

Tanya Stoner

From: Elisha Hodge
Sent: Tuesday, June 26, 2012 1:53 PM
To: Kevin Wisniewski
Subject: RE: Records Request Jail Video

Mr. Wisniewski,

I have reviewed the legislative history on this provision and have attached links for your review. Based upon the discussions of the bill, it appears that this provision is relevant to not only what I as a lay person would think of as surveillance, but also a number of other things. In the legislative history, you will hear a discussion about what exactly "surveillance recording" is. Senator Bunch, the sponsor of the bill, describes "surveillance recording" as a "recording made for surveillance purposes." Senator Haynes then ask for a representative from the TENA (Tennessee Emergency Numbers Association) to explain what is considered a surveillance recording in the field. He responds by saying that it is "audio and visual recordings made within the justice system or a court room." He also says that it could be footage from a "traffic stop" and "recordings from the jail system that shows the layout or the way the jail system operates or does business." Senator Haynes then says based upon that information, a surveillance recording could be a recording related to "an escape or terrorist attack, or whatever," and the response is yes. Frank Gibson is also asked to give his opinion of the bill and you can hear his response as well. Additionally the second link contains a discussion between Senator and Bunch and Senator Herron that also speaks to what is meant by "surveillance recording." Based upon these discussions, I think that the assertion made by the Sheriff's Department is supported by the legislative history, even though this exact type of recording is not specifically mentioned. I think that given the legislative history, Tenn. Code Ann. Section 10-7-504(m) could be used very broadly. To answer your questions, (1) I think so based upon the legislative history (2) I think so based upon the legislative history and due to the fact that the confidentiality provision reads, " Surveillance recordings, whether recorded to audio or visual format, or both, except segments of the recordings **may** be made public when they include an act or incident involving public safety or security or possible criminal activity; and (3) I think so based upon the legislative history and no, I do not think that there would be a difference.

http://tnga.granicus.com/MediaPlayer.php?view_id=77&clip_id=1402&meta_id=19730

http://tnga.granicus.com/MediaPlayer.php?view_id=77&clip_id=1476&meta_id=21823

Please let me know if you have questions.

Elisha D. Hodge
Open Records Counsel

From: Kevin Wisniewski [mailto:kwisniewski@newschannel5.com]
Sent: Thursday, May 31, 2012 6:10 PM
To: Elisha Hodge
Subject: FW: Records Request Jail Video

Elisha Hodge,

We have always been able to obtain videos from inside prisons and jails, especially when they involve something like the use of force on an inmate and which are not the subject of a current criminal investigation. However the Davidson County Sheriff's Office has recently revised its policy concerning such videos, deeming them to be surveillance videos of a government building and thus exempt.

My reading of the law is that the surveillance video must be "directly related to the security of a government building" otherwise it would be a public record. That would raise the issue of needing to define "the security of a government

building” and what the legislative intent of the law actually was. I do not believe the legislative intent was to exempt videos of guards interacting with inmates, especially when it comes to the use of force against an inmate.

Now the second part of the law states such surveillance video “ may be made public when they include an act or incident involving public safety or security or possible criminal activity.” However the DCSO seems to be taking the position that disclosure in those circumstances is not mandatory and is up to their discretion on whether or not to release it, and further implying that they won’t release it since it “may” be withheld.

1. Would video of an inmate standing at a booking desk as an employee processes paperwork, taken by a static, fixed position camera isolated on the desk area be considered “directly related to the security” of the jail? We have examples of such videos that we have received in the past from the DCSO prior to this new policy.
2. If a video shows an inmate standing at the booking desk and then getting into a scuffle with a deputy or officer, and its not part of a current criminal investigation, would the DCSO have the discretion to exempt and withhold such a record?
3. IF the jail makes a video of a cell extraction involving the use of force against an inmate using a handheld camera that was turned on for the purpose of recording the extraction, would that video be considered “directly related to the security of the jail?” Would any fixed position cameras (aka surveillance cameras) that capture the same incident be treated differently than the handheld cameras?

These questions are not the subject to a current records request, but since we make such requests for video frequently we were hoping to get some opinions on the new policy prior to a newsworthy event in which this is surely to become an issue in the future.

We would appreciate any unofficial insight you might provide on this matter.

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From: Kevin Wisniewski
Sent: Thursday, May 31, 2012 5:33 PM
To: 'Stone, Katie (DCSO)'
Cc: West, Karla (DCSO); Phil Williams
Subject: RE: Records Request

Katie,
The key language is “records that are directly related to the security of government buildings...” so the surveillance video MUST be directly related to the security of any government building. You can’t just say that we won’t release ANY surveillance video because clearly not all surveillance video is directly related to the security of a government building. In

fact a strong argument could be made that video in a booking area, which is a static camera isolated on a desk, is NOT directly related to the security of the facility.

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From: Stone, Katie (DCSO) [mailto:KStone@DCSO.nashville.org]
Sent: Thursday, May 31, 2012 12:03 PM
To: Kevin Wisniewski
Cc: West, Karla (DCSO)
Subject: RE: Records Request

Kevin,

As I said before, thank you for your patience. I understand that Karla has informed you that we do not have any surveillance video relevant to the current records request. However, as to your more general question regarding surveillance video and the Tennessee Public Records Act, the language you quoted in red below is the language in question, although it is not from the section cited. The relevant portion is TCA §10-7-504(m)(1)(E). The full text of (m)(1) states:

(m)(1) Information and records that are directly related to the security of any government building shall be maintained as confidential and shall not be open to public inspection. For purposes of this subsection (m), "government building" means any building that is owned, leased or controlled, in whole or in part, by the state of Tennessee or any county, municipality, city or other political subdivision of the state of Tennessee. Such information and records include, but are not limited to:

(A) Information and records about alarm and security systems used at the government building, including codes, passwords, wiring diagrams, plans and security procedures and protocols related to the security systems;

(B) Security plans, including security-related contingency planning and emergency response plans;

(C) Assessments of security vulnerability;

(D) Information and records that would identify those areas of structural or operational vulnerability that would permit unlawful disruption to, or interference with, the services provided by a governmental entity; and

(E) Surveillance recordings, whether recorded to audio or visual format, or both, except segments of the recordings may be made public when they include an act or incident involving public safety or security or possible criminal activity. In addition, if the recordings are relevant to a civil action or criminal prosecution, then the recordings may be released in compliance with a subpoena or an order of a court of record in accordance with the Tennessee rules of civil or criminal procedure. The court or administrative judge having jurisdiction over the proceedings shall issue appropriate protective orders, when necessary, to ensure that the information is disclosed only to appropriate persons. Release of any segment or segments of the recordings shall not be construed as waiving the confidentiality of the remaining segments of the audio or visual tape.

Please notice that I have emphasized some of the language within this portion of the statute. I would like to specifically direct your attention to the use of the words "shall" and "may." These records (surveillance video) "shall" be maintained as confidential, but "may" be made public if the incident involves public safety or security or possible criminal activity. Therefore, DCSO can ("may") choose to release surveillance video if the incident on video involves public safety or security or possible criminal activity, but is not required to under this section. And, unless the video

does involve public safety or security or possible criminal activity, such video must ("shall") not be released absent subpoena or court order.

Your assertion that DCSO has a blanket policy that no video can be released in an incorrect one. The DCSO's policy does not deal with all video we create/maintain, only surveillance video, which is clearly addressed in TCA §10-7-504(m)(1)(E).

If you have any additional concerns regarding this issue, please do not hesitate to contact me.

Katie Stone

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From: Kevin Wisniewski [mailto:kwisniewski@newschannel5.com]
Sent: Thursday, May 31, 2012 9:48 AM
To: West, Karla (DCSO)
Cc: Stone, Katie (DCSO)
Subject: RE: Records Request

Karla West and Katie Stone,

I've yet to receive the language from Ms. Stone, but I will have to assume the only language she could be speaking about is in 10-1-504 dealing with confidential records. Section (a)21 (1)(1)(e) states:

(E) Surveillance recordings, whether recorded to audio or visual format, or both, *except segments of such recordings may be made public when they include an act or incident involving public safety or security or possible criminal activity.* In addition, if such recordings are relevant to a civil action or criminal prosecution, then the recordings may be released in compliance with a subpoena or an order of a court of record in accordance with the Tennessee Rules of Civil or Criminal Procedure. The court or administrative judge having jurisdiction over the proceedings shall issue appropriate protective orders, when necessary, to ensure that the information is disclosed only to appropriate persons. Release of any segment or segments of such recordings shall not be construed as waiving the confidentiality of the remaining segments of the audio or visual tape.

These laws can be interpreted many ways, that's precisely why we have judges who decide which interpretation is correct. In this case, we wholeheartedly disagree with the opinion that all of DCSO's videos are exempt from disclosure. That's also why Tennessee has a designated public records ombudsman in the Secretary of State's office who issues *opinions* on their interpretations of the TPRA. I do not believe that the above language restricts the release of videos in most of the circumstances in which we request them. Having a blanket policy that no videos can be released is something we need to address, and we should all address this policy before something newsworthy happens and the DCSO withholds relevant records.

Can you please state what your new policy is regarding the release of videos and on what language you are basing that opinion?

Sincerely,

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From: West, Karla (DCSO) [<mailto:KWest@dcso.nashville.org>]
Sent: Thursday, May 31, 2012 8:44 AM
To: Kevin Wisniewski
Cc: Stone, Katie (DCSO)
Subject: RE: Records Request

I think it, specifically, has to do with secure environments facilities...let her explain. I had never known of it, either.

From: Kevin Wisniewski [<mailto:kwisniewski@newschannel5.com>]
Sent: Thursday, May 31, 2012 8:42 AM
To: West, Karla (DCSO)
Subject: Re: Records Request

I'm almost positive there is no language in the TPRA that exempts sheriff department videos from ever being released. We get them from departments across the state and no one has ever made that claim.

Sent from my iPhone

On May 31, 2012, at 8:27 AM, "West, Karla (DCSO)" <KWest@dcso.nashville.org> wrote:

It isn't an attorney's opinion...it is in the TN Public Records Act...

Katie -- would you please provide for Kevin? Thanks!

From: Kevin Wisniewski [<mailto:kwisniewski@newschannel5.com>]
Sent: Thursday, May 31, 2012 8:27 AM
To: West, Karla (DCSO)
Subject: Re: Records Request

Yes, I our station would be interested in knowing more about this attorney's opinion that videos can not be released. Are they saying in ALL circumstances?

Sent from my iPhone

On May 31, 2012, at 7:54 AM, "West, Karla (DCSO)" <KWest@dcso.nashville.org> wrote:

Hey Kevin --

I am working on this. Consulting with Metro Legal this morning, but I should be able to have the IA file available to you soon. I'm not sure how big it is...I may just ask you guys to run over here and take a look. The only disciplinary action is a couple letters of reprimand from three and four years ago. I will forward in a second. Keep in mind what we have is an internal investigation, basically, of policies and procedures...the criminal investigation was with the police department.

As far as video (although I am told we have none on this case), after I released a video a few months ago, I was approached by one of our attorneys who told me, according to

the TN Public Records Act, that video "shall not" be released. I am cc'ing her on this and she will be more than happy to provide the documentation regarding this...

I will follow-up soon.

From: Kevin Wisniewski [<mailto:kwisniewski@newschannel5.com>]

Sent: Wednesday, May 30, 2012 5:29 PM

To: West, Karla (DCSO)

Cc: Grizzle, Byron (DCSO)

Subject: Records Request

Karla/Byron:

We would like to request the following public records:

1. All documents, reports, interviews, videos, photos and other records pertaining to the internal investigation into the use of force against Michael Minick and his subsequent death.
2. All videos and photos showing the use of restraints and use of force on Michael Minick from cameras located in the secure lockup area at Metro General hospital, or from any other cameras. It is believed that Mr. Minick was being held in room 7104 and in the custody of the DCSO.
3. Any records pertaining to past or present disciplinary actions or complaints against deputies Christopher Foster, Matthew Barshaw, Jeffrey Davidson and Morris Craven. (All were allegedly present at the time the use of force was used against Mr. Minnick.)

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