

Smile please! You're on CCTV...



Anna Crew of Knights Solicitors explains the law when it comes to taking and holding pictures taken on surveillance cameras.

Many shoots are opting to install CCTV or operate other forms of surveillance to ensure that all property remains safe as well as to offer protection to those employed by the shoot or its members. Since the early 2000s CCTV and other surveillance methods have become increasingly popular for a wide range of reasons due to their cheapness, ease of use and deterrent effect.

However, as video footage recorded via surveillance methods may include people's

personal information, GDPR practices must be followed to ensure that the CCTV operator cannot be prosecuted. To take a closer look at how to store footage safely, the Data Protection Act 2018 clearly sets out how the controller and storer of the footage can comply with the legislation and ensure that the principles of data protection are upheld, as well as adhering to the Government's amended *Surveillance Code of Practice*.

Surveillance systems specifically include, but are not limited to, traditional

CCTV, automatic number plate recognition, body worn video, drones, facial recognition technology, dashcams and smart doorbell cameras.

The wearer/operator of surveillance cameras must obtain consent when recording in private or sensitive spaces. In public places, such as public rights of way, consent is implied as long as the subject is aware that they are being recorded, meaning it is legal to film. For the avoidance of doubt, many wearers of body worn cameras or installers of CCTV, number plate recognition cameras, etc, ensure that they are clearly labelled with audio and video recording labels. For CCTV or other cameras installed on private property that do not look beyond the property boundary, no signage is necessary. However, if the camera is placed on your private property but the footage shows land that is beyond the property boundary or public rights of way, signage must be in place so that others are aware of active filming.

CCTV for organisations

CCTV is now common practice for a large number of organisations and so there are clear guidelines that have been produced and developed to ensure that everyone remains legal and safe when handling surveillance footage. The Information Commissioner's Office (ICO) provides a 'checklist' for organisations with CCTV so that they are aware of how to store and use the footage collected for their advantage and safety. The key points are as follows:

1. Ensure that it is clear who has responsibility for the control of the information ('the controller') within your organisation and who makes the decisions about how it can be used.
2. Notify the ICO who the controller is, especially for the use of a surveillance system that processes personal data.
3. Responsibilities must have been agreed within the organisation if more than one controller is jointly involved in the processing and each needs to know their



Be sure to understand rules surrounding GDPR before using body worn cameras.

own and their colleagues' responsibilities in a transparent manner.

4. Written contracts need to be in place that clearly define the responsibilities of external organisations that provide the processing services for you or your organisation.

5. Ensure that information is only processed by others in accordance with the above instructions, with guarantees about security, storage and the use of properly trained staff.

If the CCTV installed covers any of the public road network or public car parks or common land or village or town greens, signage must be in place to alert drivers and others to this, taking into account a driver's ability to read at higher speeds.

In most cases it is appropriate to disclose video surveillance information to law enforcement when the purpose of the system is to contribute to the prevention and detection of crime. Unless a Court Order applies, this disclosure is not a legal requirement and is often done voluntarily.

Body worn cameras

Body worn cameras (BWCs) effectively turn the wearer into a mobile surveillance system that is highly likely to capture the personal data of passers-by. The necessity for BWC use will generally have to meet a relatively high threshold to comply with data protection legislation, which tends to be higher than for CCTV. The use of BWCs must be lawful and fair, transparent, for a stated purpose and only record for the minimum period required as Article 6 of GDPR states that an appropriate legal basis is needed or there must be justification for BWCs being worn.

In professional contexts, operators of BWCs must respect the obligations required of them by GDPR, in particular accordance with Article 5 Data Protection Principles. All individuals whose personal data could be captured by BWCs must be 'informed of the existence of the processing operation and its purposes' (Recital 60 GDPR). This information must include at least the identity and contact details of the data controller, the purposes of the processing and its legal basis, recipients of the data (if any) and if the data is going to be transferred to a third country or international organisation (Article 13). This may be done by visible notices containing that information or badges next to the equipment in use. It is also recommended

that, due to the stricter regulations relating to the use of BWCs, organisations should take precautions to ensure that all of the above is met such as risk assessments, necessity and balancing tests and/or a Data Impact Assessment.

Video footage from BWCs can be used as proof of wrong-doing by an individual as long as the data controller had a valid legal basis for using the BWC and complied with the obligations under data protection law. The fact that the footage would have negative consequences for the individuals concerned does not always make the use of the camera unfair or unlawful *per se*.

Three main points

In summary, there are three main points to take into account and ensure are in place if you are considering installing or using any type of surveillance system for shoots or as deterrence for thieves or other ne'er-do-wells as follows:

■ Fairness

The use of a surveillance camera system must always be for a specified purpose which is legitimate and necessary to meet an identified need.

■ Transparency

There must be as much transparency in the use of a surveillance camera system as possible, especially if the footage covers public areas or beyond your private land boundary.

■ Security

There must be clear responsibility and accountability for all surveillance camera

system activities including images and information collected, held and used. It is also worth noting that if the video footage is stored on a device or a memory stick there is an additional risk of loss or theft of personal data. Always ensure that footage is safe, both physically and digitally, and that it is encrypted.

Data Protection and the GDPR are huge subjects and it is impossible to cover them in detail in this short article. If you are thinking of installing a surveillance system, seek advice before doing so – from the manufacturer or from the supplier in the first instance – and follow that advice. Also download and review the ICO's checklist referred to above; it will enable you to say that you implemented your surveillance system under ICO guidance. ●

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Anna Crew is an Apprentice Solicitor at Knights Solicitors. She is part of the team which fields NGO Legal Helpline calls (see below) and she has a particular interest in Firearms Act 1968 problems. Knights Solicitors is a specialist litigation practice well-known for representing clients with animal and countryside interests on a national level.

NGO free legal Helpline

NGO members in need of emergency legal advice relating to gamekeeping and fieldsports can call the helplines below. Up to 30 minutes telephone advice is available free of charge as a benefit of your NGO membership.

For those in the South: Matthew Knight, Richard Atkins, Surini Saparamadu, Evie Green, Georgia Wardle or Anna Crew at Knights Solicitors (Tunbridge Wells), 01892 537311. www.knights-solicitors.co.uk

For those in the North, Scotland and Wales:

Michael Kenyon, Solicitor (Macclesfield), 01625 422275 or 07798 636460. ●

