



Garner Police Department Written Directive

Chapter: 400 – Uniform / Equipment

Directive: 430.02 – Use of Recording Devices

Authorized by: Chief Brandon Zuidema

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430.2.1 - Policy

Garner Police Department employees may record conversations or images when such recording is appropriate for the proper performance of their duties, the recording is consistent with departmental policy, and the recording is not made outside the limits of State, Federal, or Constitutional law.

Police Department employees must follow a code of conduct that reflects the highest ethical standards and promotes public confidence in the Department. Conduct may be unethical, even if it is lawful. The surreptitious recording of the conversations of others can be appropriate in connection with criminal investigations or when dealing with threatened or actual criminal activity. However, as a general rule, the non-consensual recording of a conversation with another person outside of employment-related functions is not appropriate and is incompatible with the best interests of the Department.

430.2.2 – Purpose

To establish guidelines and procedures for employee use of recording devices to reliably and lawfully record contacts with others.

430.2.3 – Definitions

- A. MVR – an acronym for Mobile Video Recorder; this term refers to audio/video recording equipment designed for fixed installation in patrol vehicles.
- B. Personally-Owned Recording Device – any recording device not issued by the Department for official use.
- C. Recordable Media – CDs, DVDs, digital chips, videotapes and any other devices of like kind which have the capability to have audio and/or video stored on them.
- D. Recorded Media – an authentic, accurate, and unaltered video and/or audio recording stored on recordable media.
- E. Recording Device – any device capable of recording and storing audio, photographic, and/or video data.
- F. Reportable Incident – any officer-involved motor vehicle crash, use-of force, performance complaint, allegation of misconduct and/or vehicle pursuit.
- G. Server-Based MVR – an MVR system that automatically uploads recordings to a centralized server whenever the recording device is brought within range of the receiving antenna.

- H. Surreptitious Recording – a covert, clandestine, or secret recording of another person or persons without the knowledge and consent of the person(s) being recorded.

430.2.4 – Authorization and Guidelines for the Use of Recording Devices

- A. All Department employees, once trained to Department standards, are authorized to utilize Department-issued recording devices, including but not limited to Mobile Video Recording devices installed in patrol vehicles, digital voice recording devices, and digital cameras.
- B. Employees wishing to use a personally-owned recording device in the performance of their duties shall obtain the written permission of the Chief of Police or his designee prior to the use of such device.
1. Any personally-owned recording device shall utilize a digital format that allows records produced by the device to be preserved as recorded media.
 2. Any personally-owned recording device shall be in good working condition and reliable for day-to-day use. The device shall be briefly tested in the presence of the Chief of Police or his designee.
 3. Employees shall not use personal devices when department-owned devices are available for the purpose at-hand. In the event that a department-owned device is not available, an approved personal device may be used.
- C. Approved recording devices may be used by Department employees for the following purposes:
1. To accurately document the circumstances or statements made during police-public contacts, arrests, and other incidents;
 2. To enhance the documentation of crime or crash scenes or other events, including the confiscation and documentation of evidence or contraband;
 3. To enhance the accuracy of reports;
 4. To enhance the department's ability to review employee work performance and training needs; or
 5. As required by the Department's *Internal Affairs Manual*.
- D. Employees shall never surreptitiously record any other Department or Town employee or official without the permission of the Chief of Police or his designee.
- E. The making and retention of any recording made by an employee is governed by the provisions of the North Carolina Public Records Act (chapter 132 of the North Carolina General Statutes) and rules of evidentiary disclosure in criminal and civil court proceedings.
1. As such, the status of the person making the recording governs the ownership of such recordings and not the ownership of the device making the recording.
 2. Therefore, any recording made by an employee of this Department while on-duty or otherwise conducting employment-related functions is deemed property of the Garner Police Department.

3. Any portion of a recording that includes events related to a violation of the law (which includes a crime or offense prosecutable in the criminal courts of this state or in the United States or an infraction under state law) is considered a record of a criminal investigation, as described in N.C.G.S. 132-1.4, and not a public record, as deemed in N.C.G.S. 132-1.
 4. Any portion of a video/audio recorded media that may be used to subject an employee to departmental disciplinary action is a part of that employee's personnel file as defined in N.C.G.S. 160A-168, and is open to inspection only as provided by that statute.
- F. Officers are encouraged to inform their supervisors of any recorded media sequences that may be of value for training purposes.
- G. Officers will note in all offense, arrest, and related reports when photographs, video and/or audio recordings were made of the incident in question.

430.2.5 –Recorded Media Control and Management

- A. Officers shall not erase, alter, or tamper with any recorded media made in the performance of employment-related duties. Any officer determined to have violated this rule shall be subject to Department discipline, up to and including termination.
- B. Recorded media from a non-server-based MVR shall be stored according to the following classifications:
1. Evidentiary recorded media – Recorded media which has evidentiary value and is stored according to existing departmental policies and procedures for evidence. Officers shall be responsible for submitting this media into evidence and obtaining a court order for disposition of the evidence once the case is adjudicated.
 2. Internal Affairs recorded media – Recorded media which has value in an internal affairs investigation and is stored according to existing departmental policies and procedures for internal affairs investigations. Supervisors shall be responsible for providing this media to the Internal Affairs Investigator (if an allegation of misconduct) or to the investigating supervisor (if a performance complaint).
 3. 30-day storage MVR recorded media – Recorded media from the MVR system that have been completed, have no known evidentiary or internal affairs value, and are being stored for the 30-day retention period. Supervisors shall be responsible for submitting the media to the secure MVR storage area after removing it from an officer's MVR system. DVDs containing 30-day storage MVR recorded media will be re-used after the 30 day retention period expires.
- C. Recorded media from a server-based MVR shall be stored according to the following classifications:
1. Case File Recordings – any recording classified as having evidentiary value to a criminal investigation. Case file recordings will be retained on the server based on incident case number and will not be deleted so long as the case file is maintained. A court order shall be obtained authorizing the deletion of the case file recordings maintained in the video evidence library.
 2. All Other Recordings – any recording classified as an "event" by the recording officer. These recordings will be retained on the server for a retention period of 30 days. These recordings will be automatically deleted from the server once the retention period expires.
- D. All recorded media and their contents are the property of the Garner Police Department. No employee shall release any recorded media, any copy of recorded media, or the contents of any recorded media to any outside agency or individual without the prior consent of the Administrative Captain, the Chief of Police, or pursuant to a valid court order.

430.2.6 – Supervisory Responsibilities

Personnel who supervise officers utilizing MVR equipment or other recording devices are responsible for the following:

- A. Ensuring all officers follow established procedures for the use and maintenance of recording devices, the custody of recorded media, and the completion of required documentation.
- B. Conducting reviews of recorded media to assess officer performance, determine whether recording devices are being fully and properly used, and to identify material that may be of value for training purposes.
- C. Documenting the review of all recordings related to reportable incidents.
- D. Ensuring that repair and replacement of any damaged or nonfunctional recording device is properly performed.

430.2.7 – The Mobile Video Recording (MVR) System

- A. Mobile video recording (MVR) equipment has proven to be a valuable law enforcement tool in the prosecution of traffic violations and criminal offenses, for evaluation of officer tactics and performance, and for training and complaint review purposes. In order to maximize the utility and benefit of this specialized equipment, officers shall follow the procedures set forth in this policy.
- B. No MVR equipment (audio and/or video) shall be used in any Garner Police Department vehicle unless owned and installed by the Department.
- C. Mobile video recording equipment shall be used only for legitimate law enforcement purposes in accordance with applicable law and Departmental policy.

430.2.8 – The MVR System Coordinator

The Chief of Police will designate an MVR Coordinator who shall be responsible for the MVR Program. The duties of the MVR Coordinator include:

- A. Supervising and controlling the installation, repair, relocation, and removal of all MVR equipment;
- B. Providing a method of collecting MVR recorded media and distributing MVR recordable media, if needed; and
- C. Administering the server-based MVR system, to include setting recorded event categories and retention periods.
- D. Coordinate initial and refresher training, as needed, for applicable personnel.

430.2.9 – Mobile Video Recording (MVR) System Operation

- A. The care and security of MVR equipment is the responsibility of the officer the equipment is assigned to; such equipment shall be maintained and operated according to the manufacturer's recommendations.
- B. Officers shall not attempt to repair, replace, remove, or relocate any components of the recording system without permission from the MVR coordinator.

- C. At the beginning of each shift, officers shall ensure that the MVR equipment is functioning properly. Officers shall immediately report any equipment loss, breakage, or malfunction to their supervisor or, if their supervisor is not available, the MVR coordinator.
- D. The mobile camera system shall remain closed and locked during operation of the unit. A supervisor must be present when the system is unlocked.
- E. Officers shall observe the following general procedures to ensure that the MVR equipment will properly record when utilized:
 - 1. Make sure that the video camera is properly positioned and adjusted at the correct viewing angle to visually record the incident.
 - 2. Verify that the mobile system wireless microphone is turned on for audio recording. The wireless microphone shall not be deactivated until the incident is completed (this specifically includes prisoner transport).
 - 3. Officers will exchange non-server-based recorded media according to manufacturer guidelines to ensure that all recordable events are captured for the tour of duty.
 - 4. When new non-server-based recordable media are needed, recorded media shall be submitted to a supervisor for retention.

430.2.10 – Specific Guidelines for Recording with the MVR System

- A. MVR equipment will activate in the following situations:
 - 1. When the vehicle's emergency warning devices are turned on;
 - 2. When the "record" button is pressed on the MVR system;
 - 3. When the officer wearing the MVR system wireless microphone turns on the microphone;
 - 4. When the MVR system detects forces similar to a vehicle crash (server-based system only); or
 - 5. When the MVR system detects a vehicle speed in excess of 80 mph based on the MVR system's internal GPS (server-based system only).
- B. Officers shall ensure that the MVR system is recording throughout the following incidents:
 - 1. All traffic stops, roadside detentions and/or arrests, field interviews, and when performing sobriety checks;
 - 2. During emergency operation or vehicle pursuits;
 - 3. Any crime scene, accident scene, or any other event where the officer believes documentation of the incident might prove useful in later judicial or internal proceedings (i.e. confiscation and documentation of evidence and contraband);
 - 4. Any citizen interaction or other circumstances that will be documented in the Department's Records Management System;
 - 5. Any prisoner transport;
 - 6. Any time the officer deems it appropriate to record an interaction based on the circumstances at hand; and

7. Whenever directed by a supervisor.
- C. Once the MVR system is activated manually or automatically, officers shall not turn off the MVR system until the incident is over with the following exceptions:
1. Officers are not required to record non-enforcement activities such as traffic control at accident scenes.
 2. Officers are not required to record DWI checkpoints or similar situations in their entirety.
- D. Officers may also use the MVR system to record the following incidents:
1. To record the reason for their current or planned enforcement action such as DWI observations.
 2. To record the actions of suspects during interviews, sobriety checks, or post arrest procedures that would prove useful in later judicial proceedings.

APPENDIX "A" - MVR RETENTION SCHEDULE

MVR Category	Retention Period
DWI Drug Arrest Pursuit Interview Room Recording Other Needed as Evidence	Indefinitely (Erased upon court order for disposition of evidence)
No category used	30 days