

MINUTES OF SETTLEMENT

BETWEEN:

CANADIAN UNION OF PUBLIC EMPLOYEES  
LOCAL 2974  
(on behalf of its sub-Local 2974.2)

(the "Union")

AND

CORPORATION OF THE COUNTY OF ESSEX  
(Essex-Windsor EMS)

(the "County")

**WHEREAS** in or around November 2016, the County did install into its ambulances, and make operational, a Digital In-Car Event Recorder Audio and Video System, namely DVM-250Plus, sold by Digital Ally ("the In-Car AV system");

**AND WHEREAS** on May 6, 2015, the County did approve a new Video Monitoring Policy, bearing Policy Number 15-001, which policy was revised on January 20, 2016 ("the Policy");

**AND WHEREAS** on May 21, 2015 and February 3, 2016, respectively, Local 2974 filed Grievances 2015-05-21A and 2016-02-03-A which challenged the County's use of video monitoring in ambulances and in other workplaces ("the Grievances");

**AND WHEREAS** the Grievances were referred to Arbitrator Christine Schmidt (the "Arbitrator") for determination;

**AND WHEREAS** the parties engaged in mediation with the assistance of the Arbitrator on November 30, 2016;

**AND WHEREAS** the parties wish to resolve the Grievances in respect of Local 2974.2 by mutual agreement on certain specified terms, which follow;

Accordingly, **THEY DO HEREBY AGREE AS FOLLOWS:**

1. The County shall configure the In-Car AV system such that it does not maintain an audio and/or video record except in the following circumstances:
  - a. when an ambulance travels 130 km/hour or more, in which case the audio and video record of the 30 seconds prior to and 30 seconds following the over speed event shall be maintained;
  - b. when an the ambulance is in a significant frontal, rear or side impact collision which activates the ambulance's acceleromater, in which case the audio and video record of the 30 seconds prior to and 30 seconds following the collision event will be maintained; and

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- c. when an employee working within the Local 2974.2 bargaining unit manually activates the In-Car AV system, in which case the audio and video record from the manual activation until the deactivation shall be maintained.

The County shall ensure that the In-Car AV system does not maintain audio or video records in any circumstances other than those set out in paragraph one (1) above, including any other "g-force" events like acceleration, braking or cornering.

2. With regard to paragraph 1(b) above, the In-Car AV system's accelerometer setting shall initially be fixed at 4, which the County advises will result in maintenance of an audio or video record only in circumstances where there is significant frontal, rear or side impact collision. This accelerometer setting shall not be modified unless events or circumstances demonstrate that the accelerometer setting is not sufficient to trigger in the case of a significant frontal, rear or side impact collision or results in maintenance of an audio or video record in circumstances other than a significant frontal, rear or side impact collision. In these cases, the County or the Union shall notify the other party of its position that there is a need to adjust the accelerometer setting (in advance of making the adjustment) and the reasons why, with factual examples, if available. Thereafter, the parties will meet promptly to seek agreement regarding what adjustment to the accelerometer setting, if any, is necessary to comply with paragraph 1(b). If the parties are unable to agree, the issue of what accelerometer setting, if any, is necessary to comply with paragraph 1(b) may be referred to the Arbitrator and any adjustment shall be deferred until the arbitrator determines the issue.

3. With regard to paragraph 1(c) above, employees shall be instructed in the use of the In-Car AV system, with such instruction to include at least the following:

- a. instruction to employees to activate the In-Car AV system only in extraordinary or emergency circumstances such as to assist with incident scene survey or to provide a record of conduct by the public or patient which places the employee or a patient in jeopardy;
- b. instruction to employees that, before activating the In-Car AV system, the employee intending to activate the system is to announce to the other employee(s) present his/her intention to do so, unless due to the prevailing circumstances it would not be practicable to do so;
- c. instruction to employees that they are required to advise the District Chief, and that they are required to submit an incident report, in the case that they manually activate the In-Car AV system; and,
- d. instruction to employees that they shall not disable or tamper with the In-Car AV system.

4. The County shall ensure that when the In-Car AV system is maintaining audio or video records, a red light on the rear view mirror is illuminated to advise the employees that they are being recorded. Employees may report to the County and/or the Union any situations where this red light illuminates in circumstances not covered by paragraph one (1) above. In the case of such a report to either party, it shall convey it to the other in a reasonably timely manner.

5. The County will disable, and keep disabled, the In-Car AV system network and Wi-Fi functionality such that it does not transmit outside of the ambulance any information or

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recordings that are made and/or maintained. There shall be no remote real-time observation of employees by way of the In-Car AV system. Rather, In-Car AV system recordings will be maintained only on secure digital (SD) cards which are stored within the rear view mirror of the In-Car AV system, until such time as the recordings may be securely transferred and stored on the County's network infrastructure in accordance with the Policy.

6. In the case that the County intends to rely on any recording created by the In-Car AV system, or in the case that the County is delivered a subpoena in respect of any such recording, the County shall advise the President of Local 2974 or his/her designate of those facts and it shall provide him/her with an opportunity to view and to listen to the relevant recording, provided that such opportunity would not violate law. If the County intends to rely on any audio or video record maintained by the In-Car AV system for disciplinary purposes, an employee potentially subject to discipline shall be given an opportunity to review the audio or video record, with union representation, before being questioned by the County about the audio or video record. It is acknowledged that there may be circumstances where an employee is questioned about an incident by the County and, after that time, the County reviews for the first time an audio or video record maintained by the In-Car AV system in relation to the same incident. In those circumstances, the affected employee will be questioned by the County, again, after first having been provided the opportunity to review the audio or video record, as described by this paragraph.

7. Up to 4 times per calendar year, the President of Local 2974, or his designate, shall have the right to inspect the master computer settings applicable to the In-Car AV system, including the configuration settings, to ensure compliance with these Minutes of Settlement. During the inspections, the President of Local 2974, or his/her designate, shall be accompanied by the Chief, or his/her designate and may inspect the audit records maintained by the County which describe the viewing, by the County since the last inspection, of the audio or video records maintained by the In-Car AV system. At this time, the local union President or designate may also listen to or view any such viewed record which is still, at the time of the inspection, maintained or preserved by the County subject to the terms of the Policy.

8. The use of the audio and video records maintained by the In-Car AV system shall be consistent with those identified by the Policy (reference section 8 of the Policy). However when an audio or video record is maintained in accordance with paragraphs 1(a) and 1(c) of these Minutes of Settlement, the County agrees to not to view the record unless there exists a reasonable basis to do so, which basis is independent of the fact that or the reasons why the record was maintained under paragraphs 1(a) and/or 1(c) of these Minutes of Settlement.

9. Separate and distinct from the In-Car AV System, the County shall not utilize, nor request any 3<sup>rd</sup> party to utilize, any laptop computers or tablets installed in the ambulances to conduct video and/or audio surveillance of employees in the Local 2974.2 bargaining unit.

10. The County administration will recommend to County Council that the changes to the Policy, described in the attached draft, be adopted. The obligation in this respect shall be conditional upon the consent of the Canadian Union of Public Employees, Local 860 to the changes. If County Council agrees to adopt the changes, the Grievances shall be resolved with respect to the Local 2974.2 bargaining unit. In this event, Local 2974 shall not allege in any future proceeding regarding the Local 2974.2 bargaining unit that the Policy, as amended in accordance with these Minutes of Settlement, violates the collective agreement or any applicable legislation, but it reserves the right to allege that, by the County's future conduct

DRAFT

related to the In-Car AV system, the County has violated these Minutes of Settlement, the Collective Agreement or applicable legislation.

10. The Grievances are settled with respect to Local 2974.2 but not Local 2974.1.

11. The Arbitrator shall remain seized in respect of the application, administration or interpretation of these Minutes.

DATED THIS 28<sup>TH</sup> DAY OF FEBRUARY, 2017

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For Local 2974

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For the County

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Final  
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County of  
Essex

## County of Essex Policy Manual

### Video Monitoring Policy

<b>Policy Number:</b>	15-001
<b>Approved by:</b>	County Council
<b>Department:</b>	All Departments
<b>Date Approved:</b>	2015-05-06
<b>Effective Date:</b>	2015-05-06
<b>Originating Department:</b>	Human Resources
<b>Last Revision Date:</b>	2016-01-20
<b>Scheduled for Review By:</b>	2017-05-01
<b>Replaces Policy No:</b>	Click here to enter text.

#### 1.0 Objective

The County of Essex is committed to the on-going protection of the health and safety of its employees, customers and visitors, as well as the protection of municipally owned or occupied property, both physical and intellectual. The Corporation recognizes the need to strike a balance between the Corporation's responsibilities to promote a safe and secure environment and its responsibility to protect the privacy of individuals.

Video Cameras, when utilized with other security measures and operational tools, is an effective means of ensuring the security and safety of Corporation facilities, the employees who work in them, the individuals who use them and the assets housed in them. ~~They are also often effective as an operational tool to assess the flow of product and progress in providing services.~~ The Corporation supports the use of Video Monitoring technology to promote a safe and secure environment and to protect the Corporation's assets and property in accordance with established standards and procedures

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# Video Monitoring Policy

**Policy Number: 15-001**

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## 2.0 Purpose

The purpose of this policy is to ensure that Video Monitoring technology is used for safety, security and operational purposes and that its use is conducted in a manner that reflects the provisions of the Municipal Freedom of Information and Protection of Privacy Act (MFIPPA) and any other relevant legislation.

More specifically, this policy addresses requirements and responsibilities with respect to:

- The installation of video monitoring systems;
- The operation of video monitoring systems;
- The use of the information obtained through video monitoring systems; and
- Custody, control and access to records created from video monitoring systems.

## 3.0 Scope

This policy applies to all facilities and vehicles owned or occupied by the County of Essex and to all employees, including temporary and contract employees, elected officials, appointees to agencies, boards, commissions and committees, volunteers, and any individual retained by the Corporation to act on the Corporation's behalf. This policy also applies to visitors and tenants of Corporation facilities. This policy does not apply to video monitoring systems that are not owned by the County of Essex.

## 4.0 Definitions

In this policy:

- "Facility" means any building or land that is owned or occupied by the County of Essex;
- "Vehicle" any car, truck, or ambulance owned by the Corporation and driven by persons covered by this policy's Scope statement;

# Video Monitoring Policy

## Policy Number: 15-001

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- "Video monitoring camera" means a camera used to monitor and/or record activities as part of the video monitoring system;
- "Video monitoring recording" means information transmitted from the video monitoring system to a storage device which includes videotape, computer disc or drive, compact disc, computer chip or other device used to store the recorded data or visual, audio or other images captured by the video device system;
- "Video monitoring record" means monitoring information that has been extracted from video monitoring recordings; and
- "Video monitoring system" or "System" refers to a video, physical or other mechanical, electronic, digital or wireless monitoring system or device that enables continuous or periodic video recording. In this policy, the term video monitoring system includes, but is not limited to, an audio device, thermal imaging technology or any other component associated with capturing an image.

### 5.0 Use of Video Monitoring System

Video monitoring systems are installed in facilities/vehicles where a need has been identified by the Department Head responsible for a facility/vehicle and funding has been approved.

### 6.0 Installation of Video Monitoring System

#### 6.1 Location of Video Monitoring Cameras

The Corporation <sup>may {ok}</sup> employ the use of video monitoring cameras as they offer a reasonably effective deterrent to inappropriate activity <sup>by members</sup> and will assist in maintaining a safe and secure environment. Cameras also allow for an effective means by which to manage operations and to remotely address issues such as security alarms that have been activated.

~~of the public~~

Each proposed camera position/location will be assessed on a case-by-case basis to determine the effects the video monitoring system may have on personal privacy. The Corporation will take all reasonable steps to mitigate any adverse effects that may be caused by camera position/location. No camera will be placed so that it

# Video Monitoring Policy

**Policy Number: 15-001**

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views into an area where individuals have an expectation of privacy, such as washrooms, change rooms or employee lunchrooms.

## 6.2 Signage

The Corporation will provide notice that an area is under video monitoring. Signage will be installed in a clearly visible location at all facilities that are subject to monitoring. The signage will advise all persons entering the facility that the facility is under video monitoring, and will provide a contact for more information.

## 6.3 Approval

All positions/locations for cameras and signs will require the approval of the Department Head responsible for the facility in which video monitoring equipment is located.

## 6.4 Notice

Prior to the installation of video monitoring cameras, the Department Head responsible for a facility will advise the Director, Human Resources of the installation, who in turn will provide notice of the installation to the applicable union.

*L written {ok}*

Prior to the activation of audio recording capabilities in conjunction with video monitoring, the Corporation will discuss its intention to and rationale for the activation of audio recording with the applicable union.

*L provide written notice to the applicable union of {ok}*

## 6.5 Maps and Floor Plans for Video Monitoring Cameras

The Department Head responsible for the facility in which video monitoring equipment is located will ensure that maps/floor plans are prepared to identify the location of video cameras, video monitoring monitors and any other video monitoring equipment located at a facility. The Department Head will retain copies of such maps and floor plans and provide a copy to the Director Council Services/Clerk and the Manager, Information Technology,

*and to the applicable unions, on request. {ok}*

## 7.0 Operation of Video Monitoring System

To ensure the ongoing privacy of employees and the public at large, only authorized persons shall monitor live video monitoring



# Video Monitoring Policy

**Policy Number: 15-001**

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recordings. The Department Head of a facility in which video monitoring equipment is located shall designate those persons permitted to monitor live video monitoring recordings and shall maintain a list of all persons so authorized.

A person authorized to view live video monitoring recordings shall not permit members of the public or other unauthorized persons to view live video monitoring recordings.

If staff authorized to monitor live video monitoring recordings have reason to believe that the video recording contains relevant information for law enforcement or public safety purposes, they shall notify the Department Head responsible for the facility immediately, who in turn will advise the Manager, Information Technology. In the absence of the Department Head responsible for a facility, the Manager, Information Technology will be advised directly. The Manager, Information Technology will make every effort to ensure that the information is protected and not written over.

## 8.0 Use of Information Collected

The information collected through video monitoring systems will only be used to:

- Assess the effectiveness of safety and security measures at a particular facility;
- Investigate an incident involving the safety or security of people, facilities or assets;
- Provide law enforcement agencies with evidence related to an incident under police investigation;
- Provide evidence as required to protect the corporation's legal rights;
- Respond to a request for information under MFIPPA;
- Investigate an incident or allegation of serious employee misconduct; or
- Investigate an incident involving an insurance claim.

## Video Monitoring Policy

**Policy Number: 15-001**

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The Corporation will not use video monitoring systems to monitor or measure productivity of employees. Notwithstanding this, where video monitoring systems disclose that an employee has been involved in an activity that can be reasonably characterized as criminal in nature, may affect the Corporation's reputation, or may present a possible legislation or policy violation, the Corporation reserves the right to use the video monitoring recordings to support investigations leading to possible discipline or discharge or as an investigative aid in any investigation arising out of such activity.

### 9.0 Record Management

The information collected through video monitoring is managed by the Manager, Information Technology. All activities with respect to video monitoring recordings, including access to recordings and storage and disposal of recordings will be documented by the Manager of Information Technology.

#### 9.1 Retention of Video Monitoring Recordings

The retention period for video monitoring recordings will vary by facility, number of video monitoring cameras at each facility and the video monitoring hardware used. As storage devices become full, recordings are written over previously recorded information. The maximum standard retention period for video monitoring recordings is forty-five (45) days, unless required for related investigations. Retention periods will be reviewed regularly to ensure that retention periods are minimized in order to reduce the risk of improper use and disclosure.

#### 9.2 Creation and Retention of Video Monitoring Records

A record will be created from the video monitoring recordings collected by the video monitoring system only for the purposes outlined in this policy. No other records will be created or retained.

The Director of Corporate Services/Clerk, in consultation with the Chief Administrative Officer, is responsible for determining when a record will be created. The Manager, Information Technology will be responsible for creating records upon the request of the Director of Corporate Services/Clerk and for maintaining custody of records created from the point of creation to the point of disposition.

# Video Monitoring Policy

**Policy Number: 15-001**

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Records created from the video monitoring system shall be labeled, documented and securely stored in an access-controlled area by the Manager, Information Technology.

## 10.0 Access

### 10.1 Access Restrictions

In accordance with the Municipal Freedom of Information and Protection of Privacy Act (MFIPPA), as amended, access to the records created by video monitoring is restricted. Access is limited to:

- Individuals responsible for the management of recordings or records of the video monitoring equipment;

- Individuals who have a legitimate need to access the information for one of the purposes listed in the "Use of Information Collected" section of this policy; and

- Individuals whose request for access under MFIPPA, as amended, has been granted <sup>to members of the public who requested by</sup> ~~any County employee or contractor~~ with due notice to

For purposes of this policy, "access" means any of the following:

- The Manager of Information Technology may provide a summary of the information collected by the video monitoring system;
- The recording or record may be viewed in the presence of the Manager of Information Technology; or
- If required by police or in relation to litigation, a copy of a video monitoring record may be provided.

### 10.2 Access Procedures

A Request to Access Video Monitoring Recordings or Records must be completed and submitted to the Director of Corporate Service/Clerk for all requests for access to video monitoring recordings or records. For all requests related to investigations of serious employee misconduct, the request form must also be authorized by the Director, Human Resources.

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 employee depicted in the record (number)   
 exist if they can be identified)   
 of the fact of the disclosure, in accordance with the Act

# Video Monitoring Policy

**Policy Number: 15-001**

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Requests for access to recordings or records shall be bound by and subject to MFIPPA and any other relevant legislation.

When access to a record is given, the following information will be logged for audit purposes:

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• the date of the incident recorded

• the location or vehicle number, if applicable, of the incident recorded

- the date and time at which access was allowed or the date on which disclosure was made;
- the identification of the party who was allowed access or to whom disclosure was made;
- the reason for allowing access or disclosure;
- details of the information to which access was allowed or which was disclosed; and
- provisions for the return of the record or its destruction.

Anyone who is granted access to any record created through video monitoring systems will be required to sign a written agreement regarding his or her duties, obligations and responsibilities with respect to the use and disclosure of the record.

## 10.3 Exceptions to the Access Processes Outlined in Section 10 are:

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- Employees permitted to monitor live video of the workplace, as outlined in section 7.0 of this policy, as part of their regular ongoing responsibilities. These employees may rewind to view (but not create or record a video record) events within the same calendar day.
- In urgent circumstances, Department Heads may contact the Director of Council Services/Clerk directly requesting access to a video record. A "Request to Access Video Monitoring Records" form will subsequently be submitted in a timely manner. If the Department Head is not able to make contact with the Director of Corporate Services/Clerk in a timely manner, the Department Head may contact the Manager, Information Technology directly, then subsequently follow up with the Director of Corporate Services/Clerk.

# Video Monitoring Policy

**Policy Number: 15-001**

## 10.4 Ownership of Video Monitoring Recordings

All recordings created by means of video monitoring systems shall be the sole property of the County of Essex and may not be taken, reproduced or destroyed for any reason without the prior express written permission of the Director of Council Services/Clerk. Only the Manager, Information Technology shall be authorized to delete recordings and records in accordance with this policy. Where recordings or records are to be disposed of, they must be deleted or destroyed in a manner that ensures that they cannot be viewed or accessed by anyone.

## 10.5 Unauthorized Access and/or Disclosure

Any County of Essex employee having knowledge of unauthorized access or disclosure of a video monitoring recording or record created from video monitoring systems must immediately report the incident to the Director of Council Services/Clerk.

The Director of Council Service/Clerk will inform the Chief Administrative Officer of all reported breaches of privacy and unauthorized viewing or disclosure, and together they will take all reasonable actions to recover the record and limit the Corporation's exposure.

Any breaches of privacy and unauthorized viewing or disclosure of information as set out in this policy may result in disciplinary action up to and including termination of employment.

## 11.0 Responsibility

The Chief Administrative Officer is responsible for ensuring compliance with this policy.

## 12.0 References and Related Documents

Other applicable legislation includes but is not limited to the following:

- Municipal Freedom of Information and Protection of Privacy Act

3.0 This Policy is subject to any written agreement between the County and any state union, ~~the Charter of Rights~~

~~and Freedom of Information Act~~ and any governing legislation.



