution of a suspect, including but not limited to:
 - a. Family violence calls.
 - b. Disturbing the peace calls.
 - c. Offenses involving violence or weapons.
- 4. Any other contact that becomes adversarial after the initial contact, in a situation that would not otherwise require recording.
- 5. Any other circumstance where the officer, through training and experience, believes that a recording of an incident would be appropriate.
- D. Officers have no duty to inform people that a MVR is being operated or that they are being recorded (one party consent – Minn. Statute 626A.02 Subd. 2c), however, if asked officers will advise citizens that they are being recorded, unless such notification will hinder the officer’s investigation.
- E. Once activated, the MVR should continue recording until the conclusion of the incident or encounter unless:
 - 1. The incident or event is of such duration that the MVR is deactivated to conserve power or storage capacity.
 - 2. It becomes apparent that additional recording is unlikely to capture information having evidentiary value.
 - 3. Recording needs to be temporarily ceased to exchange information with other officers. The reason to cease and resume recording will be noted by the officer either verbally on the MVR recording or in a written report.
 - 4. Deactivation is approved or ordered by a supervisor.
 - 5. If officers stop recording during the course of an event they should state on the recording the reasons for ceasing the recording. If circumstances change, officers shall reactivate their MVR’s as required by this Directive in order to capture any information having evidentiary value.
 - 6. For the purposes of this section, the conclusion of an incident has occurred when all arrests have been made, arrestees have been transported and witnesses have been interviewed.

IV. Prohibited Use of Recorders

- A. Officers shall not use their MVRs (or any other recording device) under the following circumstances:
 - 1. Routine, non-enforcement related activities including conversations of/with fellow police employees or other government workers without their knowledge.
 - 2. In any court of law, unless authorized by a judge (Minn. Court Rule 4, General Rules of Practice).
 - 3. Upon entering the Tri-County Community Correctional Center or any other correctional facility, with the exception of the East Grand Forks Police Department.

4. Encounters with undercover officers or confidential informants. If any undercover officers or confidential informants are recorded special care must be made to redact any portion of the recording that would reveal that person's identity (See Section VIII – C).
 5. While in any areas or activities of the East Grand Forks Police Department including pre-shift conferences, department meetings, locker rooms, break rooms or other activities not related to a criminal investigation.
 6. When in any medical facility officers shall avoid recording persons other than the suspect.
 7. During informal or casual encounters with members of the public unless the officer believes the encounter may provide information having evidentiary value.
- B. Officers are prohibited from using department issued MVR equipment for personal use and are prohibited from making personal copies of recordings created while on duty or while acting in their official capacity.
- C. While private citizens generally have an expectation of privacy in their homes, when officers are lawfully present in the home in the course of official duties, there is no expectation of privacy and officers are allowed to use their MVR's.

V. Documenting MVR Use or Non-Use

- A. If any incident or video statements are recorded with a MVR, the existence of the recording shall be documented in the officer's report.
- B. If a citation is issued, the officer shall make a note on the citation (if a paper citation is issued) or in the police report indicating that the incident was recorded.
- C. Whenever an officer fails to record an activity that is required to be recorded under this policy or captures only a part of the activity, the officer must document the circumstances and reasons for not recording in an ICR and shall notify the on-duty supervisor.

VI. Review of MVR Recordings – Classification of Data

- A. According to the MGDPA (MN Statute 13.825), outside of active criminal investigations (where data is generally confidential or protected nonpublic) BWC data is private or nonpublic data. Private data is accessible to the data subject. However, BWC data is public in four situations:
 1. When a peace officer discharges a firearm in the course of duty (but not when discharged for training purposes or killing animals).
 2. When use of force by a peace officer results in "substantial bodily harm".
 3. When a data subject requests that the data is made accessible to the public, after redacting undercover officers and those who have not consented to the release.
 4. When the BWC data documenting the basis for discipline is part of personnel data in the final disposition of discipline.
- B. Other situations when BWC data is, or may be, made public include:
 1. Law enforcement agencies may make public data that could:
 - a. Aid the law enforcement process.
 - b. Promote public safety.
 - c. Dispel widespread rumor or unrest.
 2. If the data is part of the arrest data (MN Statute 13.82, subd. 2)

3. Response or incident data (MN Statute 13.82, subd. 6).
 4. Per statute, if a member of the public still believes that BWC data should be disclosed (in situations other than listed above), than an action may be brought in district court.
- C. All recording media, recorded images and audio recordings are the property of the East Grand Forks Police Department and are government data subject to the provisions of the MGDPA. Dissemination outside of this agency is strictly prohibited except to the extent permitted or required under the MGDPA, PODPA or other applicable law.
- D. Recordings may be reviewed in any of the following situations:
1. For use when preparing reports or statements.
 2. To review for court preparation.
 3. By a supervisor investigating an official complaint.
 4. By a supervisor to assess officer performance.
 5. To assess proper functioning of MVR systems.
 6. By department investigators assigned to a related criminal investigation, or after approval of the chief of police, for official investigations.
 7. By another law enforcement or government agency upon meeting the standards for requesting access to the data. If data are shared with another agency, the agency that receives the data must comply with all data classification, destruction, and security requirements as stated in MN Statute 13.825.
 8. By an officer who is captured on or referenced to in the video or audio data and reviews and uses the data for any purpose related to his employment including defense against allegations of substandard performance or misconduct.
 9. By court personnel through proper process.
 10. By the Media through a valid MGDPA request.
 11. Recordings may be shown for staff or public safety training purposes. If an involved officer objects to showing a recording, his/her objection shall be submitted to the chief of police for determination as to whether the training value outweighs the officer's objections.
 12. An officer is entitled to access audio and video data: derived from MVR equipment issued to him/her; in which his/her voice or image appears; when reasonable and necessary for the officer to perform the essential functions of his/her job; or to defend against allegations of substandard or misconduct.
 13. An officer shall not make a copy of any audio/video recording without the prior approval of a supervisor. The exception to this clause would be if the copy is for court purposes and is at the request of court officials.
 14. Supervisors shall not access or review audio or video data involving an employee under their supervision for the purpose of surveillance of the employee or initiating disciplinary action against the employee (Other than the limited random reviews as detailed in Section II.E.). However, data collected by the MVR may be used as evidence relating to a complaint of misconduct made against an officer.
 15. The Department shall restrict by password protection access to all audio and video data and shall maintain an electronic record of the date, time and person with regard to each access to data.

16. In no event shall any recording be used or shown for the purposes of ridiculing or embarrassing any employee.
17. An individual who is the subject of MVR data has access to the data, including data on other individuals who are the subject of the recording. If the individual requests a copy of the recording, data on other individuals who do not consent to its release must be redacted from the copy. The identity and activities of an on-duty police officer engaged in an investigation or response to an emergency, incident, or request for service may not be redacted, unless the officer's identity is protected by statute. (13.82, subd. 17, clause 1)
18. Officers will typically not allow citizens to review the recordings; however, using officer discretion it is allowed to replay the video recording to citizens at the scene in order to mitigate possible complaints or as part of an investigation.

VII. MVR Administrator Responsibilities

- A. The MVR Administrator is responsible for:
 1. Deleting media:
 - a. Pursuant to a court order.
 - b. In accordance with established records retention policies, including reissuing all other media deemed to be of no evidentiary value.
 - c. In instances where privacy issues are noted.
 2. Establishing a maintenance schedule for all MVR equipment.
 3. Developing and maintaining a checkout log that reflects MVR equipment assignment.
 4. Arranging warranty and non-warranty repair of the MVR units.

VIII. Downloading, Labeling and Storing Data

- A. Each officer using a MVR is responsible for transferring or assuring the proper transfer of the data from his/her MVR system to the storage location by the end of that officer's shift. However, if the officer is involved in a traffic crash, shooting, in-custody death, or other law enforcement activity resulting in death or great bodily harm, a supervisor or investigator shall take custody of the officer's MVR systems and assume responsibility for transferring the MVR data.
- B. MVR data shall be labeled at the time of capture or transfer to storage. Personnel should consult with a supervisor if there is any doubt as to the appropriate labeling. As many of the following labels as are applicable may be listed for each file:
 1. Evidence – Criminal: This information has evidentiary value with respect to an actual or suspected criminal incident or charging incident or charging decision.
 2. Evidence – Force: Whether or not enforcement action was taken or an arrest resulted, the event involved the application of force by a law enforcement officer of this or another agency.
 3. Evidence – Property: Whether or not enforcement activity was taken or an arrest resulted, an officer seized property from an individual or directed an individual to dispossess property.
 4. Evidence – Administrative: The incident involved an adversarial encounter.
 5. Evidence – Other: The recording has potential evidentiary value for reasons identified by the officer at time of labeling.

6. Training: The event was such that it may have value for training.
 7. Unintentionally recorded footage.
 8. Not evidence: The recording does not contain any of the foregoing categories of information and has no apparent evidentiary value. Recordings of general citizen contacts are not evidence.
- C. Officers shall flag each file as appropriate to indicate that it contains information about data subjects who may have rights under the MGDPA limiting public disclosure of information about them. These individuals include:
1. Victims and alleged victims of criminal sexual conduct.
 2. Victims of child abuse or neglect.
 3. Vulnerable adults who are victims of maltreatment.
 4. Undercover officers.
 5. Informants.
 6. When the video is clearly offensive to common sensibilities (Minn. Statute 13.825, subd. 2(5) (b)).
 7. Victims of and witnesses to crimes, if the victim or witness has requested not to be identified publicly.
 8. Individuals who called 911, and services subscribers whose lines were used to place a call to the 911 system.
 9. Mandated reporters.
 10. Juvenile witnesses, if the nature of the event or activity justifies protecting the identity of the witness.
 11. Juveniles who are or may be delinquent or engaged in criminal acts.
 12. Individuals who make complaints about violations with respect to the use of real property.
 13. Officers and employees who are the subject of a complaint related to the events captured on video.
 14. Other individuals whose identities the officer believes may be legally protected from public disclosure.
- D. Labeling and flagging designations may be corrected or amended based on additional information.
- E. All MVR data must be stored in a secure manner so as to ensure that it is not inappropriately accessed.

IX. Data Retention

- A. Per Minnesota State Statute the minimum records retention schedule for MVR data is:
1. Not-Active or inactive criminal investigative data – Ninety Days.
 2. Discharge of a firearm by a peace officer in the course of duty (but not for discharge for training purposes or killing animals) – One Year.
 3. Use of Force by a peace officer resulting in substantial bodily harm – One Year.
 4. Formal Complaint made against an officer related to an incident – One Year.
- B. MVR data may be retained for as long as is reasonably necessary for possible evidentiary or exculpatory use.
- C. Subjects of the data may submit a written request to retain MVR data beyond the applicable retention period for possible evidentiary or exculpatory use. The data will be retained for an additional time period as requested by the requestor for a period of

up to 180 days. The requestor must be notified that the data will be destroyed at the end of this additional period unless a new request is made.

- D. Unintentionally recorded data shall not be retained.
- E. The Department shall maintain an inventory of ICC recordings.

X. Inventory of Portable Recording System Technology

- A. A law enforcement agency that uses a portable recording system must maintain the following information, which is public data:
 - 1. The total number of recording devices owned or maintained by the agency.
 - 2. A daily record of the total number of recording devices actually deployed and used by officers.
 - 3. The policies and procedures for the use of portable recording systems. These policies must also be maintained upon the Department's website.
 - 4. The total amount of audio and video collected by the portable recording systems and maintained by the agency, the agency's retention schedule for the data, and the agency's procedures for the destruction of the data.

XI. Biennial Audit

- A. A law enforcement agency must maintain records showing the date and time portable recording system data were collected and the applicable classification of the data.
- B. Law enforcement agencies are required to conduct an independent, biennial audit of portable recording system data to determine whether data are appropriately classified, how the data are used and whether the data are destroyed as required under MN statute 13.825. The results of the audit are public, unless otherwise classified under the MGDPA.
- C. A summary report must be provided to the Legislative Commission on Data Practices and Personal Data Privacy within 60 days following the completion of the audit.

XII. Notification of the BCA

Should the East Grand Forks Police Department ever implement a portable recording system device that has a surveillance capability beyond audio or video recording (i.e. facial recognition software) the Department must notify the Minnesota BCA of that acquisition.

XIII. Portable Recording System Vendor

Any vendor that provides services for the creation, collection, retention, maintenance, processing, or dissemination of portable recording system data for a law enforcement agency is subject to all the requirements as if it were a government entity under MN Statute 13.825 and the MGDPA.

XIV. Public Comment

Per MN Statute 626.8473 a local law enforcement agency must provide an opportunity for public comment before it purchases or implements a portable recording system. At a minimum, the agency must accept public comments submitted electronically or by mail, and the governing body of the jurisdiction over

the budget of the law enforcement agency must provide an opportunity for public comment at a regularly scheduled meeting.