
OFFICE OF THE CAO

By-law Enforcement Division

Body Worn Cameras

POLICY

#BLED-2023-01

Municipal Law Enforcement

Effective Date: March 2023

Revision Date:

GENERAL DESCRIPTION

The use of body worn cameras (BWC) is an effective tool a law enforcement agency can use to demonstrate its commitment to transparency, enhance safety for officers and for the public, ensure the accountability of its members, increase the public's trust in officers, and protect its members from unjustified complaints of misconduct. The *County* of Brant Bylaw Enforcement Division is committed to establishing a BWC program that reinforces its responsibility for protecting the public and promoting officer safety.

The BWC is a small audio-video recorder with the singular purpose of recording audio/visual files, specifically designed to be mounted on a person. The BWC is designed to record audio and video activity to preserve evidence for use in a court of law and administrative investigations (including disciplinary cases), civil litigation, and to review divisional procedures, as appropriate.

PURPOSE

It is the purpose of this policy to authorize *County* staff to deploy and use body worn cameras and to ensure that their use by staff occur in such a way as to make certain that public interests are served by:

- a. Improving the transparency of the *County* in relation to any potential allegations of discreditable conduct, improper conduct or other types of misconduct by staff;
- b. Ensuring the accountability of the *County* and its staff through internal and public oversight systems;
- c. Protecting individuals' right to privacy by limiting access to recordings from body worn cameras to the greatest extent possible and to a limited number of people as possible;
- d. Ensuring there is a process for individuals to request access to personal information pertaining to them which is collected by the body worn cameras;
- e. Enhancing public trust during the enforcement process;
- f. Enhancing public and officer safety;

- g. Providing improved evidence for investigative, judicial and oversight purposes;
- h. Ensuring a timely and fair response to misconduct allegations against staff, in a manner that enhances public and staff confidence in the *County's* complaint and enforcement process; and
- g. Providing information as to the effectiveness of *County's* procedures and training;
- h. Enhance officer accountability and professionalism.

SCOPE

This policy applies to Municipal Law Enforcement Officers, Enforcement Division staff and Information Services staff.

AUTHORITY

Constitution Act, Part I; Canadian Charter of Rights and Freedoms; Criminal Code of Canada; Municipal Freedom of Information and Protection of Privacy Act (MFIPPA) and Ontario Regulation 823; Limitations Act, 2002, S.O. 2002, c. 24, Sched. B

DEFINITIONS

“Activation” – Refers to any process which turns on the *body worn camera* to record audio and/or video data.

“BWC” - Shall mean a body worn camera.

“Body worn camera” - Refers to a forward-facing camera unit and supporting hardware worn by an *Officer* and mounted on their front upper torso, in plain view. The *BWC* is a recording device intended to capture footage during the execution of an *Officer's* duties during his or her shift.

“Body worn camera recording” refers to a digital recording that captures video and audio of an interaction between an individual and an *Officer on call for service*.

“Call for Service” means an incident and/or location attended by a Municipal Law Enforcement Officer in response to a call for assistance from the public which involves an *investigative contact*.

“Consent” for the purposes of BWC recording under this policy, means permission from a homeowner(s) or occupant(s) of a *private place* who has the authority to consent, gives consent voluntarily, knows the nature of the *Officer(s)* conduct, knows they can refuse or revoke consent at any time, and who is aware of the potential consequences or jeopardy of giving that consent.

“*County*” means the Corporation of the County of Brant.

“Deactivation” refers to turning off the video and/or sound recording on the BWC.

“Exigent Circumstances” means, for the purpose of this policy, circumstances where there are reasonable grounds to suspect there is an imminent threat of bodily harm or death to any person.

“Investigative Contact” means any direct contact between an *Officer* and a member of the public where the contact is for the purpose of an investigation in relation to the enforcement of any and all bylaws enacted by the *County* and in force at the time.

“Manager” shall mean the Manager of Enforcement and Regulatory Services or designate.

“MFIPPA” shall mean the Municipal Freedom of Information and Protection of Privacy Act.

“Officer” shall mean a Municipal Law Enforcement Officer appointed by the Council of the *County* of Brant to enforce municipal bylaws.

“Overt” means shown openly, plainly, or readily apparent; not secret or hidden.

“Private Place” means a place where a person or persons enjoy a reasonable expectation of privacy and may reasonably be expected to be safe from uninvited intrusion or surveillance but does not include a place to which the public has lawful access. Such places include, but are not limited to, a dwelling, a place of worship, a lawyer’s office and healthcare settings.

“Public Place” means any place to which the public has access as of right or by invitation, either expressed or implied.

“Redaction” refers to the removal or obscuring of privileged, sensitive or clearly irrelevant content prior to the disclosure or release of a copy of a *BWC* recording. Redaction shall be completed using the tools found in Evidence.com©. The redaction process shall create an edited copy while leaving the original record unaltered.

“Supervisor” shall mean the Supervisor of Enforcement and Regulatory Services.

POLICY

County of Brant Municipal Law Enforcement Officers shall employ *body-worn cameras (BWCs)* in an *overt* capacity in support of their functions as Municipal Law Enforcement Officers. *Officers* will take reasonable steps to balance the privacy rights of individuals with the anticipated benefits of using *BWCs* for law enforcement purposes.

County of Brant Municipal Law Enforcement Officers shall activate the *BWCs* as set out in this policy and procedure below. This policy prohibits the use of surreptitious recordings.

1. PROCEDURES

This policy is designed to:

1.1 Implement the recommendations set out in the Office of the Privacy Commissioner Canada's Guidance for the Use of Body-Worn Cameras by Law Enforcement Authorities (2015) and ensure that new recommendations and best practices continue to be monitored and implemented as they are identified by the relevant Provincial and Federal authorities.

1.2 Specifically identify the legislative authority for the collection of personal information that will be captured by the cameras and ensure that any such collection aligns with that authority and all other relevant legislation, including any legislative provisions addressing data, information or records storage, access, use and/or disclosure;

1.3. Ensure that all use of *BWCs* and their recordings is consistent with the Ontario Human Rights Code.

1.4. Failure to comply with any provision of this policy shall not invalidate any proceeding or any step, document or order in a proceeding otherwise in accordance with any municipal by-law, provincial or federal legislation.

2. ADMINISTRATION

The *County* has adopted the use of *body-worn cameras* to accomplish several objectives.

The primary objectives are as follows:

2.1. *BWCs* allow for accurate documentation of *Officer*-public contacts, investigations, and critical incidents. They also serve to enhance the accuracy of *Officer* reports and testimony in court.

2.2. Audio and video recordings also enhance the *County's* ability to review enforcement proceedings, *Officer* interactions with the members of the public, the gathering of

evidence for investigative and prosecutorial purposes and to provide additional information for *Officer* evaluation and training.

2.3. The *BWCs* may also be useful in documenting infractions, violations or other events that include the confiscation, removal of equipment, personal items and vehicles from *County* or private property.

3. USE OF BODY WORN CAMERAS

3.1 *Officers* equipped with a *BWC* shall activate the *BWC* as soon as reasonably possible before arriving at a *call for service* when initiating an *investigative contact*. *BWCs* should also be used to record on-scene investigative discussions, especially those relating to reasonable grounds and evidence. *BWCs* may also be used to record:

- a) statements that would normally be taken in the field, including utterances and spontaneous statements;
- b) interactions with a member of the public in a *County* facility when the *Officer* believes it would be beneficial to an investigation/occurrence report to do so; and
- c) any other situation where the *Officer* believes it would support the lawful execution of their duties.

3.2. *Officers* may not deactivate the *BWC* until;

- a. the *call for service* or *investigative contact* with the public has ended;
- b. the *Officer* is no longer engaged in the collection of evidence or is no longer interacting with the public;
- c. except for specific circumstances which are clearly defined in this policy and are as limited as possible, and where such exceptions serve to protect the dignity of members of the public, in which cases the *Officer* must record an audible statement summarizing the activities or information obtained while the *BWC* was *deactivated* or muted and specifying the reason for *deactivation*. *Officers* shall report any such deactivations to their *Supervisor* in writing within 24 hours;
- d. except when directed to do so by the *Supervisor*.

3.3. *Officers* may not intentionally prevent the *BWC* from capturing video or audio during an *investigative contact* in accordance with Section 3.1 (e.g., by obstructing the lens or microphone), with the sole exception of temporarily covering the lens to protect the dignity of an individual during situations of a sensitive nature (e.g., when encountering a person in a state of undress), occurring in a *private place*, and only for the shortest time possible while taking steps to protect the dignity of the individual, and provided that no *exigent circumstances* exist where the *Officer* might be encountering an element of danger while the lens is covered.

- 3.4. *Officers* must whenever possible, inform members of the public that they are being recorded at the earliest opportunity during an *investigative contact* or *call for service*.
- 3.5. No person shall be permitted to review the *body worn camera recordings* at the scene.
- 3.6. Notwithstanding sections 3.1 and 3.2 above:
- a. Prior to entering a *private place*, *Officers* must inform all occupants that they are being recorded in both video and audio and inquire whether these individuals *consent* to the recording or request that the *BWC* be *deactivated*;
 - b. Recording within a *private place* is dependent on the lawful authority upon which an *Officer's* attendance at the location is based (e.g., *consent* of owner/occupant(s), *exigent circumstances*, or in relation to a search warrant). *Officers* are required to provide owners/occupants with a reasonable opportunity to refuse or *consent* to be being recorded. When entering a *private place* upon *consent*, the *Officer* must inform the owners/occupants of the use or intended use of a *BWC*.
 - c. *BWCs* shall not be activated in places or circumstances where recording is prohibited by law, except under *exigent circumstances* or with lawful authority.
- 3.7 *BWC* recordings must not be integrated or used in conjunction with live streaming capabilities, artificial intelligence or biometric technology (including facial recognition).
- 3.8 *Officers* shall file a written report for any loss, theft, damage, or malfunctions of a *BWC* to their immediate *supervisor* as soon as reasonably possible. The *Supervisor* will forward that information and/or the equipment to the *Manager of Enforcement and Regulatory Services*. In the case of loss or theft, the *Manager of Enforcement and Regulatory Services* will notify the Supervisor of Information Services who will determine if the Privacy Breach Protocol needs to be initiated.

4. CONTROLS

- 4.1. If an *Officer* has not recorded in full or in part an interaction with a member of the public, the officer shall document the specific reason that a recording was not made in part or in full using the designated process as outlined in Section 3.2.
- 4.2 *Officers* are required to receive relevant training for the use of a *BWC* along with the associated systems before being issued a *BWC*, and subsequent ongoing training requirements, to ensure that *Officers* can fully comply with this policy.
- 4.3 *BWCs* will not be activated to record uninvolved bystanders or benign interactions with the public, to the extent as is reasonably possible.

5. TRANSPARENCY

5.1. Up-to-date information shall be posted on the *County* public website concerning the collection of *BWC* recordings, including:

- a. A current copy of the *County Body-Worn Camera* Policy;
- b. The process by which individuals can voice concerns about the use or lack of use of *BWCs*;
- c. What information is being collected;
- d. The length of applicable retention periods;
- e. The procedure by which *body worn camera recordings* can be requested for viewing or releasing to the public; and
- f. Information about how to appeal to the Information and Privacy Commissioner of Ontario where a request is denied in whole or in part.

6. SECURE RETENTION AND DISPOSAL OF RECORDINGS

6.1. In keeping with the Information and Privacy Commissioner of Ontario guideline, and in accordance with all applicable legislation, *body worn camera recordings* including any meta-data produced by the *BWCs* or the technology supporting the *County's BWCs*, shall be:

- a. Stored on a secure Canadian storage server in accordance with all applicable provincial and federal legislation and security best practices, so as to prevent any editing, tampering and unauthorized access to recordings and meta-data;
- b. Encrypted within the camera, during transit to the storage server, and while in storage; and
- c. Destroyed at the end of their retention period in a secure manner which prevents recovery and unauthorized access to the recordings and meta-data.

6.2 All *body worn camera recordings* will be categorized within the digital evidence platform to ensure they are subject to the following retention periods:

- a. Non-evidentiary recordings are kept for sixty (60) days and will be securely destroyed if there is no circumstance that triggers a longer retention period.

The following types of recordings are considered non-evidentiary:

- i. *Calls for service* that do not involve interaction with members of the public for investigative or enforcement purposes; e.g. providing directions or information to a passerby would not be considered an *investigative contact*.

- ii. Recordings that do not contain meaningful evidence; e.g., routine issuance of a parking ticket where photographs are taken for evidence and *body worn camera recordings* would be redundant.
 - iii. Recordings that are unrelated to enforcement or investigative activities.
- b. Evidentiary recordings are kept for a minimum of two (2) years plus one (1) day or as otherwise required under Retention By-law #229-10 as amended and then securely destroyed if there is no circumstance that triggers a longer retention period. Recordings of calls for service that involve interaction with members of the public for investigative or enforcement purposes or contain evidence captured during an investigation are considered evidentiary.
 - c. Circumstances that may trigger a longer retention period include recordings being required for ongoing investigations, court purposes, legal proceedings, or access to information requests.

6.3. In case of a potential or actual access breach of the *County's* recording and meta-data storage services, the *County* shall make a public post on the *County's* website and social media to notify the public and impacted individuals of the potential breach.

6.4. *Body worn camera recordings* will be uploaded automatically from the docking station to a secure, centralized server (evidence.com) maintained by Axon.

6.5. The *County* shall exercise all due diligence to ensure that all data is protected and backed up accordingly on a daily, but no less than a weekly basis. The *County* and its employees shall not be held responsible for any data loss which occurs due to circumstances that are beyond the control of the *County*. These circumstances may include but are not limited to loss of data due to:

- a. Data breaches from external parties;
- b. A storage device or server malfunction;
- c. A power surge;
- d. Theft of storage device or equipment; and
- e. Fire or natural disaster.

7. USE AND DISCLOSURE OF BWC RECORDINGS

7.1. Access to viewing or production of *BWC* records for the public will be provided only in accordance with this Policy or required by law.

Without limiting the generality of the foregoing, the following are examples of circumstances where this will occur:

- a. Anyone who has the legal authority (by statute, regulation or prior judicial authorization) shall have access to such recordings, including

in relation to the prosecution of the *County* By-law Enforcement cases and access requests granted under *MFIPPA*;

- b. Members of the public or their representatives can make a request for access to *body-worn camera* footage upon the formal filing of a Freedom of Information request under *MFIPPA*;
- c. All requests for a copy of *BWC* records from a member of the public shall be directed to the Supervisor of Information Services.

7.2. Anyone who obtains records of *body worn camera recordings* in accordance with section 7.1 above may not further disclose these recordings to other parties without lawful authority.

7.3. The *County* will ensure that an audit trail is created and maintained by the *County*, that will identify with respect to every recording the time of access, whether a copy was provided to the requestor, and any information gathered under the *MFIPPA* process.

7.4. The *County* shall ensure that additional safeguards enhance the storage and limit access to recordings of minors who are suspected of an offence or are witnesses to a suspected offence, in accordance with the applicable legislation.

7.5. A member of the public may request to view recordings from a *body worn camera* if:

- a. The member of the public making the request is:
 - i. An individual participating in the interaction captured in the recording;
 - ii. The parent or legal guardian of a minor participating in the interaction captured in the recording;
 - iii. The next-of-kin of a deceased individual participating in the interaction captured in the recording; and;
- b. The identity of any other member of the public who appears in the recording can be appropriately concealed through measures such as image blurring and voice muting or distortion.

7.6. The *County* may refuse to release to the public recordings where such refusal is in accordance with the *MFIPPA*, provided that the reason for the refusal is provided to the requestor in writing.

7.7. The Supervisor of Information Services or designate may initiate the release to the public of *body worn camera recordings* taking into consideration relevant factors, including what is consistent with Federal and Provincial laws and the public interest, and what is reasonable in the circumstances of the case.

7.8. In cases where the *County* releases to the public any *body worn camera recordings* that include images or voice recordings of members of the public, the *County* shall ensure that:

- a. The identities of all members of the public captured in the recordings are concealed through measures such as image blurring and voice distortion or muting unless the *County* is required by law to release the recordings in another form; and
- b. The Supervisor of Information Services or designate will include with the release a justification of the public interest in releasing the recording.

7.9. Recordings released to the public in accordance with Sections 7.5 and 7.7 must be full and unedited except for measures such as image blurring and voice distortion or muting for the purpose of concealing the identities of members of the public.

7.10. The *County* may use *body worn camera recordings* for the purposes of training after the identities of all members of the public captured in the recordings are concealed through measures such as image blurring and voice distortion or muting.

7.11 In consultation with the Supervisor or Information Services, Corporate Communications may use *body worn camera recordings* for media or community relations purposes with the approval of Senior Management Team by virtue of there being a compelling public interest in the release of such recording.

8. EVIDENTIARY DISCLOSURE

8.1 Further to Section 7.1, the disclosure of *body worn camera recordings* and records for law enforcement or evidentiary disclosure shall only be completed through the *Supervisor*.

8.2 The *Supervisor* shall be responsible for managing and preparing *BWC* related evidentiary disclosure to the Crown Attorney's Office or POA Prosecutions Office, including video and audio redaction.

8.4 All *BWC* audio/video evidence where provincial offences proceedings have been commenced will be vetted, redacted, and electronically disclosed to the POA Prosecutor no later than (7) days from the date of first appearance.

8.5 Where *body worn camera recordings* containing private and sensitive information of victims, witnesses, and/or third parties must be disclosed, the *Supervisor* shall consult with the Crown Attorney or POA Prosecutor to determine whether the disclosure should

be made under an undertaking or court order to explicitly prohibit the misuse of the recording.

8.6 The *Supervisor* shall be responsible for managing and responding to law enforcement requests for *body worn camera recordings*. Institutions or law enforcement agencies that request *body worn camera recordings* will be required to submit a request in writing and provide:

- a. Incident or occurrence number associated with the investigation;
- b. Name and badge number of the requesting officer;
- c. Date, time, and location of incident;
- d. Brief description of incident; and
- e. Confirm that the request is being made under section 32(g) of the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA).

9. AUDITING AND PUBLIC REPORTING

9.1. The *County* may conduct an audit of:

- a. Incidents where a misconduct case is filed during the reporting and retention period;
- b. A sample of incidents during the reporting period that was not initiated by a *call for service*;
- c. Incidents wherein a *body worn camera* was disabled for the purpose of protecting law enforcement strategies;
- d. A sample of incidents whose retention period has expired during the reporting period; and
- e. The recording begins prior to the beginning of the interaction with the member of the public, and if not, that a satisfactory explanation for the failure to activate the *body worn camera* before the interaction began was provided in accordance with available *County's* procedures;

9.2. The audit may include a review of *body worn camera recordings* for the above incidents to ensure that:

- a. The subject of the recording is informed at the earliest opportunity in the interaction that the interaction is being recorded for video and audio;
- b. Any obstruction of the lens or gaps in the recording are justified and of reasonable duration;
- c. The recording ends:
 - i. After conditions for an exception in accordance with Section 3.2 have been established; or,
 - ii. After the interaction has ended and the *Officer* has left the scene;
- d. All-access to the recordings was justified and necessary; and
- e. The *County* is in compliance with required retention and destruction practices;

9.3. Staff shall advise the *County* Council and file with it a new copy of the Policy governing body worn camera use whenever any changes to the Policy are made.

10. PROCEDURE FOR BODY-WORN CAMERA USE

10.1. *BWC* equipment is issued to staff appointed by the *County* as Municipal Law Enforcement Officers. *Officers* who are assigned *BWC* equipment must use the equipment unless otherwise authorized by the *Manager of Enforcement and Regulatory Services* or designate, in consultation with the CAO.

10.2. *Officers* shall use only *BWCs* issued by the *County* of Brant. The *BWC* equipment and all data, images, video, and meta-data captured, recorded, or otherwise produced by the equipment is the sole property of the *County*.

10.3. *BWC* equipment is the responsibility of individual *Officers* and will be used with reasonable care to ensure proper functioning.

10.4. *Officers* shall inspect and test the *BWC* prior to each shift to verify that they are fully charged and properly functioning and shall notify *County* management of any problems.

10.5. *Officers* shall not edit, alter, erase, duplicate, copy, share, or otherwise distribute in any manner *body worn camera recordings* without prior written authorization and approval of the Supervisor of Information Services or his or her designate.

10.6. *Officers* shall inform *County* management or appropriate authorities of any recordings that may be of significant interest or sensitive nature.

10.7. If in the opinion of the *County* Supervisor of Information Services or his or her designate, a matter of significant consequence is captured using a *BWC*, the matter may be disclosed or brought forward to Council for direction.

10.8. Requests for deletion of portions of the recordings (e.g., in the event of a personal recording) must be submitted in writing and approved by the *County* and in accordance with *County* record retention laws and the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA). All requests and final decisions shall be kept on file.

10.9. *Officers* shall note an incident and related reports when recordings were made during the incident in question. However, *body worn camera recordings* are not a replacement for written reports or detailed notebook entries.

11. RESTRICTIONS ON USE OF BWC

BWCs shall be used only in conjunction with official law enforcement duties and interactions. The *BWCs* shall generally not be used:

- a. To record communications with other *County* staff without the permission of the Chief Administrative Officer (CAO) or his or her designate;
- b. When on break, when driving or otherwise engaged in personal activities; or
- c. In any location where individuals have a reasonable expectation of privacy, such as a restroom or locker room.
- d. To record audio or video for any purpose not permitted under this policy;
- e. To disseminate *BWC* images to any person or entity unless authorized by law;
- f. In a covert capacity.

12. COUNTY MANAGEMENT RESPONSIBILITIES

12.1. The *County* shall ensure that *Officers* equipped with *BWC* devices utilize them in accordance with the policy and procedures defined herein.

12.2. The *County* may randomly review *BWC* recordings to ensure that the equipment is functioning properly, and that *Officers* are using the devices appropriately and in accordance with this policy and to identify any areas in which additional training or guidance is required.

13. MISCONDUCT

13.1 Breaches of this policy may be regarded as misconduct and may be subject to disciplinary action in accordance with *County* policy.