

IOWA PUBLIC INFORMATION BOARD

MEMBERS

Daniel Breitbarth, Des Moines (Government Representative, 2022-2026)

Joan Corbin, Pella (Government Representative, 2020-2024)

E. J. Giovannetti, Urbandale (Public Representative, 2022-2026)

Barry Lindahl, Dubuque (Government Representative, 2020-2024)

Joel McCrea, Pleasant Hill (Media Representative, 2022-2026)

Monica McHugh, Zwingle (Public Representative, 2022-2026)

Julie Pottorff, Des Moines (Public Representative, 2020-2024)

Jackie Schmillen, Urbandale (Media Representative, 2022-2026)

vacant

STAFF

Erika Eckley, Executive Director

Brett Toresdahl, Deputy Director

Daniel Strawhun, Legal Counsel

Dial-in number: 877-304-9269 Conference Code: 664760#

Note: ALL phones MUST remain on mute unless you are addressing the Board.

To unmute your phone, enter ##1 on your key pad

Agenda

November 16, 2023, 1:00 p.m.

3rd Floor E/W Conference Room

Wallace Building

502 East 9th Street, Des Moines

1:00 PM – IPIB Meeting

- I. Approval of agenda*
- II. Approval of the October 19, 2023 minutes *
- III. Public Forum (5-minute limit per speaker)
- IV. Comments from the board chair. (McHugh)

- V. Advisory Opinion – Deliberation/Action.
 1. 23AO:0008 Debra Schiel-Larson – Chapter 22 - Draft documents confidentiality exception. 10/11/23 pending

- VI. Cases involving Board Deliberation/Action. (Eckley)
 1. 22FC:0118 Dakota Sellers - Chapter 22- City of Vinton 11/14/2022 – * Final Report
 2. 23FC:0060 Dina Raley - Chapter 22- Delaware County Sheriff 6/16/2023 - * Acceptance
 3. 23FC:0072 Don Benedict – Chapter 22 – City of Sidney – 7/11/23 – * Informal Resolution Report
 4. 23FC:0074 Chad Miller - Chapter 21- Scott County Board of Review 7/18/2023 – * Informal Resolution Report
 5. 23FC:0081 Elijah Mathern – Chapter 21 – GMG Community School District – 8/10/23 and 23FC:0085 Jackie Stonewall – Chapter 21 – GMG Community School Board – 8/22/23 – * Consolidation & Dismissal

6. 23FC:0082 Mellisa Mattingly – Both Chapters – McCallsburg City Council – 8/3/23 – * Acceptance
7. 23FC:0091 Michelle Hillman – Chapter 21 – Grand Junction City Council 9/14/23 – * Dismissal
8. 23FC:0094 Matthew Jensen – Chapter 22 – Pottawatamie Co. Treasurer 9/28/23 – * Dismissal
9. 23FC:0096 Leslie Wiles – Chapter 21 – Redfield Public Library 10/9/23 – and 23FC:0097 Pauletta Cox – Chapter 21 – Redfield Public Library 10/9/23 – * Consolidation and Acceptance
10. 23FC:0100 Travis Johnson – Chapter 21 – Eddysville Blakesburg Fremont CSD Board 10/18//23 – * Acceptance
11. 23FC:0103 Crystl McCall – Both Chapters – Elk Horn City Council 10/23/23 – * Dismissal

VII. Matters Withdrawn, No Action Necessary. (Eckley)

1. 23FC:0065 Neetu Arnold - Chapter 22 – University of Northern Iowa 6/14/23 * Withdrawn
2. 23FC:0099 Steve Kirby – Chapter 22 – Warren County Auditor 10/17/23 – * Withdrawn
3. 23FC:0069 Roger Hurlbert – Chapter 22 – Montgomery County Assessor 6/26/23 – * Withdrawn

VIII. Pending Complaints. Informational Only (Eckley)

1. 22FC:0069 Mari Radtke - Chapter 22- City of Paulina 7/25/2022 - Probable Cause Report Pending
2. 23FC:0053 Debra Schiel-Larson – Both Chapters – Indianola Community School District – 5/1/23
3. 23FC:0056 Ruth Bolinger - Chapter 21- Creston City Council 5/22/2023 – Pending Informal Resolution
4. 23FC:0063 Laurie Kramer - Chapter 21- City of Delhi 6/19/2023; & 23FC:0063 Greg Preussner – Chapter 21– City of Delhi – Pending Informal Resolution
5. 23FC:0083 Brendan Chaney – Chapter 21 – City of Iowa Falls – 8/14/23 – Information Gathering
6. 23FC:0086 Todd Banner – Chapter 22 – Iowa State University – 8/23/23 – Information Gathering
7. 23FC:0093 Randy Phelps – Chapter 22 – Boone Police Department 9/27/23 – Information Gathering
8. 23FC:0098 Joseph Foran – Chapter 21 – Audubon City Council 10/10/23 – Information Gathering
9. 23FC:0101 Braxton Morrison – Chapter 21 – Benton Co. Supervisors 10/18/23 – Information Gathering
10. 23FC:0102 Maggie Mangold – Chapter 21 – Benton Co. Supervisors 10/19/23 – Information Gathering
11. 23FC:0104 Hendrik van Pelt – Chapter 22 – City of West Des Moines 10/25/23 – Information Gathering
12. 23FC:0105 Jeff Law/Kourtnee Mammen – Chapter 21 – River Valley School Board 10/29/23 – Information Gathering
13. 23FC:0106 Clint Fichter – Chapter 22 – Iowa Ethics and Campaign Board 11/3/23 – Information Gathering
14. 23FC:0107 Dana Sanders – Both Chapters – Benton Co. Board of Supervisors 10/31/23; 23FC:0108 Kurt Karr 11/1/23; 23FC:0109 Valerie Close 11/3/23; 23FC:0110 Maggie Mangold 11/3/23; 23FC:0111 Kaitlin Emrich 11/4/23; 23FC:0112 Lu Karr 11/4/23; 23FC:0113 Molly Rach 11/5/23 – Consolidating & Information Gathering
15. 23FC:0114 John Bandstra – Chapter 21 – South Central Regional Airport Agency 11/6/23 – Information Gathering
16. 23FC:0115 Bert Bandstra – Chapter 21 – South Central Regional Airport Agency 11/10/23 – Information Gathering
17. 23FC:0116 Jacob Ballard – Chapter 21 – Perry Community School Board 11/8/23 – Information Gathering
18. 23FC:0117 Ellen O’Mally – Chapter 21 – Pleasant Grove Trustees 11/9/23 – Information Gathering

IX. Committee Reports

1. Communications – (Toresdahl)
2. Legislative – (Eckley)
3. Rules – (Strawhun) – Meeting set for November 21, 2023 @ 1:00pm

- X. Office status report.
1. Office Update * (Eckley)
 2. Financial/Budget Update (FY23) * (Toresdahl)
 3. Presentations/Trainings (Eckley) – Iowa Municipal Attorney Assn., Floyd County officials, Creston City Council, Sidney City Council
 4. District Court Update (Strawhun)
- XI. Next IPIB Board Meeting will be held in the Wallace Building, 3rd Floor, E/W Conference Room
December 21, 2023 at 1:00 p.m.
- XII. Adjourn *** Attachment**

IOWA PUBLIC INFORMATION BOARD

October 19, 2023

Unapproved Minutes

The Board met on October 19, 2023 for its monthly meeting at 1:00 in the 3rd floor E/W Conference Room in the Wallace Building with the following members participating: Daniel Breitbarth, Des Moines; Joan Corbin, Pella (phone); E. J. Giovannetti, Urbandale; Barry Lindahl, Dubuque; Joel McCrea, Pleasant Hill; Monica McHugh, Zwingle; Julie Pottorff, Des Moines. Absent: Jackie Schmillen, Urbandale. Also present were IPIB Executive Director Erika Eckley; Brett Toresdahl, Deputy Director; Daniel Strawhun, Legal Counsel. A quorum was declared present.

Others identified present or by phone: Rick Morain, Xavier Leonard, Bob Tieg, Laura Belin, John Burnado, Mary Beth Kennedy, Roger Hurlbert, Carol Dalton, Mikki Schulz, Katie Morgan Michelle Hillman, Paula Hoskinson.

On a **motion** by Giovannetti, **second** by Lindahl, the agenda was unanimously adopted 7-0.

On a **motion** by McCrea, **second** by Brietbarth, to approve the August 17, 2023 minutes. Unanimously adopted 7-0.

Public Forum – Dakota Sellers, Bob Tieg spoke.

Board Chair Comments – Addressed the process for complaints and how they are handled by staff and Board. Staff was asked to modify the meeting packets to also include original complaints.

Advisory Opinions –

1. 23AO:0008 Debra Schiel-Larson – Chapter 22 - Draft documents confidentiality exception. 10/11/23 - pending

The board was briefed on cases and took action as indicated:

1. 23FC:0044 Cliff Sheakley – Chapter 22 – Tama County Assessor – 3/31/23 A motion by Breitbarth and second by Giovannetti to accept the informal resolution final report and to dismiss the complaint as being resolved. Unanimously approved, 7-0.
2. 23FC:0060 Dina Raley - Chapter 22- Delaware County Sheriff 6/16/2023 – John Burnado and Mary Beth Kennedy spoke. A motion by Pottorff and second by Giovannetti to table the matter for further investigation. Approved, 6-1 with Lindahl voting nay.
3. 23FC:0063 Laurie Kramer - Chapter 21- City of Delhi 6/19/2023; & 23FC:0063 Greg Preussner – Chapter 21– City of Delhi - A motion by Lindahl and second by Brietbarth to accept the informal resolution report. Unanimously approved, 7-0.
4. 23FC:0069 Roger Hurlbert – Chapter 22 – Montgomery County Assessor 6/26/23. Roger Hurlbert and Carol Dalton spoke. A motion by Brietbarth and second by Lindahl to approve the acceptance order. Unanimously approved, 7-0.

5. 23FC:0071 Bradley Wendt – Chapter 21 – City of Adair – 7/11/23. A motion by Giovannetti and second by McCrea to approve the dismissal order. Unanimously approved, 7-0.
6. 23FC:0075 Less Grossman – Chapter 21 – Eastern Iowa Community College – 7/17/23. Mikki Schultz spoke. A motion by McCrea and second by Lindahl to approve the dismissal order. Unanimously approved, 7-0.
7. 23FC:0087 Travis Scott – Chapter 22 – O’Brien County Conservation Board – 8/24/23. Katie Morgan Spoke. A motion by Brietbarth and second by Lindahl to approve the dismissal order. Unanimously approved, 7-0.

Note: *At 2:15pm the phone line disconnected. It was reconnected promptly.*

8. 23FC:0088 Concerned Citizen – Chapter 21 – O’Brien County Conservation Board – 8/28/23. Katie Morgan spoke. A motion by Pottorff and second by Brietbarth to approve the dismissal order. Unanimously approved, 7-0.
9. 23FC:0090 Richard Radtke – Chapter 22 – City of Paulina 9/6/2023. A motion by McCrea and second by Pottorff to approve the dismissal order. Unanimously approved, 7-0.

Note: *Corbin left the meeting.*

10. 23FC:0091 Michelle Hillman – Chapter 21 – Grand Junction City Council 9/14/23. Paula Hoskinson and Michelle Hillman spoke. A motion by Pottorff and second by McCrea to approve a motion to table pending a redraft of the order. Unanimously approved, 6-0.
11. 23FC:0092 Pamela Jo Brodie-Fitzgerald – Chapter 21 – City of Marquette 9/19/23. A motion by Brietbarth and second by Lindahl to approve the dismissal order. Unanimously approved, 6-0.

Matters Withdrawn. No Action -

1. 23FC:0095 Emily Hawk – Chapter 22 – Moulton-Udell School District 10/3/23 – Withdrawn

Note: *Corbin rejoined the meeting.*

Pending complaints that required no board action. Informational

1. 22FC:0069 Mari Radtke - Chapter 22- City of Paulina 7/25/2022 - Pending Informal Resolution
2. 22FC:0118 Dakota Sellers - Chapter 22- City of Vinton 11/14/2022 – Pending Informal Resolution
3. 23FC:0053 Debra Schiel-Larson – Both Chapters – Indianola Community School District – 5/1/23
4. 23FC:0056 Ruth Bolinger - Chapter 21- Creston City Council 5/22/2023 – Pending Informal Resolution
5. 23FC:0065 Neetu Arnold - Chapter 22 – University of Northern Iowa 6/14/23 Pending Informal Resolution
6. 23FC:0072 Don Benedict – Chapter 22 – City of Sidney – 7/11/23 – Pending Informal Resolution
7. 23FC:0074 Chad Miller - Chapter 21- Scott County Board of Review 7/18/2023 – Pending Informal Resolution
8. 23FC:0081 Elijah Mathern – Chapter 21 – GMG Community School District – 8/10/23 – Information Gathering

9. 23FC:0082 Melisa Mattingly – Both Chapters – McCallsburg City Council – 8/3/23 – *
10. 23FC:0083 Brendan Chaney – Chapter 21 – City of Iowa Falls – 8/14/23 – Information Gathering
11. 23FC:0085 Jackie Stonewall – Chapter 21 – GMG Community School Board – 8/22/23 – Information Gathering
12. 23FC:0086 Todd Banner – Chapter 22 – Iowa State University – 8/23/23 – Information Gathering
13. 23FC:0093 Randy Phelps – Chapter 22 – Boone Police Department 9/27/23 – Information Gathering
14. 23FC:0094 Matthew Jensen – Chapter 22 – Pottawatomie Co. Treasurer 9/28/23 – Information Gathering
15. 23FC:0096 Leslie Wiles – Chapter 21 – Redfield Public Library 10/9/23 – Information Gathering
16. 23FC:0097 Pauletta Cox – Chapter 21 – Redfield Public Library 10/9/23 – Information Gathering

Committee Reports

1. Communications – No report
2. Legislative – The Committee is scheduled to have a meeting on October 19, 2023 immediately following the Board meeting.
3. Rules – There is an upcoming rule writers training.

Updates for the board.

- a. Executive Director Report:
 - Eckley share a draft of a sample public records request form
 - Website change-over is progressing
- b. Toresdahl shared the FY24 financials.
- c. Upcoming presentations:
 - City Clerk's Training
 - Municipal Attorneys Training
 - Floyd County
- d. A district court case:
 - Ward appeal – an answer has been filed.
 - Swarm case – hearing scheduled for January 25, 2024.

The next IPIB meeting will be in the Wallace Building, **3rd Floor, E/W Conference Room**, November 16, 2023, at 1:00 p.m.

At 3:06 p.m. the meeting adjourned on a motion by Pottorff and a second by Brietbarth. Unanimously approved.

Respectfully submitted
Brett Toresdahl, Deputy Director

IPIB, Chair
Approved

Before The Iowa Public Information Board

In re the Matter of: Dakoda Sellers, Complainant And Concerning: City of Vinton, Respondent	Case Number: 22FC:0118 Final Report
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COMES NOW, Daniel M. Strawhun, Legal Counsel for the Iowa Public Information Board (IPIB), and submits this Informal Resolution Report:

On November 11, 2022, Dakoda Sellers filed formal complaint 22FC:0118, alleging that the City of Vinton violated Iowa Code chapter 22.

IPIB accepted the complaint on January 19, 2023. Pursuant to Iowa Code section 23.9, the parties agreed to informally resolve the complaint. IPIB approved the informal resolution on September 21, 2023.

All terms of the Informal Resolution have now been completed. It is therefore recommended that the complaint be dismissed as successfully resolved.

Respectfully submitted,



Daniel M. Strawhun
Legal Counsel, IPIB

CERTIFICATE OF MAILING

This document was sent by electronic mail on November 15, 2023, to:

Dakoda Sellers
Douglas Herman, Attorney for the City of Vinton

The Iowa Public Information Board

In re the Matter of: Dina Raley, Complainant And Concerning: Delaware County Sheriff's Office, Respondent	Case Number: 23FC:0060 Acceptance Order
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COMES NOW, Erika Eckley, Executive Director for the Iowa Public Information Board (IPIB), and enters this Acceptance Order:

On March 29, 2023, Dina Raley filed formal complaint 23FC:0060, alleging that the Delaware County Sheriff's Office (Sheriff) violated Iowa Code chapter 22.

Background

On January 23, 2023, the complainant submitted identical public records requests to the Delaware County Attorney, the Delaware County Sheriff's Office, the Manchester Police Department, the Manchester Fire and Rescue Department, and the Earlville Fire and Rescue Department.

The requests were for records related to the death of Amy Mullis in 2018 and the subsequent investigation into Todd Mullis. The requests also specified officer and EMS reports and recordings that the complainant sought to obtain through the requests. After some initial back and forth between the complainant and the various government bodies to whom the requests were made, it became evident that the Sheriff was the lawful custodian of most of the records sought.

On February 28, 2023, the office manager for the Sheriff emailed the complainant the following message:

I have attached the recordings I have been authorized to release. Please be advised that there are no narratives from Mark Banghart, nor Jason White.

Also, we have no recordings between Greeley Fire EMS and Manchester EMS, other than what might be in the attached 911 call.

Attached to this email was a recording of the 911 call reporting Amy Mullis's death. This was the only record the Sheriff released, initially. The Sheriff did not explain what additional records existed, if any, and why they were being withheld, although the email alludes to the existence of additional records.

The complainant thanked the Sheriff for releasing the 911 call recording and asked whether there were additional records that were being withheld, and if so, for what reason. The complainant also asked for clarification regarding the potential existence of written EMS and fire reports and body camera recordings.

On March 16, 2023, the Sheriff replied to the complainant's email. The Sheriff ordered the complainant to submit documentation that she represented Todd Mullis and stated that it possessed two body camera videos that it had apparently withheld initially, but would now provide to Barry Law since "they filed an appearance." The Sheriff then stated that "any other communications or document requests will need to be requested by a law firm that has a current, up-to-date appearance on file representing Todd Mullis."

The complainant thereafter filed this complaint, alleging that the Sheriff had unlawfully withheld public records and had wrongfully demanded evidence of representation in connection with a public records request.

In response to the complaint, the Delaware County Attorney stated for the first time that the records were being withheld as confidential police investigative reports pursuant to Iowa Code section 22.7(5):

Initially, some of the information requested was not provided due to law enforcement exceptions to a public records request. As of this writing, I believe that everything requested and more have been provided as the requestor is representing Mr. Mullis in a Post Conviction Relief action related to his Murder conviction that allows more information to be provided than a typical public records request.

If there is something in particular they are requesting as a public record that is not subject to an exception and in possession of either office, we will gladly turn it over as always.

As detailed in IPIB advisory opinion AO:0003, the confidentiality provided under section 22.7(5) is qualified, rather than categorical. *Mitchell v. City of Cedar Rapids*, 926 N.W.2d 222, 232–234

(Iowa 2019). This means that the mere fact that a record is part of a police officer's investigative report is not, by itself, sufficient to demonstrate that the record is confidential under section 22.7(5). *Id.* In addition to showing that the records at issue fit within the general category of records protected under the statute, *AFSCME/Iowa Council 61 v. Iowa Dep't of Pub. Safety*, 434 N.W.2d 401 (Iowa 1988), “[a]n official claiming the privilege must satisfy a three-part test: (1) a public officer is being examined, (2) the communication [to the officer] was made in official confidence, and (3) the public interest would suffer by disclosure.” *Mitchell*, 926 N.W.2d at 232 (citing *Hawk Eye v. Jackson*, 521 N.W.2d 750, 752 (Iowa 1994)).

Thus, in order to meaningfully analyze whether a violation of chapter 22 may have occurred, IPIB staff needed to know two things: 1) whether the records in question fit within the general category of records protected by the statute; and 2) why they should be withheld under the *Hawkeye* test. IPIB staff attempted to obtain this information by asking the County Attorney to provide a brief description of the records that were being withheld and the reason for withholding them. The County Attorney responded:

This is ongoing criminal litigation. Never hear of a requirement to release this type of information in a public records request in my almost 30 years as a prosecutor. Considering the number of documents and time involved in your request, please assure us your office or Ms Raley will pay for the time involved regardless of what more needs to be produced.

IPIB staff therefore recommended that the complaint be accepted, as the County Attorney failed to provide any information that would support his contention that the records in question were confidential under section 22.7(5). “Disclosure [under chapter 22] is the rule, and one seeking the protection of one of the statute's exemptions bears the burden of demonstrating the exemption's applicability.” *Clymer v. City of Cedar Rapids*, 601 N.W.2d 42, 45 (Iowa 1999). At its October meeting, IPIB voted to table the complaint for further investigation.

Since the October meeting, the County Attorney provided IPIB staff (as well as the Complainant) with a log detailing the records that were withheld. The County Attorney also provided IPIB staff with the following statement as to why the public interest would suffer through disclosure of the records in question:

The records in the "Deputy/Case Investigative File" portion of the log/index contain lots of personal information, are work product and most importantly are now part of a pseudo-ongoing investigation since the matter is in PCR with requests for things that don't exist, but might later exist (new interviews, etc.) just as if the case were

fresh. Mr. Mullis' counsel has claimed to have a number of witnesses and/or experts that the sheriff's department did not know about or have contact with in the beginning, so clearly there is more here that is keeping the file open and active. Finally, if Mr. Mullis' conviction is reversed, we are back to square one, day one as if he had not yet been charged and all of this information will then be part of an on-going and current prosecution the release of which would potentially taint a prospective jury.

Analysis

The issue raised in this complaint is whether the Sheriff's Office properly withheld the records from disclosure under section 22.7(5). Under section 22.7(5),

The following public records shall be kept confidential . . . [p]eace officers' investigative reports. . . . However, the date, time, specific location, and immediate facts and circumstances surrounding a crime or incident shall not be kept confidential . . . except in those unusual circumstances where disclosure would plainly and seriously jeopardize an investigation or pose a clear and present danger to the safety of an individual.

This provision creates a qualified, not absolute, privilege of confidentiality. *Hawk Eye v. Jackson*, 521 N.W.2d 750, 753 (Iowa 1994). A party claiming the privilege must demonstrate 1) that the records at issue fit within the general category of records protected under the statute, *see e.g., AFSCME/Iowa Council 61*, 434 N.W.2d at 401 (“The first issue to be resolved in this regard is whether the lab reports are ‘investigative reports,’ as is asserted by the DPS.”); and 2) that under the *Hawk Eye* balancing test, the records may be withheld as confidential. *Mitchell v. City of Cedar Rapids*, 926 N.W.2d 222, 232–234 (Iowa 2019) (“We hold that *Hawk Eye* remains the controlling precedent for disputes over access to police investigative reports.”).

Are the records at issue investigative reports?

The public records request was for “information related to the death of Amy Mullis on November 10, 2018, or the investigation of Todd Mullis on or about November 10, 2018 . . . , police reports or narratives written by . . . Officer Mark Banghart [and] . . . Officer Jason White,” as well as audio recordings and written/audio communications between officers, audio recordings between dispatch and officers, and EMS audio recordings.

The wording of the request, as well as the nature of the records specified in the log that was provided, support the conclusion that the withheld records are investigative reports. *See AFSCME/Iowa Council 61*, 434 N.W.2d at 401 (holding that lab reports are included within the meaning of “investigative reports”); *Neer v. State*, 798 N.W.2d 349 (Iowa App. 2011) (*stating* “the term ‘investigative reports’ has been interpreted to encompass not only reports but also other material and evidence incorporated into reports”).

Under the Hawk Eye test, may the records be withheld?

The party claiming confidentiality under section 22.7(5) must satisfy a three-part test: (1) a public officer is being examined, (2) the communication [to the officer] was made in official confidence, and (3) the public interest would suffer by disclosure.” *Mitchell*, 926 N.W.2d at 232 (*citing Hawk Eye v. Jackson*, 521 N.W.2d 750, 752 (Iowa 1994)).

The determinative part of the test here is the third, “whether the public interest would suffer by disclosure.” In *Mitchell*, the Court cited several factors that are relevant to making this determination: (1) the need for confidentiality is greater when reports are based on confidential informants; (2) whether the information at issue references “named but innocent suspects”; (3) whether the investigation is ongoing, such that public disclosure would hinder the investigation; and 4) whether the report contained “hearsay, rumor, or libelous comment.” *Mitchell*, 926 N.W.2d at 233.

In addressing why the public interests would suffer through disclosure, the County Attorney characterized the investigation as “pseudo-ongoing,” despite the fact that the subject of the investigation, Todd Mullis, has already been criminally charged and convicted as a result of the investigation. The County Attorney’s characterization of the case as “pseudo-ongoing” is based on the fact that a postconviction relief action was filed on behalf of Todd Mullis, after the public records request was made. Thus, the County Attorney argues that the investigation is pseudo-ongoing because new evidence might be generated in the context of the PCR action, the conviction might ultimately be reversed, and new charges might ultimately be brought as a result of the possible reversal.

These concerns are speculative, and the County Attorney has not cited any authority for his contention that a PCR action has the effect of re-opening the criminal investigation. “[P]ostconviction relief proceedings are not ‘criminal proceedings’ involving ‘charges’ and a ‘defense.’ They are collateral actions initiated by an incarcerated individual challenging a prior conviction. *Jones v. State*, 479 N.W.2d 265, 269 (Iowa 1991).

The County Attorney also stated that disclosure of the records could potentially taint the jury pool if the PCR action results in a reversal of Mr. Mullis’s conviction and the State pursues

charges against him again that result in a criminal trial. This concern is extremely speculative. Furthermore, the Court has rejected such concerns as a basis for maintaining confidentiality of investigative reports. *Mitchell*, 926 N.W.2d at 235 (“The defendants also argue that further disclosure and the resulting publicity could taint the jury pool. We believe that concern can be addressed during jury selection.”).

The County Attorney further stated that the records contain “personal information and work product,” but did not elaborate or explain why the public interest would suffer through the disclosure of this information or how it is relevant to the analysis under section 22.7(5).

The facts underlying this complaint are similar to those in *State v. Henderson*, No. 01-0295, 2002 WL 987851, at *3 (Iowa Ct. App. May 15, 2002). Being an unreported opinion from the Court of Appeals, this case is of persuasive value only. However, the Board may find it helpful in considering whether this complaint should be accepted.

In *Henderson*, a convicted individual, through his agent, submitted a public records request for the police investigative files related to his conviction. *State v. Henderson*, No. 01-0295, 2002 WL 987851, at *3 (Iowa Ct. App. May 15, 2002). The State withheld the files, claiming confidentiality under section 22.7(5). *Id.* The convicted individual challenged the State’s claim of confidentiality in the district court. *Id.* The district court ordered the files to be released, finding that the State was unable to identify any particular public interest that would suffer by disclosure of the information. *Id.* The State appealed the district court’s order. On appeal, the Court of Appeals affirmed the district court’s ruling:

Here, the State did not present evidence confidential informants had been used in the investigation. The case certainly was not ongoing; Henderson–El was convicted in 1977. Also, there were no allegations the investigative files contained “hearsay, rumor, or libelous comment.” Instead, the State expressed concerns that witnesses identified in the files would be contacted and harassed. The State pointed out there was a public interest in finality of judgments.

We note there is a presumption of openness and disclosure under Iowa's Open Records Law. *Gabrilson*, 554 N.W.2d at 271. The public has an interest in the review of government affairs. *Hawk Eye*, 521 N.W.2d at 754. The State highlighted concerns about things that might happen, but presented no evidence of a particular public interest that would suffer by disclosure of the information. We determine the district court did not err in concluding the State failed

to show public interests would suffer by disclosure of Henderson–
El's investigative files. We affirm the decision of the district court.

State v. Henderson, No. 01-0295, 2002 WL 987851, at *3 (Iowa Ct. App. May 15, 2002).

Conclusion

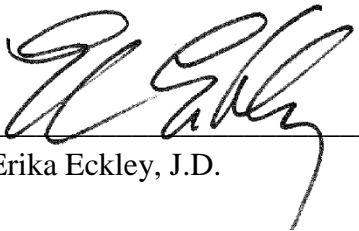
Section 22.7(5) extends a qualified privilege of confidentiality to police investigative records. The party seeking the protection of one of the exemptions in 22.7 bears the burden of demonstrating the exemption's applicability. In the case of 22.7(5), this involves not only demonstrating that the records at issue are police investigative reports, but also requires a showing that the public interest would suffer by disclosure of the records. The Sheriff has failed to demonstrate that any of the relevant factors that would weigh against disclosure are present here. Therefore, the complaint appears to have merit and should be accepted.

Iowa Code § 23.8 requires that a complaint be within IPIB's jurisdiction, appear legally sufficient, and have merit before IPIB accepts a complaint. Following a review of the allegations on their face, it is found that this complaint meets those requirements.

IT IS SO ORDERED: Formal complaint 23FC:0060 is accepted pursuant to Iowa Code § 23.8(2) and Iowa Administrative Rule 497-2.1(2)(b).

Pursuant to Iowa Administrative Rule 497-2.1(3), IPIB may “delegate acceptance or dismissal of a complaint to the executive director, subject to review by the board.” IPIB will review this Order on November 16, 2023. Pursuant to IPIB rule 497-2.1(4), the parties will be notified in writing of its decision.

By the IPIB Executive Director



Erika Eckley, J.D.

CERTIFICATE OF MAILING

This document was sent on November 9, 2023, to:

Dina Raley
John Bernau, Delaware County Attorney

The Iowa Public Information Board

In re the Matter of:	Case Number: 23FC:0072
Don Benedict, Complainant	Informal Resolution
And Concerning:	
City of Sidney, Respondent	

On July 11, 2023, Don Benedict filed formal complaint 23FC:0072, alleging that City of Sidney (City) violated Iowa Code chapter 22.

Mr. Benedict alleges that on June 15, 2023, he sent a public information request to the City requesting all City email communications concerning an incident on May 22nd. In response to the request, the City provided email logs on June 16, 2023. After reviewing the logs, Mr. Benedict sent a new public information request on June 16, 2023, for all City email communications between:

- Ken Brown and Riley Christie
- Ken Brown and RC tree service
- Ken Brown and Fichter law firm

On June 16th, Ken Brown indicating he would not comply with the public records request. Mr. Brown is the Mayor of the City. Due to Mr. Brown's unwillingness to turn over the public records, the City Council voted at the July 10, 2023, council meeting for the City to access the City's email archives and release the information to the city attorney for review in response to the records request. Mr. Benedict further alleges he was told by the city attorney that Mr. Brown is threatening litigation if the City proceeds with responding to the public records request without his cooperation. Mr. Benedict alleges that Mr. Brown has indicated he will not cooperate in complying with the request without an order from the Iowa Public Information Board.

The Iowa Public Information Board (IPIB) accepted the complaint on August 17, 2023. Pursuant to Iowa Code section 23.9, the parties have agreed upon the following terms for an informal resolution of this matter:

1. The city acknowledges that there was sufficient evidence of a violation of Iowa Code chapter 22 when Ken Brown, as mayor of the city of Sidney, refused to cooperate with other city officials and staff in complying with a records request. The city provided documentation of the mayor's refusal to provide his public email records and subsequent

- deletion of public records. The city of Sidney will include this acknowledgement of the mayor's conduct and refusal to comply with state law in the minutes of an open meeting.
2. The city of Sidney will conduct Open Meetings and Public Records training at an open meeting. This training will be conducted by the Iowa League of Cities or the Iowa Public Information Board.
 3. The city of Sidney will review its public records and retention policies for email and make any necessary changes to prevent future loss of records or delays in complying with records requests.
 4. The city of Sidney will approve this agreement at an open meeting and provide a copy of this Informal Resolution with its meeting minutes.

All terms of this Informal Resolution shall be completed within 60 days of the date of approval of this Informal Resolution by all parties. Upon showing proof of compliance, the IPIB will dismiss this complaint as successfully resolved.

THIS INFORMAL RESOLUTION HAS BEEN REVIEWED AND APPROVED BY THE FOLLOWING:

Don Benedict
Don Benedict

10-23-23
Date

Anne M. Traas
City of Sidney Mayor Pro Tem

By: Anne M Traas
(Print Name)

10-23-2023
Date

The Iowa Public Information Board

In re the Matter of:	Case Number: 23FC:0072
Don Benedict, Complainant	Informal Resolution Report
And Concerning:	
City of Sidney, Respondent	

COMES NOW, Erika Eckley, Executive Director for the Iowa Public Information Board (IPIB), and submits this Informal Resolution Report::

On July 11, 2023, Don Benedict filed formal complaint 23FC:0072, alleging that City of Sidney (City) violated Iowa Code chapter 22.

Mr. Benedict alleges that on June 15, 2023, he sent a public information request to the City requesting all City email communications concerning an incident on May 22nd. In response to the request, the City provided email logs on June 16, 2023. After reviewing the logs, Mr. Benedict sent a new public information request on June 16, 2023, for all City email communications between:

- Ken Brown and Riley Christie
- Ken Brown and RC tree service
- Ken Brown and Fichter law firm

On June 16th, Ken Brown indicating he would not comply with the public records request. Mr. Brown is the Mayor of the City. Due to Mr. Brown's unwillingness to turn over the public records, the City Council voted at the July 10, 2023, council meeting for the City to access the City's email archives and release the information to the city attorney for review in response to the records request. Mr. Benedict further alleges he was told by the city attorney that Mr. Brown is threatening litigation if the City proceeds with responding to the public records request without his cooperation. Mr. Benedict alleges that Mr. Brown has indicated he will not cooperate in complying with the request without an order from the Iowa Public Information Board.

The Iowa Public Information Board (IPIB) accepted the complaint on August 17, 2023. Pursuant to Iowa Code section 23.9, the parties have agreed upon the following terms for an informal resolution of this matter:

1. The city acknowledges that there was sufficient evidence of a violation of Iowa Code chapter 22 when Ken Brown, as mayor of the city of Sidney, refused to cooperate with other city officials and staff in complying with a records request. The city provided documentation of the mayor's refusal to provide his public email records and subsequent deletion of public records. The city of Sidney will include this acknowledgement of the mayor's conduct and refusal to comply with state law in the minutes of an open meeting.
2. The city of Sidney will conduct Open Meetings and Public Records training at an open meeting. This training will be conducted by the Iowa League of Cities or the Iowa Public Information Board.
3. The city of Sidney will review its public records and retention policies for email and make any necessary changes to prevent future loss of records or delays in complying with records requests.
4. The city of Sidney will approve this agreement at an open meeting and provide a copy of this Informal Resolution with its meeting minutes.

The date of this agreement is the date upon which all parties have signed it, as evidenced by the signature dates below. The parties shall complete all terms of this agreement within 60 days. Upon successful completion of all terms, IPIB shall dismiss this complaint.

The parties approved and signed the Informal Resolution on October 23, 2023.

It is recommended that the IPIB approve the proposed informal resolution and set the matter for compliance review in accordance with the terms of the informal resolution.

Respectfully submitted,



Erika Eckley, J.D.
Executive Director

CERTIFICATE OF MAILING

This document was sent on November 14, 2023, to:

Don Benedict
Bri Sorensen, attorney City of Sidney

The Iowa Public Information Board

In re the Matter of:	Case Number: 23FC:0074
Chad Miller, Complainant	Informal Resolution
And Concerning:	
Scott County Board of Review, Respondent	

On July 9, 2023, Chad Miller filed formal complaint 23FC:0074, alleging that Scott County Board of Review (Board) violated Iowa Code chapter 21.

In his complaint, Mr. Miller alleged the Scott County Board of Review failed to comply with requirements of Iowa Code chapter 21 because the meeting minutes did not include the vote of the Board, the meetings were not conducted openly and only one petitioner is allowed in the meeting at a time. He alleged the public cannot listen to other petitioners and that the petitioners are required to leave before the board votes and are not able to listen to any discussion between the Board and Scott County Assessor representatives.

The Iowa Public Information Board (IPIB) accepted the complaint on September 20, 2023. Pursuant to Iowa Code section 23.9, the parties have agreed upon the following terms for an informal resolution of this matter:

1. Establishing a policy or procedure to ensure the Board's minutes reflect the requirements of Chapter 21.
2. Establishing a policy or procedure to ensure all activities of the Board are done in compliance with Iowa Code chapter 21's open meeting requirements and that this is clearly articulated/communicated to all individuals.

THIS INFORMAL RESOLUTION HAS BEEN REVIEWED AND APPROVED BY THE FOLLOWING:

Chad Miller

Date

Scott County Board of Assessment

By: Tom W. Downing
(Print Name)

10/31/2023
Date

The Iowa Public Information Board

In re the Matter of:	Case Number: 23FC:0074
Chad Miller, Complainant	Informal Resolution
And Concerning:	
Scott County Board of Review, Respondent	


On July 9, 2023, Chad Miller filed formal complaint 23FC:0074, alleging that Scott County Board of Review (Board) violated Iowa Code chapter 21.

In his complaint, Mr. Miller alleged the Scott County Board of Review failed to comply with requirements of Iowa Code chapter 21 because the meeting minutes did not include the vote of the Board, the meetings were not conducted openly and only one petitioner is allowed in the meeting at a time. He alleged the public cannot listen to other petitioners and that the petitioners are required to leave before the board votes and are not able to listen to any discussion between the Board and Scott County Assessor representatives.

The Iowa Public Information Board (IPIB) accepted the complaint on September 20, 2023. Pursuant to Iowa Code section 23.9, the parties have agreed upon the following terms for an informal resolution of this matter:

1. Establishing a policy or procedure to ensure the Board's minutes reflect the requirements of Chapter 21.
2. Establishing a policy or procedure to ensure all activities of the Board are done in compliance with Iowa Code chapter 21's open meeting requirements and that this is clearly articulated/communicated to all individuals.

THIS INFORMAL RESOLUTION HAS BEEN REVIEWED AND APPROVED BY THE FOLLOWING:



Chad Miller

Date

Scott County Board of Assessment

By: _____
(Print Name)

Date

The Iowa Public Information Board

In re the Matter of: Chad Miller, Complainant And Concerning: Scott County Board of Review, Respondent	Case Number: 23FC:0074 Informal Resolution Report
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COMES NOW, Erika Eckley, Executive Director for the Iowa Public Information Board (IPIB), and submits this Informal Resolution Report::

On July 9, 2023, Chad Miller filed formal complaint 23FC:0074, alleging that Scott County Board of Review (Board) violated Iowa Code chapter 21.

In his complaint, Mr. Miller alleged the Scott County Board of Review failed to comply with requirements of Iowa Code chapter 21 because the meeting minutes did not include the vote of the Board, the meetings were not conducted openly and only one petitioner is allowed in the meeting at a time. He alleged the public cannot listen to other petitioners and that the petitioners are required to leave before the board votes and are not able to listen to any discussion between the Board and Scott County Assessor representatives.

The Iowa Public Information Board (IPIB) accepted the complaint on September 20, 2023. Pursuant to Iowa Code section 23.9, the parties have agreed upon the following terms for an informal resolution of this matter:

1. Establishing a policy or procedure to ensure the Board's minutes reflect the requirements of Chapter 21.
2. Establishing a policy or procedure to ensure all activities of the Board are done in compliance with Iowa Code chapter 21's open meeting requirements and that this is clearly articulated/communicated to all individuals.

The date of this agreement is the date upon which all parties have signed it, as evidenced by the signature dates below. The parties shall complete all terms of this agreement prior to the Scott County Board of Review's required 2024 session start date. Upon successful completion of all terms, IPIB shall dismiss this complaint.

The parties approved and signed the Informal Resolution on November 1, 2023.

It is recommended that the IPiB approve the proposed informal resolution and set the matter for compliance review in accordance with the terms of the informal resolution.

Respectfully submitted,



Erika Eckley, J.D.
Executive Director

CERTIFICATE OF MAILING

This document was sent on November 14, 2023, to:

Chad Miller
Thomas McManus, Scott County Assessor

The Iowa Public Information Board

In re the Matter of: Elijah Mathern and Jackie Stonewall, Complainants And Concerning: Green Mountain-Garwin Community School District, Respondent	Case Numbers: 23FC:0081 & 23FC:0085 Consolidation & Dismissal Order
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COMES NOW, Erika Eckley, Executive Director for the Iowa Public Information Board (IPIB), and enters this Dismissal Order:

Background

On August 21 and 22, 2023, Elijah Matthern and Jackie Stonewall (“Complainants”) filed formal complaints 23FC:0081 and 23FC:0085, respectively. The complaints allege that the Green Mountain-Garwin Community School Board (“Board”) violated Iowa Code chapter 21. Because the complaints consist of substantially similar allegations relating to the same set of events, they should be consolidated.

The GMG School Board consists of seven members. Three of the seven board members gathered at Garwin Church on August 10, 2023. At this August 10 gathering, the three board members in attendance reviewed comments that the other four members submitted individually. The comments dealt with suggested goals and evaluation criteria for the district’s part-time superintendent. Upon reviewing the comments received from the other board members, the three members compiled the information into a list of goals and criteria to be discussed at the next Board meeting on August 14, 2023.

At the August 14 meeting of the school board, the three-person committee presented the list of goals and evaluative processes to the entire Board and superintendent for discussion and action.

The Complainants allege that the August 10 meeting of the three-person committee violated Iowa Code chapter 21, as the meeting was neither noticed nor held in open session.

Analysis

Iowa Code chapter 21 governs meetings of governmental bodies. A “meeting” of a governmental body occurs when a majority of the members of the body gather to deliberate or act upon any matter within the scope of the governmental body's policy-making duties. Iowa Code § 21.2(2). Thus, a meeting subject to chapter 21 consists of the following elements:

1. A gathering of members of a governmental body;
2. In such a number so as to constitute a majority;
3. During which deliberation or action occurs; and
4. Such deliberation or action is within the scope of the governmental body’s “policy-making duties.”

See 1981 Iowa Op. Att'y Gen. 162 (1981). Such meetings must comply with the public notice, open session, and minute keeping requirements of chapter 21. The occurrence of a meeting satisfying these criteria is a necessary prerequisite to an ultimate finding that a violation of chapter 21 occurred.

Was the August 10 gathering of board members a meeting subject to chapter 21?

To be subject to chapter 21, a meeting must consist of a majority of the members of the governmental body. Here, the Board is a seven-member body, and the August 10 gathering consisted of three of the seven members, which is less than a majority.

Although less than a majority of the Board gathered on August 10, the three members in attendance reviewed the other four board members’ individually submitted comments. This fact presumably serves as the basis for the alleged violation. Thus, the determinative issue is whether the sub-majority’s review of the comments provided by the other board members constituted a chapter 21 meeting.

“Activities of a governmental body's individual members to secure information to be reported and acted upon at an open meeting ordinarily do not violate sunshine statutes. Any other rule would hamstring the progress of governmental bodies, and impose intolerable time burdens on unpaid officeholders.” *Telegraph Herald v. City of Dubuque*, 297 N.W.2d 529, 534 (Iowa 1980). Here, the sub-majority committee compiled the comments individually submitted by the other board members into a list of goals and criteria. The committee then presented this list at the Board meeting on August 14, at which point the Board deliberated and took action on the topic.

Conclusion

The August 10 gathering consisted of less than a majority of the Board. Further, the sub-majority in attendance merely compiled the individual comments of the other Board members into a list of goals and criteria to be deliberated and acted upon at the August 14 meeting of the Board. At no point on August 10 did a majority of the Board gather to deliberate or act upon matters within

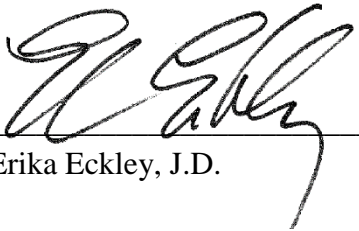
their policy-making duties. The mere receipt and compilation of the other board members' prewritten comments did not constitute deliberation or action by a majority of the Board.

Iowa Code § 23.8 requires that a complaint be within the IPIB's jurisdiction, appear legally sufficient, and have merit before the IPIB accepts a complaint. Following a review of the allegations on their face, it is found that these complaints do not meet those requirements.

IT IS SO ORDERED: Formal complaints 23FC:0081 and 23FC:0085 are consolidated and dismissed for lack of merit pursuant to Iowa Code § 23.8(2) and Iowa Administrative Rule 497-2.1(2)(b).

Pursuant to Iowa Administrative Rule 497-2.1(3), IPIB may "delegate acceptance or dismissal of a complaint to the executive director, subject to review by the board." IPIB will review this Order on November 16, 2023. Pursuant to rule 497-2.1(4), the parties will be notified in writing of its decision.

By the IPIB Executive Director



Erika Eckley, J.D.

CERTIFICATE OF MAILING

This document was sent on November 9, 2023, to:

Elijah Mathern
Jackie Stonewall
Kristy Latta, attorney for GMG school district



Toresdahl, Brett <brett.toresdahl@iowa.gov>

Re: 23FC:0081 and 23FC:0085 Draft Order

1 message

Eckley, Erika <erika.eckley@iowa.gov>

Mon, Nov 13, 2023 at 8:46 AM

To: Elijah Mathern <emathern76@gmail.com>, Kristy Latta <KLatta@ahlerslaw.com>

Cc: jackiestonewall@gmail.com, "Toresdahl, Brett" <brett.toresdahl@iowa.gov>, Daniel Strawhun <daniel.strawhun@iowa.gov>

Received. Thank you, Mr. Mathern.

Erika Eckley, Executive Director
Iowa Public Information Board (IPIB)

On Sun, Nov 12, 2023 at 6:27 PM Elijah Mathern <emathern76@gmail.com> wrote:

My concern in this whole process is accountability and transparency. During the exemp meeting in March the evaluation process was agreed upon by the board. Then the information was compiled by the sbo. Now there has been changes to the evaluation process during the august 10th personnel committee meeting that have yet to be approved by the board. There was discussion at the August board meeting but only by those who represented the personnel committee. As of yet there has never been a vote on the evaluation process of the superintendent even though it's a action item.

Also on the September board meeting board members gave committee reports listing the jobs of board member committee's. (Personnel Committee –Jackson, Roberts, Kienzle

- We negotiate with the union for teacher and staff pay raises)

Here is a quote from the board president in a email.

(The personnel committee is meeting on Thursday, August 10, 2023, to outline what our vision of success is for the two standards we identified as strengths and the two standards we defined as in need of growth. The members of the personnel committee have reached out to all of the board members to get their input and ideas. We would like you to reflect on what your vision of success is for those same four standards. Then, on Monday, August 14, 2023, the board and you will discuss our ideas)

In my opinion this is not only a rolling quorum but a committee that does not have board approval for gathering info or discussing evaluation criteria. There are other avenues this can be done and has been done in the past that doesn't lead to distrust in the public.

With the emails that were sent to the SBO discussing the fact that the board said "I fear that we may get into specific scenarios/examples where those conversations are not appropriate for a public session."

It seems to me that this board has motives that are being kept from the public.

The Iowa Public Information Board

In re the Matter of:	Case Number: 23FC:0082
Mellisa Mattingly, Complainant	
And Concerning:	Acceptance Order
McCallsburg City Council, Respondent	

COMES NOW, Erika Eckley, Executive Director for the Iowa Public Information Board (IPIB), and enters this Acceptance Order:

Background

On August 22, 2023, Mellisa Mattingly (“Complainant”) filed formal complaint 23FC:0082, alleging that the McCallsburg City Council (“City Council”) violated Iowa Code chapter 21.

The complaint alleged a number of violations related to a closed session the City Council held at its meeting on July 12, 2023. The closed session was held to discuss whether to refund a portion of a citizen’s utility bill. Specifically, the complaint alleged the following:

- 1) that the meeting agenda did not include a general description of the subject matter to be discussed during the closed session, in violation of section 21.4(1)(a);
- 2) that the City Council failed to publicly announce the reason for holding the closed session with reference to the specific exemption allowing for the closed session, in violation of section 21.5(2);
- 3) that the closed session was not recorded;
- 4) that the Council violated chapter 21 by failing to state the amount of the refund that it had approved in the closed session; and
- 5) that the City Council held a public hearing for the sale of city property at the July 12 meeting without voting to do so at a previous meeting.

The city attorney provided the Council's response on September 27, 2023. The Council admitted to allegations 1 and 2 above, stating that many of the council members and the mayor are newly elected and inexperienced with the requirements of chapter 21. The Council denied allegation 3, stating that the closed session had been recorded and that the confidential recording is in the possession of the city clerk.¹

With respect to allegation 4, the Council reiterated that final action on whether to issue the utility refund was taken in open session. The Council stated that it did not disclose the amount of the refund in open session because it believed that information to be confidential pursuant to Iowa Code section 388.9A. In response to allegation 5, the Council stated that the procedural requirements for the sale of public property are controlled by chapter 364 of the Iowa Code, which is outside of IPiB's jurisdiction. The Council stated that under chapter 364, it was not required to vote to set a public hearing; rather, it was required to publish a resolution and notice of a public hearing and hold the public hearing, which it did.

Analysis

The Council does not dispute allegations 1 and 2. It admits that the July 12 closed session violated sections 21.4(1)(a) and 21.5(2). The Complainant admits that allegation 3 was based on incorrect information. The remaining disputed allegations are allegations 4 and 5.

Allegation 4 relates to what information the Council was required to include when taking final action on the matter discussed in closed session. Section 21.5(3) states that "[f]inal action by any governmental body on any matter shall be taken in an open session unless some other provision of the Code expressly permits such actions to be taken in closed session." Here, the Council properly returned to open session before taking final action. The Council's final action was to approve the utility refund to the citizen. Nothing in chapter 21 required the Council to disclose the amount of the refund or anything else discussed during the closed session.

Allegation 5 relates to whether the public hearing on the sale of public property was properly noticed. Chapter 364 of the Iowa Code controls the sale of public property. That chapter requires a city to publish a resolution and notice of public hearing for the sale of the property. The complainant argues that the resolution was never discussed in previous meetings of the Council. Nothing in chapter 21 requires a city to discuss or draft a proposed resolution in open session, and there is no evidence to suggest that the proposed resolution was drafted during a secret meeting of the Council.

¹ The Complainant later admitted that this allegation was based on incorrect information she received.

Conclusion

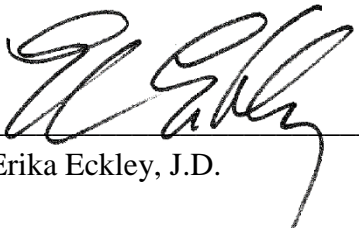
The Council does not dispute allegations 1 and 2 above, which allege that the July 12 closed session violated sections 21.4(1)(a) and 21.5(2). Therefore, the complaint should be accepted for resolution of these violations. Allegations 3, 4, and 5 lack merit for the reasons discussed above and do not serve as the basis for accepting this complaint.

Iowa Code § 23.8 requires that a complaint be within IPIB's jurisdiction, appear legally sufficient, and have merit in order to be accepted. Following a review of the allegations, it is found that this complaint meets those requirements only with respect to allegations 1 and 2.

IT IS SO ORDERED: Formal complaint 23FC:0082 is accepted pursuant to Iowa Code § 23.8(2) and Iowa Administrative Rule 497-2.1(2)(b).

Pursuant to Iowa Administrative Rule 497-2.1(3), IPIB may “delegate acceptance or dismissal of a complaint to the executive director, subject to review by the board.” IPIB will review this Order on November 16, 2023. Pursuant to Rule 497-2.1(4), the parties will be notified in writing of its decision.

By the IPIB Executive Director



Erika Eckley, J.D.

CERTIFICATE OF MAILING

This document was sent on November 9, 2023, to:

Mellisa Mattingly
Franklin Feilmeyer, McCallsburg City Attorney

The Iowa Public Information Board

In re the Matter of:	Case Number: 23FC:0091
Michelle Hillman, Complainant	
And Concerning:	Dismissal Order
Grand Junction City Council, Respondent	

COMES NOW, Erika Eckley, Executive Director for the Iowa Public Information Board (IPIB), and enters this Dismissal Order:

Background

On September 14, 2023, Michelle Hillman (“Complainant”) filed formal complaint 23FC:0091, alleging that the Grand Junction City Council (“City Council”) violated Iowa Code chapter 21.

The Grand Junction City Council consists of five members: Ken Madsen, Paula Hoskinson, Dennis Jacobs, Lora Lyons, and the Complainant, Michelle Hillman. The Complainant alleges that on September 12, 2023, council member Paula Hoskinson, “called or texted three other council people to vote on hiring Kelly Beaman to clean out manholes within the city.”

The complaint implicitly alleges that these communications between council members regarding the hiring of a city employee constituted a meeting of the council that did not comply with the public notice, open session, and minute keeping requirements of chapter 21.

In response to the complaint, the mayor and other council members submitted letters detailing their version of the events leading up to the alleged violation. Grand Junction is in the process of making DNR-mandated updates to its sewer system. As the first step in this process, the City hired a company to clean and televise the sewer lines. The company required that the City locate and remove each manhole cover prior to the cleaning. Each manhole cover that was not removed would result in an additional fee of \$350 for removal by the company.

Grand Junction employs one city maintenance employee, who resigned shortly after the City began locating and removing manhole covers. At its regular meeting on September 11, 2023, the City Council discussed the need to hire a new employee to ensure completion of the project and avoid

incurring additional fees. A special meeting was scheduled for September 13, at which time the City Council was to make a hiring decision by vote.

In the interim, council member Paula Hoskinson continued locating and removing the manhole covers herself. On September 12, 2023, Hoskinson contacted the mayor to discuss potential candidates. Kelly Beaman, a local contractor, was identified as someone who might be willing and able to take over the project on short notice. After her conversation with the mayor, Hoskinson contacted council members Jacobs and Madsen, separately, to discuss the same. She then contacted Kelly Beaman and confirmed his interest in the job.

Later that day, council member Lyons called Hoskinson and asked for an update on potential candidates. The following day, September 13, 2023, the City Council convened its special meeting. The Complainant alleged that at the meeting, Hoskinson stated that she, Jacobs, Madsen, and Lyons had “already voted” to hire Beaman to complete the project. The Complainant further alleged that when she asked why she had been excluded from this vote, Hoskinson stated that the Complainant “has an attitude problem” and that she should have contacted Hoskinson if she wanted to participate in the decision making.

At the IPIB Board meeting on October 19, 2023, Paula Hoskinson provided additional statements to the Board regarding the allegations. She stated, among other things, that the city council discussed and voted on the hiring of Beaman at the September 13 special meeting.

Analysis

Chapter 21 governs meetings of governmental bodies. A “meeting” of a governmental body occurs when a majority of the members of the body gather to deliberate or act upon any matter within the scope of the governmental body's policy-making duties. Iowa Code § 21.2(2). Such meetings must comply with the public notice, open session, and minute keeping requirements of chapter 21.

The Grand Junction City Council is a five-member body, meaning that three members constitute a majority. Between the September 11 and September 13 council meetings, a series of individual conversations between Hoskinson and each of the other three council members. Because these conversations were one-on-one (i.e., consisted of only two council members, which is less than a majority of the council) and serial (i.e., did not occur contemporaneously) in nature, they technically did not constitute a meeting of the council. However, IPIB strongly discourages the use of such serial submajority discussions to evade the open meetings requirements of chapter 21. *See* 18AO:0010, “‘Serial’ submajority sessions of a governmental body and chapter 21 open meetings,” Iowa Public Information Board.

It is unclear why Hoskinson openly stated during the September 13 meeting that she, Jacobs, Madesen, and Lyons had “already voted” to hire Beaman for the project. Such a vote, had it occurred outside of the September 13 meeting, would have constituted a majority of the council taking action upon a matter within the scope of its policy-making duties—a clear violation of chapter 21. IPIB would encourage Ms. Hoskinson to be more circumspect in future when making statements as an elected official in a public forum. Nevertheless, the underlying facts contradict Hoskinson’s statement, and the council discussed and voted on the hiring of Beaman at the September 13 meeting in full compliance with chapter 21.

Conclusion

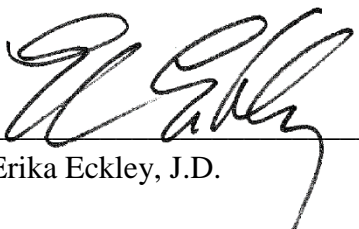
The conversations between Hoskinson and the other council members were serial in nature and consisted of less than a majority of the city council. Hoskinson’s statement that she and the other council members had already voted on the issue, while concerning, is contradicted by the facts. The council discussed and voted on the issue at the properly noticed meeting on September 13. Thus, no improper meeting occurred that could have violated chapter 21, despite Hoskinson’s statement to the contrary. For these reasons, the complaint should be dismissed.

Iowa Code § 23.8 requires that a complaint be within IPIB’s jurisdiction, appear legally sufficient, and have merit in order to be accepted. Following a review of the allegations, it is found that this complaint does not meet those requirements.

IT IS SO ORDERED: Formal complaint 23FC:0091 is dismissed pursuant to Iowa Code § 23.8(2) and Iowa Administrative Rule 497-2.1(2)(b).

Pursuant to Iowa Administrative Rule 497-2.1(3), IPIB may “delegate acceptance or dismissal of a complaint to the executive director, subject to review by the board.” IPIB will review this Order on November 16, 2023. Pursuant to Rule 497-2.1(4), the parties will be notified in writing of its decision.

By the IPIB Executive Director



Erika Eckley, J.D.

CERTIFICATE OF MAILING

This document was sent on November 9, 2023, to:

Michelle Hillman.
Wendi Tolan, City Clerk

October 19th, 2023

Dear Ericka Eckley,

I was suppose to speak at a board meeting this afternoon, but I was not able to get the ##
1 to work for me in order to speak to the board.

So I am mailing the information to you that I was going to present to the board.

Sincerely,

Michelle Hillman

Michelle Hillman



THANK YOU FOR THE OPPORTUNITY TO SPEAK.

Whoever interviewed me and typed the notes, did an excellent job. Therefore I am not going to repeat the interview posted. It is there to be read by everyone.

Instead I am going to explain why I think that Council person Hoskinson is not worthy to be on the Grand Junction City council any more. Today's complaint is just another example of how she doesn't think the laws or rules apply to her.

This was not the first time that Council person Hoskinson was told she was not following the voting rules but she barreled ahead and did what she wanted to.

At this past June council meeting she announced she wanted to amend the council agenda to include new sewer rates. I told her she couldn't amend the agenda because it was not an emergency. She said she didn't want to wait another month to increase the rates and she didn't care she was going to amend the agenda. She asked for a vote and the other council people voted to amend the agenda. I voted no on the amended amendment. You can find the vote in the city notes.

The next day I Called the League of Cities and spoke to Amanda about the situation and Amanda told me I could file a complaint about the amendment, but I decided not to do so.. I am sure there is a record of my phone call to the League of Cities.

Page 2

I am in charge maintenance of the Community Center and in February 2023 I received a letter from the Iowa Dept of Health about a complaint from someone anonymously who complained about a smoker on the community center grounds. The Letter was clearly addressed to Mickey Hillman (me), but Hoskinson opened the letter without my permission stating to me that she was afraid it was an emergency and needed immediate attention. Even though I only work only mornings 7 miles away and would have been in city hall that same afternoon that the letter was received and I could have handled the situation.

I am currently looking into federal charges for her tampering with my mail.

Hoskinson has donated many hours to projects in the town and I have told her several times that her volunteering was appreciated. But this doesn't seem to appease her. She wants to know what you are doing.

Her behavior is a constant that she has to know everything going on in city business and she needs to be involved in the project or the project needs her blessing. No other Grand Junction council person requires this constant updating and information like she does.

She has served 2 years of her 4 year term and she needs to be censored or told to follow the rules that everyone else does, or she needs to resign the remainder of her term if she can't follow the rules.

Thank you

**First Notice of Potential Violation
Iowa Smokefree Air Act**

February 20, 2023

Micky Hillman
City Hall
107 Main Street East
Grand Junction, IA 50107

Dear Ms. Hillman:

The Iowa Department of Health and Human Services has received a complaint of an alleged violation of the Iowa Smokefree Air Act at Grand Junction city hall/community center located at 107 Main Street East in Grand Junction. This is the first complaint received for this establishment in the past 12 months. The following paragraph describes the particular alleged violation in brief detail.

The complainant reported observing smoking in a prohibited area and ashtrays present on 02/07/2023. The alleged violation was observed on the grounds of a public building (right outside building). This is a potential violation of the following requirements of Iowa Code 142D, the Smokefree Air Act:

- *Smoking in prohibited areas. An employer, owner, operator, manager, or person having custody or control of any enclosed facility or outdoor area where smoking is prohibited is required not to permit smoking in that area.*
- ***Ashtrays.** The owner, operator, manager, or other person having custody or control of a public place, place of employment, area declared a nonsmoking place or outdoor area where smoking is prohibited shall remove all ashtrays from these locations. "Ashtray" means any receptacle, including a can, bottle, bowl, tray, or other vessel that is used for extinguishing or disposing of any lighted cigar, cigarette, pipe, or other tobacco product in any manner or form including ash, cigarette butts or filters, or cigar stubs.*

This letter is not a citation or notification of a fine. We are taking this opportunity to provide you with information that will help you ensure that your establishment is in compliance with the Smokefree Air Act. Enclosed are materials containing basic information about provisions of the laws and a brochure with a link to the Web site where you find more detailed information.

OVER

Additionally, we would like to offer you a personalized educational site visit. This is an opportunity for you to become more familiar with the law and ask questions. Please contact the tobacco prevention coordinator of Greene County at 712-792-9266 Ext. 1010 to arrange an appointment.

This First Notice of Potential Violation has not been forwarded to any law enforcement agency or city official. However, if a second valid complaint concerning your establishment is received within the next 12 months, a Second Notice of Potential Violation may be issued and this notice will be forwarded to a local law enforcement agency and city official for further action.

Further action may result in civil penalties of not more than \$100 for a first violation or not more than \$500 for subsequent violations. In addition, as stipulated in the Smokefree Air Act, Iowa Code section 142D.9(4): *"violation of this chapter by a person who owns, operates, manages, or who otherwise has custody or control of a public place, place of employment, area declared a nonsmoking place...or outdoor area regulated under this chapter may result in the suspension or revocation of any permit or license issued to the person for the premises on which the violation occurred."*

We are available to assist you in bringing your establishment into compliance with the law. If you have any questions concerning the law or would like to receive additional information, please visit smokefreeair.iowa.gov or call 888-944-2247.

Sincerely,

Jerilyn Oshel
Division Director
Division of Tobacco Use Prevention & Control

Grand Junction City Council

Regular Meeting Minutes

June 12, 2023

Mayor Gerold Herrick opened the regular Council Meeting of The City of Grand Junction at 6 pm on Monday, June 12, 2023, at City Hall. Council present were Michelle Hillman, Paula Hoskinson, Lora Lyons, Ken Madesen and Dennis Jacobs.

Motion by Hoskinson, seconded by Jacobs to amend agenda to include sewer rate increase and Muir Tree Service. Madesen and Lyons aye. Hillman nay.

X Motion by Hoskinson, seconded by Lyons to approve amended agenda. Madesen and Jacobs aye. Hillman nay.

Motion by Lyons, seconded by Madesen to approve Consent Agenda. Hoskinson and Jacobs aye. Hillman nay.

Lyons discussed a congregate meal donation for the residents in Grand Junction to receive nutritious meals.

Motion by Hillman for a donation of \$200 from the City, seconded by Hoskinson. All ayes.

Motion by Jacobs, seconded by Hillman to allow the Lions Club to continue to store their stuff in the brick building. There will be an Agreement drawn up between the City and the Lions Club. All ayes.

Motion by Hoskinson, seconded by Lyons to talk to the bank and open a separate account for the library and fire department. All ayes.

Discussion was made by Hillman as to what the Grow Greene County funds are being used for. Clerk will start newsletter back up to keep the public informed.

Joan St. Clair was present at the meeting and supplied the council with Renewal Member Insurance papers from ICAP insurance. Motion by Lyons, seconded by Madesen to approve renewal figures from ICAP. All ayes.

Frank Dunn dropped off a flyer for a pallet of cold patch. Madesen made a motion to not use Frank Dunn at this time for cold patch. We can go to Des Moines and get it in bulk and the leftovers that we have that are out of date Wade Weiss will dispose of. Seconded by Jacobs. All ayes.

Motion by Hoskinson, seconded by Jacobs to change employee comp time hours from 100 to 40. All ayes.

Motion by Lyons, seconded by Madesen to increase sewer rates a minimum of \$20 a month. All ayes.

Motion by Lyons, seconded by Hoskinson to use \$10,000 from the City's Grow Greene County money to pay Muir Tree Service to continue cutting down the trees in town. All ayes.

Department reports: Mayor discussed ordinance about dogs being loose. Sheriff will not come to town for a loose dog, only if it is a vicious dog. Will check with other towns to see what they do about loose dogs. Siren at the fire station needs to be fixed. Discussion on Grundon property. Hillman discussed the appointment of Misti Murphy on the Park and Rec Committee. We need people to send letters to the Mayor and the Mayor will decide. We will vote on Park and Rec Committee at July meeting. Lyons said pool is up and running and we have had a good turnout. As of this time the only time the pool will be closed will be weather permitting or pool party. Fire Chief McDowell reminded everyone of the Annual Pancake Breakfast coming up on July 1st.

Motion to adjourn by Hillman, seconded by Lyons. All ayes. Meeting adjourned at 7:33.

Gerold Herrick, Mayor

Attest: _____

Wendi L. Tolan, City Clerk

The Iowa Public Information Board

In re the Matter of: Matthew Jensen, Complainant And Concerning: Pottawattamie County Treasurer, Respondent	Case Number: 23FC:0094 Dismissal Order
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COMES NOW, Erika Eckley, Executive Director for the Iowa Public Information Board (IPIB), and enters this Dismissal Order.

Facts

Matthew Jensen filed formal complaint 23FC:0094 on September 28, 2023, alleging that the Pottawattamie County Treasurer violated Iowa Code chapter 21 on September 19, 2023.

Mr. Jensen alleged that this complaint centers around an open records request that he submitted to the Pottawattamie County Treasurer Lea Voss on September 5, 2023. Mr. Jensen requested a copy of the bill of sale for three separate vehicles. The Treasurer forwarded the request to the Pottawattamie County Attorney's office. Mr. Jensen states that he had to wait until someone came back from being out of the office to review the request. It was then sent back down to Lea Voss. On September 25, 2023, he received a response. The only records provided were for one of three vehicles. He states that regarding the other two, he was either sent information not matching the date or they are saying the DOT deleted the files. He believes Ms. Voss is attempting to hide criminal activity by not wanting to release the documents.

Matthew Wilber, Pottawattamie County Attorney provided a response on behalf of the Treasurer's office. The record request was received on September 5, 2023, from Mr. Jensen requesting the bill of sale for three vehicles and provided the descriptive information needed for a search. The Treasurer forwarded the request to the County Attorney for a review of confidentiality before responding to Mr. Jensen's request on September 13, 2023.

The Treasurer provided the County Attorney with copies of the title for two of the vehicles requested. The third vehicle was not found to be registered in Iowa and did not appear on a list of vehicles ever registered to Mr. Jensen. These documents were not reviewed until September 19, 2023 at which time Mr. Wilbur responded to Ms. Voss and informed her that there was no confidential information and the documents could be provided to Mr. Jensen.

Mr. Jensen specifically requested a bill of sale for each vehicle. The Pottawattamie County Treasurer's Office does not have those specific documents available but did provide the certificate of title as well as the application for certificate of title. Per the DOT, the application can be

classified as a bill of sale so long as the application includes the purchase price, date of purchase, and a signature by the automobile dealer.

Mr. Jensen received the records from the Treasurer's Office on September 25, 2023 after some confusion regarding his email address was corrected. There were several communications over the next two days between the Treasurer and Mr. Jensen in which he expressed his dissatisfaction with the information that had been provided to him. On September 28, 2023, Ms. Voss responded to Mr. Jensen that he had received all of the responsive documents available from the Treasurer's office.

Upon further investigation by the Treasurer's office, title to the third vehicle was discovered in Pottawattamie County. An assignment of the title to Mr. Jensen was indicated on the title. However, an affidavit of correction was also filed indicating that the assignee did not accept delivery of the vehicle. No bill of sale was found in Iowa for this vehicle, and it does not appear that a title transfer was processed in the state. While not part of Mr. Jensen's original request, these documents were provided to Mr. Jensen in person at the Pottawattamie County Treasurer's office on October 5, 2023.

Law

"Every person shall have the right to examine and copy a public record and to publish or otherwise disseminate a public record or the information contained in a public record. Unless otherwise provided for by law, the right to examine a public record shall include the right to examine a public record without charge while the public record is in the physical possession of the custodian of the public record. The right to copy a public record shall include the right to make photographs or photographic copies while the public record is in the possession of the custodian of the public record." Iowa Code § 22.2(1).

Analysis

IPIB staff reviewed the record request, emails communications between Mr. Jensen and the Treasurer's office, and the records provided to Mr. Jensen. Mr. Jensen was provided the requested records twenty-three days from the date he made his request and nine days from the date he claims the violation occurred. He received the records on the same day he filed this complaint.

Mr. Jensen was provided with documents that equate to a bill of sale for two of the three vehicles he requested. Additionally, he was provided with documentation regarding the third vehicle, even though there was no transfer of title completed in the State of Iowa. The Treasurer's Office has no further responsive documents.

Conclusion

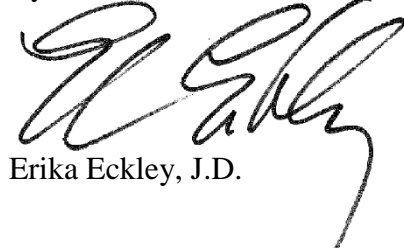
Iowa Code section 23.8 requires that a complaint be within the IPIB's jurisdiction, appear legally sufficient, and could have merit before the IPIB accepts a complaint. This complaint does not meet those requirements.

The Treasurer was responsive to the request and provided all records available to Mr. Jensen.

IT IS SO ORDERED: Formal complaint 23FC:0094 is dismissed as legally insufficient pursuant to Iowa Code section 23.8(2) and Iowa Administrative Rule 497-2.1(2)(b). The County Treasurer did not violate Iowa Code chapter 22.

Pursuant to Iowa Administrative Rule 497-2.1(3), the IPIB may "delegate acceptance or dismissal of a complaint to the executive director, subject to review by the board." The IPIB will review this Order on November 16, 2023. Pursuant to IPIB rule 497-2.1(4), the parties will be notified in writing of its decision.

By the IPIB Executive Director



Erika Eckley, J.D.

CERTIFICATE OF MAILING

This document was sent by electronic mail on the November 9, 2023, to:

Matthew Jensen
Lea Voss, Pottawattamie County Treasurer
Matthew Wilber, Pottawattamie County Attorney

The Iowa Public Information Board

In re the Matter of: Leslie Wiles, Complainant Pauletta Cox, Complainant And Concerning: Redfield Public Library, Respondent	Case Number: 23FC:0096 & 23FC:0097 Consolidation & Acceptance Order
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COMES NOW, Erika Eckley, Executive Director for the Iowa Public Information Board (IPIB), and enters this Consolidation & Acceptance Order.

Facts

Leslie Wiles filed formal complaint 23FC:0096 on October 9, 2023, alleging that the Redfield Public Library violated both Iowa Code chapter 21 & 22 on August 11, 2023, and August 30, 2023.

Ms. Wiles alleged that a private meeting took place on August 11, 2023, in which four board members and the Library Director attended. Ms. Wiles did not see an agenda or minutes from the meeting. Ms. Wiles also alleges that another meeting was held on August 30, 2023, in which a quorum was present. There was nothing posted or any agenda and minutes of the meeting.

Ms. Wiles did not provide any information regarding an alleged violation to Iowa Code chapter 22.

Pauletta Cox filed a formal complaint 23FC:0097 on October 9, 2023, alleging that the Redfield Public Library violated Iowa Code chapter 21 on August 11, 2023, August 30, 2023, and October 8, 2023.

Ms. Cox alleged that the complaint centers around the Redfield Public Library Board holding meetings without public notice, agendas, or minutes. On August 11, 2023, a private meeting was held with three board members and the director present. The meeting was not posted. An agenda was not posted. Minutes were not taken.

A meeting was held on August 30, 2023, at the Redfield public library. Ms. Cox stopped by the library on that afternoon and informed the Director that this meeting was not posted. She was told “we would not call it a meeting. It could be considered a gathering.” Ms. Cox informed the Director that with many board members present it should still be considered a meeting and it needed to be posted. Ms. Cox took pictures of all of the bulletin boards showing that it was not posted.

Ms. Cox also reported that a meeting of the Redfield Public Library Board was held on October 8, 2023. She alleges that the meeting was not posted, there was no agenda, and not all of the members were notified. There was discussion held concerning meetings not being posted.

Cristin Lantz, Board Vice President authored the response from the Library Board with review by Obie Meyers, Board Secretary and Martha Bosomworth, Board President.

Ms. Lantz responded and provided information regarding the meeting on August 11, 2023. She stated that “an informal meeting” was held at the Redfield Public Library on Friday, August 11 to discuss a concern brought by a board member. “Library Director Lori Stonehocker and board members Martha Bosomworth, Obie Meyers and Cristin Lantz were present. No other board members were contacted. We did not consider this a formal meeting. We were taking this as an opportunity to squash rumors being started regarding the integrity of the library director and library board. There was not a quorum. There was no agenda posted. Nothing was voted on. A notice, agenda or minutes were not done for the August 11th meeting as we were considering this as an informal meeting.”

In regards to the meeting on August 30, 2023, Ms. Lantz provided the following response, “A second meeting was held at the Redfield Public Library on Wednesday, August 30th to allow Pauletta Cox to voice concerns that she was taking individually to our library board officers. Library Director Lori Stonehocker and board members Pauletta Cox, Martha Bosomworth, Obie Meyers and Cristin Lantz were present. Lynn Baldwin was notified but did not attend. We did not consider this a formal meeting. We were trying to address a disgruntled board member. There was no agenda posted. Nothing was voted on. A notice, agenda or minutes were not done for the August 30th meeting as we were considering this an informal meeting.”

Ms. Lantz responded and provided information regarding the meeting on October 8, 2023. “A special meeting was held on Sunday, October 8th to address a succession of emails from disgruntled board members Leslie Wiles and Pauletta Cox. All board members were invited. All were present except for Bernie Peterson and Lynn Baldwin. We did consider this a formal meeting, while it was not one of our regular meetings. There was no formal agenda presented at the meeting and no agenda was posted. The Library Director normally posts meeting agendas for our regular meetings. Nothing was voted on. Ms. Lantz provided the agenda and minutes for October 8th meeting. A notice was not posted.”

Law

Iowa Code § 21.4(1)(a) states that “a governmental body shall give notice of the time, date, and place of each meeting including a reconvened meeting of the governmental body, and the tentative agenda of the meeting, in a manner reasonably calculated to apprise the public of that information.”

Iowa Code § 21.4(2)(a) requires that “notice conforming with all of the requirements of subsection 1 shall be given at least twenty-four hours prior to the commencement of any meeting of a governmental body unless for good cause such notice is impossible or impractical, in which case as much notice as is reasonably possible shall be given.”

“Meetings of governmental bodies shall be preceded by public notice as provided in section 21.4 and shall be held in open session unless closed sessions are expressly permitted by law. Except as provided in section 21.5, all actions and discussions at meetings of governmental bodies, whether formal or informal, shall be conducted and executed in open session. Each governmental

body shall keep minutes of all its meetings showing the date, time and place, the members present, and the action taken at each meeting. The minutes shall show the results of each vote taken and information sufficient to indicate the vote of each member present. The vote of each member present shall be made public at the open session. The minutes shall be public records open to public inspection.” Iowa Code § 21.3.

Analysis

Both complaints make the same allegations regarding the same meetings. IPIB staff reviewed the allegations and responses. The meeting held on August 11, 2023, did not include a quorum of the Board. The meetings held on August 30, 2023, and October 8, 2023, did have a quorum present. The Board, however, did not provide notice to the public or provide an agenda for their meeting. It is concerning the Board considers that some meetings are not “official meetings” and therefore do not require compliance with the requirements of Iowa Code chapter 21.

The Redfield Public Library Board violated Iowa Code chapter 21 on two occasions. The public was deprived of access to the business of this governmental body and the Board functions in a transparent manner.. There were no allegations presented regarding a violation of chapter 22.

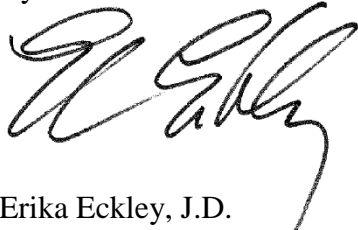
Conclusion

Iowa Code section 23.8 requires that a complaint be within the IPIB’s jurisdiction, appear legally sufficient, and could have merit before the IPIB accepts a complaint. These complaints meet those requirements.

IT IS SO ORDERED: Formal complaints 23FC:0096 and 23FC:0097 are consolidated and accepted as legally sufficient pursuant to Iowa Code section 23.8(2) and Iowa Administrative Rule 497-2.1(2)(b). The Board did violate the open meeting code section.

Pursuant to Iowa Administrative Rule 497-2.1(3), the IPIB may “delegate acceptance or dismissal of a complaint to the executive director, subject to review by the board.” The IPIB will review this Order on November 16, 2023. Pursuant to IPIB rule 497-2.1(4), the parties will be notified in writing of its decision.

By the IPIB Executive Director



Erika Eckley, J.D.

CERTIFICATE OF MAILING

This document was sent by electronic mail on the November 9, 2023, to:
Leslie Wiles, Complainant
Pauletta Cox, Complainant
Cristin Lantz, Board Vice President
Martha Bosomworth, Board President

The Iowa Public Information Board

In re the Matter of:	Case Number: 23FC:0100
Travis Johnson, Complainant	Acceptance Order
And Concerning:	
Eddyville Blakesburg Fremont CSD Board of Education, Respondent	

COMES NOW, Erika Eckley, Executive Director for the Iowa Public Information Board (IPIB), and enters this Acceptance Order:

On October 18, 2023, Travis Johnson filed formal complaint 23FC:0100, alleging that Eddyville Blakesburg Fremont CSD Board of Education (“Board”) violated Iowa Code chapter 21.

Facts

Mr. Johnson alleges that after the start of the Board’s meeting on October 16, 2023, the published agenda was amended to add an action item regarding the school hiring a volunteer archery coach. The item was discussed and board action was taken at the meeting. There was no advanced notice that this item was to be addressed at this meeting. There was an item on the agenda to approve a list of volunteer coaches for the archery program, but nothing on hiring a head coach. Parties involved such as the current head coach and other members of the archery program were not able to participate in any discussion or provide information to the voting board members. The motion to amend the agenda was by Vandello, and Van Mersbergen clarified that what she was wanting was to add an item to the agenda to address her issue on the head coach. This was not an emergent matter that had to be decided at that meeting. It could be postponed to the next meeting in which the public could be aware that the item would be discussed.

In response, the Board states that the Board felt it was necessary to add the agenda at the last minute to add the archery coach discussion and approval because if they waited until the next meeting the position would not have been posted until November and approved until December.

The minutes of the meeting reflect the change in the meeting agenda and the item added to consider a volunteer head archery coach was discussed and approved. There was no statement regarding

why the issue was emergent and could not wait for the following Board meeting or a special meeting to provide the required notice to the community.

Applicable Law

Iowa Code § 21.4 requires “ a governmental body shall give notice of the time, date, and place of each meeting including a reconvened meeting of the governmental body, and the tentative agenda of the meeting, in a manner reasonably calculated to apprise the public of that information. . . .notice conforming with all of the requirements . . . shall be given at least twenty-four hours prior to the commencement of any meeting of a governmental body unless for good cause such notice is impossible or impractical, in which case as much notice as is reasonably possible shall be given. . . .When it is necessary to hold a meeting on less than twenty-four hours’ notice... the nature of the good cause justifying that departure from the normal requirements shall be stated in the minutes.”

Analysis

In this case, the Board chose to amend the agenda at the time of the Board meeting to add discussion and approval of a new head coach position for the archery team. The approval of the other archery volunteers was on the agenda, but there was no notice that a head coach position would be added prior to the meeting. There was no ability for the public to know the issue and discussion was even something that was to be contemplated prior to the beginning of the meeting.

Iowa Code § 21.4 requires that the public have notice of the agenda items to be considered twenty-four hours in advance of a meeting unless there is good cause that such notice is impossible or impractical. In this case, the Board added the agenda item at the beginning of the meeting and provided no notice to the public that the item would be deliberated and approved. The fact that the archery season would be starting that week and that delaying the discussion until the next month would mean that a head coach would not be identified and approved until the December meeting. The explanation for such amendment does not meet good cause showing giving notice would be impossible or impractical.

The Board fails to consider that adding a volunteer head coach for the archery program was something that could be discussed in previous meetings or in a special session meeting that gave the public notice that the discussion and action on the item would occur. Failing to provide notice in a situation that appears to be merely a lack of planning is not an emergency or good cause for failing to provide appropriate 24-hour notice of the agenda item. Instead, to the public, it appears that the item added at the last minute and acted upon by the Board was added to intentionally avoid public knowledge of the action prior to the meeting especially when individuals directly impacted by the decision were on the agenda for approval of their volunteer commitment.

In addition, Iowa Code § 21.4 requires that when proper notice of an agenda item is not able to be given, “the nature of the good cause justifying that departure from the normal requirements shall be stated in the minutes.” The minutes are silent as to any explanation for the failure to provide notice to the public.

It is clear a violation of Iowa Code § 21.4 occurred in the amendment of the agenda at the start of the meeting without a showing of good cause that delaying action until proper notice could be given was impossible or impractical. Further, the Board failed to document its justification for the need to untimely amend its agenda.

Conclusion

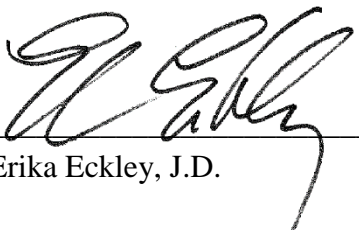
Iowa Code § 23.8 requires that a complaint be within the IPIB’s jurisdiction, appear legally sufficient, and have merit before the IPIB accepts a complaint. This complaint meets the necessary requirements for acceptance.

The Board amended its agenda at the time of its meeting to add a non-emergent issue without providing 24-hour notice to the community about the issue. The Board failed to explain why appropriate notice could not be given for this agenda item.

IT IS SO ORDERED: Formal complaint 23FC:0100 is accepted pursuant to Iowa Code § 23.8(1) and Iowa Administrative Rule 497-2.1(2)(a).

Pursuant to Iowa Administrative Rule 497-2.1(3), the IPIB may “delegate acceptance or dismissal of a complaint to the executive director, subject to review by the board.” The IPIB will review this Order on November 16, 2023. Pursuant to IPIB rule 497-2.1(4), the parties will be notified in writing of its decision.

By the IPIB Executive Director



Erika Eckley, J.D.

CERTIFICATE OF MAILING

This document was sent on November 9, 2023, to:

Travis Johnson
Mary McCrea, Eddyville Blakesburg Fremont CSD Board of Education



Toresdahl, Brett <brett.toresdahl@iowa.gov>

Re: Comments to be submitted for 10/16 IPIB meeting from Lara Vandello in reference to 23FC:0100

1 message

Eckley, Erika <erika.eckley@iowa.gov>

Mon, Nov 13, 2023 at 8:49 AM

To: Lara Vandello <lara.vandello@rocketsk12.org>, ttjohnson1228@gmail.com

Cc: "Toresdahl, Brett" <brett.toresdahl@iowa.gov>

Received. Thank you.

Erika Eckley, Executive Director
Iowa Public Information Board (IPIB)

On Sun, Nov 12, 2023 at 9:49 PM Lara Vandello <lara.vandello@rocketsk12.org> wrote:

Good evening,

First, I want thank the IPIB for taking time to listen to my comments.

My name is Lara Vandello, I currently sit on the Eddyville Blakesburg Fremont School Board, Director District #1.

I was unsure on what my availability would be on the date of your meeting secondary to a previous commitment, so I am instead writing to you in response to a complaint regarding open meeting laws that was submitted following our previous months school board's monthly board meeting on 10/16/2023.

Prior to this meeting, I made an inquiry to our board president, Curt Houk as well as our board secretary, Mary McCrea asking if it was permissible to make a motion to amend the agenda, as I wanted to make sure that I wasn't violating any rules. I was told that it was allowed.

When our board president asked for a motion to approve the agenda, I made a motion to amend the agenda to add item 9f- which would be to have the head volunteer archery coach apply, interview and be offered the position by administration.

Amending the agenda without 24 hours notice is not a common practice amongst our school board. It is my belief that there was good cause for making this motion without 24 hours notice. Reasoning as to why this motion should occur was also brought up in discussion openly in the meeting. This discussion mentioned recurring and repeated issues being reported by archery families as well as a need for the head coach for archery being held to the same standard as other coaches. This includes club coaches.

Over the past 14 months, our board members have received multiple complaints from parents as well as volunteer coaches in regards to how the EBF archery club has operated. All complaints made concerned the head coach. They included bullying, lack of compliance with NASP rules and regulations as well as lack of communication and transparency.

In response to this, approximately 12 months ago, a committee was formed that was made up of 3 board members whom were appointed by our school board president. One of those members being myself. We then scheduled a meeting with the archery board. At this meeting, the school's superintendent, Scott Williamson as well as our athletic director, Curt Johnston were also present. I believe minutes of this meeting could be provided by Mr. Williamson. At the conclusion of the meeting Mr. Williamson made the requirement that moving forward, the superintendent and athletic director be notified of any future archery board meetings in order to improve communication and transparency. In that year, the archery board admits to holding at least one meeting. Neither Mr. Williamson or Mr. Johnston were notified of a meeting.

The school board continues to receive complaints of the same nature from additional parents and stakeholders of the archery club both via phone calls and at monthly board meetings during open forum.

When the October agenda was sent out by Mrs. McCrea 3 days prior to the October monthly meeting, I reviewed it and noted that there was an action item (8c) to approve the list of archery club volunteer coaches. I also noted there was not an action item to approve the head coach.


My choice to amend the agenda the night of the meeting without notifying the public is simple. Safety. I also can explain why I did not voice this among discussion with the other issues that were discussed. Since forming the archery committee and meeting with the archery club approximately 1 year ago, the school board has seen communication or transparency from the head coach, but instead members have been harassed and threatened.

It is my belief that asking this item to be added to the agenda 24 hours prior to the meeting could have created a hostile environment at our open board meeting including but not limited to aggression from the head coach.

Please note that item 8c was approved unanimously. This allowed the archery club to begin their season on time under the several coaches listed for approval. Please also note that item 9f was approved unanimously.

Thank you for your time. Please reach out if you have further questions.

Sincerely,
Lara Vandello

Lara Vandello
Director District #1
Eddyville-Blakesburg-Fremont CSD
(641)777-7033
#GoRockets 

The Iowa Public Information Board

In re the Matter of: Crystl McCall and Adam McCall, Complainants And Concerning: Elk Horn City Council, Respondent	Case Number: 23FC:0103 Dismissal Order
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COMES NOW, Erika Eckley, Executive Director for the Iowa Public Information Board (IPIB), and enters this Dismissal Order:

On October 23, 2023, Crystl McCall filed formal complaint 23FC:0103, alleging that Elk Horn City Council (“City”) violated Iowa Code chapter 21. On October 27, 2023, Adam McCall supplemented the complaint with additional allegations of violations of Iowa Code Chapter 21. The Complaints are all related to the City’s handling of Mr. McCall’s employment and ultimately termination and are considered together.

Facts

This case arises out of a personal dispute that has snowballed into an issue impacting the operation of City departments and volunteer services. Ms. McCall alleges the City violated Iowa Code Chapter 21 by holding an open meeting before terminating the employment of her husband, Adam McCall, on October 3 despite the expressed desire to consult with their lawyer about the possibility of a closed meeting. She was also unhappy with the investigations the City did or did not do regarding issues raised by she and her husband. Adam McCall alleges that the City committed a violation of Iowa Code Chapter 21 when the confidentiality of a closed meeting by the City on September 18 was violated. He stated that he confirmed the closed meeting would be confidential prior to attending and addressing the City. He alleges that after the meeting, information discussed in the meeting was the topic of questions from residents who were not at the meeting. He also alleges that a temporary policy considered by the City was sent to someone not on the City Council.

In response, the City’s attorney stated that there was a dispute between Ms. McCall and the City’s clerk way that made the operations of the small staff impossible. On September 18, 2023, the City Council held a meeting with staff to discuss these issues. The discussions of the closed session

were enacted into policy after returning to open session, and the City's attorney was instructed to reduce them into a written policy. The attorney stated that the discussion on policy were held in open session. He provided a copy of the memo produced for that purpose that he states does not meet any requirements for confidentiality under Iowa Code 22.7. "While we clearly didn't want people talking about this anymore than they already would, I don't believe we can prevent people from talking about what was approved in an open session; to do so would run afoul of the 1st amendment."

IPIB can consider only those aspects of the Complaint within the scope of Chapters 21 and 22 and within the jurisdiction of the Board. IPIB staff reviewed the information provided by the McCalls related to the Chapter 21 claim, including a recording of the October 2 City Council meeting, minutes from the City's previous meetings, and relevant email correspondence.

Closed Meeting September 18

In regards to the allegation that information from the closed session on September 18 was released to individuals outside the City Council, there is no evidence that the information was disclosed. The controversy leading up to the closed meeting appears to have been well-known due to social media postings and general knowledge among community residents. There is no evidence of a violation of Iowa Code Chapter 21. Further, the City Council returned to open session and ultimately approved the City's attorney documenting the discussed employee policy and to send a cease and desist notice to Ms. McCall.

Closed Meeting October 2

At the October 2 meeting, the City had an agenda item and deliberated on concerns with retaining individuals in the Fire Department and discussed ways to encourage more participation, which was related to the underlying issues of this Complaint. The City also discussed that a number of volunteers had all quit recently due to these issues. Later, the City voted to go in to closed session to discuss employment matters under Iowa Code § 21.5(1)(i).¹ Some unidentified individuals attending the meeting asked if the closed meeting discussion was going to be about Mr. McCall, and if so, they stated that Mr. McCall had requested an open meeting. After some discussion, the City agreed that if Mr. McCall did not request a closed session then the portion about Mr. McCall should not occur in a closed session. An email was provided to IPIB in which Mr. McCall specifically stated he did not want a closed session. Neither of the McCalls attended the meeting.

The City voted to return to open session and discussed Adam McCall's employment and the impact his continued employment was having on other employees. They also discussed a compromise arrangement that had been attempted but failed. Afterwards, there were additional employment

¹ The City mistyped the Code section for the closed session in the minutes. It should state it was Iowa Code § 21.5(1)(i) rather than 21.5(I). The City made clear the purpose of the closed session in the meeting.

matters in which there was a request by the impacted individual to go into closed session, so the City voted to go into closed session. That was the end of the informal recording provided.

The minutes reflect that when the City returned to open session, the City voted to allow the Mayor to provide Mr. McCall the option to resign in lieu of termination or to be terminated on October 3. Mr. McCall was terminated on October 3.

Applicable Law

Iowa Code § 21.5(1)(i) provides that a closed session can be held to “evaluate the professional competency of an individual whose appointment, hiring, performance, or discharge is being considered when necessary to prevent needless and irreparable injury to that individual’s reputation and that individual requests a closed session.”

Analysis

As stated by someone during the meeting on October 2, “It’s a no-win situation for anyone.”

Mr. McCall raised concerns that information related to the closed session was disclosed to individuals outside the meeting. There is no evidence that information related to the discussion in closed session on September 18 was disclosed. There was discussion and action by the City Council in open session once the City returned to open session. This information would not be confidential as it occurred in open session. Further, the underlying issues appeared to be well-known in the community based on social media posts and other discussions. There appears to have been no violation regarding the September 18 meeting.

Mr. McCall did not attend the City meeting on October 2. The city attorney provided an email in which Mr. McCall specifically requested that his issues not be discussed in a closed session under Iowa Code § 21.5(1)(i) after notice was provided to him about the potential closed session. There were individuals at the meeting who spoke in favor of Mr. McCall during the meeting who made it explicit that Mr. McCall asked for an open meeting to discuss his employment matters.

Under Iowa Code § 21.5(1)(i), a closed session “to discuss the professional competency of an individual whose appointment, hiring, performance, or discharge is being considered” may only be held upon a request from the individual who is the subject of the discussion. The only evidence provided was that Mr. McCall requested that a closed session not occur. The evidence indicates Mr. McCall wanted the discussion to be in open session. The City conducted the discussion in open session. There was no violation of Iowa Code Chapter 21.

Conclusion

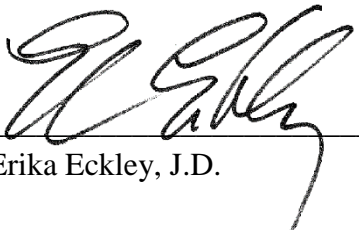
Iowa Code § 23.8 requires that a complaint be within the IPIB's jurisdiction, appear legally sufficient, and have merit before the IPIB accepts a complaint. Following a review of the allegations on their face, it is found that this complaint does not meet those requirements.

There is no evidence that the discussion during a closed session on September 18 was disclosed. Further, the City held an open session on October 2 to evaluate Mr. McCall's performance. Mr. McCall requested the session be conducted in open session.

IT IS SO ORDERED: Formal complaint 23FC:0103 is dismissed is dismissed as it is legally insufficient pursuant to Iowa Code § 23.8(2) and Iowa Administrative Rule 497-2.1(2)(b).

Pursuant to Iowa Administrative Rule 497-2.1(3), the IPIB may "delegate acceptance or dismissal of a complaint to the executive director, subject to review by the board." The IPIB will review this Order on November 16, 2023. Pursuant to IPIB rule 497-2.1(4), the parties will be notified in writing of its decision.

By the IPIB Executive Director



Erika Eckley, J.D.

CERTIFICATE OF MAILING

This document was sent on November 9, 2023, to:

Crystl McCall and Adam McCall
Clint Fichter, attorney for City of Elk Horn

Active Cases Report

46

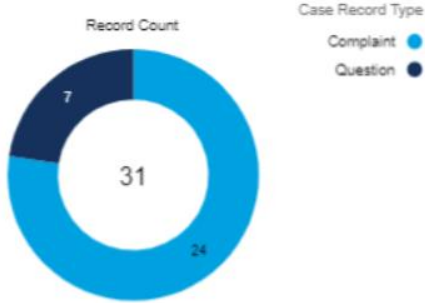
[View Report \(Active Cases Report\)](#)

Active Questions Report

1

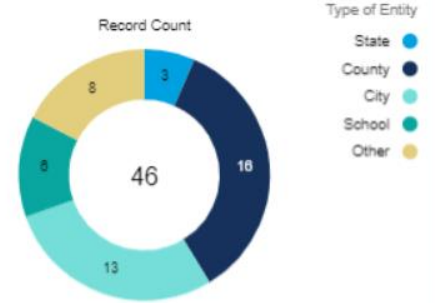
[View Report \(Active Questions Report\)](#)

New complaints &/or question last 30 day



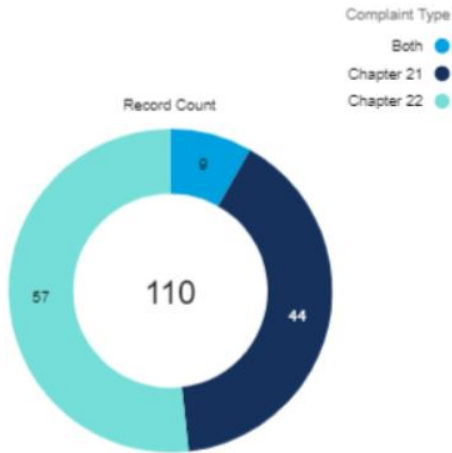
[View Report \(New complaints &/or question last 30 day\)](#)

Cases by Entity



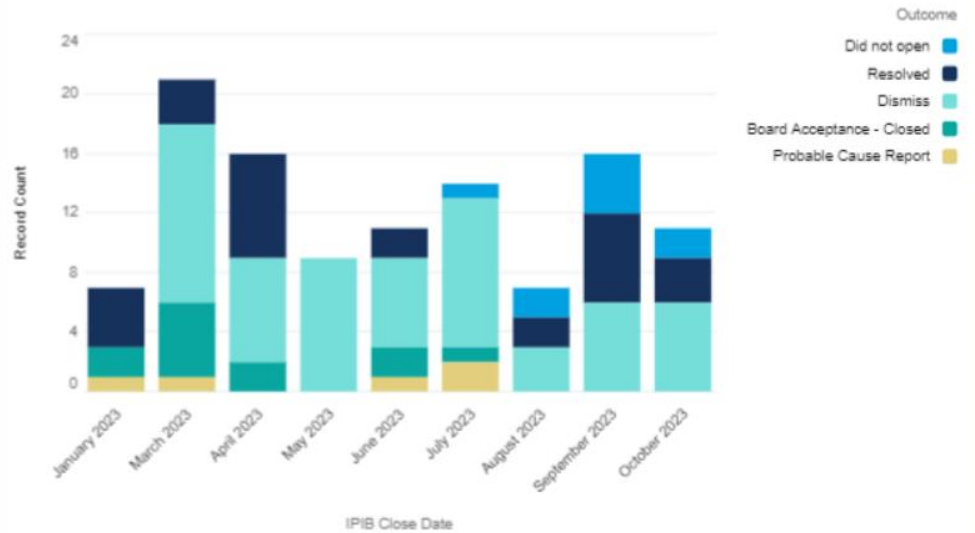
[View Report \(Cases by Entity\)](#)

Broad Type (Filed in Current)



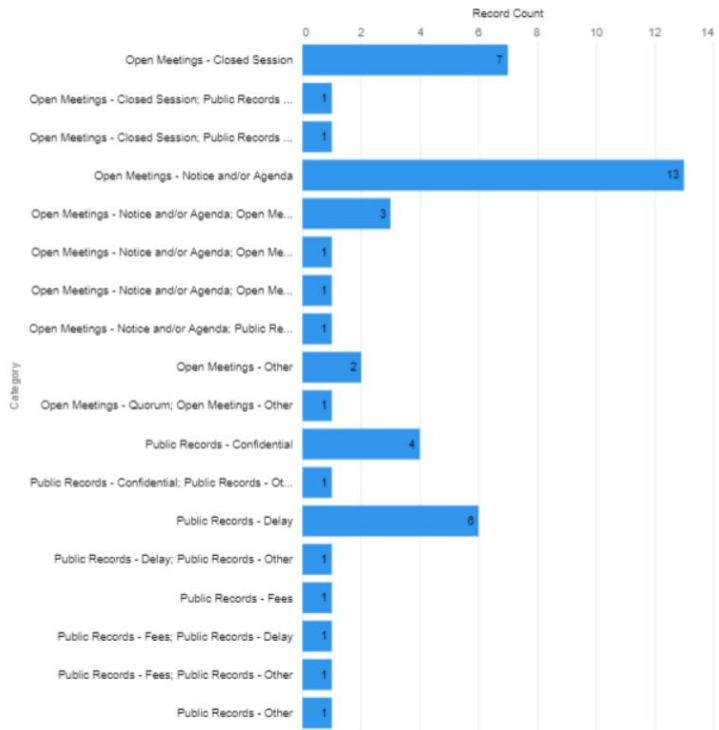
[View Report \(Broad Type \(Filed in Current\)\)](#)

Closed cases 2023



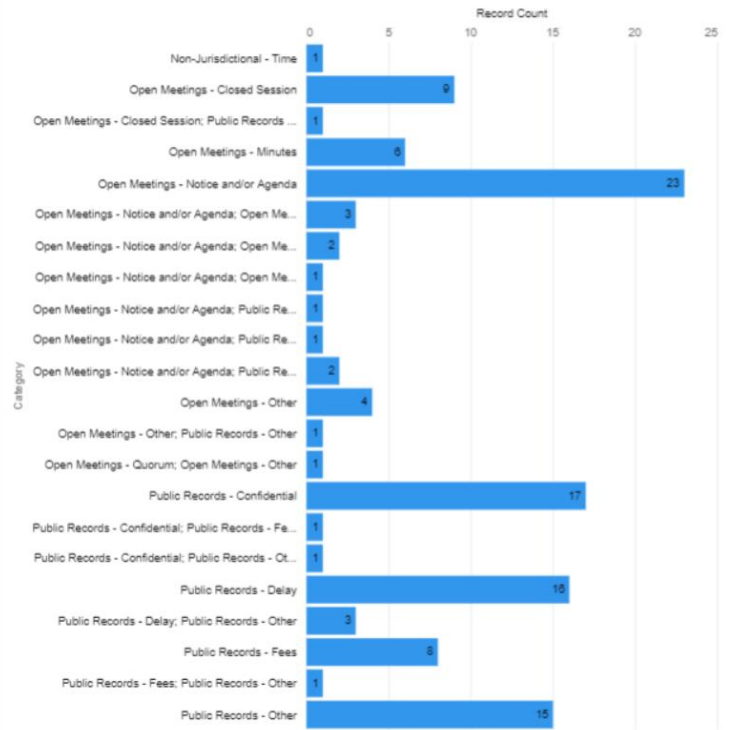
[View Report \(Closed cases 2023\)](#)

Cases by Type (Active)



[View Report \(Cases by Type \(Active\)\)](#)

Cases by Type (Filed in Current Year)



[View Report \(Cases by Type \(Filed in Current Year\)\)](#)

Report ID: SCHED 6 DEPT/APPR

STATE OF IOWA

Page: 1 of 3

Source: I/3 Budget

FINANCIAL INFORMATION SCHEDULE BY APPROPRIATION

Run Date: 11/09/2023

Spec Dept: All Fund: All Unit Detail: All

Run Time: 02:58:35 PM

Department: All Appropriation: All Recap Unit: All

Special Department: 760SD **Public Information Board**
Department: 592 **Public Information Board**
Fund: 0001 **General Fund**
Appropriation: P22 **Iowa Public Information Board**

Object Class	Year to date	Revised Budget	Actuals
	Actuals	I/3 Financial	
	FY 2024	FY 2024	FY 2023

RESOURCES

Appropriations

05A	Appropriation	357,407	357,407	358,039
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Appropriations TOTAL:		357,407	357,407	358,039
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Receipts

234R	Gov Fund Type Transfers - Other Agencies			8,050
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Receipts TOTAL:				8,050
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Other Resources

04B	Balance Brought Forward (Approps)	13,543	13,543	11,374
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Other Resources TOTAL:		13,543	13,543	11,374
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TOTAL RESOURCES:		370,950	370,950	377,462
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DISPOSITION OF RESOURCES

Expenditures

101	Personal Services-Salaries	95,448	286,459	288,030
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202	Personal Travel In State	372	5,298	117
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301	Office Supplies	444	3,000	2,178
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309	Printing & Binding		500	1
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313	Postage	10	150	54
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401	Communications	908	5,000	3,352
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Report ID: SCHED 6 DEPT/APPR

STATE OF IOWA

Page: 2 of 3

Source: I/3 Budget

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Department: 592 **Public Information Board**
Fund: 0001 **General Fund**
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Object Class		Year to date	Revised Budget	Actuals
		Actuals	I/3 Financial	
		FY 2024	FY 2024	FY 2023
405	Professional & Scientific Services		9,000	8,050
406	Outside Services	975		325
414	Reimbursement to Other Agencies	3,075	17,000	12,424
416	ITS Reimbursements	12,293	22,000	33,965
418	IT Outside Services	140		1,826
434	Gov Fund Type Transfers - Other Agencies Services		9,000	
602	Other Expense & Obligations		13,543	55
Expenditures TOTAL:		113,665	370,950	350,377
Other Dispositions				
91B	Balance Carry Forward (Approps)			13,543
93R	Reversions			13,543
Other Dispositions TOTAL:				27,086
TOTAL DISPOSITION OF RESOURCES:		113,665	370,950	377,462

FTE

FTE Summary

FTE	FTE	3	3
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FTE Summary TOTAL:		3	3
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TOTAL FTE:		3	3
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Report ID: SCHED 6 DEPT/APPR

STATE OF IOWA

Page: 3 of 3

Source: I/3 Budget

FINANCIAL INFORMATION SCHEDULE BY APPROPRIATION

Run Date: 11/09/2023

Spec Dept: All Fund: All Unit Detail: All

Run Time: 02:58:35 PM

Department: All Appropriation: All Recap Unit: All

Special Department: 760SD Public Information Board
 Department: 592 Public Information Board
 Fund: 0001 General Fund
 Appropriation: P22 Iowa Public Information Board

Object Class	Year to date	Revised Budget	Actuals
	Actuals	I/3 Financial	
	FY 2024	FY 2024	FY 2023
Appropriation P22 Net (Res-Disp):	257,285	(0)	
Appropriation P22 FTE:		3.00	2.59
Fund 0001 Net:	257,285	(0)	
Fund 0001 FTE:		3.00	2.59
Department 592 Net:	257,285	(0)	
Department 592 FTE:		3.00	2.59
Special Department 760SD Net:	257,285	(0)	
Special Department 760SD FTE:		3.00	2.59
Report Total Net:	257,285	(0)	
Report Total FTE:		3.00	2.59