



Council use of and access to Surveillance Systems Policy

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Applicable Legislation:	<i>Local Government Act 1999</i> <i>Surveillance Devices Act 2016 (SA)</i> <i>State Records Act (1997) (SA)</i> <i>Freedom of Information Act (1991)</i> <i>Geographic Names Act (1996)</i> <i>Privacy Amendment Act (2012)</i>
Related Policies or Documents:	<i>Privacy Committee of South Australia Procedures (2009)</i>
Responsible Manager:	Chief Executive Officer
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Council use surveillance systems - Policy

1. Preamble

- 1.1 In seeking to protect its assets and create a safer environment for Kangaroo Island's residents and visitors, Council has developed this Policy to establish clear parameters for the use of surveillance systems as a means to prevent fees evasion, to discourage inappropriate behaviour and for the detection of crime on, in and to Council properties and facilities.
- 1.2 Council is committed to providing and maintaining quality community, recreational and tourism facilities, which both residents and visitors may enjoy, yet requires surveillance support to fulfil this commitment.
- 1.3 Council remains committed to the importance of handling confidential information and recognises the importance and the right of every person to not be unjustly monitored.

2. Purpose

- 2.1. The primary purpose of this policy is to ensure that the use of systems is legal and appropriate.
- 2.2. This policy aims to regulate the access to, and management of any material created in relation to surveillance systems.
- 2.3. The general uses for a surveillance system include, but are not limited to:
 - 2.3.1. discourage and/or detect unlawful behaviour in and around council owned or maintained property (including, where the context so requires, property under the care, control and management Council) thereby enhancing the safety and security of all people and property; and
 - 2.3.2. provide documentation and evidence of events to enhance the protection and safety of Council's staff, Customers, Councillors, the community, and visitors to the island and their assets.

3. Scope

- 3.1 This policy applies to and governs all surveillance systems within Kangaroo Island that are either owned, operated, and maintained by council.

4. Definitions

CCTV means Closed Circuit Television;

CEO means the Council's Chief Executive Officer;

Communication means all forms of communication with another person(s) and includes, any verbal, written, recorded image and physical forms of communication (e.g., via video recording, telephone, radio, letter, memo, email, social-media or in person);

Confidential information includes:

any images recorded, stored and reproduced by a surveillance device;

- decision, document or discussion regarding those recorded images;
- any matter deemed as confidential by the Management Team; and
- any information which would breach a person's right to the protection of their personal information, property and/or image.

Council means the Kangaroo Island Council;

Employee and Employees of Council including managers, staff, contractors, agency personnel, volunteers and work experience placements who are performing duties/tasks on behalf of the Council;

EM means all Elected Members of the Council, including the Mayor;

FOI Act means the *Freedom of Information Act 1991 (SA)*

GI means the General Inspector/s;

Listening Device is a device capable of being used to listen to or record a private conversation or words spoken to or by any person in private conversation (whether or not the device is also capable of operating as some other kind of surveillance device) and associated equipment (if any).

Media means all forms of public media and press including social-media, television, radio, newspapers and other publications;

Optical surveillance device is a device capable of being used to observe or record visually (whether for still or moving pictures) a person, place or activity and associated equipment (if any).

Resources means all property of the Council including buildings, land, consumables, plant (e.g., vehicles), equipment (e.g., CCTV, computers, photocopiers), Intellectual Property (documents, guidelines, regulations, Policies and Procedures, etc., that are not open to the public) and facilities (e.g., telephones, internet access).

SAPOL means the South Australian Police (those serving Kangaroo Island in particular).

SD ACT means the *Surveillance Devices Act 2016 (SA)*

Surveillance Device means

- (a) a listening device; or
- (b) an optical surveillance device; or
- (c) a tracking device; or
- (d) a data surveillance device; or
- (e) a device that is a combination of any of the devices referred to in a preceding paragraph; or
- (f) a device of a class or kind prescribed by the *Surveillance Devices regulations (2017) SA*

5. Policy Statement

5.1. Council's Approach

- 5.1.1. Surveillance system applications and monitoring specifications shall only be applied to Council owned, managed or occupied property.
- 5.1.2. Body-mounted or otherwise mobile surveillance devices will only be worn and activated by authorised users in undertaking their delegated roles and responsibilities.
- 5.1.3. Appropriate operating procedures shall be applied to all surveillance systems to ensure effective and ethical management of equipment and that the recorded information is appropriately maintained by authorised users, which includes SAPOL Officers. All surveillance systems installed will comply with the following:
 - 5.1.3.1. All surveillance systems controls and recorders must be located in a secure area;
 - 5.1.3.2. Access to surveillance systems controllers and recorders shall be limited only to authorised user(s).
- 5.1.4. All surveillance devices shall be integrated into the Council's wider current and future electronic security network to enable effective monitoring by Council, and SAPOL where agreed.

5.2. Obligations

- 5.2.1. Subject to the applicable law and noted Acts; Council undertakes to do all things reasonably necessary to manage the efficient operation the surveillance system, including:
 - 5.2.1.1. acquisition and installation of the necessary surveillance devices;
 - 5.2.1.2. acquisition and installation of surveillance notification signage, in line with Council's Policies and legislation, at all sites where the surveillance devices may be sited;
 - 5.2.1.3. liaising with SAPOL (Kangaroo Island) regarding surveillance device siting, recording, viewing and any actions where a possible unlawful activity has been captured on the resulting record;
 - 5.2.1.4. the scheduled and non-scheduled maintenance of the surveillance devices, including the supply of recording materials and consumables; and
 - 5.2.1.5. monitoring, evaluating, assessing and responding to the risk management issues involved with surveillance devices

5.3. Security of Information

- 5.3.1. Council will ensure appropriate security measures are in place to protect any confidential information from unauthorised use, access, modification or disclosure of records pertaining to the use of surveillance devices.
- 5.3.2. Council will ensure that any Employees authorised to access confidential information gathered under this policy will not record, disclose or communicate such information to any 3rd party except in the performance of their official functions.
- 5.3.3. Council will ensure any and all information gathered by the surveillance system that eventuate in an expiation notice or criminal proceedings will be stored in Council's Records Department secured safe and only available to persons other than the appropriate Council Employees and SAPOL through *Freedom of Information Act* (1991) processes, or as directed by a legal authority.

5.4. Access to surveillance system data

5.4.1. By Members of the Public:

Members of the public can apply under the Freedom of Information Act (1991) (SA) ('FOI Act') to view any official records kept by Council

Any application received under the FOI Act must be determined by an accredited Freedom of Information Officer. If the application is approved, a member of the public may then view the footage at the Council office or obtain a copy of the requested footage within a timeframe that is both reasonable and appropriate. If viewing at the Council office, an accredited FOI Officer or a staff member with express, written authority by the CEO will be present at all times to operate the viewing equipment.

5.4.2. By the Media:

The Kangaroo Island Council views the rights of the media to gain access to footage to be the same as for a member of the public. That is, an application will need to be made under the FOI Act and the provisions of that Act will apply.

5.4.3. By Elected Members:

Section 61(1) of the *Local Government Act* (1999) provides that 'a member of Council is entitled, at any reasonable time, in the connection with the performance or discharge of the functions or duties of the member (whether under this or another Act), without charge to have access to any relevant Council document'.

Section 61(2) of *The Local Government Act* (1999) requires any request for access to be directed to the Chief Executive Officer of the Council or such

other officers as the Chief Executive Officer (CEO) has specified, provided that:

- the Elected Member makes the necessary request in writing to view or obtain a copy of the recording to the CEO of the Council; and
- the CEO is satisfied that access to the information is relevant to the performance or discharge of the functions or duties of that Elected Member; or
- it does not contain confidential information that the Elected Member requesting access would not normally be allowed (e.g. excluded due to conflict of interest, building and/or staff security or as may be directed by SAPOL or other law enforcement agency).

If the application is approved, the Elected Member may then view the recording at the Council office or obtain a copy of the requested recording within a reasonable timeframe.

If viewing at the Council office, an accredited FOI Officer or a staff member with express, written authority from the Chief Executive Officer will be present at all times to operate the viewing equipment.

5.5. Privacy & Accountability

5.5.1. Council recognises that in using recording equipment to undertake surveillance operations of its facilities it must ensure that the principles applied by the *State Records Act* (SA) (1997) and *Privacy Act* (Cth) (1988) be upheld. As such, Council will not tolerate any Employee or EM breaching the confidentiality of any person or persons recorded, whether those persons were conducting themselves lawfully or if their actions warrant the consideration of SAPOL and due legal process.

5.5.2. If an Employee or Elected Member is found to have breached confidentiality, they will be found accountable to their respective Codes of Conduct and be investigated as outlined within those Codes of Conduct.

5.6. Role of Council

5.6.1. Council will manage and maintain the surveillance system, inclusive of the placement of permanent surveillance notification signs, the rotational siting of the surveillance equipment, the retrieval and secure storage of any recordings, the review of the recordings and the expiation of fines for offences such as fee evasions, littering, etc. Council will immediately notify SAPOL if there is evidence of criminal activities and provide them with a copy of the recording.

5.7. Legislative Requirements

5.7.1. Whilst the primary purpose of surveillance systems is to protect Council property, it should also be noted that captured surveillance record is also classed as an official Council record under the *State Records Act 1997* (SA),

which defines a record as 'a written, graphic or pictorial matter, or a disk, film, tape or any other object that contains information or from which information may be reproduced.' As such, Council is under an obligation to act in accordance with the requirements of this statute.

5.7.2. Where appropriate, if an activity which is deemed to be of a criminal nature (ie graffiti, vandalism, illegal dumping etc) is recorded by a surveillance device and identified by Council staff, the matter will be referred to the South Australian Police ('SAPOL') or an appropriate enforcement agency.

5.7.3. *The Surveillance Devices Act 2016* (SA) ('SD Act') restricts the installation, use and maintenance of surveillance devices and the communication of information or material from these devices

5.7.4. The SD Act differentiates between a listening device and an optical surveillance device.

5.7.4.1. A listening device is a device capable of being used to listen to or record a private conversation or words spoken to or by any person in private conversation (whether or not the device is also capable of operating as some other kind of surveillance device) and associated equipment (if any).

5.7.4.2. An optical surveillance device is a device capable of being used to observe or record visually (whether for still or moving pictures) a person, place or activity and associated equipment (if any).

5.7.5. The SD Act prohibits the installation, use or maintenance of a listening device to overhear, record, monitor or listen to a private conversation. Exclusions apply where:

5.7.5.1. The parties to a conversation consent to the use of a listening device;

5.7.5.2. A listening device is needed to protect the lawful interests of a person;

5.7.5.3. The use of the device is in the public interest.

5.7.6. The SD Act prohibits the installation, use or maintenance of an optical surveillance device to overhear, record, monitor or listen to a private activity. Exclusions apply where:

5.7.6.1. The parties to a conversation consent to the use of an optical surveillance device;

5.7.6.2. A listening device is needed to protect the lawful interests of a person;

5.7.6.3. The use of the device is in the public interest.

5.7.7. Unless lawful interest or public interest exclusions apply, surveillance by Council may only occur with the consent of surveillance subjects. Consent may be express (verbal or written agreement) or implied (where the surveillance

subject has been made aware of surveillance, i.e. by signage).

5.7.8. The SD Act prohibits the use of information or material derived from surveillance devices, except where it is used to protect the lawful interests of a person or the use is in the public interest. Employees must not use, communicate or publish information or material from a Surveillance Device in breach of the SD Act.

5.7.9. Whether the SD Act applies to any given situation will depend on the circumstances. All persons to whom this policy applies must nevertheless be mindful that Parliament has regulated the recording of private conversations and it cannot be automatically assumed that it is lawful to make a recording and/or make use of a recording once it has been made. All personnel should seek further information from their supervisor or manager if they have any doubts.

5.8. Management and Maintenance

5.8.1. Whilst Council acknowledges the right of its residents and visitors to enjoy the Council facilities free from unwarranted surveillance, it is recognised that there are particular circumstances when oversight of those facilities is justified. In those circumstances, Council opts, in the interests of public safety and the protection of its facilities, to utilise surveillance devices as one of the means to provide that safety and protection. The use of surveillance devices will form part of wider safety and protection strategies employed by Council that will focus on key facilities such as boat ramps and camping grounds.

6. Availability of the Policy

This Policy will be available for inspection at the Council's Offices 43 Dauncey Street, Kingscote during ordinary business hours and via the Council's website:
www.kangarooisland.sa.gov.au

Copies will also be provided to the public upon request, and upon payment of a fee in accordance with the Council's Schedule of Fees and Charges.

SIGNED:



Chief Executive Officer

Date: 9 April 2024

History:		
Date Reviewed:	Version:	Reason for Amendment:
9 July 2014	Version 1	New Policy

24 July 2015	Version 2	Council Logo change only.
13 June 2017	Version 3	Periodic Review Ref# C184:2017
12 July 2022	Version 4	Policy template update and full review Ref: C274:2022
09 April 2024	Version 5	Incorporation of the Council use of Surveillance Systems Policy. Change of name to reflect incorporation.