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L'Hoiry, X., Gatrix, L., Harrison, K. et al. (1 more author) (Submitted: 2018) Body-worn video policy – documentary analysis. Report. (Unpublished)

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## **Body-Worn Video Policy – Documentary Analysis**

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October 2018

## Contents

Introduction	3
Principle I - Visibility and Accessibility	4
Principle II - Clarity and Intelligibility	5
Principle III - Accountability and Transparency	7
Principle IV - Surveillance by Consent	9
Principle V - Accounting for Victims and Vulnerable People	11
Implication for Humberside Police's BWV policy	13
Recommendations for Humberside Police's BWV policy	14
Appendix 1 - Summary of good practice recommendations	15
Appendix 2 – References	16
Appendix 3 – Table of examined documents	18

## Introduction

The aim of this comparative documentary analysis is to provide Humberside Police with a series of recommendations to promote and ensure good practice in the content and formulation of their Body Worn Video (BWV) policy.

This analysis encompasses a review of 18 force-level policies on the use of BWV<sup>1</sup>. The sample of forces selected for this review is based upon a number of considerations: a desire to examine the policies of forces deemed by HMIC to be performing strongly (thus suggesting good practice); a range of forces encompassing large, medium and small forces to determine if any differences in approaches exist; and to include in the sample Humberside Police's neighbouring forces in the North North-East region<sup>2</sup>.

The analysis of force policies was supplemented by an examination of eight further documents drawn from regulatory and advisory bodies. These documents include good practice guides, codes of practice and position statements from institutions including the College of Policing (CoP), the Surveillance Camera Commissioner (SCC), the Information Commissioner's Office (ICO), the Independent Police Complaints Commission (IPCC) and the National Council of Police Chiefs (NCPC). All documents examined in this analysis are currently publicly available (with the exception of Humberside Police's BWV policy which is due to be made public soon)<sup>3</sup>. A full list of the documents analysed is available in Appendix 2 at the end of this report. Appendix 3 also provides a table detailing which forces' policies (and associated documents) were examined, together with supplementary information concerning the format of these documents, where they can be located and how they may be accessed<sup>4</sup>.

This report is structured around five key principles which emerge from the comparative analysis. These principles represent what we deem to be 'good practice' within the sample of forces' BWV policies. Principles I and II refer to broad considerations around the visibility and accessibility of BWV policies. Principles III, IV and V are concerned with the substantive content of these policies from a number of perspectives. Implications for Humberside Police are outlined at the end of the analysis, together with recommendations tailored specifically to Humberside Police and its existing BWV policy.

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<sup>1</sup> It should be noted that a total of 20 forces were included in the sample, but some forces do not have a publicly available BWV policy, despite having deployed BWV.

<sup>2</sup> These are West Yorkshire Police, South Yorkshire Police, North Yorkshire Police, Cleveland Police, Durham Constabulary and Northumbria Police.

<sup>3</sup> All information in this report is correct at the time of writing.

<sup>4</sup> One force – the Metropolitan Police – does not make available a singular document as a BWV policy but rather has a dedicated website which deals with various aspects of BWV deployment. This can be found at <http://www.met.police.uk/bwv/index.html>. The website was analysed as part of this research and is included in this sample.

## **Principle I – Visibility and Accessibility**

A basic expectation of forces deploying BWV is that they first produce a BWV policy. The College of Policing stipulates that the police's use of BWV must be overt and one mechanism in ensuring this overtness may be for forces to produce a BWV policy and for this to be publicly available.

With this in mind, the majority of forces within the sample of this analysis did indeed have publicly available BWV policies. However, this was not always the case. Despite deploying BWV since 2015, Cleveland Police do not have a BWV policy openly available. Instead, Cleveland Police's website provides a briefing note which largely consists of a perfunctory FAQ section on the basic usage and rationale of deploying BWV. Elsewhere, North Yorkshire Police does not provide a BWV policy or any alternative form of guidance for the public despite currently deploying BWV with plans for significant expansion in the next few months. Likewise, South Yorkshire Police has no publicly available BWV policy despite having rolled out BWV to some of their specialist capabilities officers (i.e.: firearms). The failure by these forces to make their BWV policy available to the public despite having deployed this technology in active service is considered in the context of this analysis to be poor practice.

Other forces do provide a BWV policy of sorts, but an element of opacity remains. West Midlands Police for instance, provides only a lengthy Privacy Impact Assessment (PIA) on the use of BWV. While carrying out a PIA is consistent with a desire for transparency and accountability in the use of a new type of technology, West Midlands Police appear to have subsumed their BWV policy within the PIA. This arguably gives the impression that the BWV policy has been 'buried' within the PIA. A clearer and more transparent approach here may be to publish both documents – a standalone BWV as well as a PIA concerning the use of this tool. This is the approach taken by a number of forces – Derbyshire Police, Lincolnshire Police, Leicestershire Police, Northamptonshire Police and Nottinghamshire Police – who have published a joint BWV policy together with their PIA. Notwithstanding the specific content of a BWV policy, this approach is considered to be representative of good practice. Similarly, Durham Constabulary's BWV policy includes several linked documents (PIA, Equality Impact Assessment, Domestic Abuse Protocol), but these are added as appendices rather than presented as part of the BWV policy. Such an approach aids in differentiating one document from the other and avoiding important information being 'buried' in a single, lengthy document.

A minimum acceptable level of good practice can therefore be considered to be that a force must produce a BWV policy if such technology is to be deployed in active service. If supplementary measures/evaluations have been undertaken pertaining to the use of BWV (such as a PIA), these should also be published (if appropriate). When these types of documents are published, they should be distinguished from the force's BWV policy rather than subsumed within them.

*Recommendation 1 – Forces should have a specific, standalone policy pertaining to their use of BWV.*

*Recommendation 2 – A force's BWV policy should be publicly available via forces' official websites and should ideally be in a downloadable format.*

## **Principle II – Clarity and Intelligibility**

Simply making a BWV policy publicly accessible is of course not necessarily congruent with good practice. Accessibility of force policies pertains not only to documents being publicly available but may also refer to the intelligibility of documents for members of the public. Here, stylistic elements including structure, lay-out and the use of complex jargon become particularly important. If a BWV policy is to be public facing and is (at least partially) intended to inform the public about aspects of BWV, a certain level of clarity must be ensured to fulfil these goals.

This clarity can – and indeed is – obscured in a number of ways in some forces’ policies. As mentioned above, lengthy policies can lead to information important to the public being ‘buried’ or being generally challenging to locate amongst considerable amounts of procedural content. For instance, Humberside Police’s BWV policy includes important information on the legal rights of members of the public in relation to BWV footage. But some of this information is located on page 30 (of a 40-page document) and is preceded by detailed procedural guidance relevant principally to users of BWV. Elsewhere, BWV policies may seem disjointed or disconnected from other important documents. For instance, Surrey Police’s BWV policy appears to be a short webpage. Although there is a longer BWV policy published jointly by Surrey and Sussex Police, there is no mention at all of this policy on Surrey’s main webpage concerning its BWV policy. This failure to ‘join-up’ connected and relevant content obscures the clarity and ease of access for the public to important information concerning this force’s use of BWV.

Fairly simple tools can be used to add clarity and accessibility to policies. For instance, the use of a contents page at the start of a BWV policy aids readers to locate relevant information quickly. Merseyside Police, Greater Manchester Police and Humberside Police employ such tools to good effect. Similarly, a ‘Terms and Definitions’ or glossary section outlining the meaning of any key terms is also a useful reference point for readers who may not be familiar with law enforcement terminology and jargon. Merseyside Police and West Midlands Police usefully present such a section in their BWV policies/PIA.

The structure of BWV policies must be carefully considered vis-à-vis the aim of the document itself. If the policy is intended to inform members of the public about the use of BWV, then perhaps a useful structural approach may be to locate the content most relevant to the public (i.e.: how BWV impacts individual rights; how to object to being filmed; etc) near the beginning of the document. Concurrently, information less relevant to the public (i.e.: specific procedural guidance to officers about deployment of BWV in certain scenarios) could be placed near the end of the document. The specificities concerning structure will of course depend on what the policy itself is attempting to achieve but we repeat that if the policy is at least partially seeking to inform the public and non-police audiences about any aspect of BWV, then this should be reflected in the structure and style of the policy itself. The use of an online platform – such as the Metropolitan Police’s dedicated BWV website – can certainly aid in overcoming problems of structure by lending flexibility and ease of navigation to otherwise lengthy content.

*Recommendation 3 – The structure and lay-out of BWV policies should be carefully considered in line with what the policy itself is intended to achieve (i.e.: inform the public about the use and purpose of BWV deployment).*

*Recommendation 4 – BWV policies should aim to avoid jargon and be written in such a style that is intelligible to members of the public.*

### **Principle III – Accountability and Transparency**

A common concern for regulatory and advisory bodies such as the ICO, SCC and the CoP centres on the importance of accountability and transparency in the introduction of any new surveillance technology, particularly in the context of policing. Promoting these values can be achieved by organisations like the police communicating clearly how they intend to use tools such as BWV. Forces' BWV policies may be useful here but only if these policies clearly present a number of fundamental features including (but not necessarily limited to): the aims, rationale and stated benefits of introducing BWV; the legal basis underpinning the introduction and use of BWV; and the safeguards in place to protect individuals' civil liberties<sup>5</sup>. All of these issues should be clearly and explicitly addressed in order to demonstrate forces' commitment to transparency and accountability in their use of BWV.

A number of BWV policies examined in this analysis were very short in length and as such lacked any depth of detail on these important issues. While all policies at the very least stated why the respective force sought to introduce BWV, a number of policies failed to elaborate on the anticipated benefits of doing so. Some policies were so short that this brevity necessarily meant achieving any sort of detailed consideration of key matters was not possible. For instance, Essex Police's policy is only three pages long; Northumbria Police's policy is a single, brief webpage; and the policy shared by Warwickshire Police and West Mercia Police is also only three pages in length. These documents are largely policies in name only and the substantive content therein is superficial, doing little to promote accountability and transparency.

On the other hand, some forces made considerable efforts to provide detailed guidance on matters related to transparency and accountability. The policies presented by Humberside Police, Merseyside Police and Greater Manchester Police go to considerable lengths to contextualise the introduction of BWV, explaining its anticipated benefits and outlining the rationale which supports this new tool of surveillance and policing. Multiple examples are given in these policies of how BWV will be used, where the benefits lie in these contexts, and how users will ensure that these benefits are realised in conjunction with respect for existing legal provisions. Elsewhere, the PIAs made available by West Midlands Police as well as the East Midlands collaboration of five forces<sup>6</sup> include detailed guidance on the legal basis – in statutory and case law – supporting the use of BWV<sup>7</sup>. Further, the Metropolitan Police include summaries (and links) to trials conducted on the efficacy of BWV, demonstrating the scientific support for the use of this policing tool. Further still, Cleveland Police's BWV briefing note goes as far as detailing where funding for BWV has been procured, adding a further layer of disclosure and transparency concerning the background of the force's development of BWV capability.

These examples show that BWV policies can support forces' commitment to transparency and accountability, but this is only possible where the substantive content of policies is geared

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<sup>5</sup> This latter point is considered separately in Principle IV below.

<sup>6</sup> Comprised of Derbyshire Constabulary; Lincolnshire Police; Leicestershire Constabulary; Northamptonshire Police; Nottinghamshire Police.

<sup>7</sup> It is worth noting that a potential drawback here is the at times complex legal terminology used which may not be immediately comprehensible for all readers.



towards this goal. Brief policies or those containing superficial, perfunctory summaries of the use of BWV will not achieve sufficient depth to enable transparent practices. It is worth noting that BWV policies need not be particularly lengthy. The content of policies is more important than the length of the document itself, but this is only true where the content is carefully designed to promote maximum levels of accountability. A useful example here is Durham Constabulary's policy which is ten pages in length (considerably shorter than others) but the content therein is 'stripped back' to include mainly information pertinent to achieving practices of transparency and accountability in the force's use of BWV.

*Recommendation 5 – Forces should consider how their BWV policies can promote maximum levels of transparency and accountability in their deployment of BWV.*

*Recommendation 6 – BWV policies should include information concerning the rationale and anticipated benefits of BWV as well as the legal basis supporting its introduction.*

## Principle IV – Surveillance by Consent

The Home Office and the SCC have long espoused the importance of securing ‘surveillance by consent’ and this is particularly important when new surveillance technologies are deployed. This approach is supported by a number of the CoP’s seven principles around the use of BWV, particularly its commitment to overtness, proportionately and legitimacy. Securing consent may be achieved by demonstrating a commitment to transparency and accountability, as outlined above. Further, manufacturing consent can be achieved by clearly explaining to the public what their legal rights are in relation to the surveillance technology in question, and how they may exercise these rights. Clarity on this matter shows a willingness to be held accountable for one’s use of surveillance tools and the introduction of BWV should arguably compel forces to follow such transparent approaches.

Some forces unfortunately largely fail to deal with the issue of individuals’ legal rights in a meaningful or effective way, demonstrating poor practice. The issue of individuals’ privacy rights is at times ignored completely, as is the case in the policy of Essex Police. If they are not omitted altogether, legal rights are often ‘namechecked’ with very little meaningful elaboration beyond perfunctory content. This is exemplified in the BWV policies of Warwickshire and West Mercia Police and Northumbria Police where a list of relevant statutory instruments is provided with no further information. Elsewhere, some forces attempt to deal with legal rights but rather mishandle this. Cleveland Police’s BWV briefing note, for instance, usefully provides a section entitled ‘What about my right to privacy?’ which is commendable. But the information contained therein is in fact legally inaccurate and lacks clarity<sup>8</sup>.

There are however a number of examples of good practice on this issue and several forces evidently use their BWV policies to promote individuals’ legal rights. One way in which this is done is by clearly identifying the retention period for BWV footage, enabling individuals to know how long their personal data will be stored and when they can expect it to be deleted. Greater Manchester Police, Humberside Police and the East Midlands five force collaboration all provide specific information concerning the BWV footage retention limit. But some forces go further and demonstrate what can be considered as best practice here. For example, Great Manchester Police’s BWV policy includes a separate, detailed section on Subject Access Requests, correctly explaining that this process is the principal tool with which individuals can request BWV footage and thus hold forces to account. Similarly, Durham Constabulary’s BWV policy identifies Section 7 of the DPA 1998 as the legal basis for Subject Access Requests and does so early in the policy, avoiding this important information becoming lost amongst procedural and other content. The Metropolitan Police also include a dedicated section entitled ‘Your Rights’ in their online content. Although this section is brief, it specifically mentions Subject Access Requests and provides a link to further information. Some forces may rightly wish to avoid lengthy guidance on how individuals may exercise their rights, particularly if this is likely to include legal jargon. If this is the case, BWV policies should at least include a link to further information. This is the approach taken in Merseyside Police’s

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<sup>8</sup> Readers are erroneously advised that they may request BWV footage of themselves under the Freedom of Information Act 2000. The correct legal instrument for such requests is Section 7 of the Data Protection Act 1998.

policy which is relatively brief on details but does provide a number of links to further information.

Finally, a simple but effective manner in which forces can indicate a willingness to be held to account is to include information in their BWV policies about how members of the public may make a complaint. Durham Constabulary, Greater Manchester Police and Cleveland Police all provide explicit guidance on making a complaint to the force about their use of BWV.

*Recommendation 7 – BWV policies should be mindful of securing ‘surveillance by consent’ and may do so by providing clear and specific guidance on individual legal rights.*

*Recommendation 8 – To achieve best practice, policies should have a distinct section concerned only with individual’s privacy and other rights which provides detailed guidance.*

## **Principle V – Accounting for Victims and Vulnerable People**

The introduction of BWV evidently presents the potential for multifaceted benefits to the delivery of policing. An oft-repeated benefit and driver for the deployment of BWV is in the perennially challenging context of domestic violence. But this brings other challenges insofar as how a new form of technology can be used in a manner which accounts for and respects the needs of victims of crime, particularly those who may be deemed to be vulnerable. Indeed, the Ministry of Justice's *Code of Practice for Victims of Crime* encourages criminal justice agencies to ensure that they are 'putting victims first' and are being responsive to their needs (2015: 1). BWV policies can acknowledge this challenge by addressing this issue directly, demonstrating that the needs of victims and vulnerable individuals has been systematically built into the strategic planning and operational delivery of this new policing tool.

Forces with brief BWV policies naturally leave themselves with no room to explore the impact of BWV upon victims and vulnerable people in any useful way. As outlined above, examples here include Surrey Police, Northumbria Police and Warwickshire and West Mercia Police, all of whose BWV policies appear to be very short in length and lack any elaboration on how BWV may impact different populations.

Other policies which are longer, more in-depth and can be considered to exercise good practice in other respects, lack meaningful analysis of the needs of victims and vulnerable people in relation to the use of BWV. West Yorkshire Police's policy for instance, fails to mention victims aside from a very brief note pertaining to the use of BWV footage as a replacement for unreliable evidence from victims. A number of other policies specifically discuss the context of domestic violence which clearly involves victims who may be considered vulnerable. However, these discussions rarely go beyond stating that recording domestic violence incidents is mandatory and re-emphasizing the anticipated value of BWV in this context from an evidentiary perspective. This is the case for the BWV policies of Durham Constabulary, Merseyside Police and others.

Unfortunately, within the examined sample, it appears to be a relatively rare occurrence for force policies to comprehensively account for the ways in which BWV may impact victims and vulnerable people. A standout example demonstrating how this can be achieved is in the case of Greater Manchester Police who detail in their policy that the needs of victims and vulnerable people will require more careful and nuanced handling than others. Specifically, the policy advises users of BWV that permission must be sought from victims or vulnerable people to begin recording. This reverses the advice in other contexts which instructs users that they are not required to obtain expressed consent and indeed are advised that 'there should always be a tendency to record' (GMP 2018: 10).

If the deployment of BWV is intended to improve the delivering of policing, the needs of victims of crime must be placed at the heart of such developments. While forces are at pains to highlight the potential benefits of BWV in the context of domestic violence, greater efforts must be made in forces' BWV policies to account for the specific needs of victims and vulnerable people.

*Recommendation 9 – Force policies should consider the needs of victims of crime, particularly those considered to be particularly vulnerable.*

*Recommendation 10 – Specific guidance should be given to users of BWV in relation to how victims and vulnerable people may have different needs and expectations vis-à-vis the use of BWV.*

## **Implications for Humberside Police's BWV policy**

As the analysis above shows, Humberside Police's current BWV policy contains a number of features which can be considered to represent good practice from a number of perspectives. Equally, there are areas in which some amendments could be made to the policy to maximise current good practices.

One broader but important consideration for Humberside Police and its BWV policy is to consider what the force wants this document to achieve. What is the purpose of the policy? Is it to be a policy or a procedure? It is currently titled as being both, but procedural documents have a natural tendency to be inwardly focused (towards staff and users) and policy documents can be rather more outwardly focused (towards the public and non-police audiences as well as staff and users). If the aim of the document is to inform the public as to the introduction of BWV and some of its prospective uses and anticipated benefits, then the formulation of the document must reflect this, both in style and substance. Intending documents to be read by public audiences has implications which may include avoiding jargon; considering the order in which content appears; providing contacts/links for further information; etc.

No single force policy explored in this analysis can be considered to be perfect. However, some forces' policies were certainly better than others and these include Greater Manchester Police, Durham Constabulary, Merseyside Police and indeed Humberside Police. But even these forces' policies have some limitations, as detailed above. One of the standout examples of good practice seen in this sample is presented by the Metropolitan Police who, instead of providing a single policy document, have created a dedicated website with a number of webpages concerning various aspects of BWV. This approach is certainly one worth considering in the future, particularly if the use of BWV expands.

Amongst the forces preferring to issue a BWV policy, Humberside Police represents one of the stronger examples in this sample. We therefore propose that there are no immediate, urgent changes necessary to Humberside Police's current policy, but some amendments are possible to maximise existing good practices and these are outlined in the following section.

## **Recommendations for Humberside Police's BWV policy**

The recommendations presented below build on the commentary above and are divided along three strands – changes that may be made immediately to improve the policy; changes which may lead the policy to be considered as an example of good practice; and changes which would lead to the policy being recognised as demonstrating a 'gold standard' as compared to the other policies examined in this analysis.

### *Immediate*

- Add a section on how members of the public may make a complaint to the force about its use of BWV. This should include a postal and/or email address for such complaints.
- If a PIA or other type of consultation has been carried out by the force, this should be added as an appendix or a hyperlink should be provided for ease of access.

### *Good practice*

- The policy could be re-structured to present the material most relevant to the public towards the start of the document, rather than near the end. See for example, information on the public's rights as part of the Data Protection Act 1998 which does not appear until page 30 and could be moved to earlier in the policy.
- Add a detailed section concerning individual legal rights in the context of the use of BWV. This should take the form of a separate, distinct section which is not subsumed within other discussions.
- Consider (if this has not already been undertaken) the need to consult with the community and/or relevant charities to ensure that the policy is appropriate for those classed as vulnerable.
- If/when the above consultation is undertaken, make a summary report publicly available via the force's website.

### *Gold standard*

- A section on individual rights should include information on Section 7 of the Data Protection Act 1998 which is concerned with Subject Access Requests. If this proves to be too lengthy, a link to related information should be provided.
- Add a section dealing specifically with the potential impact of BWV deployment on victims and vulnerable people.
- If the above recommendation is followed up, the force should give some consideration to the instructions given to BWV users when they engage with vulnerable people. Specifically, should the default position be to record or not record vulnerable people?
- Consider whether a dedicated website/online presence could be created in the style of the Metropolitan Police's website concerning BWV.

## **Appendix 1 - Summary of good practice recommendations**

The following recommendations are formulated based upon observed good practices within the examined sample of forces' BWV policies (and associated documents), together with the advice and guidance provided by regulatory and advisory bodies such as the ICO, the SCC, the CoP and others. These recommendations are not specific to Humberside Police but are applicable more broadly. Indeed, Humberside Police already fulfils a number of these recommendations.

Recommendation 1 – Forces should have a specific policy pertaining to their use of BWV.

Recommendation 2 – A force's BWV policy should be publicly available via forces' official websites and should ideally be in a downloadable format.

Recommendation 3 – The structure and lay-out of BWV policies should be carefully considered in line with what the policy itself is intended to achieve (i.e.: inform the public about the use and purpose of BWV deployment).

Recommendation 4 – BWV policies should aim to avoid jargon and be written in such a style that is intelligible to members of the public.

Recommendation 5 – Forces should consider how their BWV policies can promote maximum levels of transparency and accountability in their deployment of BWV.

Recommendation 6 – BWV policies should include information concerning the rationale and anticipated benefits of BWV as well as the legal basis supporting its introduction.

Recommendation 7 – BWV policies should be mindful of securing 'surveillance by consent' and may do so by providing clear and specific guidance on individual legal rights.

Recommendation 8 – To achieve best practice, policies should have a distinct section concerned only with individual's privacy and other rights which provides detailed guidance.

Recommendation 9 – Force policies should consider the needs of victims of crime, particularly those considered to be particularly vulnerable.

Recommendation 10 – Specific guidance should be given to users of BWV in relation to how victims and vulnerable people may have different needs and expectations vis-à-vis the use of BWV.



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### Appendix 3

*Table 1: Forces in the examined sample and the type of document analysed (if any available).*

<b>Force</b>	<b>Type of document</b>	<b>Where available</b>	<b>Downloadable?</b>
Cleveland Police	Briefing Note	Official force website	No
Derbyshire Constabulary; Lincolnshire Police; Leicestershire Constabulary; Northamptonshire Police; Nottinghamshire Police	Policy and Privacy Impact Assessment	Official force website	Yes
Durham Constabulary	Policy	Official force website	Yes
Essex Police	Policy	Official force website	Yes
Greater Manchester Police	Policy and Procedure	Official force website	Yes
Humberside Police	Policy and Procedure	Emailed on request	Not at this time
Merseyside Police	Policy and Procedure	Official force website	Yes
Metropolitan Police	Dedicated website	Official force website	No
Northumbria Police	Policy	Official force website	No
Surrey Police	Policy	Official force website	No
Warwickshire Police and West Mercia Police	Policy	Official force website	Yes
West Midlands Police	Privacy Impact Assessment	Official force website	Yes
West Yorkshire Police	Policy	Official force website	Yes