

Iowa Public Information Board

In re the Matter of: Timothy Miller, complainant And concerning: Buchanan County	Case Number: 15FC:0002 PROBABLE CAUSE REPORT
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Summary: Upon further review and investigation, this complaint is legally insufficient and beyond the jurisdiction of the Iowa Public Information Board (IPIB). Iowa Code section 22.7(50) designates certain records concerning security systems as confidential. The provisions of the Iowa Judicial Council Guidelines adopted April 15, 2015, support the Buchanan County (County) policy concerning courthouse security. Court rules and the Guidelines are judicial matters and as such beyond the scope of jurisdiction of the IPIB (Iowa Code section 23.12).

On December 26, 2014, Timothy Miller requested video footage from security cameras located in the Buchanan County Courthouse Courtroom. The footage requested concerned a court hearing involving Mr. Miller and included footage of jury selection. The camera system was installed in the courtroom as part of an overall security system installed by Buchanan County for the protection of employees, visitors and others utilizing the courtroom. On January 7, 2015, the County denied the request, citing Iowa Code section 22.7(50). Mr. Miller filed a formal complaint on January 17, 2015. On March 26, 2015, the Iowa Public Information Board accepted this complaint and directed staff to pursue further investigation and possible informal resolution. Informal resolution is not possible.

The county attorney for Buchanan County, Shawn Harden, stated there are two reasons these records cannot be released:

1. The records in question are video camera recordings of jury selection in a court room. Chapter 25 of the Iowa Court Rules (expanded news media coverage rules) prohibits extended photographic and/or video coverage of jurors:

25.2(6) Jury selection. *Expanded news media coverage of jury selection is prohibited. Expanded news media coverage of the return of the jury's verdict shall be permitted. In all other circumstances, however, expanded news media coverage of jurors is prohibited except to the extent it is unavoidable in the coverage of other trial participants or courtroom proceedings. The policy of the rules in this chapter is to prevent unnecessary or prolonged photographic or video coverage of individual jurors.*

2. The records in question are part of a security system protected from release by Iowa Code 22.7(50). While security system videos are not specifically included in the listing of examples of covered records and information, the Iowa Judicial Council Guidelines, adopted on April 15, 2015, does include videos. Courthouse and Public Building Security (CPBS) guideline '3' recommends the adoption of a policy by county officials to declare the courthouse security plans "and security video recordings to be confidential materials consistent with the terms of Iowa Code section 22.7(50)." (CPBS-3) Buchanan County adopted such a policy prior to Mr. Miller's request.

Court Rule 25 prohibits the news media from taping jury selection. Whether a presiding judge would extend the substance of this rule to a public records request for the same information under a provision of constitutional or statutory law is a matter best left to the Judicial Branch. It is unnecessary in any event to address this point because the second basis for not releasing the video is dispositive.

The second rationale (Iowa Code section 22.7(50) in conjunction with the Buchanan County policy implementing the Guidelines proposed by the Iowa Judicial Council and the Iowa State Association of Counties (ISAC)) is legally sufficient for a refusal. That section lists a number of specific examples of information and records covered by the section – video camera recordings is not one of those listed. The catch-all phrase "information contained in records that if disclosed would significantly increase the vulnerability of critical physical systems or infrastructures of a government body to attack" can be interpreted to include these security recordings. A release of the recordings, as a public record, even if jurors are not present, would allow the general public to determine how the security system works, what the video range is and the quality of the videotaping, leading to the distinct possibility that the security system could be compromised or that its weaknesses be exploited.

Iowa Code section 23.12 specifically denies the IPIB jurisdiction over the judicial branch or any entity, officer or employee of that branch. The judicial branch has decided the issue of the release of certain records by the enactment of Chapter 25 of the Iowa Court Rules and by interpreting Iowa Code section 22.7(50) as that pertains to courthouse security.

IPIB Action

The IPIB has several options upon receipt of a probable cause report. According to Iowa Administrative Rule 497 - 2.2(4):

"Board action. Upon receipt and review of the staff investigative report and any recommendations, the board may:

- a. Redirect the matter for further investigation;
- b. Dismiss the matter for lack of probable cause to believe a violation has occurred;
- c. Make a determination that probable cause exists to believe a violation has occurred, but, as an exercise of administrative discretion, dismiss the matter; or

d. Make a determination that probable cause exists to believe a violation has occurred, designate a prosecutor and direct the issuance of a statement of charges to initiate a contested case proceeding”.

Recommendation

Based upon investigation of the complaint, I recommend that the IPIB determine probable cause does not exist to believe that a violation has occurred due to lack of jurisdiction over the judicial branch and due to statutory authority for denial of the release of the requested records. Without a finding of probable cause, the complaint would be dismissed.

Respectfully submitted this 15th day of May, 2015.

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