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Are video surveillance recordings created by third parties public records?

FACTS:

The city of Dearborn received copies of video surveillance recordings created by third parties during the course of pending criminal misdemeanor proceedings against James Amberg. At the time of receipt of the recordings, the city had already issued a citation against James Amberg. Amberg subsequently initiated a Freedom of Information Act (FOIA), MCL 15.231 et seq., request, to receive materials related to the pending criminal proceedings that were in the city's possession, including the video surveillance recordings created by private businesses. The city denied the request for the surveillance recordings on the basis that the recordings were not public records within the meaning of FOIA. Amberg then sued the city to require disclosure of the recordings.

Under FOIA, except under certain specifically delineated exceptions, a person who provides a public body's FOIA coordinator with a written request that describes a public record is entitled to inspect, copy, or receive copies of the public record. A "public record" is defined as "a writing prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function, from the time it is created...." MCL 15.232(e). The parties did not dispute that the video recordings are "writings" within the meaning of FOIA. The city asserted, however, that it did not use the recordings "in the performance of an official function" because it did not obtain the recordings until after it had issued the citation.

QUESTION:

Were the recordings at issue in possession of or retained by the city "in the performance of an official function, from the time [they were] created"?

ANSWER ACCORDING TO THE TRIAL COURT AND THE COURT OF APPEALS:

No. The trial court and the court of appeals majority held that the city did not use the recordings in the performance of an official function—specifically, its issuance of a criminal misdemeanor citation—because it did not obtain the recordings until after it issued the citation.

ANSWER ACCORDING THE MICHIGAN SUPREME COURT:

The Michigan Supreme Court reversed, stating that the issuance of a citation is not the only official function to consider. Since the city collected the recordings as evidence to support its decision to issue the citation, the recordings were in its possession or retained in the performance of an official function for purposes of FOIA.

Amberg v City of Dearborn, No. 149242 (December 16, 2014)

This column highlights a recent judicial decision or Michigan Municipal League Legal Defense Fund case that impacts municipalities. The information in this column should not be considered a legal opinion or to constitute legal advice.

