

Corporate Policy and Procedure



Policy	Body-Worn Cameras Policy
Category	Departmental
Authority	Corporate and Community Safety Division, Operations
Related Policies	Access and Privacy Policy; Privacy Breach Protocol; Records and Information Management Policy
Approved By	Colleen Clack-Bush, Deputy CAO Public Services
Effective Date	February 2, 2022

Policy Statement

The City of Guelph (City) is committed to providing fair, effective, and equitable bylaw enforcement services and has undertaken the use of body-worn cameras (BWCs) in a manner that:

- is necessary and proportionate;
- is transparent and accountable to the public;
- upholds the integrity of law enforcement activities;
- protects individual rights to information and privacy;
- treats all persons fairly and equitably; and
- respects the worth and dignity of all persons.

Purpose

BWCs create an unbiased, independent record of encounters between City Bylaw compliance officers and members of the public and provide the following benefits:

- provide accurate and improved quality of evidence collection for investigative, judicial, and oversight processes;
- maintain transparency to ensure trust between our community, internal colleagues, and partner agencies;
- enhance accountability for both members of the City Bylaw Compliance area and members of the community served by the City Bylaw Compliance area; and
- provide information as to the effectiveness of Bylaw Services procedures and training.

The BWC is an audio video recording device that will document Bylaw compliance officers' interactions with members of the public during the execution of their investigative and enforcement duties. BWCs are intended to capture specific

incidents. They are not intended for twenty-four (24) hour recording. This policy outlines the processes for the use of BWCs and the collection, management, storage, disclosure, retention, and retrieval of video/audio digital media using BWCs.

Scope

This policy applies to Bylaw compliance officers, Corporate and Community Safety Division staff and Access and Privacy 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 O.Reg. 823; City of Guelph Records Retention By-Law.

Definitions

“Activation” means any process which causes a BWC to record audio and/or video data.

“Call for Service” means an incident attended by a Bylaw compliance officer(s) in response to a call from the public for assistance or service.

“Consent” for the purposes of BWC recording under this policy, means consent from a homeowner or occupant of a private place who has the authority to consent, gives consent voluntarily, knows the nature of the Bylaw compliance officer conduct, knows they can refuse consent, and who is aware of the potential consequences or jeopardy of giving that consent.

“Covert” means not openly acknowledged or displayed.

“Deactivation” means the termination of video recording on a 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 a Bylaw compliance officer and a member of the public where that contact is for the purpose of an investigation.

“Muted” or **“Muting”** means the deactivation of audio recording while still video recording on a BWC.

“Off” means the BWC is powered off.

“On” means the BWC is powered on. When the camera is in the “on” position, the camera has a pre-event recording with no audio set to thirty (30) seconds. When the camera begins recording, the video automatically captures the thirty (30) second pre-event and attaches it as part of the overall recording.

“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 place of worship, a lawyer's office, and healthcare settings.

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

"Record" means any process which causes the BWC to record audio and video data.

"Redaction" means the removal or obscuring of privileged, sensitive, or clearly irrelevant content prior to the disclosure or release of a copy of a BWC recording. The redaction process creates an edited copy while leaving the original record unaltered.

"Stealth Mode" means a state of the BWC where the camera's lights and sounds are suppressed, even though recording continues. This mode is used only on **rare** occasions, and only for officer safety.

"Stop Recording" means any process which causes the BWC to stop recording audio or video data.

"Vetting" means a review of BWC recordings to identify content that may require redaction prior to disclosure or release. Content that should be identified includes:

- a) information relating to victims and witnesses;
- b) content of a sensitive nature (may include nudity, medical episodes, medical treatment, or extreme emotional distress);
- c) content potentially protected by legal privilege or medical confidentiality (e.g., legal advice, medical treatment or records);
- d) content that is clearly irrelevant.

Procedure

1. General

- 1.1** Bylaw compliance officers may only wear BWCs approved and/or provided by the City.
- 1.2** Bylaw compliance officers assigned a BWC are responsible for its proper care and use. Bylaw compliance officers may be held accountable for the costs associated with the replacement of a BWC due to carelessness or neglect.
- 1.3** No Bylaw compliance officer shall operate a BWC without having completed the required BWC training.
- 1.4** Bylaw compliance officers shall report any loss, theft, damage, or malfunctions of a BWC to their immediate supervisor as soon as reasonably possible. That supervisor will forward that information and/or the equipment to the Manager, Corporate and Community Safety. In the case of loss or theft, the Manager, Corporate and Community Safety will remotely wipe the BWC and notify Access and Privacy Staff in the City Clerk's Office who will determine if the Privacy Breach Protocol needs to be initiated.

- 1.5 Making covert or personal-use recordings using a BWC is prohibited.
- 1.6 Audio/video records created using a BWC are encrypted and can only be edited by those who perform redaction functions.
- 1.7 No one other than the Manager, Corporate and Community Safety shall modify or attempt to modify any permanent settings or components of the BWC without direction from the General Manager of Operations.
- 1.8 No one shall edit, erase, copy, use, or in any way share or distribute any BWC records except as authorized by this procedure.
- 1.9 BWC recordings must not be integrated or used in conjunction with live streaming capabilities, artificial intelligence or biometric technology (including facial recognition).
- 1.10 BWC recordings and any copies of such shall only be retained within the Digital Evidence platform with the exception of copies provided to Access and Privacy staff for responding to Freedom of Information requests (these will be saved to a restricted folder on the City network). Bylaw compliance officers may not retain their own copies of any BWC recordings.
- 1.11 Any public requests for BWC recordings must be made through Access and Privacy staff in the City Clerk's Office. The release of requested BWC recordings may only be authorized and completed by Access and Privacy staff.
- 1.12 Upon consultation with Access and Privacy staff in the City Clerk's Office, Corporate Communications may use BWC recordings for media or community relations purposes with the approval of the Executive Team by virtue of there being a compelling public interest in the release of such recording.

2. Operation of Body-Worn Cameras

- 2.1 Bylaw compliance officers equipped with a BWC shall activate the BWC as soon as reasonably possible before arriving at a call for service or when initiating any 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 City facility when the Bylaw compliance officer believes it would be beneficial to an investigation/occurrence report to do so; and
 - c) any other situation where the Bylaw compliance officer believes it would support the lawful execution of their duties.

- 2.2** As soon as reasonably possible and if they are able given the circumstances, when a BWC is activated, Bylaw compliance officers shall:
- a) record a brief audible statement indicating why the BWC is being activated if making that statement will not jeopardize an investigation;
 - b) advise the person(s) being investigated that they are being recorded through the use of a BWC; and
 - c) advise all other persons on scene, including other City staff members and emergency personnel, that a BWC is in use and they may be recorded.
- 2.3** Once a BWC has been activated, it **shall not be** deactivated, obstructed, or deliberately repositioned until the incident has concluded, except when:
- a) deactivating the audio and/or video recording is necessary to prevent the recording of information or circumstances prohibited by this procedure as per sub clause 4.4 or 4.6 of this procedure;
 - b) the Bylaw compliance officer is no longer engaged in the collection of evidence; or
 - c) the Bylaw compliance officer is no longer interacting with members of the public.
- 2.4** When deactivating or muting a BWC, Bylaw compliance officers shall, where reasonably possible:
- a) record a brief audible statement indicating why the BWC is being deactivated or muted before deactivating or muting it;
 - b) note the deactivation or muting in their notebook, articulating the reasons for deactivation/muting, including the name of the supervisor directing the deactivation/muting where applicable; and
 - c) record an audible statement summarizing the activities or information obtained while the BWC was deactivated or muted.
- 2.5** When a Bylaw compliance officer fails to activate their BWC at an investigative contact, or where intentional or accidental deactivation occurs, or the recording function is limited, that Bylaw compliance officer shall record why the BWC was not activated or was limited in their notes and reports. When relevant to an investigative contact, the Bylaw compliance officer shall summarize what transpired during the time the BWC was not recording.
- 2.6** At the conclusion of their shift, Bylaw compliance officers assigned a BWC shall ensure the BWC is returned to its designated dock for secure upload, charging, and updating.

3. Note Taking and Report Writing

- 3.1** BWC recordings supplement and do not replace Bylaw compliance officer notes or reports.

- 3.2** Bylaw compliance officers equipped with BWCs shall complete detailed reports that clearly indicate that they were equipped with a BWC, if the BWC was used, and if it was not used, why not. The report shall contain sufficient detail and key times to describe the content of the associated BWC videos. Key times include:
- a) BWC activation;
 - b) BWC deactivation;
 - c) BWC muting; and
 - d) the start of any event relevant to an investigation, including interactions with witnesses and suspects, and the exercise of authority to detain, arrest, or search.
- 3.3** Bylaw compliance officers shall complete a video synopsis for events shared through a Freedom of Information (FOI) request. Bylaw compliance officers may complete this document after they have been notified that an FOI request has been received.
- 3.4** Bylaw compliance officers using a BWC will make appropriate notes during an incident regardless of whether the BWC is recording. Bylaw compliance officers may review their own BWC recording of an incident to assist in note taking and report writing. Notes in relation to an investigation or enforcement shall include a record of any review of BWC recording, and if necessary, an addendum to the notes based on the review of the BWC recording.

4. Notification of and Restrictions on Body-Worn Camera Recordings

- 4.1** Notification of activation of BWCs is required unless a Bylaw compliance officer believes that doing so could compromise public safety or would interrupt an investigative contact. Those two exceptions do not apply in regard to the owner/occupant(s) of a private place when entering upon consent, or where there is a heightened expectation of privacy (see sub clause 4.6), in which cases notification must be made.
- 4.2** Recording within a private place is dependent on the lawful authority upon which a Bylaw compliance officer's attendance at the location is based (e.g., consent of owner/occupant, exigent circumstances, or in relation to a search warrant). Bylaw compliance 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 Bylaw compliance officer must inform the owner/occupant of the use or intended use of a BWC. Consent from an owner/occupant to enter a private place must be fully informed for that consent to be valid.
- 4.3** If at any time during a Bylaw compliance officer's attendance in a private place the owner/occupant requests the interaction not be recorded, the

Bylaw compliance officer shall deactivate the BWC or leave that place. The Bylaw compliance officer's continued lawful presence is then conditional on the BWC being deactivated.

- 4.4** BWCs shall not be used to record the following:
- a) discussions relating to City of Guelph staff member personnel information, safety, or health and wellness; and/or
 - b) administrative duties.
- 4.5** In the event that a BWC recording of one of the situations outlined in sub clause 4.4 or 4.6 is made, that recording shall be marked in the vetting log and directed to the Manager, Corporate and Community Safety to determine appropriate action.
- 4.6** Unless a Bylaw compliance officer is actively engaged in an investigative contact or there is an exigent need to video record, such as when use of force may reasonably be foreseen or critical evidence or statements may be lost, Bylaw compliance officers shall ensure that BWCs are not recording circumstances or in locations where there are heightened expectations of privacy, including but not limited to:
- a) individuals in circumstances of a sensitive nature (may include nudity, medical episodes, medical treatment, and extreme emotional distress);
 - b) courthouses;
 - c) places of worship (i.e., religious or spiritual places);
 - d) hospitals, health care facilities, or inside an ambulance; and/or
 - e) events or locations protected by legal privilege (e.g., law offices).
- 4.7** Bylaw compliance officers can use the mute function on their BWC to continue video recording as necessary in the lawful execution of their duties.
- 4.8** BWCs shall not be used to intercept communications to which the person using the BWC is not a party.
- 4.9** Bylaw compliance officers should avoid recording bystanders who are not directly involved in an investigative contact.
- 4.10** BWCs shall not be used to carry out general surveillance and shall not be used during demonstrations or protests unless a Bylaw compliance officer engages or is about to engage members of the public to conduct an investigation or to attempt to enforce the law.

5. Evidentiary Disclosure of Body-Worn Camera Recordings

- 5.1** The disclosure of BWC recordings and records for law enforcement or evidentiary disclosure shall only be completed through the Manager,

Corporate and Community Safety or at the direction of the Manager, Corporate and Community Safety.

- 5.2 The Manager, Corporate and Community Safety 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.
- 5.3 All BWC video/audio evidence where charges have been laid will be vetted/redacted and electronically disclosed to the Crown Attorney's office forthwith.
- 5.4 All BWC audio/video evidence where provincial offence and/or Bylaw charges have been laid will upon request be vetted, redacted, and electronically disclosed to the POA Prosecutions Office forthwith upon notification that the matter is being set for trial, and not later than fourteen (14) days from the date of that notification.
- 5.5 Where BWC recordings containing private and sensitive information of victims, witnesses, and/or third parties must be disclosed, the Manager, Corporate and Community Safety shall consult with the Crown Attorney to determine whether the disclosure should be made under an undertaking or court order to explicitly prohibit the misuse of the recording.
- 5.6 The Manager, Corporate and Community Safety shall be responsible for managing and responding to law enforcement requests for BWC recordings. Institutions or law enforcement agencies that request BWC 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).

6. Access to, Control, and Storage of Body-Worn Camera Recordings

- 6.1 Access to BWC audio and visual recordings is restricted except as permitted or required by law, examples of which may include:
 - a) anyone who has legal authority (whether that be by statute, regulation, or prior judicial authorization) shall have access to such recordings, including in relation to the prosecution of the City of Guelph criminal and quasi-criminal cases and access requests granted under MFIPPA;

- b) members of the public or their representatives may be allowed to view BWC footage that captures an incident in which they were involved for the purpose of attempting to informally resolve a complaint or potential complaint into the conduct of an officer; such viewing will be at the discretion of the Manager, Corporate and Community Safety or delegate; and
- c) members of the public will see a BWC recording that has been ordered released to the public by the Executive Team by virtue of there being a 'compelling public interest' in the release of such recording.

6.2 Access to BWC audio and visual recordings is subject to review and monitoring to ensure they have not been accessed, modified, retained, used, disclosed, or destroyed without proper authority. Automated, randomized auditing shall occur through the digital evidence platform. Any issues discovered during the audit process will be directed to a Bylaw compliance officer's supervisor. The audit trail for these recordings will be disclosed to the Crown Attorney for criminal prosecutions on request.

6.3 All BWC video/audio records 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 then 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 BWC recording would be superfluous.
- iii. recordings that do not relate to enforcement or investigative activities.

- b) **Evidentiary recordings** are kept for a minimum of two (2) years plus one (1) day 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.

Circumstances that may trigger a longer retention period include recordings being required for ongoing investigations, court purposes, legal proceedings, or access to information requests. Recordings used for these

purposes will be kept in accordance with the City's records retention by-law.

6.4 At the end of their retention period, BWC recordings are to be securely destroyed unless a recording has been determined to be relevant to a criminal or civil investigation or proceeding, in which case it shall be retained pursuant to the applicable retention period as per the City of Guelph records retention by-Law. BWC records will be categorized to ensure they are subject to the appropriate retention period as specified in the records retention by-law.

7. Additional Supervisor Responsibilities

7.1 Supervisors of Bylaw compliance officers equipped with BWCs shall review recordings of incidents involving:

- a) use of force resulting in complaints; and
- b) public complaints.

7.2 Supervisors may review/use BWC records to:

- a) ensure the BWCs and systems are being used and operated in accordance with this procedure;
- b) determine additional training needs;
- c) identify material that may be appropriate for training;
- d) assist in incident debriefings; and/or
- e) Bylaw compliance officer commendations.

7.3 Supervisors cannot use BWC footage for discipline matters, unless the discipline issue is discovered as a result of a public complaint.

Revision History

Date	Revision	Revised by
February 2, 2022	Initial draft	Manager, Corporate and Community Safety / Information and Access Coordinator