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January 13, 2017

Re: Privacy Concerns with Video Cameras in Public Library Restrooms

Dear Iowa City Public Library Board, City Council, Ms. Dilkes and Ms. Craig:

We are writing on behalf of Kellsie Pepponi, a sophomore at the University of Iowa and frequent patron of the Iowa City Public Library, regarding serious concerns about the cameras inside the interior of the Iowa City Public Library restrooms. Ms. Pepponi has shared her privacy concerns about the cameras with Susan Craig, Library Director, but does not feel her concerns were adequately addressed. Ms. Pepponi feels the cameras are a violation of her privacy in light of inadequate notice or warning that they record inside the most private of places: the restroom. We have included photographs of the bathroom cameras with this letter.

The fact that Ms. Pepponi feels the Iowa City Public Library Cameras intrude on her privacy caused her to reach out to the ACLU of Iowa for assistance. We write to you today to address these concerns and seek an appropriate remedy for all Iowa City Public Library Patrons.

The ACLU recognizes and honors the proud tradition of American libraries and librarians in protecting patron privacy and free speech, and we consider the Iowa City Public Library an ally on those important issues. Libraries exemplify the democratic ideal of citizens' access to information, while protecting citizens' right to keep their inquiries and their interests private. It is in that spirit that we are writing to you seeking resolution finally to this now years-long interruption in that stellar record regarding fidelity to those principles that the interior bathroom cameras represent.

I. Background

Kellsie Pepponi is a Chicago native attending the University of Iowa; she is in her second year at the University. Ms. Pepponi was a frequent patron of the Iowa City Public Library ("Library") and enjoyed their selection of books and movies. In mid-September of 2016, Ms. Pepponi used the restroom in the Library, and noticed the sign stating security cameras were in use. Ms. Pepponi saw security cameras outside the bathroom, monitoring the entrance, and reasonably believed those were the only cameras in use. She reasonably understood the notice to be informing her that the area just outside the bathroom door, not within the bathroom, was subject to video recording.

When Ms. Pepponi entered the bathroom, she did not immediately notice the cameras, as they are located behind the person entering the bathroom. However, once she entered the stall, she noticed a camera while standing up. From within the stall, she saw the camera in the corner of the bathroom, where it appeared to be facing her. Once she realized the cameras were in use inside of the bathroom, she left quickly and has not used the restrooms in the Library since.

Ms. Pepponi felt violated by the cameras. Because of the location of the camera inside the bathroom and the dome over the camera, she was unable to tell what the camera was recording and what it could see. Ms. Pepponi herself felt violated and also recognized that others may also feel anxiety about using the restroom and frequenting the Library after realizing their most private moments are being captured on film by a government entity.

Ms. Pepponi reached out to Library Director Susan Craig and received a response on September 21, 2016. Ms. Craig informed Ms. Pepponi that the bathroom cameras were for security purposes and have been a deterrent to criminal activity. Additionally, Iowa City Attorney Eleanor Dilkes reached out to Ms. Pepponi on September 27, 2016, informing Ms. Pepponi that the cameras were lawful and that Library patrons do not have a reasonable expectation of privacy in the common areas of the bathroom. Ms. Dilkes also informed Ms. Pepponi that the signage provided is adequate notice of the cameras in the bathroom, that the cameras are not actively monitored, and that footage is deleted after seven days.

II. Law

As Ms. Pepponi has accurately recognized, the restroom is an incredibly private place, and cameras placed in the restroom without adequate notice of what or where they are recording can increase the anxiety of patrons who frequent the Library. Both the U.S. Constitution and the Iowa Constitution recognize that individuals have the right to be free from warrantless surveillance by the government. U.S. Const. amend. IV. Iowa Const. art. 1, § 8. The U.S. Supreme Court and the Iowa Supreme Court have both held that an individual should be free from government surveillance when that individual has 1) a reasonable expectation of privacy in the place being searched and 2) that expectation is one that society is prepared to recognize as reasonable. Katz v. U.S., 389 U.S. 347, 350 (1967); State v. Breuer, 577 N.W. 2d 41, 45 (Iowa, 1998). The purpose of this standard is to protect individuals from arbitrary government invasion. Breuer, 577 N.W. 2d at 45.

Courts have noted that individuals can expect a significant amount of privacy in the restroom. U.S. v. White, 890 F.2d 1012, 1015 (8th Cir., 1990). The 8th Circuit Court of Appeals recognized that even civilly committed individuals under the government's care have a reasonable expectation of privacy in single person bathrooms in a government facility. Arnzen III v. Palmer, 713 F.3d 369, 373 (8th Cir., 2013). The 8th Circuit has also held that an individual's expectation of privacy in a public bathroom may be diminished by the length of time a person occupies the bathroom, the design of the bathroom, and where in the bathroom observation is taking place. U.S. v. Hill, 393 F.3d 839, 841 (8th Cir., 2005).

Although individuals do not enjoy complete privacy in common areas of public restrooms, courts agree that individuals do enjoy some level of privacy. Even in the common areas, or areas that can be viewed from the common areas, people do not expect to have their actions recorded and permanently preserved by government surveillance. See Scharrer, *Covert Electronic Surveillance of Public Rest Rooms: Privacy in the Common Area?*, 6 Cooley L. Rev. 495, 501 (1989). The Library's public bathrooms are provided by the city of Iowa City, a government entity. Individuals have a reasonable expectation that their activities will not be observed and recorded by the government.

We recognize an expectation of privacy in public restrooms in our society. Public restrooms are "the final bastion of privacy is to be found in the area of human procreation and excretion . . . and if a person is entitled to any shred of privacy, then it is privacy as to these matters." State v. Casconi, 766 P.2d 397, 399 (Ct. App. Ore., 1988).

Even common areas of public bathrooms can be used for private activities, such as to "change clothes, nurse infants, adjust undergarments, apply make-up, putting it somewhat politely, relieve itches in private parts . . . people also carry on private conversations." Scharrer, *Covert Electronic Surveillance of Public Rest Rooms: Privacy in the Common Area?*, 6 Cooley L. Rev. 495, 501 (1989). Individuals in public restrooms can reasonably expect to have their privacy infringed upon by another patron. However, it does not necessarily follow that same individual should expect to have their private actions observed and recorded by a government

entity. See O’Callaghan, *Cameras in the Restroom: Police Surveillance and the Fourth Amendment*, 22 Hastings Con. L.Q. 867, 874 (1995).

Though it may be argued that individuals have a diminished expectation of privacy in the common areas of the bathroom, footage from the Library cameras show that individuals do engage in highly private activity, even in the common areas. In 2013, the ACLU of Iowa documented the use of the cameras within the restrooms, and submitted an open records request to the Library regarding footage. In response, we were provided with video footage of the restroom recordings. In the women’s restroom, one camera shows a mother and daughter emerging from the same stall while the mother is still trying to help the child get dressed. Another camera shows a woman sponging herself off with a wet paper towel, and a young girl changing in the common area. In the men’s room, a camera shows a man zipping up his pants and adjusting himself while approaching the sink to wash his hands. While individuals are given notice that they are being recorded, library patrons have an expectation that these private acts should not be observed and recorded by a government entity. Due to the private nature of these acts, society does recognize that there is a reasonable expectation of privacy in public library bathrooms. Individuals are not informed that recordings are open records subject to disclosure.¹

When balancing a Library patron’s privacy against the interests of the city of Iowa City, it follows that an individual carrying out very private matters in a public restroom would have a legitimate privacy interest in said rest room. While preventing theft is a legitimate government interest, it does not outweigh a person’s interest in not being observed by the government while they change clothes, adjust themselves, or nurse their child in the common area of the bathroom. Put simply, the patrons entering the restroom to engage in this conduct do so seeking privacy, and would not engage in the same behavior in the common, public areas just outside the bathroom doors.

There are less intrusive methods available to the library to prevent theft. For instance, the library could install sensors at the entrance to the bathrooms and prevent individuals from taking library materials into the bathrooms at all. The sensors would sound if a person entered or exited the rest room with library materials. This has the added benefit of reducing the library’s cost of housing and keeping up the cameras.

As Ms. Craig noted in her email to Ms. Pepponi, librarians are very sensitive to privacy issues and libraries are charged with the duty to protect patrons’ privacy. Our organization deeply values and supports the work of librarians across our state and country for their often fearless defense of these important principles. The “Library Bill of Rights” is a set of principles

¹ During her meeting with Ms. Craig on September 27, 2016, Ms. Pepponi asked her if there was a process she could use to obtain a portion of the footage of her in the women’s restroom. Ms. Craig responded that only select individuals could view the footage. To be clear, while library patrons have a clear expectation of privacy within the bathrooms, we do not believe that answer complies with Iowa Open Records law under Chapter 22. Clearly, the best solution, rather than make a choice between providing the public with sensitive video capturing private images of library patrons in the bathroom, or violate Open Records law, is to remove the cameras from the bathrooms altogether.

that guide policies for services provided by libraries. American Library Association, “Library Bill of Rights”, <http://www.ala.org/advocacy/intfreedom/librarybill>. In the ALA’s interpretation of the privacy aspects of the Library Bill of Rights, the right to privacy is “the right to open inquiry without having the subject of one’s interest examined or scrutinized by others.” American Library Association, “Privacy: An Interpretation of the Library Bill of Rights”, <http://www.ala.org/advocacy/intfreedom/librarybill/interpretations/privacy>.

Libraries have the responsibility to provide unrestricted access to information, not to monitor the private actions of individuals. The Library is not adequately safeguarding the privacy rights of its patrons. Instead, it is chilling the privacy rights of individuals by subjecting them to government surveillance in the most private of spaces. Libraries should be safe havens of information, not places for the government to monitor the coming and going of individuals.

III. Remedy Required

We write to ask that you remove the cameras inside the public restrooms located in the Iowa City Public Library. If removal of the cameras is not feasible, we demand that appropriate, adequate, and complete notice be provided to patrons. This notice should make it clear that cameras are in operation inside the restroom. Notice must state that recordings are subject to open records requests. Notice should be posted not only outside the restroom entrance, but also inside the restroom. Patrons must be able to readily discern what is being recorded, who maintains the recordings, and that all recordings are subject to open records requests.

We are eager to work with you to address this important issue. Please inform us in writing of your decision either to take down the cameras or agreement to place adequate notice by Wednesday, January 25, 2016.

You may call me with any questions or to discuss this matter directly at (515) 207-0567, or by email at rita.bettis@aclu-ia.org.

Sincerely,



Rita Bettis
Legal Director

Enclosure: Photos of Iowa City Public Library bathroom cameras