



Sussex IFCA Body-Worn Video Camera Policy & Guidelines

1. Introduction & basic principles

1.1 This document sets out the Sussex IFCA's policy and procedural guidelines for the use of body-worn video cameras by Inshore Fisheries & Conservation Officers. It will enable officers to comply with the relevant legislation relating to video recording and outline the associated benefits to officers, fishers, any other stakeholders and members of the general public. It also documents best practice procedures with regard to the integrity of data, images and video as well as its security and use.

1.2 The use of a body-worn video camera by the Sussex IFCA is lawful under Common law.

1.3 A body-worn video camera forms part of an Inshore Fisheries & Conservation Officer's personal protective equipment. It is provided for health and safety purposes and for contemporaneous evidence capture.

1.4 The use of body-worn video can provide a number of benefits. These include enhanced contemporaneous evidence capture, which may be used to support Sussex IFCA and/or other enforcement agency prosecutions, and swifter justice by way of early guilty pleas and admissions. The cameras may deter acts of aggression or verbal and physical abuse towards officers and can also inform more appropriate sentencing. An audio & visual recording of an incident can show exactly what happened, exactly what was said, help to avoid disputes, reduce the time taken to establish important facts and clearly show the truth of many matters. The use of body-worn video cameras supports transparency, trust and confidence in the Sussex IFCA.

1.5 The use of body-worn video will be overt. The cameras are able to capture audio as well as visual imagery. It will be used in an overt manner and emphasized by officers wearing clear identification that it is a CCTV device. Officers will wear the body-worn video camera in a prominent forward-facing position and will make a verbal announcement, where practicable, that a recording is or is about to take place.

1.6 The operational use of body-worn video will be proportionate, legitimate and necessary. Compliance with the Human Rights Act 1998 (HRA), Data Protection Act 2018 (DPA), Protection of Freedoms Act 2012 and the Surveillance Camera Code of Practice 2013 will ensure the use of the camera is always proportionate, legitimate and necessary. Continuous, non-specific recording is not permitted.

1.7 The use of body-worn video will be incident specific. Officers will use common sense and sound judgement when using the equipment, in support of the principles of best evidence. Officers are required to justify their use of body worn video cameras.

1.8 Body-worn video does not replace conventional forms of evidence gathering (such as written statements and Police and Criminal Evidence Act 1984 interviews) but supports them. Officers will continue to follow current practices for achieving best evidence.

2. Legislation

The integrity of any video data recorded will be considered in accordance with the following legislation:

Data Protection Act 2018

General Data Protection Regulation (EU) 2016/679

Human Rights Act 1998

Criminal Procedure and Investigations Act 1996

Freedom of Information Act 2000

Protection of Freedoms Act 2012 and the Surveillance Camera Code of Practice 2013

2.1 Data Protection Act 2018

The Data Protection Act 2018 is a UK Act of Parliament which complements the EU's General Data Protection Regulation (GDPR). This Act makes provisions regarding the processing of personal data, where 'personal data' means any information relating to an identifiable data subject ('person'), and this data is processed by a set of operations being performed on it. This may include being processed on a computer, CCTV, stills camera or any other media. Any recorded image that captures an identifiable individual is covered by the Data Protection Act 2018.

The Act comprises six principles, which data controllers have a legal obligation to comply with. Principle 1 of the Act (fair and lawful processing) requires that the data must only be used for law enforcement purposes if the processing is necessary for the task to be carried out. The data subject must be informed of:

- The identity of the data controller, and
- The purpose(s) for which the controller processes the personal data

For the use of data processing within a law enforcement capacity, a "competent authority" means any person that has statutory functions for any law enforcement purpose, where "law enforcement purposes" are the purposes of the prevention, investigation, detection or prosecution of criminal offences. The GDPR provisions do not apply to data processed for the following [relevant] purposes:

- (a) The prevention and detection of crime
- (b) The apprehension or prosecution of offenders

The Act requires this information to be made clear to those individuals whose personal data will be processed. In the context of body-worn video, this is those who are included in the recording. There are various ways to inform data subjects that they are being recorded, including verbally at the time they are being recorded or, if this is not practicable because of an ongoing incident, as soon as possible afterwards. However, as a general rule, where an officer is in uniform and is clearly carrying or wearing a suitably identified camera (clearly labelled as an audio and visual recording device) this condition is considered to have been satisfied.

Where an individual asks to view footage, this is called a 'Subject Access Request'. The requester is only allowed to see footage of themselves and anyone who has provided consent for their images to be viewed by them.

2.1(a) Sussex Inshore Fisheries & Conservation Officers will:

- Identify themselves
- Announce, where possible/practicable, to the subject(s) of an encounter that video and audio recording is taking place using a body-worn video
- Explain why the body-worn video is in use and the intended use of the footage obtained
- Be aware that any persons included in a body-worn video recording are entitled to obtain a copy via a subject access request
- Be able to explain the process for obtaining a copy

2.2 Human Rights Act 1998

Article 6 provides for the right to a fair trial. All images captured through the use of a body worn device have the potential to be used in court proceedings and must be safeguarded by an audit trail in the same way as any other evidence.

Article 8 of the Human Rights Act 1998 concerns the right for private and family life, home and correspondence. Recordings of persons in a public place are only public for those present at the time and can still be regarded as potentially private. Any recorded conversation between members of the public should always be considered private and officers using body-worn video equipment should not record beyond what is necessary for evidential purposes.

2.3 Criminal Procedure and Investigations Act 1996

The Criminal Procedure and Investigations Act 1996 (CPIA) introduced the statutory test for disclosing material to the defence in criminal cases.

The Sussex IFCA must be able to disclose both used and unused images and demonstrate that this has been done. Deleting any Sussex IFCA-generated images (or a third-party's images in the Sussex IFCA's possession) prior to their respective retention periods may amount to a breach of the Act if they are not then available for disclosure. The Sussex IFCA must retain images relevant to an investigation in accordance with the Code of Practice issued under section 23 of the CPIA.

2.4 Freedom of Information Act 2000

The Freedom of Information Act 2000 (FOIA) grants a general right of access to all types of recorded information held by public authorities, which may include digital images recorded by body-worn video cameras.

2.5 Protection of Freedoms Act 2012 and the Surveillance Camera Code of

Practice

Part 2 of the Protection of Freedoms Act 2012 deals with the regulation of CCTV and other surveillance camera technology and introduces the 'Surveillance Camera Code of Practice.' Section 29(6)(b) of the Act states that this code covers any other systems for recording or viewing visual images for surveillance purposes; this includes body-worn video.

Section 33(5) specifies relevant authorities who are placed under a duty to have regard to the code. Consequently, the Sussex IFCA must consider the code and its 12 guiding principles. The content will be relevant when a court takes into account whether the Authority has shown regard to the guidance in the code when exercising any of its functions, including the decision to activate body-worn video equipment.

3 Operational Guidance & Best Practice

3.1 Training

All officers will receive training in the use of body-worn video cameras. This training will include practical use of equipment, operational guidance and best practice, when to commence and cease recording and the legal implications of using such equipment.

3.2 Daily use

At the commencement of each patrol the officer will ensure that the unit is fully functioning and that it has been cleared of all previous recordings. This check will also include verifying that the unit is fully charged and that the date and time displayed is correct.

3.3 Recording an incident – basic principles and techniques

The decision to record or not to record an incident rests with the individual officer. However, officers should record incidents when they suspect the commission of an offence or when there is a risk to them of physical harm and/or a likelihood of threatening, abusive, insulting words or behaviour.

Under normal circumstances, all officers wearing body-worn video cameras that are present at an evidential encounter, regardless of the fact that other officers with cameras may be present, should record the incident.

Officers may not indiscriminately record entire duties or patrols. Recordings must be incident specific (whether or not the recording is ultimately required for use as evidence).

All recordings can be used in evidence, even if it appears to the officer at the time of the incident that this is unlikely (e.g. a vessel inspection with no infringements noted). All recordings should be treated as evidential until it is confirmed otherwise. If it becomes obvious that the recording will not be evidential, unless there are other extenuating circumstances, the officer should stop recording immediately. Consideration should always be given to what is being recorded and how this might be presented or shown in court.

Officers should capture as much evidence as possible (including the context of the encounter) and should always try to record as much of an incident as possible. Officers should begin recording at the start of an incident or at the earliest opportunity thereafter.

In order to comply with the Data Protection Act 1998 and the Human Rights Act 1998,

wherever practicable, officers should restrict recording to the areas and persons necessary in order to obtain evidence and intelligence relevant to the incident. Officers should always attempt to minimize collateral intrusion on those not involved.

3.4 Starting a recording

At the start of any recording, the officer will, where practicable, make a verbal announcement to indicate that the body-worn video equipment has been activated. This announcement should be captured on the recording and, if possible, should include:

- The nature of the incident to which the officer is deployed
- Confirmation to those present that the incident is now being recorded using both video and audio.

If the recording has started prior to the officer's arrival at the scene of an incident, they should, as soon as is practicable, announce to those present that recording is taking place and that their actions and sounds are being recorded. Announcements should be made using straightforward language that can be easily understood, such as:

'I am audio and video-recording you'

'I am audio and video-recording this incident'

'Everything you say and do is being recorded'.

As previously covered in the Data Protection Act 1998 section above officers will:

- Identify themselves
- Announce, where possible/practicable, to the subject(s) of an encounter that video and audio recording is taking place using a body-worn video
- Explain why the body-worn video is in use and the intended use of the footage obtained
- Be aware that any persons included in a body-worn video recording are entitled to obtain a copy via a subject access request
- Be able to explain the process for obtaining a copy

3.5 Making a commentary while filming

Some evidential information may take place out of view or hearing of the camera or microphone. Officers should provide a running commentary detailing evidence not present in the video to assist the viewer.

3.6 Concluding a recording

Unless specific circumstances dictate otherwise, recording must continue uninterrupted from the moment it starts until the conclusion of the incident or the resumption of general patrolling.

The user should continue to record for a short period after the incident to clearly demonstrate to any subsequent viewer that the incident has concluded and that the user has resumed other duties or activities.

Where practicable, officers should make an announcement that the recording is about to finish and the reason for its conclusion. This should state:

- The date, time and location
- The reason for concluding the recording.

Once a recording has been completed, the recorded data becomes Sussex IFCA information. The officer recording must not, therefore, delete any recorded material that may be relevant to an investigation. The Sussex IFCA will maintain a full audit trail to protect the subject of the footage and the recorder. Any breach of the code may render the recording officer liable to disciplinary action or adverse comment in criminal proceedings.

3.7 Selective capture

Officers should record entire encounters from beginning to end without interrupting the recording. There will, however, be occasions when an officer may wish to consider interrupting the recording of an incident. In such circumstances the officer may decide to start and stop recording at any point during an encounter. This practice is referred to as selective capture.

For example, it may be necessary to stop recording an incident in cases of a sensitive nature or if the incident has concluded prior to the arrival of the officer. In all cases the officer should exercise their professional judgement in deciding whether or not to record all or part of an incident.

If the officer chooses to interrupt or cease recording at an ongoing incident, they should record their decision and rationale (if practicable in the circumstances) by making a suitable verbal statement on the body-worn video footage and also in a pocket notebook or other log.

Selective capture never involves deleting images. There are no circumstances in which the recording officer can justify unauthorised deletion of any images that have already been recorded. Any such action may result in legal or disciplinary proceedings.

3.8 Relying on body-worn video recordings as evidence and partial recordings

Body-worn video material should be used to corroborate, rather than replace, traditional written statements and officers should not rely on the equipment for providing their evidence.

Although a body-worn video recording may provide compelling evidence, it will not necessarily prove all aspects of a case and officers must always be prepared to provide written evidence of anything pertinent to the case and not wholly represented by the recording.

Some incidents may be only partially recorded. This may be as a result of the incident not being fully visible to the operator or owing to some technical or physical failings of the equipment. Similarly, problems with the equipment or prominent background noises may affect the clarity of the audio recording.

In such instances it is likely that the recording will be incomplete and it may be necessary for the officer to give evidence of anything missing from or not discernable in the recording.

It may not be obvious to the officer that such issues have occurred so officers should review recorded material as soon as practicable, to check for completeness of the recording.

Should there be a break during the recording of an incident, the officer must retain and produce any material that is created and then supplement this with a written statement detailing any other necessary evidence.

If the officer becomes aware of a break in recording and it can be rectified quickly they should do so, explaining by verbal statement what happened when the recording recommences. If, however, it is not possible to continue recording, the officer should make a pocket notebook entry covering the incident.

If an incident is only partially recorded because of equipment failure, the officer should produce the recorded evidence as usual and provide a statement covering the entire incident. This should include the reason, if known, for the equipment failure.

3.9 When not to use a body-worn video camera

The use of body-worn cameras is not appropriate in some situations. The following list is for guidance only and is not exhaustive:

- Officers must respect legal privilege and must not record material that is, or is likely to be, subject to such protections.
- Clear justification will be required if recording in areas where individuals would have a strong expectation of privacy (for example, in a private residence or during an incident in a public area). Officers must consider the right to respect for private and family life (Article 8 of the Human Rights Act 1998) and must not record beyond that which is justifiable, lawful, proportionate and necessary for the evidential requirements of a case.
- The equipment should not be used for formal investigative interviews (e.g. To interview a witness for the purpose of preparing a statement), nor may it be used for interviewing suspects, as it would contravene Code C of the Police & Criminal Evidence Act 1984. It is also currently unsuitable for recording interviews with vulnerable or intimidated witnesses and victims.

3.10 Other evidential considerations

Officers must be careful that any commentary they make relates only to what they are doing or what can be seen. Material the court considers to be prejudicial will not be admitted. Officers may still be required to give verbal evidence and should not rely solely on a showing of body-worn video footage as evidence.

The evidential statement must include details of the audit trail for producing the master copy. In order to assist prosecution and defence solicitors, it is advisable that the statement producing the exhibit contains a summary paragraph outlining the evidential aspects of the incident and the recording. If there is any break in the recording, the user must include the details and the reason for this in their statement.

More than one officer may refer to the video evidence to confirm that it shows the incident that they are referring to. Their statements could say, for example, 'I have seen the video (exhibit x) and confirm that this is a recording of the incident that I attended.'

If a recording covers the whole incident, it is not essential for the recording officer to produce a written statement detailing the entire nature of the interactions contained in the material, as this is avoidable duplication. The officer's recollection, as expressed in their statement or pocket notebook entries, should be confined to parts of the

incident that are not properly shown or heard on the video material.

When producing their statement all officers involved in an incident should consider the video material and then add to that their recollection of any other parts of the incident that they witnessed. Each case should be considered on its merits to enable the officer to give their evidence in the most effective manner.

In some instances, an officer may decide not to use the body-worn video material and instead provide the evidence in a written statement. In this instance the video evidence should still be retained as unused material.

An officer may view their recorded footage at any time and for any reason.

3.11 Producing a statement after reviewing first account evidence

Body-worn video may be used to capture a first account and witnesses may be permitted to review their account prior to making and signing any written statement. Care must be taken to ensure that witnesses are not permitted access, in any way, to any aspect of the recording other than their own first account. Their statement should also refer to the fact that they have viewed the recording of their first account. This applies equally to officers, who may refer to their own body-worn video material prior to making any statement.

3.12 Audit trail

To prove the authenticity of recordings required as evidence in a trial at court, evidential continuity statements may be necessary. Such statements confirm that any securely stored master copy has not been tampered with in any way and must, therefore, include the following content:

- Equipment serial number/identifying mark
- Day, date and time the user took possession of the equipment (time A)
- Day, date, time and location the user commenced recording (time B)
- Day, date, time and location the user concluded recording (time C)
- Day, date, time and location that the master copy was created and retained in secure storage (time D)
- If any other person had access to or used the equipment between times A, B or C and time D (if so a statement will be required from that person).

3.13 Producing exhibits

To allow the recorded evidence to be presented in court, officers will preserve the master copy as an exhibit. Officers will not store evidence on removable storage cards/media.

Where body-worn video material is used as evidence, it will be an exhibit. If it is unused, the disclosure regime applies and the material must be disclosed on the relevant MG forms in a prosecution file.

3.14 Multiple recordings

Where more than one body-worn video device is present at the scene of an incident or the area of the incident is also covered by a CCTV system, the user in the case must ensure that all available material of the incident is secured as exhibits in

consideration of any defence arguments that may be presented.

3.15 Providing copies for the defence

Body-worn video material should be disclosed to the defence in the same manner as other case exhibits. It is important to ensure that copies to be served on the defence do not contain any sensitive information such as the addresses of witnesses. If necessary the officer in the case will produce an edited version of the DVD or CD-ROM and appropriately mark the copy as prepared for service on the defence.

3.16 Submitting material for a charging decision

The prosecutor should view all body-worn video material relating to the incident when making charging decisions. If this is not possible (for example, owing to technical limitations), the prosecutor making a charging decision may consider accepting a summary of what can be seen & heard on the footage.

A summary should be provided on the MG6 (case file evidence & information) in the first instance by the officer in the case. The senior case file officer in charge of the overall investigation will also review the footage and provide a summary on the MG3 (report to the prosecutor for charging decisions/investigative advice) and submit this with the case papers to the prosecutor making the charging decision. The summary should be a report made by the person viewing the material and be a factual account of what can be observed, including descriptions and actions of those involved, and any relevant reaction of others present.

It is inappropriate and unacceptable bad practice for officers to send large volumes of recorded information to the prosecutor without indicating where in a particular recording the relevant evidence exists. Each and every recording must also include a reference point for the start and end of the relevant parts of the material, and indicate the extent to which other parts of the material have been viewed.

Material that is not to be used must be clearly scheduled as unused material, making clear exactly which parts are unused.

Although a summary of the evidence contained in the recording is normally sufficient for the routine disclosure required as part of the early indication of the prosecution case (advance information), evidential parts of recordings have to be disclosed on the defence for a known not guilty plea, or for trial where the recording is part of the prosecution case or it is required by the defence. The recordings may also have to be disclosed as part of the unused material processes.

Any recordings for service must not include sensitive data such as the addresses of witnesses. These recordings must be sent to the prosecutor properly edited and marked for service on the defence accordingly.

3.17 Storage

As soon as practicable, after any incident where a body-worn video camera has been used, the officer will download all recorded material onto the encrypted Sussex IFCA IT system and remove all recorded material from the body-worn video camera.

Images will be stored so that they are retrievable and accessible for replay and viewing, and kept in an environment that will not be detrimental to the quality or capacity for future viewing.

Working copies that the officer in the case no longer requires for investigation purposes may be stored with the relevant file until the accused is acquitted or convicted, or the prosecutor decides not to proceed with the case. When the officer in the case or prosecutor no longer requires a working copy, it should be securely disposed of. The master copy may remain on the secure system in case copies are required in the future (please see further guidelines below).

3.18 Retention and deletion

Overt filming raises significant human rights issues, notably the question of whether the action is compatible with the right to respect for private life protected by Article 8 of the Human Rights Act 1998.

Taking video recordings of incidents and individuals is not likely to be unlawful, provided that officers follow this guidance. If the Sussex IFCA wishes to retain such images & recordings, the purpose for which they were taken and their continuing retention has to be justified and proportionate. Once it becomes clear that the purpose for which the recordings was made is no longer valid or no longer exists, the possibility that the material could be of some legitimate use in the future is generally insufficient to justify continuing retention.

If the Sussex IFCA retains video recordings of incidents and persons, it must be justified and the justification must be compelling. Officers should adhere to the following principles when considering the use of overt body-worn video and retaining material:

- Is it in accordance with the law?
- Does it pursue a legitimate aim, for example, prevention of disorder or crime, is it in the interests of public safety, or is for the protection of the rights and/or freedoms of others?
- Is it necessary and proportionate?

In all but exceptional circumstances Sussex IFCA body-worn video footage, if forming part of a prosecution case, will be deleted and/or securely destroyed as soon as practicable from the date of acquittal or, in the case of a court conviction, as soon as practicable from 21 days after the date of the conviction. All other Sussex IFCA body-worn video footage obtained during the course of an officer's duty not forming part of a prosecution case or ongoing investigation should be deleted and/or securely destroyed as close as practicable to the officer first obtaining the material and within 31 days of the material first being obtained for any investigation to become apparent. Officers will make a record of the destruction of any non-evidential recording and prior to disposal will take all reasonable steps to ensure that the images are not required as evidence in any case or complaint under investigation.

3.19 Use as a training aid

The Sussex IFCA may use body-worn video material to review and enhance how incidents are dealt with, in so doing improving the professionalism of its compliance work and providing a powerful tool for behavioural change and continuous improvement.

If such footage is used as a training aid, the Sussex IFCA will ensure that the footage used for training does not contain, or is edited to remove, any personal data (for example, an individual being identifiable either directly through the footage or in

conjunction with other data that the Sussex IFCA may hold).

Material that is still subject to any legal proceedings or where it has been used in a recent prosecution must not be used for training purposes.

3.20 Sharing information with other agencies

Section 29(3) of the Data Protection Act 1998 allows the Sussex IFCA to share material with a statutory partner agency where it is necessary to prevent or detect crime, or apprehend or prosecute offenders.

All requests for body-worn video material will be risk assessed in line with the Sussex IFCA's policies and relevant legislation. Once the decision has been made to release material, the partner agency should be made aware that they are responsible for its appropriate use and storage. This may be done in writing; outlining the partner's responsibilities, including the extent of permitted use.

The Sussex IFCA will transfer material in a secure manner and maintain continuity of evidence, e.g. through a pocket notebook entry and exhibit label. The Sussex IFCA will maintain an audit trail.

References

College of Policing (2014) Body-Worn Video Professional Practice

Association of Chief Police Officers (2012) Good Practice Guide for Digital Evidence

Data Protection Act 2018

General Data Protection Regulation (EU) 2016/679

Freedom of Information Act 2000

Home Office (2007) Guidance for the Police Use of Body-Worn Video Devices

Human Rights Act 1998

Police and Criminal Evidence Act 1984

Protection of Freedoms Act 2012

Regulation of Investigatory Powers Act 2000

Home Office (2013) Surveillance Camera Code of Practice