



# BODY-WORN CAMERAS POLICY DRAFT

## CONSULTATION GUIDE

October 19, 2020

The purpose of this guide is to facilitate a review of each component of the draft policy and obtain input, feedback and recommendations that will strengthen this policy.

### *Guiding Principles*

This section outlines the guiding principles for the policy, including the Board's commitment to ensuring equitable and accountable policing services to all members of Toronto's communities, as well as to protecting the privacy and dignity of members of the public who interact with the police.

The section also recognizes the risks that come with using body-worn cameras, primarily to privacy, and the need for clear governance of how the cameras are used for them to have the desired positive impact.

**Q1: Are there any other principles or risks that should be considered?**

### *Purpose of Policy*

This section outlines the purpose of the policy, specifically:

- Improving the transparency of the Service with regards to allegations of discreditable conduct, improper conduct, misconduct and excessive or improper use of force by Service Members;
- Ensuring the accountability of the Service and Service Members through internal and public oversight systems;
- Protecting individuals' right to privacy by limiting access to recordings from body-worn cameras to the greatest extent possible and to as limited a number of people as possible;
- Ensuring individuals have access to personal information pertaining to them which is collected by the body-worn cameras;
- Enhancing public trust and police legitimacy;
- Enhancing public and police officer safety;
- Enhancing the commitment to bias-free service delivery by Service Members to the public;
- Providing improved evidence for investigative, judicial and oversight purposes;
- Ensuring timely and fair response to misconduct allegations against Service Members, in a manner that enhances public and Member confidence in the Service's complaint process; and
- Providing information as to the effectiveness of Service procedures and training.

**Q2: Is there anything missing from this section that should be included? If yes, what information is missing and what should be included?**

### *Policy of the Board*

The following sections outline how the procedure, which the Chief of the TPS is required to create, should be developed. These sections address the legal authority for the collection of data, when and how to use the cameras, controls to be used by the TPS, transparency requirements, retention and disposal of recordings, use of the recordings, and auditing and public reporting on the use of the cameras and the recordings. Notably, as a Policy, this document sets the minimum requirements that

the Chief of Police must achieve in the Procedure. The Chief may go beyond these minimum requirements.

### *General*

This section requires the TPS to follow the recommendations issued by the Office of the Privacy Commissioner of Canada and other sources of information for best practices, to clearly identify the legal authority for the collection of personal information that guides the TPS's procedure, and to ensure the use of body-worn cameras is consistent with the *Ontario Human Rights Code*.

**Q3: Are there other sources of expertise or legal authority that the Policy should require the TPS to use in the development of its Procedure?**

### *When and How to Use Body-Worn Cameras*

This section sets the minimum standards for the activation of the body-worn cameras, and sets strict limitations on when they may be deactivated. The purpose of this section is to ensure that all interactions between an officer and a member of the public are captured in full by the cameras, and that individuals interacting with the officers will be made aware that they are being recorded.

The Policy makes the following exceptions:

1. When entering a private residence or a private place (e.g., a private office) consensually, the officers will inform the occupant(s) that they are recording the interaction, and will ask the occupant(s) if they ask that the cameras be turned off;
2. During some situations of a sensitive nature, for example when coming upon a person in a state of undress, the officer is allowed to *temporarily* cover the lens (but not the microphone) while they taking steps of protect the dignity of the individual, such as covering them;
3. During Indigenous spiritual ceremonies, officers will deactivate their cameras for the duration of the ceremony;
4. When attending at a healthcare facilities, under certain circumstances to be determined by the Chief in consultation with the Information and Privacy Commissioner, officers will deactivate their cameras to protect the dignity and privacy of members of the public;
5. When recording is prohibited by law, officers must respect that prohibition as well.

While all interactions are to be captured, the Policy clearly states that the body-worn cameras are *not* to be used as a surveillance device outside of an interaction with a member of the public.

**Q4: Should there be more situations in which the Policy should require the body-worn camera to be activated? Which ones?**

**Q5: Should there be more situations in which the Policy should require the body-worn camera to be deactivated? Which ones?**

**Q6: Is the direction allowing for the covering of the lens during situations of a sensitive nature sufficiently clear? Should it be further constrained/removed?**

**Q7: Should there be more situations in which the Policy should allow officers to cover the lens?**

Q8: Should officers be allowed or required to mute the microphone under any circumstances during an interaction? Which ones?

Q9: During spiritual ceremonies, should cameras be required to be deactivated? Should officers ask for permission to activate the camera? Or should the cameras be on by default and the officers should ask if the person conducting the ceremony wishes to have them turned off?

Q10: The purposes of the Policy include protecting the privacy of members of the public by restricting access to recordings. Is that protection sufficient provided the breadth of situations that will be recorded by body-worn cameras?

Q11: Are there any other possible uses of the cameras that the Policy should explicitly ban, which are not covered by section 6, which states that cameras may not be used a general surveillance device to record activity that is not a direct interaction between an officer and a member of the public?

### *Controls*

This section establishes required checks and controls over Service Members to ensure compliance with the Policy. These controls include training, record keeping, supervisory review, and a discipline framework.

Q12: Are these controls sufficient to ensure that the Policy achieves its purpose of enhancing the accountability of the Service? Are any additional controls or changes to these controls necessary?

### *Transparency*

This Section ensures that the public will be made aware of all the duties of TPS officers and the rights of members of the public with regards to body-worn cameras. Importantly, this section requires the TPS to make its body-worn camera procedure public. Note that this Policy does not discuss the initial communication strategy that the TPS will be required to implement to inform the public about the deployment of the body-worn cameras, but rather only permanent measures.

Q13: Are there any additional measures that the Board should take or require the TPS to take, to ensure transparency in the deployment and use of the body-worn cameras?

### *Secure Retention and Disposal of Recordings*

This section establishes the framework for the secure storage of recordings and related meta-data collected by the body-worn camera, the minimum duration for which recordings must be kept and that this duration may be extended under specific conditions, and the manner in which recordings must be destroyed once their retention period has expired. This framework must be developed in accordance with all applicable legislation, and in consultation with the Information and Privacy Commissioner of Ontario.

The section also describes the actions the TPS must take in the case of a data breach to mitigate the breach and inform the public and any potentially impacted individuals.

Q14: Are there any missing elements to the retention and disposal framework, to ensure the privacy of members of the public who were captured in the recordings?

### *Limited Access to Body-Worn Camera Recordings*

The Policy emphasizes that the privacy of members of the public will be protected by limiting access to recordings to the greatest extent possible. This section identifies the individuals and roles who will be granted access to specific recordings, and the condition for such access.

- The officer whose body-worn camera has made a recording will be allowed access to their recordings, but only after all initial reports were filled out. Any addenda to their notes must clearly indicate that it was made after reviewing the recordings. This ensures that initial reports reflect how the officer perceived the incident while it was taking place.
- Other TPS Members may be granted access based on their role in relation to the recording. For example, supervisors may be granted access to recordings made by officers under their supervision under certain conditions.
- Recordings may be used for training purposes only after the identities of all members of the public in the recordings were concealed through image blurring and voice distortion, or similar measures.
- Independent oversight bodies, such as the Special Investigations Unit, will be able to access recordings when conducting related investigations. This further serves the purpose of increasing the TPS's accountability.
- Other individuals and bodies may obtain lawful authority, e.g., by law or court decision, to gain access to specific recordings. The TPS will grant such access where required.
- Access may be granted to members of the public who interacted with TPS officers and captured on a recording, as well as the parents or guardians of minors who interacted with officers and the next-of-kin of deceased individuals who interacted with officers. Recordings provided to members of the public will be full and unedited with the exception of image blurring and voice distortion or similar measures to conceal the identity of other members of the public other than the requestor.
  - The TPS may refuse access to a member of the public under certain conditions. These conditions are established by the *Municipal Freedom of Information and Protection of Privacy Act*, and include where such release may:
    - interfere with a law enforcement matter;
    - interfere with an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;
    - reveal investigative techniques and procedures currently in use or likely to be used in law enforcement;
    - disclose the identity of a confidential source of information in respect of a law enforcement matter, or disclose information furnished only by the confidential source;
    - endanger the life or physical safety of a law enforcement officer or any other person;
    - deprive a person of the right to a fair trial or impartial adjudication;

- interfere with the gathering of or reveal law enforcement intelligence information respecting organizations or persons;
  - reveal a record which has been confiscated from a person by a peace officer in accordance with an Act or regulation;
  - endanger the security of a building or the security of a vehicle carrying items, or of a system or procedure established for the protection of items, for which protection is reasonably required;
  - facilitate the escape from custody of a person who is under lawful detention;
  - jeopardize the security of a centre for lawful detention;
  - facilitate the commission of an unlawful act or hamper the control of crime;
  - constitute an offence under an Act of Parliament; or
  - be expected to expose the author of the record or any person who has been quoted or paraphrased in the record to civil liability.
- When warranted by the public interest, the Chief of Police can decide to release a recording to the public. This recording must be full and unedited, with the exception of image blurring and voice distortion or similar measures to conceal the identity of members of the public.

Firmer restrictions to access will apply in accordance with the law to recordings where minors suspected of an offence or who were witnesses to a suspected offence were captured.

Any access to a recording will be documented and an audit trail will be maintained by the TPS, including at a minimum the identity of the requestor, the reason for the request, the time of access, and whether a copy was provided to the requestor where the TPS was required to do so.

In addition, this section bans the use of the body-worn cameras in combination with facial recognition technology or to create a searchable database. The sole exception is using the recordings in combination with the TPS's database of "mugshots" to identify suspects. Any request for a change in this ban must be accompanied by a Privacy Impact Assessment. Additional restrictions apply to the use of recordings made during protests in combination with the TPS's mugshot database, to ensure the public's freedom of peaceful assembly.

Q15: Are these restrictions sufficient to protect the privacy of members of the public whose interactions with the TPS are captured by the body-worn cameras? What additional restrictions are necessary?

Q16: Should any other individuals or bodies be allowed to access recordings? Who, and under what circumstances?

Q17: Should to Policy specifically ban any other potential uses of the recordings? Which ones?

### *Auditing and Public Reporting*

The TPS will be required to conduct an annual audit of the body-worn camera recordings to ensure compliance and the effectiveness of the current procedure in capturing interactions in full.

The findings of this audit will be included in an annual report to the Board, which will also include overall statistics on stored recordings, statistics on failures to record interactions, statistics on access to recordings by different requestors, statistics on recordings release to the public, complaints with regard

to body-worn camera use, and a review by the TPS establishing whether the body-worn camera initiative is achieving the purposes as set in the Policy.

Finally, the Policy itself must be reviewed on a regular basis to ensure that it effectively achieves its purposes and follows current best practices, and make any amendments necessary to improve its ability to achieve this.

Q18: Are there any other items the TPS should report on to the Board as part of its annual report on body-worn cameras? What are they?

Q19: Does this framework sufficiently address the purpose of public transparency with regards to body-worn camera use? What changes should be made to it?