



October 29, 2020

Dr. Dubi Kanengisser  
Senior Advisor Toronto Police Services Board  
40 College Street, 7th Floor  
Toronto, ON M5G 2J3

**Re: Body-worn Camera Policy Consultation**

Dear Dr. Kanengisser,

I would like to thank the Toronto Police Services Board (TPSB) for reaching out to invite me to review the TPSB draft body-worn camera (BWC) policy in conjunction with the Toronto Police Service's (TPS) draft BWC procedure. It is my opinion that police have expertise (craft knowledge) unique to their profession, but that police services that work in consultation with their communities are better positioned to provide quality services that satisfy their communities while also making the work of policing easier.

I am a criminologist with a specialization in policing research, particularly police use of data collection and management technologies, and I have researched and written about police use of BWCs specifically. I was a partner on the evaluation of the Chicago Police Department's BWC pilot and led the Durham Regional Police Service's and Guelph Police Service's BWC pilot evaluations. I have undertaken efforts to promote the adoption of standardized BWC policy by Canadian police as evidenced by my production of a BWC Policy Framework that I continue to develop with the Canadian Association of Chiefs of Police (CACCP). It is my belief that policy standardization is necessary to promoting consistency in the use of BWCs by Canadian police and that thoughtful consultation with stakeholders affected by the technology's adoption is critical to promoting the use of BWCs in ways that advance policing as a service to communities. In preparing my remarks, I reviewed the consultation guide, draft procedure, and draft policy circulated by the TPSB among other materials.

I will begin by stating that I believe the BWC policy (which I will use from this point forward to collectively refer to the combined contents of the TPS Procedure and TPSB Policy) is developing well in that it incorporates many themes within international and domestic best practice guidelines. For example, the policy requires that the BWC user notify those they come in contact with of BWC use, adopts a non-continuous recording policy, is specific about when users should activate and deactivate the BWC, and articulates the purposes of BWC adoption (and these purposes speak to the perspectives of both officer and community members as stakeholders). Having acknowledged the well-developed state of the policy, I will now draw attention to ways

in which I believe it would be beneficial for the policy to continue to evolve while referencing relevant framing questions posed by the TPSB in the consultation guide.

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

I support the existing policy decision that allows officers to cover the BWC lens in circumstances that may compromise human dignity, and I suggest that the final policy consider further limiting the capture of visual data when officers are engaged with victims of particular crimes. Emerging evidence suggests that survivors of intimate partner violence and/or sexual assault are uncomfortable<sup>1</sup> with the idea of being filmed by a BWC during their interaction with police (see Saulnier et al., 2020). The existence of a visual record was an explicit concern. Further research is needed to speak authoritatively on the development of victim-sensitive BWC policy, but, at a minimum, when a victim of intimate partner violence and/or sexual assault expresses discomfort with a BWC's presence, it seems reasonable to consider discontinuing video recording while continuing audio recording. While it is important that officers retain the right to re-initiate video recording based on the circumstances of the call (e.g., the officer is concerned about the need to use force), fostering environments that encourage victim comfort and disclosure should be a paramount concern of police.

*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?*

I believe that the policy includes a sufficient set of controls to enhance the accountability of the Service, but, alongside the Ontario Human Rights Commission (OHRC), I recommend that the details of intended BWC review by supervisors be more explicitly specified. This is a recommendation that is connected to enhancing Service accountability, but simultaneously has important implications for officers' perceptions of organizational justice. In any profession, an employee might feel targeted by their supervisor through workplace surveillance – that they are subject to scrutiny that their co-workers are not. By transparently presenting the details of the supervisory review process (including the procedure by which videos are selected for review and the criteria used to evaluate performance), the policy is theoretically better positioned to promote organizational justice and its desirable consequences (e.g., diminished employee burn-out, increased employee satisfaction).

*Q15: Are these restrictions [on access to BWC recordings] 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?*

I am, largely, satisfied with the restrictions on access to BWC footage. I will raise one concern that calls for a more restrictive policy and a second concern that calls for a less restrictive policy.

First, in agreement with the Canadian Civil Liberties Association (CCLA) and OHRC, I recommend that a moratorium be placed on the pairing of BWC technology with facial

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<sup>1</sup> This does not mean that victims were not supportive of police use of BWCs – Saulnier et al.'s (2020) limited sample was largely in favour of police adoption of BWCs.

recognition technology (or other means of biometric identification) by the TPS at this time. It should be acknowledged that the capabilities of facial recognition technologies have been improving dramatically year over year, but those are in ideal conditions – where lighting, face position, and mood portrayed are all held quite constant. While a mug shot may be capable of producing those ideal conditions, we must be highly critical of whether we expect a BWC being used in the field to produce such an image. What this theoretically amounts to in application are misidentifications – both false positives (which could badly infringe upon a person’s rights) and false negatives (which could affect the direction of police investigations). Alongside the CCLA and OHRC, my position is that “a full dedicated consultation, privacy impact assessment, and human rights impact assessment must first be undertaken” if there is an intention to link BWC footage with biometric identification by TPS. In this way, I believe that the policy should strike a more restrictive stance on access to BWC data.

However, in another way, I believe a slightly more permissive policy (or perhaps, simply the articulation of the policy) would be useful in the pursuit of public trust and police transparency. While I am highly supportive of a BWC policy that does not generally involve the disclosure of BWC videos to the public (which is the default position in Canadian policing), I am also highly supportive of a policy that allows footage to be disclosed to the public when there is a collective public demand to see a video. In the interest of maintaining the privacy and supporting the dignity of persons featured in police BWC videos, I believe that the overwhelming majority of BWC videos should never be available to the general public; however, the police do serve the public, and there are instances in which the public, as a collective, demand to see the contents of a BWC video. In such circumstances, it is my opinion that a police service has an obligation to disclose that video (in a redacted form, as indicated in the policy). I believe that such an approach is in the Service’s best interest, allowing the Service to justify their support or condemnation of the action(s) of the officer(s) in question, and, of course, demonstrating transparency to the public. My recommendation regarding this element of the policy is that what constitutes a demand from the public be more explicitly stated (e.g., does this take the form of a petition with a certain number of signatures?). While a Chief can always retain discretion to release a video in advance of a designated threshold being reached, the existence of a firm threshold may provide an indicator of public control over the activities of a police service that support accountability and transparency.

*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?*

Given that a stated purpose of the adoption of BWCs is “Providing improved evidence for investigative, judicial and oversight purposes,” I recommend the production of statistics related to this purpose. In particular, I recommend tracking the number of cases that resulted in tickets / criminal charges that were accompanied by *evidentiary* versus *asset* BWC footage. BWC footage of evidentiary value refers to footage that captures an offence, an incriminating spontaneous utterance, a confession, or physical evidence. All other BWC footage is simply considered an asset – it is (ideally) a documentation of an officer competently performing his or her job, and is of little value in court so long as the officer conducted themselves in a way that was procedurally correct. In addition, annual report statistics should document the resolution of cases (pro-prosecution versus pro-defence) and whether cases were resolved prior to court (indicative of the

decreased use of criminal justice system (CJS) resources), with cases broken down by the aforementioned existence of evidentiary versus asset BWC footage. It is useful for the Service, its CJS partners, and the research community to have access to this information. This information would more fully document the effects of BWC use, and also present the opportunity to streamline the labour of CJS partners such as prosecutors (i.e., requiring officers to label BWC videos as either evidentiary or asset (alongside providing a brief synopsis) helps to communicate to prosecutors the importance of BWC video to a case and, therefore, the resources that should be dedicated to its review). Tracking such statistics would also be useful to informing the general public's understanding of the utility of BWCs (in particular, that perhaps only a low number of BWC videos are labelled as evidentiary).

I also recommend that annual report statistics speak more clearly to the purpose of “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.” The TPSB has requested that statistics related to ‘complaints with regards to BWC use’ be reported annually, and these are valuable, but, in my opinion, it is also valuable to document statistics associated with complaints more generally as they pertain to BWCs. In particular: (1) How many complaints were issued against Members and for how many of those complaints was there a BWC video? (2) For the complaints that had a BWC video, what is the distribution of complaint resolutions (i.e., unresolved, substantiated, unsubstantiated)?

*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?*

In reading the policy, I made note of some topics that I would like to see described in greater detail. Here, I list three topics that I would recommend discussing more explicitly in the interest of transparency.

First, given that users are not recording continuously, I assume that BWCs will be left in a buffering mode. I would recommend specifying the details of this mode, such as: buffering length (e.g., 30 seconds), and whether only video or also audio content from the buffering mode will be transferred to permanent memory once the BWC is activated.

Second, while many BWC user responsibilities were explicitly listed, the policy fails to state whether it is the user’s responsibility to upload and/or catalogue BWC video (e.g., preparing a BWC log and/or synopsis). Responsibilities of other persons listed in the policy imply that these tasks fall to the user, but I would recommend that these details be explicitly stated so that members of the public have a clear reference point for understanding the chain of evidence associated with BWC footage. Clearly describing the cataloguing of BWC video also promotes the development of a simple and consistent labelling system for BWC videos – a feature that is essential for efficiently leveraging BWC footage during prosecution. As noted earlier in this letter, I recommend adopting a labelling system that includes having users catalogue all BWC videos as either (1) evidentiary (e.g., capturing an offence, incriminating utterance, physical evidence, or a confession) or (2) asset (e.g., capturing an officer carrying out their duties without capturing known evidentiary content). This labelling system will assist prosecutors in managing BWC video and assist analysts in tracking the effects of BWC use on court outcomes.

Finally, although I am very confident that it is the prerogative of the policy that no one without specialized access is capable of modifying or deleting a BWC recording, I recommend that these details be explicitly stated (particularly as they pertain to the capabilities of frontline members). I believe explicit statements on these details avoid overestimating general public knowledge about the functioning of a BWC program that, if not explicitly stated, may prompt assumptions that the Service's practices are not accountable or transparent.

Sincerely,

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