Ohio Supreme Court: There Is No Per Se Rule Excluding Dash-Cam Videos From The Public Records Act

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On December 6, 2016, the Ohio Supreme Court held that courts are required to engage in a case-by-case analysis to determine whether a dash-cam video is a public record (or whether specific parts of a video should be released.)

In *State ex rel. Cincinnati Enquirer v. Ohio Dep't of Public Safety*, 2016-Ohio-7987, two Ohio State Highway Patrol (OSHP) troopers had been engaged in a pursuit. The pursuit generated dash-cam videos automatically. The videos recorded video and audio: radio traffic, some of the pursuit, and the interior of one of the troopers' vehicles.

The Cincinnati Enquirer sought the dash-cam videos via public records request. The OSHP refused to produce the videos, arguing that the videos were confidential law enforcement investigatory records. The basis for that argument was that releasing the videos would reveal specific investigatory work product. The OSHP relied upon a prior appellate court case that had specifically held that video footage from a state trooper's in-car dash-cam was exempt from the Public Records Act, based on the confidential law enforcement investigatory records exception.

The Enquirer sued, and won. The Court held that although some of the videos contained specific investigatory work product, the vast remainder was not work product, and was therefore public records.

The only part of the videos that was specific investigatory work product was when a trooper took the suspect into her car, read the suspect his Miranda rights, and questioned him. That part could be withheld as specific work product compiled in reasonable anticipation of litigation, because the trooper sought statements to be used at a criminal trial.

The remainder of the videos, however, was public. Basically, the troopers were not making investigative decisions to record the

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videos: they were automatically recorded as soon as the troopers' emergency lights were activated. Therefore, there was no risk that the remainder of the videos would reveal work product specifically gathered in anticipation of a trial.

Accordingly, there is now no blanket exception for dash-cam videos. Each aspect of a dash-cam video should be reviewed to determine why and how the video was created, and what it reveals, before a public entity withholds part or all of the video.

We can expect a similar analysis and holding when body-cam videos become more widely used statewide, because of the similarities in the two video systems.

If you have any questions regarding Ohio's Sunshine Law or Ohio's Public Records Act, please feel free to contact Thomas Allen or any other member of Frost Brown Todd's Government Services Practice Group.

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