
Coates' Canons Blog: Are Security Videos Public Records?

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Local governments, like many other organizations, place cameras in strategic locations to monitor activities that take place on their property or in public places. Security cameras are used for various purposes, including to apprehend and deter criminal behavior by employees or members of the public and to monitor and document employee performance for evaluation, discipline or training purposes. Public agencies may receive requests to inspect or obtain copies of security video records, which increasingly take the form of digital files rather than tapes. Applying the framework for responding to public records requests, this blog post focuses on several exceptions that might apply to these types of records.

Consider two hypothetical requests for security video records:

A request for all the tapes or data created by security cameras at the landfill during the past six months; and

A request for the time the clerk arrived at work each day for the past two weeks, based on the time data recorded on the security video in town hall.

Applying the Framework

1. Does a record exist that corresponds to the request? *If not, no disclosure is required. If so, continue to question 2.*

Security cameras create records that are within the scope of the public records law. Whether they are digital files or tapes, whether they include audio or not, these are clearly records as defined in G.S. 132-1(a).

The first request clearly describes records that have been created. An issue that could arise, however, is whether the records still exist. What if the unit destroyed, deleted, or taped over them? The state's records retention requirements include a provision for "office security records" including "surveillance system reports and recordings". The schedule provides that these recordings may be destroyed in office or reused after 30 days. It's not entirely clear whether this provision would apply to landfill videos, but it's possible that the records older than 30 days no longer exist and have lawfully been destroyed.

The second request is really a request for information that may exist on a record, but it is not a request for a record that exists. The public records law does not require the agency to review the tapes and compile information from them in response to a request. Even if the videos exist and are public records, a public agency has no legal obligation to mine them for specific information or data that may be requested. A person may have a right to inspect the videos to obtain this information, unless an exception applies (see question 3).

2. Is the record "made or received in the transaction of public business?" *If not, no disclosure is required. If so, continue to question 3.*

As noted above, local governments use security cameras for various purposes, all of which are connected with public business. So even if the recordings capture private interactions that take place on public property or in public places, they are still within the definition of a public record under the statute.

3. Is there an exception that applies? *If not, the requested access must be provided. If so, continue to question 4.*

There is no categorical exception for security video records. Like email, video records may contain various types of

content. Whether an exception applies may depend upon the purpose (or purposes) for which the agency created the record, and in some cases, what information is actually contained in the record.

Criminal investigation or intelligence records – 132-1.4.

A common purpose for security cameras is to deter criminal activity and apprehend wrongdoers. Records created for this purpose fall within the public records law exception for criminal investigation or intelligence records.

What about records that do not actually document the commission of a crime? May videos that do not contain evidence of criminal activity be withheld under this exception? The statute applies to records that are collected or created for law enforcement purposes and does not limit the exception to those records that actually describe criminal activity. So as long as it's clear that the video records were created for a law enforcement purpose, it appears that they may be withheld even if they do not depict criminal activity.

It's important to note, however, that this exception *allows* a law enforcement agency to withhold the records, but does not require the agency to do so. That is, the records are not subject to a right of public access, but they are not confidential and may be released in the discretion of the agency. Local governments must also consider the constitutional privacy rights of individuals who may be recorded on security videos. These issues are addressed in the report linked at the end of this post.

Personnel Records – 160A-168; 153A-98

Another purpose for security cameras might be to document, monitor, and evaluate the actions of local government employees. As such, information on security videos might be considered to have been “gathered” with respect to employees whose actions are recorded and could become part of their confidential personnel files. In order to make this claim, it will be important for the unit of government to establish that it created the video system at least in part, for the purpose of monitoring employees, and that the specific information on the video record actually contains confidential information.

Sensitive Public Security Information – 132-1.7

Although the title of this statute may suggest that it creates a broad exception for security video tapes or data, it doesn't. Instead, this exception applies to security plans and arrangements, and to detailed plans and drawings of public buildings and infrastructure facilities. This exception could apply, however, to a request for information about the location, technical specifications, or capabilities of security cameras or other equipment.

4. Does the exception apply to the entire record, or only to certain information, and does it prohibit disclosure or does it deny the right of access? *If a prohibition applies to the entire record, do not disclose; if it applies only to certain information, redact and disclose. If there is no right of access to some or all of the information, but release is not prohibited, determine whether or not to release the entire or a redacted record.*

Going back to our broad request for the landfill videos for the past six months, how does the unit respond, considering the multiple exceptions that might apply? The personnel exception, if it applies, might warrant redaction of any data or segments that disclose personnel information. That probably doesn't mean anything that has an employee in it, but it could mean that if there is material that has been or will be gathered for the purpose of evaluating or disciplining an employee, it could be redacted. So this requires a review of the content of the record.

If the law enforcement exception applies, however, the unit probably has authority to withhold the entire record, even if some information contained in the records does not indicate criminal activity. It will be up to the unit to determine whether to release any or all of the record.

The Need For a Policy

Like email and paper records, security video tapes or video data records are not directly addressed in the statutes. Their treatment as public records depends upon the purpose for which they are created and their content. It is reasonable to expect that agencies will receive requests for copies of these records, so it makes good sense to develop policies



addressing why they are being created, how long they will be maintained, how they will be used, and under what circumstances they will be released. A comprehensive analysis of privacy and other legal and policy issues implicated by government video surveillance can be found here: [Guidelines for Public Video Surveillance](#)

Links

- canons.sog.unc.edu/?p=2592
- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=132-1
- archives.ncdcr.gov/government/retention-schedules/state-agency-schedules
- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=132-1.4
- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=160A-168
- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=153A-98
- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=132-1.7
- www.constitutionproject.org/pdf/Video_Surveillance_Guidelines_Report_w_Model_Legislation4.pdf