

## CLGS/ICGS – Policy re GPS Tracking

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[Policy Manual Chapter:           ; Policy Number           ; Ver. 1.0 2018-05-29]

1. **POLICY STATEMENT [Short Form]:** Global Positioning System [“GPS”] technology is permitted and will be utilized by CLGS, but only in accordance with this Policy Statement and SOPs developed under it.
2. **INTRODUCTION:**
  - a. Statutory and common law provisions governing Community Living Greater Sudbury / Intégration Communautaire Grand Sudbury [“CLGS/ICGS”, or “CLGS”] require that CLGS strive to achieve a balance between the rights of clients and staff members while at the same time keeping each safe and maximizing efficiency of use of the resources granted to CLGS. This can give rise to conflicts between competing rights and interests.
  - b. In the course of delivering its services to clients, GPS tracking can be a tool for addressing the appropriate balance but, by its nature may be abused or misused, either intentionally or unintentionally.
  - c. GPS tracking technology is not new and is used in a variety of businesses and social service agencies.
  - d. Recently, CLGS underwent a significant financial review where implementation of such technology was recommended.
3. **PURPOSE:** This policy is intended to give direction and guidance on:
  - a. Managing workforce productivity;
  - b. Asset protection and management;
  - c. Safety and development;
  - d. The safeguards that need to be addressed to mitigate the risk of abuse or misuse both in the technology itself and the information or records that may be generated from it.
  - e. CLGS/ICGS will adopt a program of utilizing GPS tracking equipment to enhance its ability to address:
    - i. loss prevention,
    - ii. safety & security of clients and staff,
    - iii. quality assurance measures,
    - iv. financial controls,
    - v. deterrence of theft or fraud,
    - vi. monitoring and control of fuel consumption and comparative analysis by vehicle to inform future fleet replacement acquisition decision making,

- vii. to give direction to staff regarding acceptable refueling locations or restrictions/guidelines regarding same,
- viii. access to objective evidence for dispute resolution purposes,
- ix. to monitor employee performance and adherence to laws and CLGS policies, [eg. that no vehicle be operated when an inclement weather restriction is posted]
- x. other aspects of its responsibilities.

#### 4. FURTHER POLICY STATEMENTS AND DIRECTION:

- a. GPS tracking may be used in any CLGS vehicle whether owned or leased, for the purposes set out above and may be used on a continuous 24 hour/day basis subject however to the limitations and terms of this PS and any SOPs developed under it.

**Commentary:**

- 1 There is no applicable legislation in Ontario which specifically addresses an employer's right to use GPS technology. However, there is a growing body of arbitral case law and federal and provincial privacy legislation, all of which is of assistance in guiding policy development.

- b. Such use will be undertaken only in accordance with this Policy.
- c. GPS equipment will be used to capture information about:
  - i. Vehicle start and stop times;
  - ii. Vehicle speed;
  - iii. Vehicle location;
  - iv. Parking location.
- d. GPS equipment will NOT be used to:
  - i. Identify the driver of a vehicle except in limited circumstances related to the health and safety of a staff member or for staff management purposes. By driving any CLGS vehicle, staff give their implied consent to the use of their personal information in such limited circumstances.

**Commentary:**

- 1 Vehicles are identified in the GPS system by a unit number which normally will be associated with a specific Program.
- 2 Program Vehicle Logs may identify the driver if only one staff member is in the vehicle, but not necessarily if more than one staff member is present.
- 3 In some, but not all cases, it is therefore possible to identify the driver if need be by comparing or linking the GPS data to the Vehicle Log.
- 4 Accordingly, personal information may be "linked" to the GPS data and to that extent the data then may become personal [see PIPEDA Case Summary #2006-351] [Note: ["PIPEDA" is a reference to the federal Personal Information Protection & Electronic Documents Act ]
- 5 Case Summary #2006-351:
  - a. Note that this is NOT a "decision" and is not binding, though the reasoning in the Case Summary warrants consideration.
  - b. The Case Summary pre-dated amendments to the Act in 2015 which allow for collection of personal information without consent.
  - c. The reasoning in this Case Summary is not universally adopted and the issue has had mixed outcomes. A useful and quite fulsome discussion can be found in Schindler Elevator Corporation (Re). 2012 BCIPC 25 (CanLII).

**Further Commentary:**

- 1 The CLGS policy is that such a "link" will not be established except where there is a need to identify the specific driver for staff management purposes or the safety of the staff member.
- 2 For example, if an employee is thought to be breaching the employment contract, personal information could be collected via GPS for investigative purposes, where obtaining advance knowledge or consent would compromise the accuracy or availability of the information and hence the integrity of the investigation.
- 3 Prior to the implementation of GPS tracking, staff were required to log their vehicle trips to show destination and distance travelled etc. A review of these logs demonstrates major gaps in the data recorded making the paper logs unusable for any meaningful and reliable systemic review. Missing metrics, meant missed opportunities for measurable improvements, hence the need for GPS data collection. CLGS has, accordingly, tried less intrusive measures without success.
- 4 GPS tracking allows management to know the location of the vehicle, but not who is driving it unless the "link" is investigated.
- 5 In most cases, use of the GPS data will be to identify the vehicle used, not the driver. Privacy intrusion, if any, will be minimized by restrictions on access to the "linking" data.
- 6 Use of GPS equipment is no more intrusive upon privacy than the existing "paper based" data collection methods.

## e. GPS tracking information will be used:

- i. To locate, dispatch and route employees to specific locations as warranted by varying client wants and needs within each Programs. Such needs are identified in client specific individual support plans (Life plans) and/or other program specific assigned duties.
- ii. To determine if a vehicle has remained stationary for an inordinate amount of time which could provide an indication that an employee and/or client's safety may be at risk;
- iii. To provide information on vehicle's location which could be used to retrieve it in the event it is stolen, abandoned or scheduled for maintenance or breaks down or is being driven in contravention of the CLGS winter driving restrictions;

**Commentary:**

- 1 CLGS have experienced mechanical failures leading to the vehicle being inoperable and "parked" to avoid risk of injury if the vehicle is driven. Staff have on some occasions then used a taxi or other means of transportation at some expense to CLGS.
- 2 A "stop" at an unusual location can be used to trigger an alert so that appropriate instruction can be given or other remedial steps taken.
- 3 This is of particular importance in winter driving conditions.
- 4 CLGS prohibits driving when circumstances warrant it and GPS will assist management to know whether the directives are being respected and would also alert management to some staff members perhaps not having received the directive to keep vehicles off the road.
- 5 CLGS is mindful of its obligation to keep staff, clients, and the general public safe and recent MoL prosecutions for not doing so suggest that CLGS is not allowed to rely entirely on directives to staff, but must supervise staff closely to ensure compliance at all times.

- iv. To monitor vehicle usage to ensure that vehicles are being used in accordance with statutory and regulatory provisions and CLGS policy;

- v. To analyze usage to assess and improve efficiencies in vehicle fleet utilization, fleet size, vehicle deployment, recommend travel routes, dispatching of maintenance staff, and other operational considerations.
- vi. To address MCSS concerns about the CLGS fleet size and associated costs;
- vii. To investigate and address public complaints about CLGS vehicles being driven improperly;

**Commentary:**

- 1 CLGS vehicles each have “How’s my driving” bumper stickers that advise the public to call if they have comments about how a CLGS vehicle is being driven.
- 2 Those comments may be either laudatory or critical. CLGS has received both types of comments.
- 3 Transportation logs have proven unreliable as a tool to address specifics of those incidents.
- 4 GPS data can be used to refute allegations of excessive speed or aggressive driving or can be used as an aid to training safe driving skills if an unsafe driver is identified.

- viii. To protect staff from unwarranted complaints about driving standards;
  - ix. To monitor compliance with the CLGS Vehicle Use Policy;
  - x. To identify those employees who may require defensive/safe driver training or individual coaching;
  - xi. To monitor kilometers driven and fuel consumption;
- f. **Records and Access to Records:**
- i. Access to GPS data will be restricted and all access will be logged;
  - ii. Real Time and Historical Data will be available only to upper management [Leadership Team] members.
  - iii. Real Time Data will not be monitored on a consistent basis, but rather will be accessed in response to specific incidents or investigations.
  - iv. If a middle management member [eg. a supervisor, has a need to know the location of a vehicle at any given time, that member will request the information from the Director of Operations or, in the absence of that person, then the Director of Community Services or the Executive Director;
  - v. All requests and responses will be logged;
  - vi. It is not intended that personal information be recorded. If personal information is recorded, such will not be disclosed except as required by law or as permitted under relevant privacy legislation and this Policy.
  - vii. Any personal information will be retained for 3 years only unless special circumstances warrant retention for a longer period of time [eg when the vehicle has been involved in an accident and there are claims against CLGS or to satisfy WCB reporting requirements.]

**Commentary:**

- 1 Three years is necessary because, under the Limitations Act of Ontario a claimant has 2 years to commence an action in Court and then 6 months thereafter to serve a Statement of Claim and so CLGS may not know for some time whether there is a need to preserve data for litigation purposes.
- 2 Even where the vehicle is not directly involved in a collision, an allegation may be made that a CLGS vehicle caused or contributed to an accident. While such an allegation would normally come to CLGS attention well in advance, it is not necessarily always so.
- 3 In 2015, a CLGS client suffered a catastrophic injury while a passenger in a CLGS vehicle. GPS data was not available to demonstrate the appropriateness of driver action in response to client movement inside the vehicle.
- 4 GPS data is intended to be used to refute allegations of negligent or dangerous driving and to allow a staff member to defend against prosecution.

- viii. Further provisions will be developed in the SOPs.
- g. Installations are not to be modified or tampered with by any staff member who has not been approved in writing to do so. Tampering with an installation or any GPS tracking equipment is a very serious violation of policy and will result in discipline which may include termination of employment.
  - h. GPS tracking data or records are to be accessed only by authorized staff and doing so without authorization is a very serious violation of policy and will result in discipline which may include termination of employment.
  - i. If unauthorized GPS tracking equipment or unauthorized access to GPS data is discovered, this is to be reported to the Operations Manager immediately who in turn will advise the Executive Director and corrective action will be taken to disable the equipment until properly authorized and to otherwise protect the data from intrusion.
  - j. Any CLGS employee having knowledge of a breach of this PS or the SOPs under it, GPS tracking or access to or disclosure of GPS data must immediately inform the Operations Manager who will take all reasonable steps to address the matter.
  - k. Any such breach, or failure to report such breach, is cause for disciplinary action up to and including termination of employment.
  - l. All persons attending any CLGS workplace must do so with a reduced expectation of privacy except for areas such as private washrooms or as required by law and must consider that they are likely to be under some form of monitoring, scrutiny or surveillance at all times.
  - m. Notice of the existence of a GPS tracking device in a CLGS vehicle will be given by bilingual decals prominently displayed in the vehicle as a reminder to staff of the need for vigilant, non-distracted defensive driving practices.

**Commentary:**

- 1 The expectation of privacy is not usually considered reasonable in a workplace environment, subject to some limitations.
- 2 Recent amendments to the Canadian PIPEDA legislation specifically recognize this principle with respect to workplace information.
- 3 PIPEDA provides in section 7(1) that an organization may collect personal information without the knowledge or consent of the individual if it was produced by the individual in the course of their employment, business or profession and the collection is consistent with the purposes for which the information was produced.
- 4 PIPEDA further provides now in section 7.3 that a business may collect, use and disclose personal information without the consent of the individual if
  - (a) the collection, use or disclosure is necessary to establish, manage or terminate an employment relationship; and
  - (b) the business has informed the individual that the personal information will be or may be collected, used or disclosed for those purposes.
- 5 This Policy and other CLGS Policy Statements are notice to staff of the collection, use and disclosure of information for such purposes, but specific notices will also be posted.
- 6 Consideration should be given to posting such a notice on the Vehicle Logs maintained in each Program.

n. **Principles to be Considered:**

- i. GPS monitoring should be carried out in the least intrusive manner possible in the context in which it is being used;
- ii. Except in the case of covert surveillance, notice of surveillance should be given.
- iii. Reasonable expectations of privacy need to be balanced against the risks attempted to be mitigated by the use of surveillance techniques and the benefits of such.
- iv. CLGS has multiple obligations to staff, clients, and the public not all of which are compatible and there is a need to balance expectations, rights and obligations.
- v. CLGS has legitimate organizational needs which can benefit from GPS equipment.
- vi. GPS equipment produces data which must then be protected from inappropriate disclosure and use.
- vii. GPS equipment needs to be monitored to protect against failure, tampering, or other frustration of purpose,
- viii. Only authorized personnel should install or adjust GPS equipment,
- ix. Confidentiality expectations apply to anyone who accesses GPS equipment or data collected by such equipment.

**Commentary:**

- 1 Confidentiality extends to EVERYONE and in ALL circumstances except as required by law or other required or permitted by CLGS express policies and procedures.
- 2 This means that "gossiping" about matters that GPS equipment reveals is a breach of this Policy and may result in discipline.
- 3 Members of the Management staff need to be especially mindful of this.

- x. Signage should be employed to give notice of the use of GPS equipment.
- xi. Collateral or incidental to the purpose for which it is intended to be used, information gathered by surveillance equipment may produce evidence of breach of policies and procedures and such evidence may be used in collateral or incidental ways.

**Commentary:**

- 1 CLGS is mindful of the possibility that resorting to collateral use of information for discipline purposes unrelated to the original purpose of the equipment may have the effect of discouraging people from reporting breaches of policy. An individual may, for example not report an incident, because they know that resort to GPS data about the incident may also disclose that they were in breach of some other policy [eg inappropriate cell phone use.]
- 2 CLGS would prefer to have the more serious breach reported and so will not use the records for collateral discipline purposes except in the rarest of cases.[eg a collateral breach of policy which is also serious in nature such as theft of time by a co-worker.]
- 3 This would not, however, prevent the person from being spoken to about the collateral matter to remind them of policy provisions and the need for compliance.

- xii. Reasonableness of use of GPS equipment involves consideration of the following questions:
  - (1) Is there a specific need for the equipment?

- (2) What other means of obtaining the data were considered and why were none suitable?
- (3) Is the use demonstrably necessary to meet the specific need?
- (4) Is it likely to be effective in meeting that need?
- (5) Is the intrusion upon reasonable expectations of privacy of the staff proportional to the benefit gained?
- (6) Is there a way to achieve the same end which would have been less invasive of privacy?
- (7) Are there ways to use the equipment which mitigate intrusion upon reasonable expectations of privacy?
- (8) Was notice of use given or was it surreptitious?
- xiii. CLGS has attempted and intends that this Policy Statement and its SOPs address all these issues and intends to further amend or restrict this PS as need be to be in compliance with the principles established by developments in jurisprudence and encourages staff to bring issues forward to address any perceived gaps.
- xiv. Access to GPS data and records should be restricted and limited on a “need to know” basis and data and records should not, except for litigation hold purposes, be retained longer than reasonably necessary.
- xv. The federal Personal Information Protection & Electronic Documents Act [“**PIPEDA**”]:<sup>1</sup>
  - (1) by Section 5(3) allows for the collection, use or disclosure of personal information without consent for “purposes that a reasonable person would consider appropriate” in the circumstances.
  - (2) By Section 7(1)(b) provides that collection without consent is reasonable for purposes related to investigating a breach of an agreement or a contravention of law.

## 5. SCOPE:

- a. This Policy applies to:
  - i. All employees of Community Living Greater Sudbury / Intégration Communautaire Grand Sudbury including Union and non-Union staff members and members of Management,
  - ii. Volunteers and other third parties working on behalf of or with CLGS/ICGS,
  - iii. Visitors and all and any others including clients, employers, and members of the public.
  - iv. All CLGS workplaces and vehicles and in particular users of CLGS vehicles.
  - v. All Host Family Providers.
- b. **This Policy does NOT apply to:**
  - i. **N/A.**
- c. All Managers, Supervisors and Workers are expected to adhere to this policy, and will be held responsible for not following it.

## 6. PRINCIPLES & PURPOSE [further statements as to]:

- a. Under QAM provisions of Ontario Regulation 299/10, CLGS has a statutory obligation to have policies and procedures in place to address quality assurance measures including [but not necessarily limited to]:
  - i. Promotion of social inclusion, individual choice, independence and rights.

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<sup>1</sup> See too the earlier Commentary about PIPEDA above at 4.m

- ii. Development of individual support plans.
  - iii. Assistance with the management of finances.
  - iv. Health promotion, medical services and medication.
  - v. Abuse prevention and reporting and the review of policies and procedures on abuse.
  - vi. Notification of incidents of abuse.
  - vii. Confidentiality and privacy.
  - viii. Safety around agency owned or agency operated premises.
  - ix. Safety and security of persons with developmental disabilities.
  - x. Human resource practices.
  - xi. Service records.
- b. Further, CLGS is required to have:
- i. Policies and procedures on abuse which promote zero tolerance toward all forms of abuse;
  - ii. A continuity of operation plan that ensures safety around agency owned or agency operated premises during a service disruption;
- c. Provisions of Health and Safety laws also require CLGS as an employer to have in place systems to address/mitigate the risk of injury and accidents in the workplace.
- d. CLGS recognizes GPS technology as a way to:
- i. Protect and enhance the security, health and safety of people, premises and property;
  - ii. assist in the development of training, and debriefing following incidents of varying severity;
  - iii. monitor workplaces to ensure compliance with CLGS Policies and Procedures and for quality assurance purposes as mandated by MCSS or other governing bodies;
  - iv. provide objective evidence of circumstances being reviewed in investigations of breach of CLGS Policies, or crime or other applicable law.
- e. CLGS/ICGS recognizes the need to balance privacy interests, programming needs, security, efficiency, compliance, and health & safety considerations for staff and clients and all who access CLGS/ICGS services and workplaces.
- f. CLGS/ICGS desires to have a Policy in place to assist in guiding the use of such devices and promoting an appropriate balance.
- g. Specifically, this Policy and SOPs adopted under it will address requirements, responsibilities and guidelines with respect to:
- i. Site specific documentation of the rationale for using GPS equipment,
  - ii. The installation of GPS equipment systems,
  - iii. The operation of such equipment,
  - iv. The use of the information obtained through such equipment,
  - v. The retention, storage and destruction of the information as appropriate from time to time,
  - vi. The custody and control of and access to records created through such systems,
  - vii. Training of staff members as to the responsibilities of identified role members.

## **7. RESPONSIBILITIES:**

- a. The Director of Operations is responsible for implementation and monitoring of the impact of this PS and for the development of SOPs relevant to its purposes as well as evaluation of the effectiveness of the use of GPS equipment for achieving the operational purposes for which it is implemented.

- b. Every employee is personally accountable and responsible for acting and working in compliance with this Policy and the related program(s) and Standard Operating Procedures ["SOPs"].

## 8. DEFINITIONS:

- a. **"Worker"** means any CLGS staff member engaged in the duties for which they are employed or present at a CLGS workplace when not on duty.

## 9. Further Definitions: This PS will be governed by the following additional acronyms and definitions:

- a. **"CLGS/ICGS"** means Community Living Greater Sudbury / Intégration Communautaire Grand Sudbury and is synonymous with CLGS;
- b. **"CoP"** means Code of Practice;
- c. **"MCSS"** means Ministry of Community and Social Services;
- d. **"MoL"** means the Ontario Ministry of Labour;
- e. **"OHSA"** means the Occupational Health and Safety Act of Ontario as amended from time to time;
- f. **"PIA"** means Privacy Impact Assessment;
- g. **"PS"** means: Policy Statement;
- h. **"SOP"** means Standard Operating Procedure.

## 10. PROCEDURES: In order to give effect to this policy, the following Standard Operating Procedures ["SOPs"] will be applied:

- a. Complaints or concerns raised by non-staff will be dealt with under the CLGS Complaints and Feedback Policy;
- b. Complaints or concerns raised by staff will be dealt with under the provisions of:
  - i. the Collective Agreement, or
  - ii. the JHSC procedures;
- c. **Installation, Operation & Location of Equipment;**
- d. **Records Management: Retention, Protection and Access to & Use of Data**
- e. **Notice & Signage Provisions;**

## 11. MISC:

- a. Data collected under this Policy and its SOPs will be subject to the CLGS/ICGS data retention policies and the CLGS Privacy & Confidentiality Policy.
- b. GPS data captured for one purpose may be used for another incompatible purpose especially where such data is objective evidence of what has transpired.<sup>2</sup>
- c. Documents relating to a Complaint or Investigation will be subject to CLGS/ICGS document retention policies.

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<sup>2</sup> See Commentary above at section 4 n.xi

**12. DISTRIBUTION AND POSTING:** This Policy is to be:

- a. Inserted in CLGS/ICGS Policy Manuals
- b. Made available to all employees;
- c. Posted in all regular Workplaces and Programs;
- d. Posted on the CLGS/ICGS website.
- e. Posted on ShareVision.

**13. Further Assistance:**

- i. Anyone needing assistance with this Policy may contact:
  - (1) The Director of Operations
  - (2) The Manager of Human Resources and Labour Relations
- ii. If a Worker needs further assistance, he or she may contact any of the above, and/or:
  - (1) The supervisor of their Program
  - (2) an OPSEU Local 676 Union Steward.

**14. COMING INTO FORCE, REVISION POLICY & HISTORY:**

- a. This PS comes into force once approved and signed by the Executive Director.
- b. All other PSs covering the same or similar subject matter and in force prior to the date of the coming into force of this PS are automatically repealed and deemed obsolete.
- c. Any processes or procedures commenced under other PSs or earlier version prior to the coming into force of this PS continue under this PS except to the extent that this version might deprive anyone to protections or benefits that accrued earlier.
- d. This PS is to be revised as often as is necessary, but at least every 3 years.
- e. All CLGS/ICGS policy and procedure documents are intended to be “living documents” which are amended and improved upon as circumstances may require or suggest.
- f. CLGS/ICGS is committed to amendment of its policies, procedures and processes to address ambiguities and inconsistencies. Accordingly, where this PS is considered to be ambiguous or inconsistent with other CLGS/ICGS Policy Statements, staff are expected and required to bring such issues to the attention of management in writing at the earliest opportunity.
- g. Where this Policy is not in compliance with privacy obligations imposed by law, CLGS/ICGS is committed to amendment so that it does comply.
- h. Everyone is encouraged to suggest amendments or improvements at any time and may do so in writing directed to the Executive Director.
- i. Suggested or recommended changes will not necessarily be adopted, as many considerations may come in to play and many times a balance must be struck between allocation of resources, competing interests, and Ministerial requirements and directives.

Revision	Date	Description of Changes	Approved By
1.0	2018-05-29	Adopted	Executive Director

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**CLGS Policies & Standard Operating Procedures Manual Particulars**

<b>Review Body:</b>	Management Team	<b>Approval Date:</b>	2018-05-29	<b>Approval Body:</b>	Executive Director
<b>Review Required</b>	Every 3 years	<b>Next Review:</b>	2021-05-01		
<b>Forms Attached:</b>		<b>Form #(s):</b>		<b>Form Name(s):</b>	
<b>Signatures</b>	<div style="display: flex; align-items: center;"> <div style="writing-mode: vertical-rl; transform: rotate(180deg); font-weight: bold; margin-right: 5px;">Word</div> <div style="text-align: center;">   <b>Leighton T. Roslyn</b>                      Executive Director                 </div> </div>	<div style="display: flex; align-items: center;"> <div style="writing-mode: vertical-rl; transform: rotate(180deg); font-weight: bold; margin-right: 5px;">PDF</div> <div style="flex-grow: 1;"></div> </div>			
<b>Statutory References</b>					
<b>Distribution</b>	A copy of this Policy Statement will be made available: <ol style="list-style-type: none"> <li>1. To employees upon hire</li> <li>2. In the CLGS Policy manual</li> <li>3. On the CLGS website</li> <li>4. On ShareVision.</li> </ol>				
<b>Other References</b>	1. .				
<b>Digital Location</b>	M:\Policy\GPS\GPS Tracking Policy CLGS ver20180529 FINAL.docx				