

IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO
CIVIL DIVISION

DAVID ESRATI STATE EX REL,

Plaintiff(s),

-vs-

DAYTON METRO LIBRARY et al,

Defendant(s).

CASE NO.: 2018 CV 00560

JUDGE E. GERALD PARKER JR

**DECISION, ORDER, AND ENTRY
GRANTING RELATOR'S MOTION FOR
SUMMARY JUDGMENT AND DENYING
RESPONDENTS' MOTION FOR
SUMMARY JUDGMENT**

This matter is before the Court on Respondents Dayton Metro Library, et al.'s (collectively as "The Library") *Respondents Dayton Metro Library and Tim Kambitsch's Motion for Summary Judgment* and Relator David Esrati's ("Esrati") *Motion for Summary Judgment* filed on October 5, 2018. Esrati filed *Relator's Response to Respondents' Motion for Summary Judgment* and The Library filed *Respondents Dayton Metro Library and Tim Kambitsch's Response in Opposition of Relator's Motion for Summary Judgment* on October 19, 2018. The Library filed *Respondents Dayton Metro Library and Tim Kambitsch's Reply in Support of Respondents' Motion for Summary Judgment* on October 25, 2019. For the reasons below, The Library's motion is Denied and Esrati's motion is Granted.

Public Records Request and Procedural History

The facts in this case are undisputed. (*Respondents Dayton Metro Library and Tim Kambitsch's Response in Opposition of Relator's Motion for Summary Judgment* p. 2) On February 2, 2018, Esrati petitioned this Court for a Writ of Mandamus seeking an order directing the Library to provide him copies of the surveillance video of Esrati being ejected from the Main Branch of the Library on August 19, 2017. Am. Complaint at ¶ 8-10.

The Dayton Metro Library is a free public county library under the definitions in Chapter 3375 of the Ohio Revised Code operating 19 branches within Montgomery County. Am. Complaint at ¶ 11-13. It is undisputed that the Main Branch, where the subject events took place, is located at 215 E. Third Street, Dayton, Ohio 45402. It is also undisputed that the Dayton Metro Library is a public office and Tim Kambitsch is the Executive Director of the Dayton Metro Library, and that as a public office, The Library keeps public records that are subject to the Ohio Public Records Act.

On August 19, 2017, Esrati was ejected from the Main Branch of the Dayton Metro Library by security guards. Am. Complaint at ¶ 8. Esrati's ejection was captured by the Dayton Metro Library's Main Branch video surveillance system.¹ Am. Complaint at ¶ 9.

On August 19, 2017, Esrati verbally requested a copy of the surveillance footage of his ejection from Respondent Tim Kambitsch (referred to individually as "Kambitsch") in his role as Executive Director of the Library ("the First Request"). Am. Complaint at ¶ 19. On August 31, 2017, counsel for Esrati requested the surveillance footage of Esrati's ejection (the "Second Request"). Am. Complaint at ¶ 21.

On September 19, 2017, Ashley Orr (an administrative assistant for the Library) emailed counsel for Esrati and indicated that the Library would not be providing the requested surveillance footage on the basis that the Library concluded that the surveillance footage was a "library record" and/or "patron information" within the meaning of Ohio Revised Code Section 149.432, and that it

¹ The parties used different identifiers for the video at issue in this case. For clarity purposes, this Court will identify the video as "surveillance video" and will refer to it in the singular throughout this Decision.

was, therefore, not subject to release under the Ohio Public Records Act. Am. Complaint at ¶ 23. Counsel for Esrati and counsel for the Library exchanged emails and agreed to postpone discussions related to the public records requests pending discussions related to Esrati's ejection. Am. Complaint at ¶ 25. When those negotiations concluded, Esrati renewed his public records request seeking the surveillance footage. Am. Complaint at ¶ 27.

On November 15, 2017, Esrati emailed Kambitsch and made a third public records request for the surveillance footage of his ejection (the "Third Request"). Am. Complaint at ¶ 28. On November 20, 2017, counsel for the Library emailed a copy of a letter to Esrati indicating again that the Library would not provide the surveillance footage because the Library had concluded that release of the surveillance footage was prohibited by Section 149.432 of the Ohio Revised Code. Exhibit A. Am. Complaint at ¶ 29.

The Library concedes that Esrati did make a public records request for the production of the surveillance video, and that The Library did not comply with that request. The Library claims that the surveillance footage does not constitute a public record under Chapter 149 of the Ohio Revised Code because it is exempt as a security record, as a library record, and because it contains "patron information." (*Respondents Dayton Metro Library and Tim Kambitsch's Response in Opposition of Relator's Motion for Summary Judgment* p. 2-3, 9) Esrati asserts that the recording of his ejection is a public record and does not fall under any of the public records exceptions under Sections 149.43 or 149.432 of the Ohio Revised Code as "library records" or "patron information." Am. Complaint at ¶ 10, 30-32. As of the date of this decision, the Library has not provided Esrati with the surveillance video, and Esrati seeks a writ of mandamus to compel the Library to do so.

Law and Analysis

A. Mandamus requirements

Mandamus is the appropriate legal remedy to compel compliance with the Ohio Public Records Act. *See R.C. 149.43(C)(1)(b)*. In order to prevail in a mandamus action seeking compliance

with the Ohio Public Records Act, a relator must show that he has a clear legal right to the public record, and that respondent had a clear legal duty to provide the public record to relator. *See State ex rel. Glasgow v. Jones*, 119 Ohio St.3d 391, 2008-Ohio-4788, 894 N.E.2d 686. Under the Ohio Public Records Act, a Relator must prove, by clear and convincing evidence, his or her entitlement to relief in mandamus. *State ex rel. Cincinnati Enquirer v. Deters*, 148 Ohio St.3d 595, 2016-Ohio-8195, 71 N.E.3d 1076, ¶ 19.

B. Public records

The Ohio Public Records Act reflects the state's policy that open government serves the public interest and our democratic system. *State ex rel. Glasgow v. Jones*, 119 Ohio St.3d 391, 2008-Ohio-4788, 894 N.E.2d 686 ¶ 13, quoting *State ex rel. Dann v. Taft*, 109 Ohio St.3d 364, 2006-Ohio-1825, 848 N.E.2d 472, ¶ 20 (quotations omitted). Consistent with this policy, courts must construe R.C. 149.43 liberally in favor of broad access and resolve any doubt in favor of disclosure of public records. *Id.*; *State ex rel. Dayton Newspapers v. Dayton Bd. Of Edn.*, 140 Ohio App.3d 243, 246, 747 N.E.2d 255 (2d Dist. 2000). In considering a disputed claim to public records, a court must resolve any doubt in favor of access. *Hurt v. Liberty Twp.*, Ct. Claims No. 2016-00856, 2017-Ohio-825, ¶ 11.² The Ohio Supreme Court has opined in favor of erring on the side of more open access:

The rule in Ohio is that public records are the people's records, and that the officials in whose custody they happen to be are merely trustees for the people; therefore anyone may inspect such records at any time, subject only to the limitation that such inspection does not endanger the safety of the record, or unreasonably interfere with the discharge of the duties of the officer having custody of the same.

State ex rel. Patterson v. Ayers, 171 Ohio St. 369, 371, 171 N.E.2d 508 (1960).

The Public Records Act requires that “[u]pon request * * * all public records responsive to the request shall be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours.” (Emphasis added.) R.C. 149.43(B)(1). The General

² This Court notes that because the Court of Claims handles a sizable number of public records mandamus actions, Court of Claims cases are particularly persuasive in this area of law.

Assembly has defined a “public record” as “records kept by any public office * * *.” (Emphasis added.) R.C. 149.43(A)(1). A “record” is defined as:

any document, device, or item, regardless of physical form or characteristic * * * created or received by or coming under the jurisdiction of any public office of the state or its political subdivisions, which serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office.

R.C. 149.011(G).

Revised Code Chapter 149 goes on to state numerous exceptions to what is considered a “public record,” including library records, patron information, and security records. R.C. 149.432 and R.C. 149.433.

Although the Public Records Act is accorded liberal construction in favor of access to public records, “the relator must still establish entitlement to the requested extraordinary relief by clear and convincing evidence.” *State ex rel. Caster v. Columbus*, 151 Ohio St.3d 425, 428, 2016-Ohio-8394, 89 N.E.3d 598, ¶ 15. If a public office asserts an exception to the Public Records Act, the burden of proving the exception rests on the public office. “Exceptions to disclosure under the Public Records Act, R.C. 149.43, are strictly construed against the public-records custodian, and the custodian has the burden to establish the applicability of the exception.” *State ex rel. Cincinnati Enquirer v. Jones-Kelley*, 118 Ohio St.3d. 81, 2008-Ohio-1770, 886 N.E.2d 206, paragraph two of the syllabus. A custodian does not meet this burden if it has not proven that the requested records fall squarely within the exception. *State ex rel. Ohio Republican Party v. Fitzgerald*, ¶ 20.

C. Summary Judgment Standard

Ohio Rule of Civil Procedure 56(C) states:

Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be considered except as stated in this rule. A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds

can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party's favor.

Ohio Rule of Civil Procedure 56(E) provides in relevant part:

When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the party's pleadings, but the party's response, by affidavit or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the party does not so respond, summary judgment, if appropriate shall be entered against the party.

Summary judgment, then, is appropriate under the following circumstances: "(1) no genuine issue of material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) viewing the evidence most strongly in favor of the non-moving party, reasonable minds can come to but one conclusion, that conclusion being adverse to the non-moving party." *Thacker v. Day*, 2d Dist. Montgomery No. 25265, 2013-Ohio-187, ¶ 12, citing *Harless v. Willis Day Warehousing Co.*, 54 Ohio St.2d 64, 66, 375 N.E.2d 46 (1978). Any material issues are identified by the substantive law and "[o]nly disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." *Byrd v. Smith*, 110 Ohio St.3d 24, 2006-Ohio-3455, 850 N.E.2d 47, ¶ 12, citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986).

Upon the filing of a motion for summary judgment, the moving party bears the initial burden of showing that no genuine issue of material fact exists for trial. *Harless* at 66. Any inferences to be drawn from the underlying facts must be viewed in the light most favorable to the party opposing the motion. *Leibreich v. A.J. Refrig., Inc.*, 67 Ohio St.3d 266, 269, 617 N.E.2d 1068 (1993); *Williams v. First United Church of Christ*, 37 Ohio St.2d 150, 152, 309 N.E.2d 924 (1974). The burden then shifts to the non-moving party to set forth specific facts which show that there is a genuine issue of fact for trial. *Harless* at 65-66. The non-moving party has the burden "to produce evidence on any issue for which that party bears the burden of production at trial." *Leibreich* at 269; *Wing v. Anchor*

Media, Ltd., 59 Ohio St.3d 108, 111, 570 N.E.2d 1095 (1991), citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-323 (1986). Therefore, the non-moving party may not rest upon unsworn or unsupported allegations in the pleadings. *Harless* at 66.

D. The Library's Claimed Exceptions

1. Security records

“Security record” means any of the following:

- (1) Any record that contains information directly used for protecting or maintaining the security of a public office against attack, interference, or sabotage;
- (2) Any record assembled, prepared, or maintained by a public office or public body to prevent, mitigate, or respond to acts of terrorism, including any of the following:
 - (a) Those portions of records containing specific and unique vulnerability assessments or specific and unique response plans either of which is intended to prevent or mitigate acts of terrorism, and communication codes or deployment plans of law enforcement or emergency response personnel;
 - (b) Specific intelligence information and specific investigative records shared by federal and international law enforcement agencies with state and local law enforcement and public safety agencies;
 - (c) National security records classified under federal executive order and not subject to public disclosure under federal law that are shared by federal agencies, and other records related to national security briefings to assist state and local government with domestic preparedness for acts of terrorism.
- (3) An emergency management plan adopted pursuant to section 3313.536 of the Revised Code. R.C. 149.433(A).

“Security records” include those that are directly used for protecting and maintaining the security of a public office as well as the public officials and employees of that office. *State ex rel. Plunderbund Media, L.L.C. v. Born*, 141 Ohio St.3d 422, 2014-Ohio-3679, 25 N.E.3d 988. Regarding security records, the Ohio Supreme Court has opined that “public office cannot function without the employees and agents who work in that office”, and records “directly used for protecting or maintaining the security of a public office” must inevitably include those that are directly used for protecting and maintaining the security of the employees and other officers of that office.” *Id.* at ¶ 20.

Documented threats made against the Governor were security records exempt from disclosure because they were directly used to protect and maintain the secure functioning of the governor's office. *Id.* at ¶ 21. Records of key-card-swipe data documenting when county officials entered and exited county parking facilities and buildings were not exempt from disclosure as security records when, among other things, the county official's term of office had expired. *State ex rel. Ohio Republican Party v. Fitzgerald*, ¶ 20.

The Ohio Supreme Court cautions public agencies that the security records exception is not available based on conclusory labeling of records, but must satisfy the full statutory definition in each instance. *Plunderbund* at ¶ 29. "When a public office claims an exception based on risks that are not apparent within the records themselves, the office must provide more than conclusory statements in affidavits to support its claim. *State ex rel. Rogers v. Dept. of Rehab. & Corr.*, 155 Ohio St.3d 545, 2018-Ohio-5111, 122 N.E.3d 1208, ¶ 15.

Here, The Library has provided an affidavit of Tim Kambitsch in support of its position that the surveillance video falls within the "security record" exception. The Library claims that the surveillance video exists solely for the purpose of providing security to and protecting the Dayton Metro Library, and that the security tapes contain information directly used for protecting and maintaining the security of the Dayton Metro Library. (*Respondents Dayton Metro Library and Tim Kambitsch's Response in Opposition of Relator's Motion for Summary Judgment* p. 3, 10; Kambitsch Affidavit ¶ 17.) Additionally, the Library argues that the Library takes steps to ensure that the surveillance videos are treated in a manner that reflects their security nature through The Library's written policy. (*Respondents Dayton Metro Library and Tim Kambitsch's Motion for Summary Judgment* p. 8)

The Court has reviewed the surveillance video at issue and finds that the surveillance footage does not meet the criteria necessary to be excluded from public records disclosure as a security record. Because the definition under R.C. 149.433(A)(3)(a) exempts "[a]ny record that contains information

directly used for protecting or maintaining the security of a public office against attack, interference, or sabotage" (emphasis added), there must be evidence of the specific uses the government agency makes of the record for security purposes in order for a record to be classified as a "security record."

The Court notes that The Library does not demonstrate that information in the video is being "directly used for protecting or maintaining the security of a public office against attack, interference, or sabotage." The video is not a planning, training, investigatory, or policy document maintained by the office for security purposes. Furthermore, the video contains no audio, and therefore no verbal commands, codes, perceptions, reasoning, choices, plans, or explanations are conveyed. There is no evidence presented that the video recording at issue actually constitutes "information directly used for protecting or maintaining the security of a public office against attack, interference, or sabotage," or was "assembled, prepared, or maintained by a public office * * * to prevent, mitigate, or respond to acts of terrorism."

Additionally, even if the video at issue had been properly withheld as a security record when requested, "[a]n initial correct withholding of a record as a security record does not establish the exception in perpetuity." *State ex rel. Rogers v. Dept. of Rehab. & Corr.*, 155 Ohio St.3d 545, 2018-Ohio-5111, 122 N.E.3d 1208, ¶ 20. The Library has not provided evidence showing that this 2017 video recording is being used in a current investigation regarding the incident depicted in it or that the video discloses any current security response plans or other protocols.

The Library failed to provide a reasonable explanation as to how the surveillance video at issue actually constitutes "information directly used for protecting or maintaining the security of a public office against attack, interference, or sabotage," or was "assembled, prepared, or maintained by a public office * * * to prevent, mitigate, or respond to acts of terrorism. The Library simply contends that because the sole purpose of the surveillance video system is to maintain safety and security, and because it is treated in a manner consistent with it being a security record pursuant to written policy, that it therefore constitutes a "security record" and is exempt from disclosure.

Therefore, The Library's argument that the surveillance video is exempt from disclosure as a "security record" is not well-taken.

2. Library records

A "library record" means a record in any form that is maintained by a library and that contains "[i]nformation that identifies an individual as having requested or obtained specific materials or materials on a particular subject." R.C. 149.432(A)(2)(b). Neither party cited any cases addressing "library records" or "patron information" vis-à-vis public record requests and this Court's independent research found none. In its Motion for Summary Judgment, The Library claims that the surveillance video at issue qualifies as a "library record" under R.C. 149.432(A)(2)(b). The Library does not address whether the surveillance video qualifies as a "library record" under the other sections contained in R.C. 149.432(A)(2).³

The Court reviewed the surveillance video at issue and finds that the surveillance video does not meet the criteria necessary to be excluded from public records disclosure as a library record because it does not contain information that identifies an individual as having requested or obtained specific materials or materials on a particular subject. While the surveillance video does show patrons as they enter and exit the library, and captures their movements throughout the interior of the library, the surveillance video does not capture the "comings and goings" of every individual who enters the library to the extent that it reveals which books and sections they perused, which library services they used, and which items or materials they checked out as The Library contends.

The Court conducted a detailed and meticulous review of the surveillance video and was unable to discern what items or services any given individual obtained or used from the video. Therefore, the surveillance video does not meet the necessary criteria under R.C. 149.432(A)(2)(b) to be exempt from disclosure under the Ohio Public Records Act.

³ It is clear from review of the video and the facts in this case that the other sections which address the types of information that constitutes a "library record" under R.C. 149.432(A)(2) do not apply.

However, The Library is correct in its assertion that although library patrons are not identified by name in the surveillance video, the surveillance video does show facial features and other defining characteristics of said individuals that could easily be used to identify who they are. With this in mind, the Court now turns to the final exemption from disclosure claimed by The Library; whether the surveillance video constitutes “patron information.”

3. Patron information

“Patron information” means personally identifiable information about an individual who has used any library service or borrowed any library materials. R.C. 149.432(A)(3). “A library shall not release any library record or disclose any patron information * * *.” R.C. 149.432(B). The statute does not define what constitutes personally identifiable information for purposes of determining what is considered patron information. The statute simply provides that “patron information” does not include information about the age or gender of an individual. R.C. 149.432(B)(5).

In his *Response to Respondents’ Motion for Summary Judgment*, Esrati defines personally identifiable information as social security numbers, birth dates, and addresses, but fails to cite any authority in support of his definition of what constitutes personally identifiable information under R.C. 149.432. Additionally, this Court’s independent research did not identify any case law defining what constitutes personally identifiable information with respect to “patron information” under R.C. 149.432. As a result, this Court looked to cases in the context of the disclosure of education records from public schools, which included discussion and examples, for guidance as to what constitutes personally identifiable information. One such case this Court reviewed was *Patton v. Solon City School Dist.*, Ct. of Cl. No. 2017-00570-PQ, 2017-Ohio-9415.

In *Patton*, the Ohio Court of Claims determined whether surveillance video from a school bus kept by a city school qualified as a public record, and whether the video contained personally identifiable information as to the students depicted in the video so that it should be redacted before

being provided to the requestor. *Patton v. Solon City School Dist.*, Ct. of Cl. No. 2017-00570-PQ, 2017-Ohio-9415.

In its decision, the Court of Claims stated that the school district “makes school bus video recordings for security and other purposes and retained this video when it became part of the disciplinary process,” and concluded that the entire school bus video qualified as a public record, but that it was subject to any applicable exceptions. *Id.* at ¶ 7, 11.

The court’s analysis included a discussion on the applicable Oho Revised Code section, R.C. 3319.321(B). The court focused on the language contained in R.C. 3319.321(B) which provides that “[n]o person shall release, or permit access to, personally identifiable information other than directory information concerning any student attending a public school * * *.” *Id.* at ¶ 13. The court noted that unlike the FERPA, the statute broadly prohibits the release of any personally identifiable information that is not directory information. *Id.* The court also stated that “personally identifiable information” is not defined in the Ohio Revised Code for purposes of Chapter 3319, which is also the case here as personally identifiable information is not defined in Chapter 14. As a result, the court referred to the related FERPA definition at 34 C.F.R. § 99.3 which states that personally identifiable information includes, but is not limited to:

- (a) The student's name;
- (b) The name of the student's parent or other family members;
- (c) The address of the student or student's family;
- (d) A personal identifier, such as the student's social security number, student number, or biometric record;
- (e) Other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name;
- (f) Other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or
- (g) Information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates.

Id.

The court found that the video did not contain any of the information listed in subsections (a) through (e). *Id.* However, the court determined that subsections (f) and (g) were applicable because the un-redacted video captured students' faces, hair, body shapes, clothing, backpacks, phones, voices, and actions, as well as other items that may serve to identify a student to a parent who is already familiar with that information and those characteristics. *Id.* at ¶ 13-15. As a result, the court concluded that the school district was required to withhold all personally identifiable information as defined in subsections (f) and (g), and because the school district was in the best position to evaluate what personal characteristics and other information would disclose a student's identity, the court instructed the school district to use its discretion and obscure any such items or protected information that it determines is inextricably intertwined with a student's identity or actions. *Id.*

After thorough review of the surveillance video at issue, it is the Court's conclusion that the video contains footage of library patrons that shows clothing, height, facial characteristics, hair (both color and style), body shapes, actions while in the library, etc., of those patrons, and that the identity of those library patrons, which includes both adults and children visiting the library, would be easily ascertained, with reasonable certainty, by a reasonable person with prior knowledge of those characteristics and information. As such, the Court finds that the surveillance video contains personally identifiable information with respect to the library patrons depicted in the video, and that information constitutes "patron information."

This case balances two important societal needs: the need to protect the public's right to privately use the public library and the public's need for access to information held by governmental bodies. While Esrati is the Relator here, he is representing a larger interest than his own. Likewise, The Library is representing the privacy interests of its patrons. The Library argues that legislative intent is the paramount concern when construing statutes, and that the language of R.C. 149.432 makes clear the intent of the legislature is to protect the privacy of individuals who use public libraries

within the State. The Court agrees that the legislative intent behind R.C. 149.432 is to ensure the privacy of public library patrons.

“Personal information that does “not serve to document the organization, functions, policies, decisions, procedures, [or] operations....are not obtainable under the Public Records Act.” *State ex rel. O’Shea & Assocs. Co., L.P.A., v. Cuyahoga Metro. Hous. Auth.*, 131 Ohio St.3d 149, 2012-Ohio-115, 962 N.E.2d 297 ¶ 30. The Supreme Court of Ohio has recognized that private citizens have a right to privacy and that the inherent dangers of the proliferation of personal information in today’s computerized age threatens that right. Therefore, government entities should exercise caution when revealing certain private information even if the requester is not an apparently threatening party. *State ex rel. McCleary v. Roberts*, 88 Ohio St.3d 365, 2000-Ohio-345, 725 N.E.2d 1144.

Because the Court finds that the surveillance video contains “patron information,” the portion of the video that reveals such “patron information” is exempt from disclosure under R.C. 149.432(B). Therefore, the surveillance video should be redacted to prevent the disclosure of the “patron information” contained in the video.

E. Redaction

In his *Response to Respondents’ Motion for Summary Judgment*, Esrati contends that “even if the Court finds that Respondents have met their burden to show that the Esrati Video falls squarely within the ‘library record’ and ‘patron information’ exceptions, Respondents have still failed to comply with the Public Records Act because they have failed to redact the exempt information and provide the redacted records as required under the law.” Although Esrati failed to cite any statutes or case law in support of his argument, the Court agrees that the video should be redacted to exclude the exempted “patron information.”

The Ohio Supreme Court has recognized that the Public Records Act envisions an opportunity for a public office subject to a public records request to examine records prior to release in order to redact exempt materials appropriately. *State ex rel. Shaughnessy v. City of Cleveland*, 149 Ohio St.3d

612, 2016-Ohio-8447, 76 N.E.3d 1171, ¶ 12. “Redaction” means obscuring or deleting any information that is exempt from the duty to permit public inspection or copying from an item that otherwise meets the definition of a record in section 149.011 of the Revised Code. R.C. 149.43(A)(11). “Redaction must be restricted to avoid portions that are not entitled to protection, unless the exempt record is “inextricably intertwined” with the entire remainder.” *Welsh-Huggins v. Office of the Pros. Atty.*, Ct. Claims No. 2018-00793PQ, 2019-Ohio-473, ¶ 32. This rule holds true for video recordings as well as text records and when a video recording is not exempt in its entirety, only the portions that fall squarely within the recognized exception may be withheld. *Id.* Public records may be redacted only to withhold exempt information and the public office “shall make available all of the information that is not exempt.” *State ex rel. ESPN, Inc. v. Ohio State Univ.*, 132 Ohio St.3d 212, 2012-Ohio-2690, 970 N.E.2d 939, ¶ 33-35.

Because the surveillance video at issue contains “patron information” that is precluded from disclosure under R.C. 149.432, The Library is ordered to blur or otherwise obscure the faces of the library patrons in the surveillance video.

CONCLUSION

The Court finds that no genuine issues of material fact exist in relation to Esrati’s Complaint in Mandamus and that Esrati is entitled to judgment as a matter of law. Accordingly, Esrati’s request for writ of mandamus is **Granted**.

As noted above, the Court conducted a thorough review of the surveillance video that is the subject of Erati’s *Amended Complaint in Mandamus*. (Am. Comp. ¶ 10, 19, 21, 28) The Court hereby orders The Library to release the following videos depicting Esrati’s ejection from the Dayton Metro Library on August 19, 2017.

1. Camera number (097)
2. Camera number (094)
3. Camera number (098)

4. Camera number (046)
5. Camera number (025)
6. Camera number (003)
7. Camera number (060)
8. Camera number (055)
9. Camera number (135)
10. Camera number (001)
11. Camera number (108)
12. Camera number (063)

The Library is ordered to edit the video only to the extent necessary to obscure the faces of the other library patrons in the video.

The Court hereby orders that the surveillance video be turned over to Esrati within 90 days of the date of this entry.

Statutory damages, costs, and attorney fees

Pursuant to R.C. 149.43(C)(3)(a)(i), the Library is hereby ordered to reimburse Esrati for the court costs of this action.

Statutory damages are hereby awarded to Esrati in the maximum amount of \$1000 under R.C. 149.43(C)(2).

Additionally, because the Court has ordered The Library to produce the records/surveillance video that Esrati seeks, this Court may award reasonable attorney fees to Esrati pursuant to R.C. 149.43(C)(3)(b). “When considering whether to award attorney fees in public-records cases, a court may consider the presence of a public benefit conferred by a relator seeking the disclosure and the reasonableness and good faith of a respondent in refusing to disclose.” *State ex rel. Rogers v. Dept. of Rehab. and Corr.*, 155 Ohio St.3d 545, 2018-Ohio-5111, 122 N.E.3d 1208, ¶ 36. The public benefit conferred by Esrati’s request for the surveillance video is outweighed by The Library’s reasonable

efforts to protect the privacy of its patrons. Therefore, the Court finds that The Library was not unreasonable in believing that the legislative intent behind the exemptions specifically created for libraries and their patrons applied to the surveillance video requested by Esrati. Accordingly, the Court will not award attorney's fees under R.C. 149.43(C)(3)(b-c).

THIS IS A FINAL APPEALABLE ORDER, AND THERE IS NO JUST CAUSE FOR DELAY FOR PURPOSES OF CIV. R. 54. PURSUANT TO APP. R. 4, THE PARTIES SHALL FILE A NOTICE OF APPEAL WITHIN THIRTY (30) DAYS.

SO ORDERED:

JUDGE E. GERALD PARKER JR

To the Clerk of Courts:

Please serve the attorney for each party and each party not represented by counsel with Notice of Judgment and its date of entry upon the journal.

This document is electronically filed by using the Clerk of Courts e-Filing system. The system will post a record of the filing to the e-Filing account "Notifications" tab of the following case participants:

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General Divison
Montgomery County Common Pleas Court
41 N. Perry Street, Dayton, Ohio 45422

Case Number:

2018 CV 00560

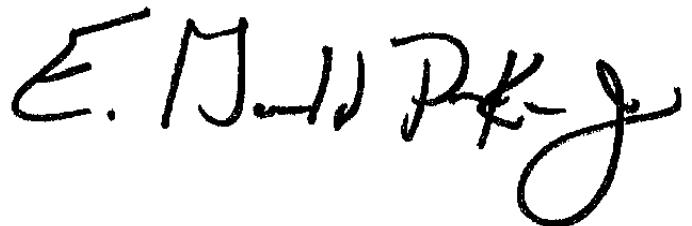
Case Title:

DAVID ESRATI STATE EX REL vs DAYTON METRO
LIBRARY

Type:

Decision

So Ordered,



Electronically signed by parkerg on 07/29/2019 09:51:44 PM Page 18 of 18