



Information and Privacy
Commissioner of Ontario

Commissaire à l'information et à la
protection de la vie privée de l'Ontario

VIA ELECTRONIC MAIL

January 15, 2021

Mr. Jim Hart
Chair
Toronto Police Services Board
40 College Street
Toronto, ON M5G 2J3

Chief James Ramer
Chief of Police
Toronto Police Service
40 College Street
Toronto, ON M5G 2J3

Dear Chair Hart and Chief Ramer:

RE: The Governance Framework for Toronto's Police Body-Worn Camera Program

I am writing to update the Toronto Police Services Board (the Board) and the Toronto Police Service (the Service) on my assessment of the progress made with respect to our recommendations on your body-worn camera (BWC) program. The goal of our engagement has been to assist the Board and the Service in the development of a BWC governance framework that respects the public's need for transparency and accountability in policing, and the equally compelling need to respect individuals' reasonable expectation of privacy.

In my November 5, 2020 submission to the Board (attached hereto), I summarized each of my office's thirteen earlier recommendations and the actions taken by the Board and the Service in response, and concluded that all thirteen had been addressed fully or substantially. I then provided thirteen further recommendations related to the BWC governance framework.

I write today with respect to the status of those thirteen additional recommendations, as they relate to the BWC policy enacted by the Board on November 24, 2020 (the Policy; Board Minute No: P181/20) and the Service's soon to be published BWC Procedure (the Procedure; V77). Consistent with the Board and Service's commendable approach to developing the key governance framework documents in an open and transparent manner, I will be publishing this letter to my office's website once the Service has published the Procedure.



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A. Status of Outstanding Transparency and Accountability-related Recommendations

Pre-event recording capacity

To help ensure the Service's body-worn cameras' pre-event recording capacity captures the full picture of the initial stages of all police-civilian investigative encounters, I asked the Service to update my office on possible enhanced use of the BWC's pre-event recording capacity within the first quarter of 2021 (**Additional Recommendation #1**). In addition, I asked the Board and the Service to commit to meet with my office regarding the lessons learned from its first annual BWC audit (**Additional Recommendation #2**).

The Board and the Service have committed to continuing to engage with my office on both of these issues as relevant information becomes available.

Status of Additional Recommendations #1 and #2: I am pleased with the commitments of the Board and the Service. I look forward to engaging the Board and the Service on the necessary follow-up work in the months ahead.

The use of BWCs at protests

To ensure that the deployment of BWCs at protests respects the fundamental rights at issue and reduces the potential chilling effect of overbroad surveillance, I recommended that the Board and Service provide appropriate controls with respect to the use of BWCs at protests. In particular, I recommended that BWCs should not be turned on until after an officer determines that a specific situation calls for an investigative or enforcement action that will lead to, or is likely to lead to, direct interaction with one or more members of the public, including through the possible use of force (**Additional Recommendation #3**).

Following staff level discussions, the latest draft of the Service's Procedure now provides that:

BWCs shall not be used as tools to carry out general surveillance and are not intended to be used to dissuade members of the public from exercising their lawful right to peaceful assembly, demonstration or protest. Officers at such events shall start recording their BWCs when they engage or are about to engage a member or members of the public to investigate a breach of the law or to attempt to enforce the law. An officer who is standing by and merely observing a peaceful assembly, lawful demonstration or protest shall not start recording her or his BWC. If an infraction of the law is occurring or the officer reasonably believes that one is about to occur then the officer shall start recording.

Status of Additional Recommendation #3: I consider this recommendation addressed.

Record keeping requirements with respect to BWC deactivation decisions

The version of the Procedure published as part of the agenda for the Board's November 24, 2020 public meeting, included two exceptions to the record-keeping obligations associated with deactivation of BWC's. These two exceptions related to circumstances where it is impossible to record a brief audible statement prior to deactivating the BWC and where making the recording would disclose confidential information.

To ensure appropriate and accountable decisions with respect to the de-activation of BWCs during police-civilian encounters, I recommended that the Service's Procedure be amended to instruct officers to make a deactivation notation in the officer's BWC and memorandum book, at the earliest opportunity, once any circumstances warranting an exception to that duty have come to an end (**Additional Recommendation #4**).

The latest draft of the Service's Procedure requires that police officers record a brief audible statement indicating the reason why the BWC is being stopped or its recording functions are being limited, in all circumstances, except where doing so would breach a duty to protect a Confidential Source.

Status of Additional Recommendation #4: Given the narrowing of the exceptions to the general rule of making a deactivation notification and the justifiable importance of the only remaining exception - protecting confidential sources - I consider this issue addressed.

Timely disclosure of relevant BWC recordings to independent oversight bodies

Given the importance of independent oversight and the evidentiary value of BWC recordings, I recommended that the sections of the Board's Policy dealing with annual auditing and annual reporting be amended to verify, and report on, the extent to which BWC recordings are being made available to the applicable independent oversight bodies in a complete and timely fashion (e.g. the Ontario Independent Police Review Director (the OIPRD) and the Special Investigations Unit (the SIU)) (**Additional Recommendation #5**).

Sections 38(a)(i) and (b) and 41(g) of the Policy enacted by the Board on November 24, 2020, require that the Chief of Police:

- Ensure that the Service conducts an annual audit that reviews body-worn camera recordings and meta-data for ... all incidents for which an investigation was initiated by the SIU or the OIPRD;
- Ensures that ... all requests for recordings from the SIU or the OIPRD were fulfilled in full and in a timely manner;

- Provide the Board with an annual report which will include ... the number, if any, of recordings requested by the SIU or the OIPRD that were not fulfilled within 30 days.

Status of Additional Recommendation #5: I consider this recommendation addressed.

Proactive public interest-based disclosure of BWC footage

To ensure transparent and accountable decision-making, particularly with respect to the police use of force, I recommended that the Procedure require that, if the Board or a member of the public requests the Chief to disclose a use of force-related BWC recording in the public interest and the Chief refuses to do so, the Chief provide the public with a justification for not releasing the recording (**Additional Recommendation #6**).

Section 29 of the Policy enacted by the Board on November 24, 2020, requires that the Chief “establish that ... the Service may refuse to release to a member of the public recordings where such refusal is in accordance with the *Municipal Freedom of Information and Protection of Privacy Act*, provided that the reason for the refusal is provided to the requestor in writing.”

The latest draft of the Procedure now provides further as follows:

In cases where the SIU is not involved or their involvement has ceased, the Service may release to the public recordings from body-worn cameras where such recordings depict interactions with members of the public where a compelling public interest exists (such as where there are allegations of discreditable conduct, improper conduct, misconduct or excessive or improper use of force by Service Members). Such ‘compelling public interest’ releases will only occur with the explicit authorization of the Chief of Police. *Where a specific request for such a release has been made to the Chief of Police and the Chief of Police decides that there should not be such a release, the Chief of Police will issue an explanation for that decision. (our emphasis)*

Status of Additional Recommendation #6: I consider this recommendation addressed.

B. Status of Outstanding Privacy-related Recommendations

The public’s reasonable expectation of privacy

In order to ensure that the BWC governance framework recognizes and protects the public’s reasonable expectation of privacy, I recommended that the Board and the Service review City of Toronto By-Law No. 689-2000 ensure that:

- Triggering events justifying retention of BWC recordings beyond the two year plus one day period are generally limited to circumstances where a recording is

determined to be relevant to an ongoing investigation or a criminal or civil proceeding (**Additional Recommendation #7**), and

- Unless indefinite detention is absolutely necessary, each applicable retention period comes with a clear rule dictating that, at the end of a reasonable period, secure destruction will be accomplished at the earliest opportunity (**Additional Recommendation #8**).

Status of Additional Recommendations #7 and #8: As reflected in Board Minute No: P181/20, the Board and the Service have committed to review By-Law No. 689-2000 to ensure it is aligned with the above recommendations. I look forward to being informed when these recommendations have been met.

I also recommended that the annual auditing and reporting requirements of the Policy be amended as follows:

- To ensure that calls for service related BWC recordings are handled in a manner consistent with the activation, deactivation, obstruction, access, retention and destruction requirements referenced in paragraphs (a) through (g) of the annual audit section of the Policy, I recommended that that section be amended to require that the Service conduct an annual audit of a sample of incidents during the reporting year that were initiated by a call for service (**Additional Recommendation #9**).
- The annual reporting section of the Policy be amended to require that the Chief's annual report to the Board include information about the number of potential privacy breaches that were investigated during the calendar year, the number determined to constitute a breach together with a summary description, the number of times my office was notified of the breach, and the number of individuals notified (**Additional Recommendation #10**).

Status of Additional Recommendations #9 and #10: Sections 38. a. iv. and 42(m) of the Policy enacted on November 24, 2020 reflect the above recommendations.

Further, I recommended that the Board ensure that the selected vendor and equipment is capable of supporting the Service's ability to comply with its statutory privacy and security requirements. In this context, I stated that it is critical that the Board satisfy itself that it has sufficient contractual terms in place with AXON Canada to support the Board's and the Service's compliance with all applicable privacy and security obligations (**Additional Recommendation #11**).

In a November 10, 2020 letter addressed to me, Chair Hart stated that Board staff had discussed these issues with the Service and, based on those discussions, Board staff were "satisfied that the necessary contractual terms were in place. Board staff will further verify this matter through a review of the confidential contract with Axon Canada."

Status of Additional Recommendation #11: I consider this recommendation addressed.

Additional safeguards to control the use and disclosure of BWC recordings

To address challenges associated with reconciling law enforcement duties with the need to mitigate the risks of using and disclosing BWC recordings for foreseen and unforeseen secondary purposes, I recommended that:

- the annual auditing and reporting requirements in the Policy be amended to ensure that the Service audit and report on the use and disclosure of BWC recordings to assess whether all sampled uses and disclosures were justified and necessary (**Additional Recommendation #12**); and,
- the Board and the Service commit to consulting with my office and any other appropriate agencies to help the Service identify the necessary *Youth Criminal Justice Act*-related safeguards (**Additional Recommendation #13**).

I understand that metadata associated with Service member access to BWC recordings will be generated and retained by the Service's BWC Program systems to enable the Service to perform necessary auditing and reporting functions. The necessary functionalities include the auditable logging of access for the purpose of facilitating the use or disclosure a BWC recording. This is reflected in the Procedure, which indicates that "all actions (e.g., recording, indexing, accessing, viewing, copying, redacting and deleting) in the BWC system are logged and auditable by Information Security. Audit logs are retained indefinitely."

As reflected in Chair Hart's November 10, 2020 letter, the Board and the Service have expressed their commitment to work with my office to identify and address necessary *Youth Criminal Justice Act*-related safeguards.

Status of Additional Recommendations #12 and #13: I consider Recommendation #12 addressed. With respect to Recommendation #13, I look forward to engaging the Board and the Service on the necessary follow-up work in the months ahead.

C. Conclusion

I am pleased that the Board and the Service have committed "to continue, on an ongoing basis, to engage with the Information and Privacy Commissioner of Ontario to consider future revisions to the Policy and Procedure, and review new evidence from the deployment of BWCs as it becomes available."

My office is committed to continuing to work with you, including on issues related to pre-event recording capacity, record retention and destruction, and *Youth Criminal Justice Act*-related safeguards. In addition, we look forward to receiving an update from the

Service about the status of the recommendations from its October 2017 “mugshot” database facial recognition system privacy impact assessment.

I also commend the Service for agreeing to amend its Procedure to explicitly require supervisors to review BWC recordings to “identify and address evidence of explicit or implicit bias and discrimination and determine the need for additional training or other measures.” The Board and the Service acknowledge that the Toronto BWC Program cannot, on its own, address and eliminate the effects of systemic racism on communities that interact with the Service. Alongside the effective implementation of the Board’s Race-Based Data Collection Policy, increasing accountability and public trust will require that the Service demonstrate its commitment to enhanced transparency with respect to the measures the Board and the Service employ to identify and respond to concerns about the policies and services it provides, as well as the conduct of its officers. Public trust requires that, to the greatest extent possible, the public receives timely access to information used by the Board and the Service to make decisions about, for example, discipline, training, and the adequacy of related governance. Only with such transparency, can the many officers who perform their duties faithfully earn the trust of the public they serve.

Based on the constructive engagement my office has had working with the Board and the Service throughout this consultation period, and the iterative dialogue from which we have gained practical insights into the operational use of BWCs, I have decided to draw from this positive experience to develop general BWC guidance for police services across Ontario. This provincial guidance will draw heavily on the advice we provided to the Toronto’s BWC governance framework, as well as what we learned from the perspective of the Service, the Board, and other key stakeholders who also contributed meaningfully to this process, including the Ontario Human Rights Commission. We intend to consult externally on our draft BWC guidance prior to publication and would very much appreciate receiving your input as part of this process.

We look forward to further BWC-related engagements with you, including the continuing implementation and enhancement of your BWC governance framework, the development of general guidance for BWC programs across Ontario, and your involvement at our January 28th event marking [International Privacy Day](#) that will be dedicated to the timely theme of BWCs.

Sincerely,

A handwritten signature in black ink, appearing to read "Patricia Kosseim". The signature is fluid and cursive, with a prominent flourish at the end.

Patricia Kosseim
Commissioner

Encl.