

FILE NO: PSC2009-02488

TITLE: WORKPLACE SURVEILLANCE POLICY

OWNER: ORGANISATION SUPPORT SECTION MANAGER

1. PURPOSE:

- 1.1 The Workplace Surveillance Act 2005 (NSW) requires that workers and the community are made aware of surveillance undertaken by Port Stephens Council (Council).
- 1.2 The purpose of this policy is to comply with Council's legal obligations by informing workers and others of the surveillance devices used in our workplace and to enhance safety outcomes for Council.

2. CONTEXT/BACKGROUND:

- 2.1 The rights of Council, its employees and others, as prescribed in workplace surveillance and privacy legislation, calls for management processes to ensure continued legislative compliance. This Workplace Surveillance Policy establishes the protocol to meet Council's legislative obligations.
- 2.2 Technology advances have made optical devices commonplace through camera and tracking capabilities being part of most mobile devices. Council, in the course of its business, uses these devices. Individual workers have similar capabilities within a Council supplied mobile device or their personal mobile device.

3. SCOPE:

- 3.1 Council recognises its obligations to ensure, where reasonably practicable, a safe and healthy workplace for its workers and others.
- 3.2 The use of certain devices has the potential through the:
 - a) provision of tracking devices, to identify the geographical location of a worker, if they are in need of emergency assistance.
 - b) provision of CCTV, and surveillance cameras to deter a possible assailant and reduce the safety risks associated with workers and others, to deter assault, vandalism and criminal activity, and/or to capture evidence for environmental investigations.
 - c) monitoring of inputs and outputs of data to manage the risks associated with non-compliance to Council's Code of Conduct and Work Health and Safety (WHS) requirements.

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- 3.3 Existing workers of Council shall be notified of the installation and intent of tracking devices, CCTV camera and data surveillance through the dissemination of this policy.
- 3.4 Workers yet to commence with Council shall be given notification of this policy as part of their offer of employment. By accepting employment with Council, the worker will be consenting to the conducting of surveillance in accordance with this policy, immediately upon the commencement of employment with Council.
- 3.5 Information stemming from the use of surveillance, as outlined in this policy, will not be used for the purposes below:
- a) as the sole and primary means of disciplinary action.
 - b) to target or victimise employees.
 - c) as a form of real time employee performance monitoring.
- 3.5.1 This means that surveillance information can be used for disciplinary purposes only to substantiate allegations stemming from other sources. This prevents victimisation in the workplace and prevents the potential abuse of power on part of those who have access to the surveillance information.
- 3.5.2 It has the secondary benefit of not viewing employees under surveillance in terms of Lowest Common Denominator thinking, in that Council expects the worst from their employees. Trust in the workplace is a vital component to increase productivity beyond that of doing merely the bare minimum.
- 3.6 From time to time staff delegated under the Surveillance Devices Act 2007, as part of their role to assist with maintaining security and safety at Council owned facilities, may view CCTV vision to assist with these requirements of their role.
- 3.7 Tracking Devices
- 3.7.1 Council, at time, requires workers to work alone and in isolation to the general workplace. To reduce the risks associated with this, Council has introduced tracking devices to identify the location of the worker, should any emergency response be required. Where tracking devices are utilised, surveillance will be continuous and ongoing.
- 3.7.2 Increasingly, Council's vehicle fleet has equipment that provides back to base, real time capability with regard to location, engine revolutions per minute (RPM), gear ratio and other performance data through in vehicle management systems (IVMS). This data is invaluable in informing our process improvement activities and for identifying obstacles to our teams that currently prevents them from doing an even better job than they do now. Where a vehicle is supplied with an IVMS or GPS device, the vehicle will display notification that a device is installed in the vehicle.

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- 3.7.3 Where there is provision of the device in the vehicle, a risk assessment process shall be completed to ascertain the need for such device. This will occur prior to any operation or function of such device. If the risk assessment deems it necessary to install a device, the vehicle will display notification that a device is installed in the vehicle.
- 3.7.4 For an 'on person' device, workers will be informed that they are required to carry such a device whilst at work based on a risk assessment identifying the need for such a device. This will occur prior to any operation or function of any such device.
- 3.7.5 A representative from the Work Health and Safety Team shall be involved throughout all risk assessments undertaken under this policy.
- 3.7.6 All Council issued mobile devices that have GPS functionality, can be tracked by Council's Information Communication and Technology unit.
- 3.8 Closed Circuit Television
- 3.8.1 Council use CCTV surveillance cameras and overt/covert surveillance devices in and around various Council worksites and facilities. This camera surveillance monitors or records visual images of activities on premises or, in any other place. CCTV camera surveillance will be continuous and ongoing.
- 3.8.2 Signs are located within each site/location to identify the areas affected by the camera surveillance, and are clearly visible at each entrance to that site or location. In the event where Council is conducting an operation in relation to environmental offences and/or investigations, Council will not display signage.
- 3.8.3 Where Council intends to install new CCTV devices, workers will be notified prior to any operation or function of the new installations which occur after the date of acceptance of this policy by Council.
- 3.8.4 Council may use licence plate recognition devices and software to manage site access points and maintain accurate logs of vehicles visiting Council sites.
- 3.9 Use of Surveillance Records – Tracking Devices and CCTV
- 3.9.1 Council may use and disclose confidentially the surveillance records where that use or disclosure is for a purpose related to the matter raised below regarding workers and management of Council.
- 3.9.2 Council may also use and disclose the surveillance records where that use or disclosure is related to Council's business activities including:
- a) to a law enforcement agency in connection with an environmental offence or alleged environmental offence, a criminal offence or alleged criminal offence.

- b) in connection with bona-fide legal proceedings.
 - c) as reasonably believed to be necessary to avert an imminent threat of serious violence or substantial damage to property.
- 3.9.3 Examples of instances in which use or disclose surveillance records might occur include but, are not limited to:
- a) allegations of breaches of Council's Code of Conduct.
 - b) allegations of poor performance or unacceptable behaviour.
 - c) allegations of illegal dumping or other environmental offences.
 - d) if there is an assault, or suspected assault of a person.
 - e) if theft of Council's property (or that of a related entity of Council) is suspected.
 - f) criminal damage to Council's equipment or facilities (or that of a related corporation of Council) has occurred.
 - g) a serious WHS incident as defined by the Work Health and Safety Act 2011 (NSW).
 - h) by request of a worker and union representative regarding any bona-fide investigation.
- 3.9.4 All surveillance records are available under the Government Information (Public Access) Act 2009 (GIPA); however, persons wishing to access these records should be aware that there are provisions under GIPA that may override the release of the information.
- 3.9.5 Generally, CCTV surveillance records will not be used or disclosed unless that disclosure is:
- a) for a legitimate purpose related to employment of workers or legitimate business activities or functions of the employer.
 - b) to a member or officer of a law enforcement agency for use in connection with the detection, investigation or prosecution of a criminal offence.
 - c) for a purpose that is directly or indirectly related to the taking of criminal proceedings.
 - d) reasonably believed to be necessary to avert an imminent threat of serious violence to persons or of substantial damage to property.
- 3.10. Data Surveillance and Retrieval
- 3.10.1 The computer usage of workers is not routinely read or monitored, however, they are records of Council and shall be managed accordingly. At times, Council may retrieve or review electronic files, records and correspondence of workers. This applies to all Council's Information and Communication systems including telephones, mobile phones and mobile computing technology. Council also provides a number of software systems, which have the ability to track changes made to data.

3.10.2 Designated workers of Council are also required to utilise a variety of security systems such as silkeys and alarm systems, which provide access to Council sites based on unique logins allocated to workers. Surveillance of workers' use of all of these systems and equipment is undertaken by Council on a continual basis.

3.11 Camera Devices

3.11.1 Council frequently uses camera devices to take pictures, or videos, eg for the safety of its employees, promotions, press releases, training applications or incident/environmental investigations. At times, this may require including workers, and/or others in the picture or video. To comply with the relevant legislations, the following shall apply:

- a) a Council worker authorised to operate a Council camera device shall obtain express, or implied, consent from workers and or others, prior to taking the photograph or video.
- b) workers wishing to take pictures or videos from their personal camera device shall respect a person's privacy and obtain express or implied consent from that person or persons prior to taking the picture or video. Council shall devise such policy and procedures to facilitate this approval. In the event where relevant legislation proves that Council is not required to obtain consent from the person or persons prior to taking the picture or video, Council will follow the requirements as outlined in the applicable legislative provisions.
- c) pictures or videos of Council processes, procedures or practices shall not be taken without first obtaining permission from the worker's manager.
- d) managers shall ensure that pictures or videos for a use, other than for internal purposes, shall be approved by the Communications & Customer Experience Section Manager prior to use.

3.12 Recordings of Conversations

3.12.1 On occasion, Council may wish to record conversations. Council will not record a private conversation without the consent, of the principal parties to the private conversation or the persons who took part in the activity, as per the requirements of the Surveillance Devices Act 2007.

3.12.2 If expressly agreed, when a recording of a conversation is made in relation to a Council worker who is participating in an investigation, the worker will be offered to receive a copy of the recording together with a transcript of the recording if they elect to. This recording cannot occur without the express permission of the worker involved. Council, at no stage, will apply any duress for any interview to be recorded.

3.13 Confidentiality and Records

- 3.13.1 Council workers shall at all times exercise duty of confidentiality. Data shall only be released in compliance with the Workplace Surveillance Act 2005 (NSW) and on a need to know basis as prescribed by this policy or by a worker's request.
- 3.13.2 Non-compliance with duty of confidentiality requirements shall render a Council worker liable to disciplinary procedures which may include termination of employment.
- 3.13.3 All documents created in relation to this policy will be kept in accordance with the State Records Act 1998 (NSW) and Port Stephens Council's Records Management, Management Directive.
- 3.13.4 Members of the public can make applications to access Council's data in accordance with the Government Information Public Access (GIPA) Act 2009 and the Privacy and Personal Information Protection Act (PPIPA) 1998.
- 3.13.5 For the purposes of determining compliance to this policy, random audits will be undertaken of data generation and collection activities by Council's internal auditor. Audit results shall be reported to the relevant Group Manager for determination and the Consultative Committee for review.

3.14 Training

- 3.14.1 New workers shall be made aware of this policy during the induction process.
- 3.14.2 Record of worker's awareness of their internet obligations under this management directive shall be achieved by an on-screen declaration prior to internet access.
- 3.14.3 Record of under awareness and understanding of this management directive will be contained by the completion of toolboxing of the policy in accordance with the Toolbox Procedure and by publication on Council's Intranet and Internet Site.
- 3.14.4 Ongoing training and awareness of this policy shall be provided by Council management throughout the employment relationship.

3.15 Requesting access to information

- 3.15.1 All requests for information under this policy from members of the public will be assessed under the Government Information (Public Access) Act 2009.
- 3.15.2 All requests for data retrieval or review from workers (other than approved Information and Communication Technology workers) can only be approved by any 2 of the following workers, with the exception of the General Manager who may request data retrieval or review without the approval of another manager:

- a) the General Manager.
- b) a Group Manager.
- c) a Section Manager.
- d) the Legal Services Manager.
- e) the Human Resources Manager.

3.15.3 Any request must specify the reason for data retrieval or review, the specific period to be accessed and the Approved Worker(s) undertaking the investigation.

3.15.4 All requests and approvals must be given in writing. This shall not apply to requests where any individual piece of data directly related to a task being undertaken by a worker is required. In such case a request to gain the individual piece of data shall require approval from the worker's manager.

4. DEFINITIONS:

4.1 An outline of the key definitions of terms included in the policy.

Worker	In this policy, a worker has the same meaning as worker under section 7 of the Work Health and Safety Act 2011, being: <ul style="list-style-type: none">a) an employee.b) a contractor or subcontractor.c) an employee of a contractor or subcontractor.d) an employee of a labour hire company who has been assigned to work in the person's business or undertaking.e) an outworker.f) an apprentice or trainee.g) a student gaining work experience.h) a volunteer.i) a person of prescribed class.
Council	Port Stephens Council.
WHS	Work Health and Safety.
HSR	Health and Safety Representative.
Workplace	Means premises, or any other place, where employees work, or any part of such premises or place.
GPS	Global Positioning System.
IVMS	In Vehicle Management System.

5. STATEMENT:

- 5.1 Council recognises it has a number of electronic systems in place which are utilised for surveillance. The surveillance devices used by Council are primarily in place to assist Council to capture relevant data needed for the operation of Council's business, improve service delivery, enhance safety outcomes and ensure compliance with relevant legislative requirements.

6. RESPONSIBILITIES:

- 6.1 The Human Resources Manager is responsible for implementing, complying with, monitoring, evaluating, reviewing and providing advice on the policy.

7. RELATED DOCUMENTS:

- 7.1 Port Stephens Council Enterprise Agreement.
- 7.2 Code of Conduct.
- 7.3 Records Management Management Directive.
- 7.4 Information & Communication Technologies (ICT) Systems & Information Access & Cyber Security Management Directive.
- 7.5 Information & Communication Technologies (ICT) Assets Management Management Directive.
- 7.6 Information & Communication Technologies (ICT) Physical & Environmental Protection Management Management Directive.
- 7.7 Telecommunications Management Directive.
- 7.8 Toolbox Procedure.
- 7.9 State Records Act 1998 (NSW).
- 7.10 Local Government Act 1993 (NSW).
- 7.11 Workplace Surveillance Act 2005 (NSW).
- 7.12 Workplace Surveillance Regulation 2022 (NSW).
- 7.13 Surveillance Devices Act 2007 (NSW).
- 7.14 Privacy and Personal Information Protection Act 1998 (NSW).
- 7.15 Government Information (Public Access) Act 2009 (NSW).
- 7.16 Industrial Relations Act 1996 (NSW).

CONTROLLED DOCUMENT INFORMATION:

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Author	Human Resources Manager		

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VERSION HISTORY:

Version	Date	Author	Details	Min No
1	13/08/2013	Human Resources Manager	Adopted.	228
2	12/07/2016	Human Resources Manager	<p>The Workplace Surveillance Policy was reviewed and updated in the new policy template.</p> <p>Reference was changed to the Port Stephens Council Enterprise Agreement 2015.</p> <p>Policy reviewed and updated to ensure less duplication.</p> <p>Reference to Mobile Phones has been updated to Mobile Devices.</p> <p>Surveillance used for environmental investigations and offences has been included in this policy.</p> <p>Scope updated to clarify under what circumstances GPS surveillance will be used by Council.</p>	115
3	11/08/20	Human Resources Manager	<p>Updated into new template.</p> <p>3.7.5 – removed Health and Safety Representative (HSR) and replaced with ‘representative from the Work Health and Safety Team’.</p> <p>3.12.2 – changed wording to state that the Council worker will be offered a copy of the recording and transcript.</p> <p>3.15.2 d) – Remove position as no longer exists.</p> <p>7.12 - Changed Act Year to 2017.</p>	144

Version	Date	Author	Details	Min No
4	27/09/2022	Human Resources Manager	<p>3.6 – Deleted “who are required” and replaced with “delegated under the Surveillance Devices Act 2007”.</p> <p>3.7.1 – Deleted “may” and replaced with “has”.</p> <p>3.8.4 Deleted “From time to time staff who are required as part of their role to assist with maintaining security and safety at Council owned facilities may view CCTV vision to assist with these requirements to their role.</p> <p>3.8.4 - Replaced with “Council may use license plate recognition devices and software to manage site access points and maintain accurate logs of vehicles visiting Council sites.”</p> <p>3.11.1 – Minor grammatical correction.</p> <p>3.11.1 b) – Added “, Council will follow the requirements as outlined in the applicable legislative provisions”</p> <p>3.11.1 d) – Added “& Customer Experience” to reflect current naming convention.</p> <p>7.4 – Added “& Cyber Security”</p> <p>7.12 – Updated date for the Workplace Surveillance Regulation 2022 (NSW).</p> <p>Controlled document information:</p> <ul style="list-style-type: none"> • Updated process owner to Organisation Support Section Manager. • Amended review timeframe to 3 years in accordance with Council’s policy and management directive review timeframe. 	261