

# **POLICY AND PROCEDURES FOR VIDEO/AUDIO RECORDING ON VEHICLES & PROPERTY**

ADOPTED:

## **I. Policy for Vehicle & Facility Video Surveillance Recordings**

The Eastern Sierra Regional Transit Authority (ESTA) recognizes that on-vehicle and facility surveillance recording systems are useful in promoting safety, discouraging bad behavior, and minimizing conflicts. The ESTA also recognizes that video and audio recordings are a matter of sensitivity, and the use of recording systems should be governed by policy guidelines. This policy covers any video and/or audio recording systems which may be installed in or near any ESTA facility, or on any ESTA owned or operated vehicle.

To ensure that customers are appropriately notified, the ESTA will prominently place notices in public-facing facilities and on revenue vehicles that both images and audio may be recorded. No such notices are required in non-public workplace areas. Surveillance system use shall also not violate State, Federal, or local restrictions for video/audio recording.

Video surveillance recordings are to be conducted only for promoting bus and facility safety, providing for the security of its employees and riding public, the resolution of incidents/accidents involving ESTA vehicles/property, visitors and employees, and Bus Operator incidents. These recordings are privileged information provided to authorized legal counsel, risk management, labor organizations as part of disciplinary proceedings, and law enforcement agents at the discretion of the ESTA, or as required by law or contractual requirement. The ESTA reserves the right to use electronic surveillance equipment such as video cameras, audio devices and telephone systems for the purpose of investigation and for ensuring the safety of employees and customers within the limitations of this policy.

The following statements pertain to employees of the ESTA:

- A. **VEHICLES AND FACILITIES UNDER SURVEILLANCE** – ESTA vehicles and facilities may be equipped with electronic surveillance equipment and therefore employees may be subject to electronic surveillance in the course of their duties. In the case of passenger facilities, ESTA member jurisdictions may install surveillance systems in and around the site, and those recordings are also admissible as evidence for disciplinary proceedings. Because recording systems are primarily intended to deter bad behavior, the recording devices will be placed in plain view; none will be placed clandestinely. Employees should assume that every camera has the capability of recording both audio and video.
- B. **USE OF RECORDINGS FOR DISCIPLINARY PROCEEDINGS** – Management will not take action against any employee unless that employee has violated a policy, rule or regulation pursuant to the terms and conditions of the ESTA Employee Handbook or labor agreement. If an ESTA representative uses or permits to be used any recordings in a manner not consistent with this policy, that ESTA representative will face disciplinary action up to and including dismissal, and that recording shall not be used in any disciplinary proceeding.

- C. TAMPERING WITH RECORDING DEVICES PROHIBITED – Interfering with the normal operation or tampering with any on-vehicle or facility camera/audio system to disable it, keep it from recording or destroying a recording will be considered a serious infraction and may result in disciplinary action up to and including dismissal.

## **II. Incident Review for Continuously Recording Systems**

Authorized ESTA representatives will retrieve and review the images and/or audio recordings from continuously recording on-vehicle and facility surveillance systems to investigate incidents, accidents, customer complaints and property damage, to confirm activities or violations reported to management personnel and for other documented causes, as necessary.

Authorized ESTA representatives will not review recorded surveillance materials for the initial or sole purpose of looking for violations of work policies or procedures. Authorized ESTA representatives may use images and/or audio from recording systems as evidence in disciplinary proceedings when such recordings were first viewed during a video review made for the purpose of investigating incidents, accidents, customer complaints and property damage, confirming activities or violations reported to management for other documented causes, as necessary. If violations of work policies or procedures are discovered during or incidental to review of surveillance materials being conducted in a manner that is otherwise consistent with this policy for other purposes, then such footage may be used in or to support disciplinary proceedings.

## **III. Video/Audio Review – Authorized ESTA Representatives**

Only authorized ESTA representatives will retrieve, review and retain the original surveillance materials. If further opinions are needed, the footage may be shared with appropriate Inyo or Mono County staff, ESTA's liability insurance carriers or legal counsel for determination or evaluation of the incident. To maintain a proper chain of custody, the ESTA Board of Directors has designated the following people as the authorized ESTA representatives, also referred to as Custodians of Record:

- A. ESTA Supervisors
- B. ESTA Managers
- C. ESTA Executive Director

The ESTA Executive Director may authorize additional positions as Custodians of Record. Other ESTA personnel may be allowed to view videos, as authorized by the ESTA Executive Director, for the purpose of investigating a reported incident.

As technology evolves, other types of recording systems may be introduced. The ESTA reserves the right to fully implement and use any recording system that may become available in the future.

## **IV. Video/Audio Review – Authorized Reviews**

Reviews of a recording can only be authorized under the following limited set of circumstances:

- A. INCIDENTS, ACCIDENTS AND CUSTOMER COMPLAINTS – When management becomes aware of an incident requiring review in the above categories, the footage will be retrieved and reviewed by authorized ESTA representatives.
- B. PROPERTY DAMAGE – Authorized ESTA representatives will begin the review at the time any damage to property is noticed and/or reported.
- C. SUPERVISORY OBSERVATIONS – When a potential rule violation is observed by supervisory personnel, authorized ESTA representatives will begin review of the incident no greater than thirty (30) minutes prior to or after the time the incident occurred to observe event(s) leading up to the incident.

Because of the technology involved, any review may include multiple camera angles and/or audio recordings that were recorded simultaneously.

## **V. Additional Information**

The following additional procedures pertain to this policy:

- A. LEGAL ACCESS TO ESTA VIDEO/AUDIO – Authorized ESTA representatives will cooperate with law enforcement or other duly authorized governmental agencies by providing the opportunity to view images and/or audio recordings from surveillance systems, as requested. Duly authorized subpoenas for the release of surveillance materials from surveillance systems will be reviewed with legal counsel.
- B. THE USE OF VIDEO/AUDIO MATERIALS AS EVIDENCE – Video and/or audio evidence will stand on its own merit. The issue of whether a particular video and/or audio image does or does not prove an allegation is not an issue of policy, but rather an issue to be decided by the courts for legal cases, and by the reviewers and/or arbiters, on a case-by-case basis, in employee disciplinary proceedings.

If authorized ESTA representatives are using video and/or audio as evidence in a disciplinary proceeding, the affected employee will be allowed to review the footage in the presence of a designated Custodian of Record, and/or be provided a copy as part of the disclosure of evidence.

- C. NO EXPECTATION OF PRIVACY – There should be no expectation of privacy aboard a public bus or on ESTA property (with the exception of locker rooms, breakrooms, and restrooms) by any person, including but not limited to ESTA employees, the general public, or customers.

## **VI. Video/Audio Requests**

External agencies may request to review surveillance materials. The agency designee responsible for maintaining video/audio records must follow the procedures on distribution of surveillance materials, per Attachment A.

## **VII. Video/Audio Record Retention**

Each “validated incident” shall be saved and labeled to indicate the date, the vehicle number or facility location, and an incident number. These files are saved for a minimum of one-year. After one year, recordings of “validated incidents” may be destroyed provided the destruction is approved by the ESTA Executive Director in writing or the recordings are not evidence in any claim filed or any pending litigation. In the event the recordings are evidence in any claim filed or any pending litigation, ESTA authorized representatives must preserve the recordings until the claim or the pending litigation is resolved.

## **VIII. Requests for Copy of Surveillance Materials**

All requests for a copy of surveillance materials must be made to the ESTA Executive Director, who is responsible for safeguarding the surveillance materials. The requestor must provide the following information for the request to be processed:

- A. Date of Request
- B. Name of Requestor
- C. Title of Requestor
- D. Phone Number of Requestor
- E. Badge Number / ID of Requestor (if applicable)
- F. Department / Division of Requestor (if applicable)
- G. Citation Number (if applicable)
- H. Incident Report (I/R) Number (if applicable)
- I. Reason for the Request (Administrative Issue, Accident/Incident Investigation, claims, etc.)
- J. Bus Number (if known)
- K. Date and Time when the Recording was made
- L. Length of the Recording (minutes) to be downloaded

The surveillance materials must be obtained, the potential incident reviewed, and then the material must be saved prior to distribution (see Attachment A).

## **IX. Copies of Incident Recordings**

Unofficial copies may be made for administrative purposes or upon request using appropriate electronic means (USB, file sharing, DVD, etc.). It is the responsibility of the ESTA Authorized Representatives to copy the incident and distribute the materials to the requestor. The Authorized ESTA representatives must authorize in advance the distribution of any copies of video and/or audio recording materials.

Upon distribution of the copy, the requestor must sign for the surveillance materials, acknowledging the sensitivity and limited use of the data. The agency designee will retain records pertaining to dates of request, as well as a receipt for the copy of the surveillance materials.

## **X. Public Viewing**

Pursuant to the California Public Records Act (California Government Code Section 6250, et seq.), surveillance recordings are public records. Therefore, a member of the public may request to review recorded footage.

This request will follow the above guidelines and the member of the public will be allowed to view the incident in the presence of an authorized ESTA representative. The authorized ESTA representative is not required to provide copies of recordings to any member of the public that requests a copy if one or more of a limited number of exceptions apply, including the following:

- A. Records pertaining to pending litigation to which the ESTA it is a party, or to claims made pursuant to Division 3.6 (commencing with Section 810), until the pending litigation or claim has been finally adjudicated or otherwise settled.
- B. Records of complaints to, or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice, the Office of Emergency Services and any state or local police agency, or any investigatory or security files compiled by any other state or local police agency, or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes.

## **XII. Chain of Custody**

Authorized ESTA representatives will work with legal counsel to ensure the chain of custody will meet the current case law and statutory requirements.

## **XIII. Costs of Duplication**

The ESTA will provide copies of video/audio recordings upon payment of the following fees: the requested public records will be produced at a charge of five dollars per DVD or other electronic media device, plus the actual costs of the staff time for retrieving and duplicating the records and postage (if necessary). The cost of staff time will be computed in accordance with the guidelines contained in Section 8740 of the State Administrative Manual. However, these fees may be waived if the costs of retrieval and duplication are less than the cost of processing the payment.

Costs of duplication will not be charged to law enforcement agencies, nor to labor organizations if the records were retrieved by ESTA representatives as part of an employee disciplinary investigation.

# ATTACHMENT A

## ESTA VIDEO IMAGING REQUEST FORM

### **DIRECTION FOR USE:**

ESTA authorized representatives, Law Enforcement and authorized parties requesting to view a copy of bus and facility video images and/or audio recordings must complete and submit this form. The completed form, with the proper signature, must be presented to the ESTA authorized representatives. Requests are subject to the California Public Records Act (California Government Code Sections 6250, et seq.)

### **REQUESTOR'S INFORMATION:**

|                      |      |                    |
|----------------------|------|--------------------|
| DATE/TIME OF REQUEST | NAME | TITLE/BADGE NUMBER |
| AGENCY & DEPARTMENT  |      | PHONE NO.          |

### **INCIDENT INFORMATION:**

|                     |         |                    |                      |
|---------------------|---------|--------------------|----------------------|
| ROUTE NO.           | BUS NO. | INCIDENT DATE/TIME | CITATION/INCIDENT #: |
| REASON FOR REQUEST: |         |                    |                      |
|                     |         |                    |                      |
|                     |         |                    |                      |

By signing this request form you are acknowledging that the surveillance materials contain privileged and confidential information for the viewing of the authorized recipient only and is not to be released to another party without express written consent by the ESTA Executive Director or designee.

|                        |             |
|------------------------|-------------|
| SIGNATURE OF REQUESTOR | DATE SIGNED |
|------------------------|-------------|

### **FOR EXTERNAL REQUESTS ONLY:**

Authorization for Copy

Authorization to Review Surveillance Material

| COMPLETION DATE / TIME | COMPLETED BY |
|------------------------|--------------|
|                        |              |
| SIGNATURE              | TITLE        |
|                        |              |

**SURVEILLANCE MATERIALS RELEASED:**

|  |
|--|
|  |
|--|

TO: \_\_\_\_\_

DATE: \_\_\_\_\_