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# HALDIMAND COUNTY

## Report HRD-07-2022 Bill 88 - Electronic Data Collection and Use

For Consideration by Council in Committee on September 20, 2022

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### OBJECTIVE:

To review and approve a new corporate policy, confirming the County's practices related to electronic monitoring of employees, meaning the collection and use of electronic data. By doing so, the County will meet obligations set out in provincial legislation Bill 88, "Working for Workers Act", concerning electronic monitoring.

### RECOMMENDATIONS:

1. THAT Report HRD-07-2022 Bill 88 – Electronic Data Collection and Use be received;
2. AND THAT the Electronic Data Collection and Use Policy, included as Attachment #1 to Report HRD-07-2022, be approved;
3. AND THAT the Senior Management Team be delegated the authority to revise this policy in the future, as deemed necessary.

**Prepared by:** Megan Jamieson, Director, Human Resources

**Respectfully submitted:** Cathy Case, General Manager of Corporate & Social Services

**Approved:** Craig Manley, MCIP, RPP, Chief Administrative Officer

### EXECUTIVE SUMMARY:

Ontario legislation, Bill 88, passed in April, 2022, requires employers with more than 24 employees to develop written policy regarding electronic monitoring of employees. While such policy does not create a new "Right" it aims to ensure employers are transparent about the collection and use of electronic data regarding workers.

Staff have drafted a proposed policy to meet this requirement and are recommending its adoption by Council. Ultimately, having such a policy aligns with the County's value of transparency as well as fair and consistent employment practices which balance individual's privacy with the employer's responsibilities.

### BACKGROUND:

Recently, the Government of Ontario introduced several legislative changes in response to the realities of remote work and the modern workplace. Specific to this report, Bill 88, *Working for Worker's Act, 2021*, was introduced February 28, 2022 and passed April 11, 2022. Once passed, it amended the *Employment Standards Act (ESA)* to require certain Employers to prepare a written policy on electronic monitoring of employees. Guidelines to the ESA describe "electronic monitoring" as inclusive of all forms of employee and assignment employee monitoring that is done electronically. As examples, use of GPS in vehicles; use of electronic sensor to track speed of scanning (at a grocery store); tracking of websites that an employee visits during working hours.

It is important to note that this legislative change does not establish a new right for employees to be electronically monitored or not; likewise it does not create any new privacy rights for employees. The purpose of the legislation is to confirm employment practices so that employers can be transparent about whether they electronically monitor employees and if so, provide information as to how and in what circumstances that data is collected and used.

## **ANALYSIS:**

In response to Bill 88, staff are recommending for approval, a draft Electronic Data Collection and Use Policy, provided as Attachment #1 to this report. Key areas to focus include:

- **Scope** – This policy applies to all employees, volunteer firefighters, HCLB employees, as well as members of Council and those appointed to committees and Boards. Legislation also requires that this policy be extended to “assignment employees”, so Haldimand County will endeavor to ensure all contractors are aware of this policy and its potential implications for their staff.
- **Monitoring Data** – The County currently collects and monitors data related to county vehicles and through electronic timecard systems. This data is predominantly collected to ensure appropriate use, operational efficiencies and to defend legal interests.
- **Collecting Data** – The County collects electronic data related to: access (key fobs); network and systems; video cameras and has the ability to collect GPS data on County phones. However, none of this data is actively monitored, meaning that access would be limited to specific times that it is required to troubleshoot an issue, follow-up on a claim/investigation or otherwise protect the County’s legal and operational interests.
- **Accessing Information** – through the development of this policy, staff identified a need for a clear process in accessing collected/stored data. Using a request-based process will encourage fair and consistent practices and identify the appropriate authority level for access.

A number of established policies and practices covering Haldimand County employees were considered when developing the proposed policy. This policy is not meant to conflict or override those policies, but work in alignment with, to ensure fair and consistent practices:

- **Information Technology Acceptable Usage Policy (ITAUP)**, outlining expectations and appropriate use of County software, hardware and network access.
- **Security Video Surveillance Systems Policy**, establishing the purpose and use of security cameras throughout Haldimand County properties.
- **Corporate Use of Social Media Policy**, outlining expectations and appropriate use of corporate and personal social media accounts.
- **Haldimand County collective agreements (CUPE, SEIU, UFCW and ONA)** as well as the **Policy Governing Non-Union Employees (Corporate Policy 2012-02)** and the **Employee Code of Conduct**, outlining expectations related to performance, ethical practices, investigation/performance management parameters and access to complaint/grievance process if an employee feels they are being mistreated.

These policies work together in balancing the need of employees/volunteers for individual privacy, with the employer’s responsibilities of effective and efficient operations. While the policy is meant to confirm existing expectations, staff recognize that it may be perceived as a new or enhanced practice of Haldimand County to collect/monitor data. Human Resources staff will work jointly with communications to ensure effective communication of this new corporate policy and that each employee signs off on having received the information. In addition, any employee who feels their rights are being impacted or have concerns with the data collection as outlined, are encouraged to meet with their direct Supervisor to discuss.

The policy will be reviewed on an as-needed basis and updated as required to meet the changing workplace needs and/or changing legislation. The Senior Management Team is seeking authority to make such administrative changes as needed.

## **FINANCIAL/LEGAL IMPLICATIONS:**

Failure to document written policy on electronic monitoring of employees, will place the County in non-compliance with the ESA, which is subject to order and/or fines to be imposed. Once approved, the policy must be provided to employees within 30 calendar days of the policy being prepared or the policy being changed, and to new employees within 30 calendar days of their date of hire. Finally, every written policy must be retained for a minimum of three (3) years.

There are no financial implications.

## **STAKEHOLDER IMPACTS:**

This policy affects all employees across each department; however, since it is meant to reflect the current practices there is no anticipated immediate impacts. Human Resources staff will work directly with communications for the purposes of educating affected employees/volunteers. In addition, Human Resources staff will work directly with Innovation and Technology Services staff and the Senior Management Team with respect to ongoing practices of collection, access and usage of data.

## **REPORT IMPACTS:**

Agreement: No

By-law: No

Budget Amendment: No

Policy: Yes

## **REFERENCES:**

1. [Information Technology Acceptable Usage Policy](#)
2. [Security Video Surveillance Systems Policy](#)
3. [Corporate Use of Social Media Policy](#)
4. [CUPE Local 4700 Collective Agreement](#)
5. [SEIU Collective Agreement](#)
6. [UFCW SW Collective Agreement](#)
7. [ONA Collective Agreement](#)
8. [Policy No. 2012-02 Policy Governing Non-Union Employees](#)

## **ATTACHMENTS:**

1. Draft Electronic Data Collection and Usage Policy