

USEFUL LEGISLATIVE INFORMATION SURROUNDING OVERT POLICE USE OF BODY WORN VIDEO UNITS¹

Data Protection Act 1998

The Data Protection Act 1998 (DPA) is legislation that regulates the processing of 'personal data' or 'sensitive personal data', whether processed on computer, CCTV, stills camera or any other media. Any recorded image that is aimed at identifying a particular person or learning about their activities is described as personal data and is covered by the DPA; this is therefore likely to include all images and speech captured using BWV.

The Information Commissioner is the regulator of the Act and has enforcement powers where it is suspected that provisions of the DPA have been contravened. The Information Commissioner's Office (ICO) has been contacted with regard to police use of BWV equipment. While their guidance below has been provided in accordance with the DPA, compliance with the Act will depend upon the manner in which the equipment is used in practice, and they are obliged to consider any complaints they receive to ascertain whether any breach of the DPA has in fact taken place.

Principle 1 of the DPA (fair processing) requires that the data subject must be informed of:

- the identity of the data controller²;
- the purpose or purposes for which the footage is intended to be processed;
- any further information that is necessary for processing to be fair.

If possible, this information should be provided at the time they are being recorded or, if this is not practicable due to an ongoing incident, then as soon as possible afterwards. As a general rule, where an officer is in uniform and is clearly carrying or wearing a camera, the ICO would consider that this condition has been satisfied. However, some versions of the equipment are quite discreet and would not necessarily be identified as cameras by members of the public, especially from a distance. Members of the public may also be unaware that the camera is capable of recording sound.

Any force or BCU wishing to use BWV in their area should consider undertaking the following steps in order to comply with the requirements of the DPA.

- Before any use of BWV, ensure that a series of 'fair processing notices' are utilised locally; for example:
 - a local media campaign to advertise the use of BWV, using local newspapers and other media and the force website;
 - the use of street signs in areas where recordings are likely to take place on a regular and concentrated basis (such as in city centres or on housing estates);
 - local community-based forums to advise residents of the use of this technology.

¹ Much of the information in this hand-out has been taken from Guidance for the Police Use of Body Worn Video Devices – Home Office: Police and Crime Standards Directorate (2007)

² Ultimately the Chief Constable

- Recordings should only be made in situations where the BWV wearer would previously have made a written record of the encounter.
- Officers should, where possible/practicable, announce to the subject(s) of an encounter that video and audio recording is taking place using BWV.
- Recordings should commence at the start of any deployment to an incident and should continue uninterrupted until the incident is concluded, either because of resumption of normal patrolling or because recording has commenced through another video system (e.g. at a custody centre).
- Recordings should not be made of general patrolling duties unless this is part of a specific operation (e.g. public order duties at football matches).
- All recordings must be securely held in accordance with force procedures. Access to recordings must be controlled and only persons having the 'operational need' to view specific incidents may view them.
- All footage recorded by the BWV must also be retained in accordance with personal data guidelines. Non-evidential recordings must be disposed of after a maximum of 31 days.
- A record must be made of the destruction of any non-evidential recording.
- Prior to disposal, all reasonable steps must have been taken to ensure that the images are not required as evidence in any case under investigation.

Subjects recorded using BWV have a right of access to their personal data (their image and conversation), subject to certain limited exemptions. Individuals expressing a wish to access their personal data should be directed to the Force Information Disclosure Unit, whose details are to be found on the Grampian Police website. If an individual is dissatisfied with the way the Force has handled their personal data, there is a right of appeal to the Information Commissioner.

Human Rights Act 1998

The Human Rights Act 1998 brings the European Convention on Human Rights (ECHR) into effect in domestic law. Article 6 of the ECHR provides for the right to a fair trial. All images from BWV have the potential for use in court proceedings whether they provide information that is beneficial to the prosecution or defence; they must therefore be safeguarded by an audit trail in the same way as other evidence that is retained for court.

Article 8 of the ECHR is the right to respect for private and family life, home and correspondence. Police forces are required to consider this article when dealing with recorded images, whether they were made in public or private areas. Recordings of persons in a public place are only public for those present at the time, so those situations are therefore still regarded as potentially private (*R v Brentwood Borough Council ex parte Peck* [2003]).

In some circumstances officers may find that one party may object to the recording taking place, for example where there are allegations of domestic abuse. In such circumstances officers should continue to record while explaining the reasons for recording continuously; these reasons might include:

- that an incident has occurred requiring police to attend;
- that the officer's continued presence might be required to prevent a breach of the peace or injury to any person;
- the requirement to secure best evidence of any offences that have occurred, whether this is in writing or on video, and that the video evidence will be more accurate and of a higher quality and therefore in the interests of all parties;
- that continuing to record would safeguard both parties, with a true and accurate recording of any significant statement made by either party and of the scene;

- that the incident may reoccur in the immediate future; or
- that continuing to record will safeguard the officer against any potential allegations from either party.

It is therefore recommended that officers continue to record where incidents are occurring or allegations of a criminal nature have been made. However, if it becomes clear that the incident is not a police matter (e.g. not an allegation of a suspected or potential offence) and as such would not have been the subject of an entry in an officer's pocket notebook, then the officer should cease recording. In such circumstances it is recommended that the officer make a verbal announcement that the recording is being stopped prior to stopping the video. The officer should also announce that, if any incident begins while the officer is still present, then recording will resume immediately.

Footage taken in private dwellings should be deleted as soon as practicable if it is not relevant to any criminal investigation or prosecution. In relation to incidents of repeat domestic violence, retention for longer periods may be considered necessary in order to protect victims and their children or to provide evidence for courts to consider in respect of proceedings such as non-molestation orders or interdicts.

Regulation of Investigatory Powers (Scotland) Act 2000

This Act applies to the following conduct—

- (a) directed surveillance;
- (b) intrusive surveillance; and
- (c) the conduct and use of covert human intelligence sources,

Therefore provided the use of Body Worn Video is only used overtly involving devices clearly marked with the word 'CCTV' thereon, it does not apply.

Freedom of Information (Scotland Act 2002)

This Act provides a right of access to information held by the Force, including images and sound recorded on BWV. There are various exemptions that allow the Force to withhold information from release. It is likely that information recorded by BWV will be exempt from disclosure either because it constitutes personal data or because it was gathered as part of a criminal investigation.

Notwithstanding all the above, individuals may still apply to obtain information under Freedom of Information legislation, irrespective of whether or not their application may ultimately be successful. Individuals expressing a wish to access this information should also be directed to the Force Disclosure Unit, whose details are to be found on the Grampian Police website. If unsuccessful in their application, individuals have rights of internal review by a senior officer and of appeal to the Scottish Information Commissioner.