
OPINION OF THE PUBLIC ACCESS COUNSELOR

KRISTEN J. CASE,
Complainant,

v.

SOUTH MADISON COMMUNITY SCHOOL CORP.,
Respondent.

Formal Complaint No.
23-FC-23

Luke H. Britt
Public Access Counselor

BRITT, opinion of the counselor:

This advisory opinion is in response to a formal complaint alleging the South Madison School Corporation, through its Board of School Trustees, violated the Open Door Law.¹ Attorney Amy A. Matthews filed an answer on behalf of the school corporation. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal

¹ Ind. Code § 5-14-1.5-1-8.

complaint received by the Office of the Public Access Counselor on February 28, 2023.

BACKGROUND

This case explores whether a school corporation has discretion to withhold video footage of a school parking lot under the Access to Public Records Act's (APRA) disclosure exception for school safety and security measures.

On February 6, 2023, Kristen J. Case (Complainant) emailed a public records request to the South Madison Community School Corporation (SMCSC) seeking video footage from an incident in the Pendleton Heights High School parking lot involving her daughter.

After a couple weeks of correspondence with Case, SMCSC ultimately denied her request. The school corporation did not include a statutory justification for the denial but instead cited "safety reasons." Additionally, SMCSC did not download the requested footage; and thus, the video surveillance system—which is on a continuous loop—recorded over the relevant video.

On February 22, 2023, Case filed a formal complaint with this office alleging SMCSC violated APRA by denying her access to the video footage.

On March 20, 2023, SMCSC filed an answer with this office denying that it wrongfully withheld the surveillance footage. SMCSC argues that it exercised its discretion under APRA to withhold "school safety and security measures, plans, and systems." SMCSC contends that providing access to requested footage would give a member of the public a "deep and significant knowledge" of the capabilities—and

weaknesses—of the school corporation’s security measures. To bolster its argument, SMCSC cites previous advisory opinions from this office, which are decades old in some cases.

As an aside, it is worth mentioning that SMCSC invited the complainant to accept a written summary of the footage as a substitute for access to the actual footage.

ANALYSIS

1. The Access to Public Records Act

The Access to Public Records Act (APRA) states that “(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information.” Ind. Code § 5-14-3-1. South Madison Community School Corporation (SMCSC) is a public agency for purposes of APRA; and therefore, subject to the law’s requirements. See Ind. Code § 5-14-3-2(q). As a result, unless an exception applies, any person has the right to inspect and copy the school corporation’s public records during regular business hours. Ind. Code § 5-14-3-3(a).

Notably, APRA contains exemptions and discretionary exceptions to the general rule of disclosure. See Ind. Code § 5-14-3-4(a), to -(b).

This case involves the applicability of APRA’s disclosure exception for school safety and security measures, plans,

and systems, including emergency preparedness plans developed under 511 IAC 6.1-2-2.5.²

2. General surveillance footage

Under APRA, security camera footage qualifies as a public record. *See* Ind. Code § 5-14-3-2(r). That means the footage is presumptively disclosable unless an exemption or exception to disclosure applies.

Notably, APRA does not expressly address general surveillance footage. It does, however, provide schools authority to withhold certain safety and security records from public disclosure. Specifically, APRA provides schools discretion to withhold the following:

School safety and security measures, plans, and systems, including emergency preparedness plans developed under 511 IAC 6.1-2-2.5. I.C. § 5-14-3-4(b)(18).

Ind. Code § 5-14-3-4(b)(18). SM CSC argues, in part, this exception applies to the footage Case requested. As support, the school cites older opinions from this office, which included disputes over access to footage from a Department of Correction facility; footage of a private casino compiled by excise police in a criminal investigation; and a considerably broad analysis of camera location issues at Ivy Tech Community College.

In the years since those opinions were written, this office has addressed scores of general surveillance footage requests.

² Ind. Code § 5-14-3-4(b)(18).

This office is mindful of school security and takes a balanced approach to ensure our guidance is both consistent with the law and not contrary to the safety and well-being of students.

Toward that end, we approach the issue by differentiating between common areas and more clandestine or sensitive camera placements. For example, classroom cameras, if they exist, would certainly capture more sensitive footage than a lobby area within the school that anyone could access.

This office recently addressed a similar issue.³ In that case, a requester sought video footage of a school parking lot, which the school corporation denied on grounds that the requested video did not exist because a particular motion activated camera did not activate and record. Notably, the school corporation disclosed several other videos to the requester and made no mention of any potential security concerns by disclosing video of a common area like a parking lot.

So too is the case here. It strains credulity to conclude that a school corporation has discretion to withhold from disclosure camera footage from a school parking lot falls into the category created by the General Assembly at Indiana code section 5-14-3-4(b)(18).

Without more than just a cursory citation without explanation of application, this office is left to conclude that the denial was unjustified.

What is more, APRA imposes a duty on public agencies to protect public records from “loss, alteration, mutilation, or

³ *Opinion of the Public Access Counselor, 23-FC-09 (2023).*

destruction.” Ind. Code § 5-14-3-7. Toward that end, a public official or agency is prohibited from destroying or otherwise disposing of any government record, except in accordance with a record retention schedule or with the written consent of the Indiana Archives and Records Administration. *See* Ind. Code § 5-15-5.1-14.

At the same time, APRA authorizes a public agency to destroy public records in accordance with statutory retention schedules, or for records not subject to a retention schedule, in the ordinary course of business. *See* Ind. Code § 5-14-3-4(h)(1) to -(2).

Video surveillance of school premises, bus, or school-owned property have a 30-day retention period under the Indiana Archives and Records Administration’s public school retention schedule.⁴

Accordingly, this office recommends SMCSC take the necessary steps to align its retention practices with the relevant statutory retention schedule to avoid—if nothing else—similar disputes in the future.

Notably, it is a Level 6 felony to destroy public records without proper authorization. *See* Ind. Code § 5-15-6-8.

⁴ *See* EDS-16-042 (<https://www.in.gov/iara/files/schoolretention-schedule.pdf>).

CONCLUSION

Based on the foregoing, it is the opinion of this office that the South Madison Community School Corporation violated the Access to Public Records Act.

This office recommends SMCS harmonize its surveillance camera retention practices consistent with this opinion and state retention policy EDS-16-042.



Luke H. Britt
Public Access Counselor

Issued: May 31, 2023