

Deposition Clip May Remain on YouTube

A video clip from a policeman's deposition may remain on YouTube because the city failed to justify why it should be taken down.

The City of Collinsville, Illinois, sought a protective order to remove the video clip, which shows a portion of one of its policemen's video deposition. The City argued that the video was not part of the public record even though it was attached to a motion for summary judgment in a civil rights case against the City. It also argued that the public display of the video would taint any potential jury pool. A U.S. magistrate judge found that the City failed to show that the video was "annoying, oppressive, embarrassing, or that there is other good cause for an order prohibiting public access/dissemination of the deposition testimony."

The case was filed by two individuals who were stopped by the police officer for a traffic offense. As part of the traffic stop, the car was searched for drugs by a drug-sniffing dog.

The plaintiffs filed for summary judgment and attached to the motion a copy of the video deposition of the police officer who made the stop. They also posted a video with portions of the deposition on YouTube. The video "features a clip whereby [Officer] Reichert explains that he tests a drug-sniffing dog by smearing cannabis onto unoccupied parked cars without the knowledge or consent of their owners," the plaintiffs argued. "After the dog is tested to see if it detects the substance on the cars, Reichert wipes off the contraband from the vehicles. Reichert admits that it is possible that detectable residue remains after the test."

The plaintiffs said the practice raises questions such as: Where does the officer get the contraband used in the test? Is there an inventory? How does he store it? "While Plaintiffs cannot use their litigation to answer all of these questions, they are fair inquiries in a spirited public debate about this policy, and light should be shed on this practice," Plaintiffs stated in their response to the City's request for a protective order.

In denying the City's request to remove the video, the court noted that parties generally are not prohibited from distributing information obtained during discovery to the general public. "Absent a protective order, parties to a lawsuit may disseminate materials obtained during discovery as they see fit." Because the City did not show good cause for the protective order, the magistrate denied the request to take down the video deposition.

Terrance Huff v. City of Collinsville, S.D. Ill. No. 12-cv-00596, issued December 19, 2012.