

## Use of Body Worn Cameras (BWC)

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<b>Council File Reference:</b>	<i>Council Policies (P)</i>
<b>Applicable Legislation:</b>	<i>Local Government Act 1999 Surveillance Devices Act 2016 Charter of Human Rights and Responsibilities Bill 2020 Freedom of Information Act 1991 State Records Act (1997) SA Evidence Act 1929 Evidence (Identification Evidence) Amendment Act 2013 Privacy Amendment Act (2012) Evidence Regulations 2022</i>
<b>Relevant Policies:</b>	<i>Berri Barmera Council - Privacy Policy</i>
<b>Related Procedures:</b>	<i>Public Consultation <b>not</b> required prior to adoption</i>
<b>Delegations:</b>	

### Purpose

Council has developed this Policy to provide information and direction in relation to the use of Body Worn Camera (BWC) devices in the workplace and to facilitate compliance with legislation including the Surveillance Devices Act 2016 (SA).

The primary purposes for utilising BWC devices are to:

- ensure the health and safety of Council's employees;
- to discourage unlawful behaviour, thereby enhancing the safety and security of all people and property;
- increasing the chances of apprehending offenders
- record evidence to support expiation proceedings by Council's Community Safety Officers and support investigations and prosecutions by SAPOL in relation to offences on Council Employees, land and facilities
- ensure correct management of records to protect the privacy and confidential nature of the personal information collected
- assisting with investigations involving allegations made against Council officers.

## **Scope of Policy**

This policy applies to:

- Council employees (primarily Authorised Officers located in the Environment & Regulatory Services Group)
- Consultants/Lawyers/Contractors/Volunteers
- Community members

## **Surveillance Devices Act 2016 (SA)**

1. The Surveillance Devices Act 2016 (SA) (SD Act) restricts the installation, use and maintenance of surveillance devices and the communication of information or material from these devices
2. The SD Act differentiates between a listening device and an optical surveillance device
3. A listening device is a device capable of being used to listen to or record a private conversation or words spoken to or by any person in private conversation (whether or not the device is also capable of operating as some other kind of surveillance device) and associated equipment (if any)
4. An optical surveillance device is a device capable of being used to observe or record visually (whether for still or moving pictures) a person, place or activity and associated equipment (if any)
5. The SD Act prohibits the installation, use or maintenance of a listening device to overhear, record, monitor or listen to a private conversation. Exclusions apply where:
  - a. The parties to a conversation consent to the use of a listening device;
  - b. A listening device is needed to protect the lawful interests of a person;
  - c. The use of the device is in the public interest.
6. The SD Act prohibits the installation, use or maintenance of an optical surveillance device to overhear, record, monitor or listen to a private activity. Exclusions apply where:
  - a. The parties to a conversation consent to the use of an optical surveillance device;
  - b. A listening device is needed to protect the lawful interests of a person;
  - c. The use of the device is in the public interest.
7. The SD Act prohibits the use of information or material derived from surveillance devices, except where it is used to protect the lawful interests of a person or the use is in the public interest. Employees must not use, communicate or publish information or material from a Surveillance Device in breach of the SD Act.
8. Whether the SD Act applies to any given situation will depend on the circumstances. All persons to whom this policy applies must nevertheless be mindful that Parliament has regulated the recording of private conversations and it cannot be automatically assumed that it is lawful to make a recording and/or make use of a recording once it has been made. All personnel should seek further information from their supervisor or manager if they have any doubts.

## **Key Principles**

The policy is based on the following guiding principles:

1. The BWC program will be operated fairly, within applicable legislative requirements and only for the purposes for which it is established or which are subsequently agreed in accordance with this policy.
2. The surveillance devices will only be used in accordance with this policy.
3. The surveillance devices will be operated with due regard to the privacy and civil liberties of individual members of the public, including the rights to freedom of religious and political expression and assembly.
4. The public interest in the operation of the surveillance devices will be recognised by ensuring the security and integrity of operational procedures.
5. The Manager Environment & Regulatory Services has primary responsibility for compliance with the purposes and objectives of this policy, for the maintenance, management and security of the program, and the protection of public interest in relation to the program.
6. Access to the surveillance monitoring equipment shall be restricted to authorised staff and will be protected from unauthorised access.

The retention of, and access to recorded material will only be for the purposes provided by this policy or applicable laws and in accordance with any requirements for the retention and disposal of personal information as specified in the *State Records Act (1997) SA*.

## **Public notification of the use of a BWC**

Officers should inform all parties to the conversation/being recorded that a BWC is being worn and is recording sound and images. If the conversation continues with no objection, implied consent can be assumed to have been given.

If parties to the conversation do object, the camera should be turned off unless the use of the BWC is reasonably necessary for the protection of the lawful interests of the Officer.

## **Security of information**

Council will:

- ensure appropriate security measures are in place to protect any confidential information from unauthorised use, access, modification or disclosure;
- ensure that any Employees authorised and/or delegated to access confidential information gathered via the BWC will not record, disclose or communicate such information to any third party except in the performance of their official functions; and
- ensure any and all information gathered by the BWC eventuating in an expiation notice or criminal proceedings will be stored in Council's Records Department secured safe and only available to persons other than the delegated Council Employees and SAPOL through Freedom of Information Act (1991) processes, or as directed by a legal authority.

## **State Records Act (1997) (SA)**

Whilst the primary purpose of surveillance monitoring is outlined in this Policy it should also be noted that the captured video footage is also classed as an official Council record under the *State Records Act (1997) (SA)*, which defines a record as 'a written, graphic or pictorial matter, or a disk, film, tape or any other object that contains information or from which information may be reproduced.'

Section 23 of the *State Records Act (1997)* prohibits the Council from disposing of an official record except in accordance with the General Disposal Schedule 20 (GDS 20). Item

14.76.2 of GDS 20 specifically provides that 'video surveillance recordings' are temporary records which currently may only be destroyed six months after the last action taken in relation to them.

## **Access to Surveillance Footage**

### **1. *By Members of the Public:***

Members of the public can apply under the Freedom of Information Act (1991) (SA) [FOI Act] to view any official records kept by Council.

Any application received under the FOI Act must be determined by an accredited Freedom of Information Officer. If the application is approved, a member of the public may then view the footage at the Council office or obtain a copy of the requested footage within a timeframe that is both reasonable and appropriate. If viewing at the Council office, an accredited FOI Officer or a staff member delegated by the CEO will be present at all times to operate the viewing equipment.

### **2. *By the Media:***

The Berri Barmera Council views the rights of the media to gain access to footage to be the same as for a member of the public. That is, an application will need to be made under the FOI Act and the provisions of that Act will apply.

### **3. *By Elected Members:***

Section 61(1) of the *Local Government Act (1999)* provides that 'a member of Council is entitled, at any reasonable time, in the connection with the performance or discharge of the functions or duties of the member (whether under this or another Act), without charge to have access to any relevant Council document'.

Section 61(2) of this Act requires any request for access to be directed to the Chief Executive Officer of the Council or such other delegated officers as the Chief Executive Officer (CEO) has specified – provided that:

- (a) the Elected Member makes the necessary request in writing to view or obtain a copy of the footage to the CEO of the Council; and
- (b) the CEO is satisfied that access to the information is relevant to the performance or

- discharge of the functions or duties of that Elected Member; or
- (c) it does not contain confidential information that the Elected Member requesting access would not normally be allowed (e.g. excluded due to conflict of interest, building and/or staff security or as may be directed by SAPOL or other law enforcement agency).

If the application is approved, the Elected Member may then view the footage at the Council office or obtain a copy of the requested footage within a timeframe that is both reasonable and appropriate. If viewing at the Council office, an accredited FOI Officer or a staff member delegated by the Chief Executive Officer will be present at all times to operate the viewing equipment.

#### **4. *By Staff***

##### ***Storage and Use of Data***

This standard operating procedure will be consistent with the Berri Barmera Council- Privacy Policy.

##### ***Downloading***

All footage recorded to the BWC device will be downloaded daily at the end of the officer's shift. Data will be downloaded via the docking station and DEMS.

Images must not be shown or given to unauthorised persons unless permission has been approved by the Team Leader or Manager.

Data that is not required for further investigation or in accordance with statutory requirements will be deleted after 90 days from date of being filmed.

##### ***Reviewing data***

All staff must ensure that BWC data is only accessible by an authorised officer according to these procedures on a need-to-know basis. Access to BWC data will be monitored and periodically audited.

#### **5. *Management and maintenance***

BWC equipment will only be worn and activated by authorised, trained users in undertaking their delegated roles and responsibilities.

Appropriate operating procedures will be applied to all security surveillance applications to ensure effective and ethical management of equipment and that the recorded information is appropriately maintained by authorised users, which includes SAPOL officers. All security surveillance systems installed will comply with the following:

- All surveillance controls and recorders must be located in a secure area.
- Access to surveillance controllers and recorders will be limited to authorised user(s).

- All security surveillance equipment will be integrated into the Council's wider current and future electronic security network to enable effective monitoring by Council, and SAPOL where agreed.

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