

# **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.***

## **Agenda**

**December 21, 2023, 1:00 p.m.**

**3<sup>rd</sup> Floor E/W Conference Room**

**Wallace Building**

**502 East 9<sup>th</sup> Street, Des Moines**

### **1:00 PM – IPIB Meeting**

- I. Approval of agenda\*
- II. Approval of the November 16, 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 \*
  
- VI. Cases involving Board Deliberation/Action. (Eckley)
  1. **22FC:0069** Mari Radtke - Chapter 22- City of Paulina 7/25/2022 - \* Probable Cause Report
  2. **23FC:0063** Laurie Kramer - Chapter 21- City of Delhi 6/19/2023; & 23FC:0063 Greg Preussner – Chapter 21– City of Delhi – \* Informal Resolution Final Report
  3. **23FC:0072** Don Benedict – Chapter 22 – City of Sidney – 7/11/23 – \* Final Report
  4. **23FC:0082** Mellisa Mattingly – Both Chapters – McCallsburg City Council – 8/3/23 – \* Informal Resolution Report
  5. **23FC:0083** Brendan Chaney – Chapter 21 – City of Iowa Falls – 8/14/23 – \* Acceptance
  6. **23FC:0086** Todd Banner – Chapter 22 – Iowa State University – 8/23/23 – \* Dismissal
  7. **23FC:0104** Hendrik van Pelt – Chapter 22 – City of West Des Moines 10/25/23 – \* Dismissal

8. **23FC:0105** Jeff Law/Kourtnee Mammen – Chapter 21 – River Valley School Board 10/29/23 – \* Dismissal
9. **23FC:0106** Clint Fichter – Chapter 22 – Iowa Ethics and Campaign Board 11/3/23 – \* Dismissal
10. **23FC:0116** Jacob Ballard – Chapter 21 – Perry Community School Board 11/8/23 – \* Dismissal
11. **23FC:0120** Zachary Vulich – Chapter 22 – City of Leland 11/13/23 – \* Dismissal

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 Matters Withdrawn, No Action Necessary.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

1. **23FC:0093** Randy Phelps – Chapter 22 – Boone Police Department 9/27/23 – \* withdrawn
2. **23FC:0124** Erik Abderhalden – Chapter 22 – IA. Dept. Inspection & Appeals 11/17/23 – \* withdrawn
3. **23FC:0129** Angie Grote – Chapter 22 – City of Shelby 11/27/23 – \* withdrawn

VIII. Pending Complaints. Informational Only (Eckley)

1. **23FC:0053** Debra Schiel-Larson – Both Chapters – Indianola Community School District – 5/1/23
2. **23FC:0060** Dina Raley - Chapter 22- Delaware County Sheriff 6/16/2023 - Pending
3. **23FC:0056** Ruth Bolinger - Chapter 21- Creston City Council 5/22/2023 – Informal Resolution Report
4. **23FC:0074** Chad Miller - Chapter 21- Scott County Board of Review 7/18/2023 – Pending
5. **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 – Pending
6. **23FC:0098** Joseph Foran – Chapter 21 – Audubon City Council 10/10/23 – Information Gathering
7. **23FC:0100** Travis Johnson – Chapter 21 – Eddysville Blakesburg Fremont CSD Board 10/18//23 – Pending
8. **23FC:0101** Braxton Morrison – Chapter 21 – Benton Co. Supervisors 10/18/23; **23FC:0102** Maggie Mangold – Chapter 21 – Benton Co. Supervisors 10/19/23; **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; **23FC:0121** Adam Carros – Chapter 21 – Benton Co. Bd. of Supervisors 11/17/23 – Consolidating & Information Gathering
9. **23FC:0114** John Bandstra – Chapter 21 – South Central Regional Airport Agency 11/6/23; **23FC:0115** Bert Bandstra – Chapter 21 – South Central Regional Airport Agency 11/10/23; **23FC:0122** Jack Rempe – Chapter 21 – South Central Regional Airport Agency 11/17/23; **23FC:0123** Drew McGee – Chapter 21 – South Central Regional Airport Agency 11/17/23 – Consolidating & Information Gathering
10. **23FC:0117** Ellen O'Mally – Chapter 21 – Pleasant Grove Trustees 11/9/23 – Information Gathering
11. **23FC:0118** Leah Schwery – Both Chapters – City of Ute 11/9/23 – Information Gathering
12. **23FC:0119** Richard Hageman – Both Chapters – City of Ute 11/9/23 – Information Gathering
13. **23FC:0125** Adam McCall – Chapter 22 – City of Elk Horn 11/17/23 – Information Gathering
14. **23FC:0126** Tracy Stillwell – Chapter 22 – Hampton Public Library 11/19/23 – Information Gathering
15. **23FC:0127** Hendrik van Pelt – Chapter 22 – City of Clive 11/22/23 – Information Gathering
16. **23FC:0128** Scott Flynn – Chapter 22 – Mid-Prairie Comm. School District 11/17/23 – Information Gathering
17. **23FC:0130** Keegan Jarvis – Chapter 21 – Swan City Council 11/27/23 – Information Gathering
18. **23FC:0131** Amy McCabe – Chapter 22 – Pleasant Valley School District 11/27/23 – Information Gathering
19. **23FC:0132** Michael Merritt – Chapter 22 – Powesheik County 11/25/23 – Information Gathering
20. **23FC:0133** Matthew Knowles – Chapter 22 – Crawford Co. Attorney – 12/7/23 – Information Gathering
21. **23FC:0134** Todd Oetken – Chapter 22 – Iowa Dept. of Education – 12/11/23 – Information Gathering

- IX. Committee Reports
  - 1. Communications – (Toresdahl)
  - 2. Legislative – (Eckley)
  - 3. Rules – (Strawhun)
  
- X. Office status report.
  - 1. Office Update \* (Eckley)
  - 2. Financial/Budget Update (FY23) \* (Toresdahl)
  - 3. Presentations/Trainings (Eckley) – City of Elgin; County Assessors Group; Drake Journalism Class
  - 4. District Court Update (Strawhun)
  
- XI. Next IPIB Board Meeting will be held in the Wallace Building, 3rd Floor, E/W Conference Room  
January 18, 2023 at 1:00 p.m.
  
- XII. Adjourn **\* Attachment**

# IOWA PUBLIC INFORMATION BOARD

November 16, 2023

## Unapproved Minutes

The Board met on November 16, 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 (arrived 1:09pm); Joan Corbin, Pella (phone); E. J. Giovannetti, Urbandale; Barry Lindahl, Dubuque; Joel McCrea, Pleasant Hill; Julie Pottorff, Des Moines. Absent: Jackie Schmillen, Urbandale; Monica McHugh, Zwingle. 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: Scott Williamson, Chad Miller, Christi Latta, Pauletta Cox, Taylor Johnson, Adam McCall.

On a **motion** by McCrea, **second** by Pottorff, the agenda was unanimously adopted 5-0.

On a **motion** by Giovannetti, **second** by McCrea, to approve the October 19, 2023 minutes. Unanimously adopted 5-0.

**Public Forum** – none

**Board Chair** Comments – none

**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. 22FC:0118 Dakota Sellers - Chapter 22- City of Vinton 11/14/2022 – A motion by Giovannetti and second by Pottorff to accept the informal resolution final report and to dismiss the complaint as being satisfactorily resolved. Unanimously approved, 5-0.

Note: *Brietbarth arrived at 1:09pm*

2. 23FC:0060 Dina Raley - Chapter 22- Delaware County Sheriff 6/16/2023 - A motion by Giovannetti and second by McCrea to table the matter for further review. Unanimously approved 5-0.

Note: *Lost phone communication/restored phone communication.*

3. 23FC:0072 Don Benedict – Chapter 22 – City of Sidney – 7/11/23 – A motion by McCrea and second by Brietbarth to accept the informal resolution report. Unanimously approved, 6-0.
4. 23FC:0074 Chad Miller - Chapter 21- Scott County Board of Review 7/18/2023 – Chad Miller spoke. A motion by Brietbarth and second by Giovannetti to accept the informal resolution report. Unanimously approved, 6-0.

Note: *Corbin disconnected from the meeting.*

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 – Kristy Latta spoke. A motion by Giovannetti and second by Brietbarth to consolidate the complaints and approve the dismissal order. Unanimously approved, 5-0.
6. 23FC:0082 Mellisa Mattingly – Both Chapters – McCallsburg City Council – 8/3/23 – A motion by Brietbarth and second by Pottorff to approve the acceptance order. Unanimously approved, 5-0.
7. 23FC:0091 Michelle Hillman – Chapter 21 – Grand Junction City Council 9/14/23 – A motion by Pottorff and second by Giovannetti to approve the dismissal order. Unanimously approved, 5-0.
8. 23FC:0094 Matthew Jensen – Chapter 22 – Pottawatamie Co. Treasurer 9/28/23 – A motion by Giovannetti and second by McCrea to approve the dismissal order. Unanimously approved, 5-0.
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 – Pauletta Cox spoke. A motion by Pottorff and second by Giovannetti to consolidate the complaints and approve the acceptance order. Unanimously approved, 5-0.
10. 23FC:0100 Travis Johnson – Chapter 21 – Eddysville Blakesburg Fremont CSD Board 10/18//23 – Travis Johnson and Scott Williamson spoke. A motion by Brietbarth and second by Giovannetti to approve the acceptance order. Unanimously approved, 5-0.
11. 23FC:0103 Crystl McCall – Both Chapters – Elk Horn City Council 10/23/23 – Adam McCall spoke. A motion by Brietbarth and second by Pottorff to approve the dismissal order. Unanimously approved, 5-0.

**Matters Withdrawn. No Action -**

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

**Pending complaints that required no board action. Informational**

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
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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

### **Committee Reports**

1. Communications – No report
2. Legislative – No report
3. Rules – The next meeting is scheduled for November 21, 2023.

### **Updates for the board.**

- a. Eckley provided an office update and current statistics.
- b. Toresdahl shared the FY24 financials.
- c. Upcoming presentations:
  - Iowa Municipal Attorneys Association
  - Floyd County officials
  - Creston City Council
  - Sidney City Council
- 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**, December 21, 2023, at 1:00 p.m.

At 2:27 p.m. the meeting adjourned on a motion by Pottorff and a second by Brietbarth. Unanimously approved.

Respectfully submitted  
Brett Toresdahl, Deputy Director

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IPIB, Chair  
Approved



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## Advisory Opinion 23AO:0008

**DATE:** December 21, 2023

**SUBJECT:** Confidentiality of Draft Documents

Debra Schiel-Larson  
Via email [redacted]

Ms. Schiel-Larson,

We are writing in response to your request dated October 11, 2023, requesting an advisory opinion from the Iowa Public Information Board (IPIB) pursuant to Iowa Code chapter 23 and Iowa Administrative Code rule 497-1.3.

We note at the outset that the IPIB's jurisdiction is limited to the application of Iowa Code chapters 21, 22 and 23, as well as rules in Iowa Administrative Code chapter 497. Advice in a Board opinion, if followed, constitutes a defense to a subsequent complaint based on the same facts and circumstances.

### QUESTION POSED:

Would IPIB please clarify the Draft Documents confidentiality exception. What records are exempt from disclosure under Iowa Code § 22.7(65)?

### OPINION:

Iowa Code section 22.7(65) allows certain public records to be withheld as confidential "draft documents":

Tentative, preliminary, draft, speculative, or research material, prior to its completion for the purpose for which it is intended and in a form prior to the form in which it is submitted for use or used in the actual formulation, recommendation, adoption, or execution of any official policy or action by a public official authorized to make such decisions for the governmental body or the government body.

This subsection shall not apply to public records that are actually submitted for use or are used in the formulation, recommendation, adoption, or execution of any official policy or action of a governmental body or a government body by a public official authorized to adopt or execute official policy for the governmental body or the government body.

### Board Members

Daniel Breitbarth • Joan Corbin • E. J. Giovannetti • Barry Lindahl • Joel McCrea  
Monica McHugh • Julie Pottorff • Jackie Schmillen • vacant



No Iowa case law interpreting section 22.7(65) exists. The origin of the exception dates back to 2007, when the Iowa Legislature assembled an Interim Study Committee to review Iowa Code chapters 21 and 22.<sup>1</sup> Professor Arthur Bonfield proposed the addition to the Committee to allow for a “deliberative” exception to Iowa’s public records law.<sup>2</sup>

In proposing the exception, Professor Bonfield stated “[This exception] should apply only to nonfactual policy, opinion, or idea materials, and such very tentative or very preliminary materials could be withheld only for periods prior to the final formulation of an actual recommendation or proposal, which would be well before any actual authoritative action on any such recommendation or proposal.”<sup>3</sup>

The purpose of the exception, according to the legislative history, is “to encourage the creation and free exchange by government employees and officials of new and innovative preliminary and tentative ideas for later more careful and deliberate consideration and that such a privilege would only apply well prior to any decision to propose, adopt, implement, or act on them.”<sup>4</sup>

In advisory opinion AO 2015-01, the IPIB provided the following criteria to assist in determining whether a document falls under the 22.7(65) exception:

1. The document is tentative, preliminary, draft, speculative or research material;
2. The document exists in a form prior to completion of its intended purpose;
3. The document exists in a form prior to the form that is ultimately submitted for use or used in the actual formulation, recommendation, adoption or execution of any official policy or action by a public official with authority to make such decisions; and
4. The document must not have been submitted to or used by a public official authorized to adopt or execute official policy.

In advisory opinion 20AO:0006, IPIB utilized the criteria above to determine that notes taken by a city clerk during a council meeting and used to prepare the council minutes are not confidential under Iowa Code § 22.7(65) because the “notes taken at the meeting are essentially what is submitted to the council as minutes. Despite potential changes, such as converting the notes from handwritten to typed, the content of the record is substantially the same which points to it not existing in a prior form.” Similarly, “the notes are not in a form prior to the form that is ultimately submitted to the city council for official use.”

The present advisory opinion (23AO:0008) seeks to provide additional analysis and guidance on the application of section 22.7(65) while keeping in mind the purpose for which the exception was created.

### Clause-by-clause Analysis

1. *Tentative, preliminary, draft, speculative, or research material,*

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<sup>1</sup> All documents received and submitted by the Interim Study Committee are accessible via the following link: <https://www.legis.iowa.gov/committees/meetings/documents?committee=615&ga=ALL> (last accessed December 5, 2023).

<sup>2</sup> Arthur E. Bonfield & Alan Vestal, *State Government in the Sunshine: Chapters 21 and 22 of the Code of Iowa: Presentation to Joint Interim Study Committee on Freedom of Information, Open Meetings, and Public Records Iowa General Assembly, September 6, 2007*, p. 14.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

The document at issue (that is, the document claimed to be confidential) must be a document that is unfinished, subject to further revision, or otherwise ancillary to the creation of a primary, final document.<sup>5</sup>

2. *prior to its completion for the purpose for which it is intended*

The document at issue (“it”) must be incomplete “for the purpose for which it is intended.” “The purpose for which it is intended” is context dependent, but presumably would relate to “the formulation, recommendation, adoption, or execution of any official policy or action.”<sup>6</sup>

3. *and in a form prior to the form in which it is submitted for use or used*

In essence, this phrase expresses the same meaning that the second sentence of the statute already expresses:<sup>7</sup> if the *same* document that is claimed to be confidential was actually submitted for use or was used in government policy making or action, that document is *not* a confidential draft document and cannot be withheld under this section.

4. *in the actual formulation, recommendation, adoption, or execution of any official policy or action*

In order to be confidential under section 22.7(65), the document at issue must have been created in the context of official government policy-making or action. For example, a draft letter to the editor of an academic journal, written by a professor of a public university and concerning the professor’s opinions about an article the journal previously published, would not be confidential under section 22.7(65) because it does not relate to the “formulation, recommendation, adoption, or execution of any official policy or action.”<sup>8</sup>

In other words, if the purpose or impetus for creating the document at issue was not connected to an effort to create or implement official government policy or action, the exemption would not apply.<sup>9</sup>

The use of the word “official” implies the type of policies or actions contemplated by the statute are not informal, personal, or otherwise outside of authoritative government action.

5. *by a public official authorized to make such decisions for the governmental body or the government body.*

This phrase adds further clarification to the requirement that the government policy making or action to which the document relates must be official and authoritative.

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<sup>5</sup> *See id.* (“The General Assembly should, therefore, at least consider seriously the desirability of explicitly exempting from **required** public disclosure some materials in **very** preliminary and **very** tentative working papers of government officials or employees.”) (emphasis in original).

<sup>6</sup> *See id.* (“The argument would be that the custodians of very tentative notes, very preliminary drafts, should be able to withhold them from public scrutiny, if they choose, for **brief periods**, while decisionmakers have a chance to think about them, and should be able to withhold them from public scrutiny **only up to the time the public officials or public employees actually formulate on the basis of such earlier tentative and preliminary deliberative materials specific recommendations or proposals for future authoritative actions.**”) (emphasis in original).

<sup>7</sup> The second sentence of section 22.7(65) states “[t]his subsection shall not apply to public records that are actually submitted for use or are used in the formulation, recommendation, adoption, or execution of any official policy or action of a governmental body or a government body by a public official authorized to adopt or execute official policy for the governmental body or the government body.”

<sup>8</sup> *See Bonfield & Vestal, supra* note 2 (“[The documents] could be withheld **only** for periods prior to the final formulation of an actual **recommendation or proposal**, which would be well before any actual authoritative action on any such recommendation or proposal.”) (emphasis in original).

<sup>9</sup> *See id.* (“[The] brief exemption should not apply to factual material. It should apply only to nonfactual policy, opinion, or idea materials, and such very tentative or very preliminary material.”).

6. *This subsection shall not apply to public records that are actually submitted for use or are used in the formulation, recommendation, adoption, or execution of any official policy or action of a governmental body or a government body by a public official authorized to adopt or execute official policy for the governmental body or the government body.*

As explained above, the second sentence of section 22.7(65) means that if the document at issue was “actually submitted for use or was used in the formulation, recommendation, adoption, or execution of official government policy or action,” it cannot be withheld as confidential under this section.<sup>10</sup>

**BY DIRECTION AND VOTE OF THE BOARD:**

Daniel Breitbarth  
Joan Corbin  
E.J. Giovannetti  
Barry Lindahl  
Joel McCrea  
Monica McHugh  
Julie Pottorff  
Jackie Schmillen

**SUBMITTED BY:**

IPIB Staff

**ISSUED ON:**

December 21, 2023

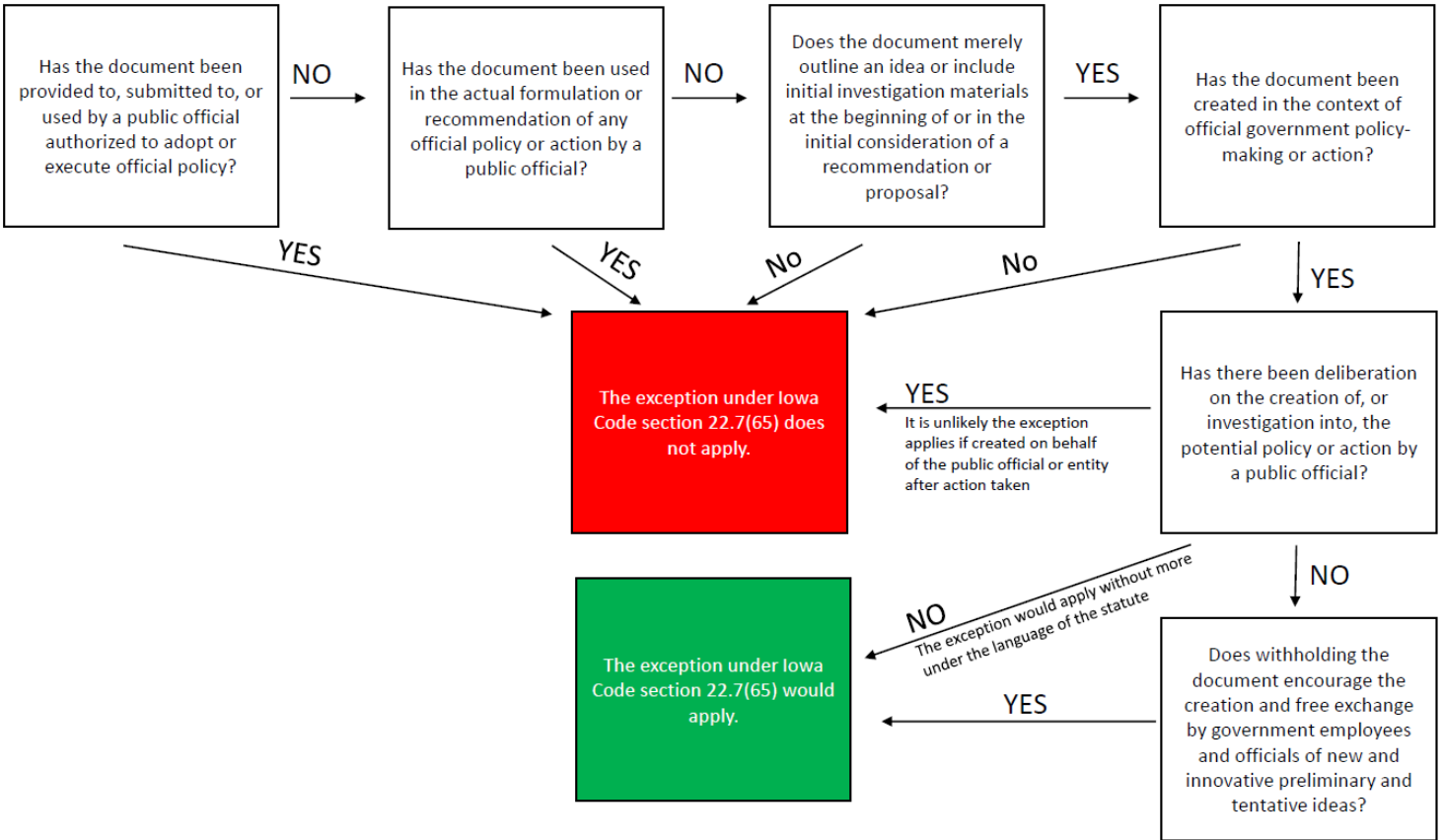
*Pursuant to Iowa Administrative Rule 497-1.3(3), a person who has received a board opinion may, within 30 days after the issuance of the opinion, request modification or reconsideration of the opinion. A request for modification or reconsideration shall be deemed denied unless the board acts upon the request within 60 days of receipt of the request. The IPIB may take up modification or reconsideration of an advisory opinion on its own motion within 30 days after the issuance of an opinion.*

*Pursuant to Iowa Administrative Rule 497-1.3(5), a person who has received a board opinion or advice may petition for a declaratory order pursuant to Iowa Code section 17A.9. The IPIB may refuse to issue a declaratory order to a person who has previously received a board opinion on the same question, unless the requestor demonstrates a significant change in circumstances from those in the board opinion.*

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<sup>10</sup> *See id.* (“It should be stressed that the purpose of such a deliberative privilege exemption is only to encourage the creation and free exchange by government employees and officials of new and innovative preliminary and tentative ideas for later more careful and deliberate consideration and that such a privilege would only apply well prior to any decision to propose, adopt, implement, or act on them.”).

The following chart may provide additional assistance in evaluating whether this exemption applies:



## Before The Iowa Public Information Board

<p>In re the Matter of:</p> <p>MARI RADTKE, Complainant</p> <p>And Concerning:</p> <p>CITY OF PAULLINA, Respondent</p>	<p>Case No. 22FC:0069</p> <p><b>Probable Cause Report</b></p>
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COMES NOW, Daniel M. Strawhun, Legal Counsel for the Iowa Public Information Board (IPIB), and respectfully submits this probable cause report for formal complaint 22FC:0069.

### Background

On July 21, 2022, Mari Radtke filed formal complaint 22FC:0069 against the City of Paullina (“City”) alleging a violation of Iowa Code chapter 22. She alleged that the City failed to provide a record she requested.

On June 15, 2022, Ms. Radtke submitted an envelope containing her written request to the Paullina deputy clerk, Whitney Engelke. Ms. Radtke requested copies of “text, telephone, email, written, in person when documents were exchanged and social media exchanges including but not limited to Facebook DM” [*sic*] from May 9, 2022 through June 10, 2022. Ms. Radtke’s request was directed toward the following persons: Brenda Ebel Kruse (mayor of Paullina), the five members of the Paullina City Council, Whitney Engelke (deputy city clerk), and Sandy Fritz (former deputy city clerk). The topic of the request was “[a]ny business regarding the City of Paullina in which the topic will come before the entire council.” Ms. Radtke also requested identification of “all elected and appointed officials present in person or via electronic means at 315 E Groesbeck on Thursday, May 12, at approximately 6:30 p.m.”

The City failed to respond to the request, leading Ms. Radtke to file her complaint with IPIB.

IPIB accepted this complaint on November 17, 2022. Pursuant to section 23.9, IPIB staff began efforts to reach an informal resolution between the parties. However, the City was unresponsive, which resulted in a probable cause report being presented to the Board on March 3, 2023.

Shortly before the March 3 IPIB meeting at which the probable cause report was presented, the City began releasing the requested records. The City has since released all of the records responsive to the request that were still in its possession. Certain records requested were not released because they had reportedly been deleted—namely, the text messages. Because of the long delay between the date the request was made and the date that the City began releasing the records, it was initially unclear whether the records had been deleted before or after the City officials/employees involved were aware of the request. Had the records been deleted after, such action would have amounted to a refusal to comply with the request—a clear violation of chapter 22.

In order to address this issue, IPIB staff requested that all individuals who failed to release records because they had been deleted answer a series of questions in the form of an affidavit. Those affidavits are attached to this report as Exhibits A through D.

Once the records were released and the affidavits explaining the timing of the deletion of the records that were not released were submitted, IPIB staff proposed that the parties agree to informally resolve the complaint. Because the records had at this point either been released or deleted, IPIB staff suggested that the informal resolution require the City to complete training on the proper way to process, respond to, and handle public records requests.

In response to this proposal, the City indicated that new council members would be elected at the beginning of November and suggested that the training include them as well. IPIB staff contacted the League of Cities and arranged for training sessions to be scheduled for all individuals that were involved with this complaint, as well as the new council members once they are elected. The Complainant, Ms. Radtke, stated that the City has already completed training as a result of a different complaint she filed, and she stated definitively that she would not agree to informally resolve the complaint through training.

On November 20, 2023, the League of Cities conducted the training session with the City. The meeting minutes reflecting this are attached as Exhibit E.

### Legal Analysis

Whereas a “good-faith, reasonable delay by a lawful custodian in permitting the examination and copying of a government record” is permitted in certain circumstances, Iowa Code § 22.8(4), “an implied or ‘silent’ refusal—can be shown through an unreasonable delay in producing records.” *Belin v. Reynolds*, 989 N.W.2d 166, 174 (Iowa 2023).

Here, the City never attributed the delay to any of the circumstances contained in section 22.8(4). The City began producing the records around 8 months after the request was made. The length of this delay and the absence of any mitigating circumstances from section 22.8(4) suggest that the delay was an unreasonable refusal to produce the records—a violation of chapter 22. However, the City did eventually produce the records, as well as affidavits accounting for the deletion of any records it did not produce. Additionally, the City participated in training on the proper procedure for responding to public records requests.

Under Iowa Code section 23.9, once the Board accepts a complaint, IPIB is required to work with the parties to attempt to resolve the complaint informally. This process of informal resolution was initially short-circuited by the City’s unresponsiveness, resulting in the March 3 probable cause report. Once the City became responsive and cooperative, the Complainant, by that time understandably frustrated, then refused to agree to informally resolve the complaint. At this point in time, the City has done everything it can to resolve the issues complained of.

IPIB Action

The Board may take the following actions upon receipt of a probable cause report:

- a. Redirect the matter for further investigation;
- b. Dismiss the matter for lack of probable cause to believe a violation has occurred;
- c. Make a determination that probable cause exists to believe a violation has occurred, but, as an exercise of administrative discretion, dismiss the matter; or
- d. Make a determination that probable cause exists to believe a violation has occurred, designate a prosecutor and direct the issuance of a statement of charges to initiate a contested case proceeding.

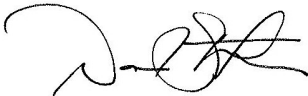
Iowa Admin. Code r. 497-2.2(4).

Recommendation

Based upon investigation of the complaint, I recommend that the Board determine probable cause exists to believe that the City of Paullina violated Iowa Code chapter 22 through unreasonable delay in producing the records.

However, I would recommend that the complaint be dismissed as a matter of administrative discretion, as the City at this point has done everything it can to remediate the alleged violation.

Respectfully submitted on December, 21 2023.



Daniel M. Strawhun  
Legal Counsel,  
Iowa Public Information Board

CERTIFICATE OF MAILING

This document was sent by electronic mail on December 13, 2023, to:

Mari Radtke  
Tisha Halverson, City Attorney for Paullina, Iowa.

AFFIDAVIT

STATE OF IOWA            )  
  ) ss:  
COUNTY OF OBRIEN    )

The undersigned, being duly sworn upon oath, deposes and states:

1. This affidavit is based upon the personal knowledge and belief of this affiant.
2. The undersigned is a resident of Paullina, Iowa, and is a member of the City Council of the City of Paullina, Iowa.
3. The undersigned did receive the records request from Mari Radke on or about June 15, 2022.
4. The undersigned does not have any records to produce per the records request. The undersigned changed providers and obtained a new phone in November. The undersigned did not retain her old phone. The undersigned's previous phone was a tracfone, and the invoices for the tracfone did not include any detailed information regarding call or text records. The undersigned was not able to obtain any records for the tracfone through the provider. The undersigned does not save her texts from any of her contacts.

Dated this 29 day of Sept, 2023.

Jean Unrau  
Jean Unrau

Subscribed and sworn before me by the said Jean Unrau, Paullina, Iowa, on 9/29, 2023.



[Signature]  
Notary Public



AFFIDAVIT

STATE OF IOWA            )  
  ) ss:  
COUNTY OF OBRIEN    )

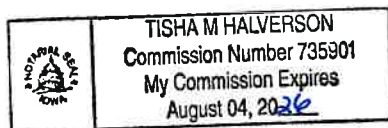
The undersigned, being duly sworn upon oath, deposes and states:

1. This affidavit is based upon the personal knowledge and belief of this affiant.
2. The undersigned is a resident of Paullina, Iowa, and is the Mayor of the City of Paullina, Iowa.
3. The undersigned did receive the records request from Mari Radke on or about June 15, 2022.
4. The undersigned got a new phone on June 11, 2022, prior to the records request from Mari Radke. The undersigned's physical text messages were not transferred to the new phone, and the undersigned did not take screenshots of any text messages that may have been relevant to the records request prior to receipt of her new phone.
5. The undersigned did provide a call log of phone calls per the records request as shown on the monthly invoices for her cell phone.

Dated this 29<sup>th</sup> day of September, 2023.

  
Brenda Ebel Kruse, Mayor of the City  
of Paullina

Subscribed and sworn before me by the said Brenda Ebel Kruse, Mayor of the City of Paullina, Iowa, on September 29, 2023.



  
Notary Public

**AFFIDAVIT**

STATE OF IOWA            )  
  ) ss:  
COUNTY OF OBRIEN    )

The undersigned, being duly sworn upon oath, deposes and states:

1. This affidavit is based upon the personal knowledge and belief of this affiant.
2. The undersigned is a resident of Paullina, Iowa, and is a member of the City Council of the City of Paullina, Iowa.
3. The undersigned received the records request from Mari Radke on or about June 15, 2022.
4. The undersigned has provided written phone and text logs as well as screenshots of her text messages, with the exception of a few text messages that were confidential. The undersigned did not have any emails to provide as she routinely deletes them, which was her normal practice prior to the records request. The undersigned was questioned in regard to a specific email, and she provided information regarding the nature and content of the question contained in the email.
5. The undersigned did receive additional questions from Mari Radke regarding the text messages she provided as part of the response to the records request, and the undersigned is providing the additional requested information.
6. The undersigned had no phone calls or messages on her landline that were relevant to the records request.
7. The undersigned has no further records to produce.

Dated this 29 day of September, 2023.

Carol Honkomp  
Carol Honkomp

Subscribed and sworn before me by the said Carol Honkomp of Paullina, Iowa, on 9/29, 2023.

Liz Herrera  
Notary Public



AFFIDAVIT

STATE OF IOWA            )  
  ) ss:  
COUNTY OF OBRIEN    )

The undersigned, being duly sworn upon oath, deposes and states:


1. This affidavit is based upon the personal knowledge and belief of this affiant.
2. The undersigned is a resident of Paullina, Iowa, and is a member of the City Council of the City of Paullina, Iowa.
3. The undersigned did receive the records request from Mari Radke on or about June 15, 2022.
4. The undersigned has provided a call log, text log and copies of the text messages per the records request. These are the only records the undersigned has per the records request.

Dated this 29 day of September, 2023.

  
\_\_\_\_\_  
Steven Heeren

Subscribed and sworn before me by the said Steven Heeren, Paullina, Iowa, on 9/29, 2023.



  
\_\_\_\_\_  
Notary Public



Strawhun, Daniel <daniel.strawhun@iowa.gov>

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## IPIB Ordered Training

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tmhalverson@klaylaw.com <tmhalverson@klaylaw.com>

Tue, Nov 28, 2023 at  
11:44 AM

To: "Strawhun, Daniel" <daniel.strawhun@iowa.gov>, Mickey Shields  
<mickeyshields@iowaleague.org>

Daniel,

Attached are the minutes from the November 20<sup>th</sup> meeting. With regard to the guests in attendance, Marlin Sjaarda is the mayor elect and Nichole Fintel and Denny Werkmeister are the council members elect. Please let me know if you have any questions or need anything further.

[Quoted text hidden]

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 **City Council Minutes 11-20-2023 (4).pdf**  
82K

Exhibit E

The Paullina City Council met in regular session on November 20, 2023 in the Council Chambers, City Hall, 127 S Main St, Paullina, Iowa. Mayor Brenda Ebel Kruse called the meeting to order at 5:30 p.m. & led the Pledge of Allegiance.

Roll Call. Council Members present: Steve Heeren, Carol Honkomp, Jay Jones, Jean Unrau. Absent: Lexy Murphy (arrived 5:39pm). Mayor Ebel Kruse declared a quorum.

Also present: Assistant Clerk Alex Griggs, City Attorney Tisha Halverson, Superintendent Kelly Top & Ambulance Director Laurie Struve & Library Director Matt Dengler. Guests: Marlin Sjaarda, Nichole Jacobs, Denny Werkmeister, Glenda Heithus. Press: Radtke.

Motion by Unrau; second by Jones to approve agenda. Four ayes (Murphy absent). Motion carried.

Presentation by Mickey Shields of Iowa League of Cities on Chapter 21 Open Meetings per IPIB vs Marcus News.

Motion by Unrau; second by Murphy to approve 11/6/23 regular meeting minutes with date correction. All ayes. Motion carried.

Motion by Murphy; second by Honkomp to approve payment of claims. All ayes. Motion carried.

Griggs updated Council with bank reconciliations from July-Dec 2022.

Presentation by Derek Colace of A&B IT Solutions regarding proposals for monthly managed IT, equipment & council chambers meeting technology. Motion by Murphy; second by Honkomp to approve monthly managed IT & hardware proposal when cleared from current vendor. All ayes. Motion carried.

Struve requested 2 items move up in order of agenda. Motion by Murphy; second by Unrau for Resolution 23-38 to approve Kylee Massmann as EMT ambulance crew member. Roll call vote. Ayes: Heeren, Honkomp, Jones, Murphy, Unrau. Nays: none. Resolution passed.

Motion by Murphy; second by Honkomp for Resolution 23-39 to approve Karlee Ohrt as EMT ambulance crew member. Roll call vote. Ayes: Heeren, Honkomp, Jones, Murphy, Unrau. Nays: none. Resolution passed. Struve shared there are 4 EMTs, 4 drivers & 4 EMRs/nurses on the crew right now.

Motion by Heeren; second by Honkomp to table council chambers meeting technology proposal until a later date. All ayes. Motion carried.

Motion by Unrau; second by Murphy for Resolution 23-40 to approve Josh Biery's \$1/hr raise effective upon completion of 2 water tests on 10/25/2023 (Distribution 1 & Treatment 1). Roll call vote. Ayes: Heeren, Honkomp, Jones, Murphy, Unrau. Nays: none. Resolution passed.

Motion by Honkomp; second by Murphy for Resolution 23-41 to approve resident appointments of Kevin Brassler (JUNE 2029) & Heidi Brown (JUNE 2026). Roll call vote. Ayes: Heeren, Honkomp, Jones, Murphy, Unrau. Nays: none. Resolution passed.

Motion by Unrau; second by Murphy for Resolution 23-42 to approve non-resident appointments of Erin Wilson (existing) & Sharla Rupert (JUNE 2025). Roll call vote. Ayes: Heeren, Honkomp, Jones, Murphy, Unrau. Nays: none. Resolution passed.

After questions from Heeren, Jones introduced first reading of Ordinance No. 36 amending the Zoning Ordinance Article 15 on Sign Regulations in R-1, R-2 & MH to allow churches, schools & governmental entities to have internally illuminated signs per restrictions, & C-1, C-2, GI & AG properties adjacent or across from residential to follow the restrictions. Second by Unrau. Roll call vote. Ayes: Honkomp, Jones, Murphy, Unrau. Nays: Heeren. First reading recorded.

Motion by Murphy; second by Heeren to approve up to \$30,000 more for additional tree removal by Schwebach Tree Service with funds allocated from the Electric Utility fund. All ayes. Motion carried.

Motion by Murphy; second by Honkomp to table stump grinding until later date. All ayes. Motion carried.

Motion by Jones; second by Honkomp to approve Outdoor Recreation Products proposal for new twister slide & window to replace damaged components using funds from Parks &/or Recreation budgets. All ayes. Motion carried.

Dengler reported on holiday closures for the library.

Motion by Murphy; second by Heeren to adjourn meeting at 8:00 pm. All ayes. Meeting adjourned.

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Brenda Ebel Kruse, Mayor

ATTEST:

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Michelle Wilson, City Clerk

December 19, 2023

Ms. Eckley, Thank you for allowing me a bit of extra time to respond in light of my personal situation.

And to the IPIB Members:

I have professionally utilized the services of Iowa Public Information Board for bad behavior by 3 individual governing bodies. Twice those bodies utilized the services of an attorney. Both of those efforts ended with the governing body not producing the requested materials. Delay proves to be the best tool for governing bodies to withhold public records. It is my opinion that IPIB enables governmental delay in response and production of documents.

Each of these events has taught me something about your legal system. I deeply, deeply do not want to ever have to battle a governing body again over public records. But if I must, I will do so by going straight to court. I find the tactics of IPIB flagrantly supportive to the cause of the public entities. It is a very disappointing realization.

In 22FC:0069, now most likely being dismissed because, it looks to me, IPIB does not do anything beyond demand training and a policy. In this case, the City of Paullina is clearly in violation. Its attorney simply ignored you for months. Yet a year plus later, here we are, the violation is most likely being dismissed under administrative discretion, despite the document presented is labeled "probable cause report." The third probable cause report, I believe, from this single complaint.

That says to me, "Yep, they're guilty. They failed to produce the documents, but nice job! You stalled long enough to prevent those communications from getting out."

On September 20, 2023 Daniel Strawhun stated in an email attempting to obtain affidavits from the City Council members and the mayor, "Part of this agency's mission and reason for existence is to provide efficient, timely resolution of complaints. The lack of progress or action toward resolution goes against these principles and cannot be allowed to continue."

The affidavit received from Mayor Brenda Ebel Kruse was not related to this complaint. I did not ever see her affidavit from 22FC:0069. While I am remembering seeing affidavits from Jean Unrau and Carol Honkomp, and I know



Steve Heeren sent his affidavit. That leaves no affidavit I am aware of for 22FC:0069 from Brenda Ebel Kruse, Jay Jones and Lexy Murphy. Please provide if you have them. Another example of how just ignoring IPIB is an almost automatic win for a public entity.

This case is a great road map for other public entities to avoid release of damaging communications. The mission failed.

Best,

Mari Radtke

<p>In re the Matter of:</p> <p>Laurie Kramer/ Greg Preussner, Complainant</p> <p>And Concerning:</p> <p>City of Delhi, Respondent</p>	<p>Case Number: 23FC:0063/23FC:0066</p> <p>Informal Resolution Report</p>
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On June 13, 2023 Laurie Kramer filed formal complaint 23FC:0063, alleging that the City of Delhi (City) violated Iowa Code chapter 21 on June 12, 2023 at its city council meeting.

On June 19, 2023 Gary Preussner filed formal complaint 23FC:0066, alleging that the City of Delhi (City) violated Iowa Code chapter 21 on June 12, 2023.

Ms. Kramer and Mr. Preussner alleged that the City added two items to the Council’s agenda after it had been posted. They believe the items were controversial and that they may have been left off the agenda intentionally so citizens were not aware the issues would be addressed.

City Clerk DeAnna Hogan provided to the IPiB a copy of the posted agenda and a copy of the agenda used in the meeting with two hand written additions noted on it. She also provided a copy of the minutes for the June 12, 2023, Council meeting. Those minutes show that two items were added to the agenda and unanimously approved by the Council. The minutes also show that action was taken by Council on the two additional items. Ms. Hogan acknowledges that the two items were added to the agenda at the meeting.

Edward Henry, attorney for the City provided a response to the complaints. He acknowledged the two items were added to the agenda at the start of the meeting and not included on the tentative agenda previously posted. He stated the omission from the agenda was simply an oversight on the part of the clerk and not a deliberate act. Mr. Henry emphasized the actions taken during the meeting on these two issues did not need Council approval as the municipal code allows the Mayor to act to address nuisances within the city.

**Law**

**Iowa Code § 21.4 Public notice:**

1. ... 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. Reasonable notice shall include advising the news media who have filed a request for notice with the

governmental body and posting the notice on a bulletin board or other prominent place which is easily accessible to the public and clearly designated for that purpose at the principal office of the body holding the meeting, or if no such office exists, at the building in which the meeting is to be held.

2. a. Notice conforming with all of the requirements of subsection 1 of this section 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.

### **Analysis**

The City did not provide proper notice of the agenda of their meeting in a manner reasonably calculated to apprise the public of what would be addressed at the meeting. The City confirms two items that were not included in prior notice were added to the agenda. Action was taken on those items later in the meeting. The public was not provided knowledge about the potential for these items to be considered and so had no advance notice of the need to attend the meeting to observe these actions being considered.

IPIB staff also notes there is an additional notice violation. The posted notice did not list a time for the meeting, which is required in Iowa Code § 21.4(1). The City violated Iowa Code § 21.4 by failing to provide 24-hour notice of the agenda items to be considered.

Because both complaints are related to the same meeting and the same issue, they should be consolidated. Iowa Code section 23.8 requires that a complaint be within the IPIB's jurisdiction, appear legally sufficient, and have merit before the IPIB accepts a complaint. These complaints meet those requirements.

The formal complaint was accepted by the IPIB on August 17, 2023.

Pursuant to Iowa Code 23.9, the parties negotiated and reached an informal resolution. The parties agree to the following terms:

1. The City Council will acknowledge that there are sufficient facts to show that the notice and agenda of a meeting held on June 12, 2023 was insufficient pursuant to Iowa Code chapter 21.4. This acknowledgement shall be recorded in the minutes of said meeting.
2. The City shall conduct training during an open meeting for all council members and administrative staff on Iowa Code chapters 21 and 22 (Sunshine Laws). The Council shall work with City Attorney and the Iowa League of Cities to provide the training to the Council and officials.
3. The City Council shall approve this resolution during an open meeting and include the full text in the minutes of said meeting. Said minutes shall be provided to the IPIB.

The Delhi City Council approved and signed this resolution on October 9, 2023. Ms. Kramer agreed to this resolution and signed it on September 14, 2023. Mr. Preussner agreed to this resolution and signed it on September 18, 2023. All parties had 60 days to meet the terms of this resolution. The Iowa Public Information Board approved this resolution on October 19, 2023.

The City Council acknowledged a violation of Iowa Code chapter 21. It approved the informal resolution at its October 9, 2023 Council meeting and included the full text in its minutes of the December 11, 2023 Council meeting. A copy of the minutes has been provided to the IPIB.

On December 11, 2023, the Council and Clerk participated in training led by the Iowa League of Cities. All Council members were present, except Brianne Wulfekuhle. Amanda Trebon Boyd presented the training. The minutes of this meeting were provided to the IPIB.

The proof of compliance has been provided. Therefore, the IPIB should dismiss this complaint as successfully resolved.

By the IPIB Deputy Director

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Brett J. Toresdahl

## The Iowa Public Information Board

In re the Matter of:	Case Number: 23FC:0072
Don Benedict, Complainant	Final Report and Order
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 indicated 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. An Informal Resolution was approved by the Board on November 16, 2023.

On December 11, 2023, the IPIB Executive Director provided training on Iowa's Open Meetings and Public Records to the City Council and incoming, newly-elected members of the City Council. All Councilmembers were in attendance except for Ken Brown.

On December 13, 2023, IPIB received confirmation from the city attorney and Mr. Benedict that all terms of the Informal Resolution have been satisfied. Therefore, it is recommended that the Board dismiss the complaint as successfully resolved.

Therefore, pursuant to the terms of the Informal Resolution, this complaint is dismissed as successfully resolved.

So Ordered on December 21, 2023:

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IPIB Chair

## The Iowa Public Information Board

In re the Matter of: Mellisa Mattingly, Complainant And Concerning: City of McCallsburg, Respondent	Case Number: 23FC:0082  <b>Informal Resolution Report</b>
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Daniel Strawhun, Legal Counsel for the Iowa Public Information Board (IPIB), submits this Informal Resolution Report for complaint 23FC:0082:

IPIB accepted this complaint on November 16, 2023. The parties have agreed to informally resolve the complaint. A copy of the informal resolution is attached to this Report.

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

Respectfully submitted on December 21, 2023.

### CERTIFICATE OF MAILING

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

Mellisa Mattingly  
Franklin Feilmeyer, city attorney

# INFORMAL RESOLUTION

23FC:0082

Mattingly/City of McCallsburg

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

IPIB accepted this complaint on the basis that the July 12 closed session likely violated Iowa Code sections 21.4(1)(a) and 21.5(2). Therefore, pursuant to Iowa Code section 23.9, the parties approve an Informal Resolution with the following terms:

1. The City shall contact the Iowa League of Cities and schedule a training session on Iowa Code Chapter 21.
2. The mayor, city council members, and all other employees of the City who play a role in the City's compliance with Chapter 21 shall attend the training session.
3. The City shall notify IPIB staff when it has completed the training and provide the minutes from the training session to confirm attendance of the relevant individuals.

The terms of the Informal Resolution will be completed no later than 60 days from the date the Resolution is signed by all parties. IPIB will dismiss this complaint upon the successful completion of its terms.

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

Mellisa Mattingly  
Mellisa Mattingly

12-13-23  
Date

Megan Walker  
City of McCallsburg

12-13-2023  
Date

By: Megan Walker  
(Print Name) MAYOR

Approved and authorized by action of  
McCallsburg City Council at a meeting  
thereof on December 13, 2023.

[Signature]  
City Attorney

IPIB:

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Date



## The Iowa Public Information Board

In re the Matter of:	Case Number: 23FC:0083
Brendan Chaney, Complainant	Acceptance Order
And Concerning:	
City of Iowa Falls, Respondent	

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

### Facts

Brendan Chaney filed formal complaint 23FC:0083 on August 14, 2023, alleging that the City of Iowa Falls (“City”) violated Iowa Code chapter 21 on July 17, 2023 and July 24, 2023.

Mr. Chaney alleges the City posted an original agenda for a City Council meeting on July 17, 2023, that did not give sufficient information regarding discussion and potential action regarding the operations of the Iowa Falls Police Department Dispatch Center. The agenda simply stated “Discussion and Operations” under “Police Department Operations.” An amended agenda, posted the morning of July 17, 2023, was changed to include “Discussion and Action” under “Police Department Operations.” Mr. Chaney alleges the amended agenda did not provide information sufficient to alert the public regarding the matter under consideration. The amended agenda, he further alleged, was posted less than twenty-four hours prior to the meeting.

Mr. Chaney also alleges the notice for the City Council meeting on July 24, 2023, was posted less than twenty-four hours prior to the meeting. He alleges it was posted on the city’s website the morning of the 4:30 p.m. special meeting. He alleges this meeting was scheduled for an unusual day and time that would not be reasonable for interested parties to attend on such short notice.

Kaci Elkin, City Clerk for the City provided a response for the City. She explained the notice posted for the meeting. The original agenda was sent to *Times-Citizen*, the local paper, on Friday, July 14, 2023, at 10:00 am. On Monday, July 17, 2023 the amended agenda that changed the wording for item #19 from “discussion and operations” to “discussion and action” was sent at 7:52am. Ms. Elkin contends that the Code requires twenty-four hours’ notice “unless for good cause such notice is impossible or impractical, in which case as much notice as is reasonably possible shall be given.” This would have provided at least 8 hours of notice and only changed one word from the original agenda.

Ms. Elkin shared that the notice for the second meeting was sent to the *Times Citizen* on July 21, 2023, at 3:47 p.m. for the July 24, 2023, meeting. Over 72 hours of notice was given.

Jody Anderson, Administrator for the City provided additional explanation. He stated that the change in the July 17 agenda was due to a clerical error identified by one of the council members. Mr. Anderson provided several other council agendas to illustrate their use of terms “discussion and operation” and “discussion and action.” He stated that the notice of the meetings was posted at the front counter of city hall besides being sent to the newspaper. This is their standard procedure. Mr. Anderson also explained that the City knew the discussion would be regarding staffing at the dispatch center and the potential that the City may lose its dispatch if it was not able to be fully staffed and operational for twenty-four hours a day, seven days a week.

### **Law**

[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. Reasonable notice shall include advising the news media who have filed a request for notice with the governmental body and posting the notice on a bulletin board or other prominent place which is easily accessible to the public and clearly designated for that purpose at the principal office of the body holding the meeting, or if no such office exists, at the building in which the meeting is to be held. Iowa Code

...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.

When it is necessary to hold a meeting on less than twenty-four hours’ notice, or at a place that is not reasonably accessible to the public, or at a time that is not reasonably convenient to the public, the nature of the good cause justifying that departure from the normal requirements shall be stated in the minutes. Iowa Code § 21.4.

### **Analysis**

IPIB staff reviewed the circumstances explained as part of this complaint. It appears that the city did post their notice at the city hall to meet the requirements under Iowa Code §21.4(1)(a). The July 17, 2023, notice however was changed with less than twenty-four hours’ notice. The city cited the exemption referenced in Iowa Code §21.4(2)(b), but failed to provide an explanation in the minutes of the meeting regarding why the change was necessary. This did not appear to be an emergency action that could not be delayed until the next meeting which was one week later.

The change in the wording of the agenda indicated that it would be a possible action item but still remained vague as to what the action would be considering. In reviewing other agendas from the city in recent meetings, more details are currently being used to clarify the action of the council.

In responding to the Complaint, the City acknowledged that it knew it would be discussing at least the staffing of the dispatch center. The description in the agenda, even after the revision was still vague and would not have given notice to anyone in the community that this was the topic to be considered.. The issue is not “whether the notice given by the governmental body could have been improved, but whether the notice sufficiently apprised the public and gave full opportunity for public knowledge and participation. In determining whether the public was sufficiently apprised, we may consider the public’s knowledge of an issue and actual participation in events in light of the history and background of that issue.” *KCOB/KLVN, Inc. v. Jasper County Bd. Of Sup’rs*, 473 N.W.2d 171, 173 (Iowa 1991).

The evidence provided by Mr. Chaney indicates that the City’s dispatch was a controversial topic that had received community involvement and interest in the past. Using such a generic topic when typical descriptions of issues are provided could not reasonably provide notice to the community that the dispatch staffing would be discussed.

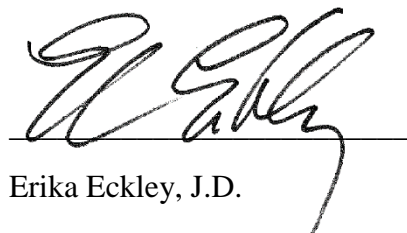
The notice for the July 24, 2023 was sent to the paper three days prior. It is unclear whether posting the agenda in the city hall over the weekend was in such a manner as to be visible and provide notice. Regardless, the agenda topic and revised topic were not sufficiently descriptive to give notice regarding a planned discussion on the City’s dispatch staffing.

Iowa Code section 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 meets those requirements.

IT IS SO ORDERED: Formal complaint 23FC:0118 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.” The IPIB will review this Order on December 21, 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 December 13, 2023, to:

Brendan Chaney

Jody Anderson, City Administrator

# The Iowa Public Information Board

In re the Matter of:  Todd Banner, Complainant  And Concerning:  Iowa State University, Respondent	Case Number: 23FC:0086  <b>Dismissal Order</b>
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COMES NOW, Erika Eckley, Executive Director for the Iowa Public Information Board (IPIB), and enters this Dismissal Order:

On August 23, Todd Banner filed formal complaint 23FC:0086, alleging that Iowa State University (ISU) violated Iowa Code chapter 22.

## Background

On May 10, 2023, the complainant submitted a public records request to ISU. The request sought records related to the boundary between an ISU property and an adjoining property owned by Swamp Fox Properties. The request itself is divided into three separate sub-requests for particular records (hereafter, “Request 1,” “Request 2,” and “Request 3”). A copy of the request is attached to this order as Exhibit A.

ISU estimated that releasing records responsive to Requests 1 and 2 would cost \$1,590, based on an estimated 54 hours of labor by Ann Lelis, ISU’s “public records officer,” who is employed as a paralegal in the General Counsel’s office. The Complainant paid the fee estimate and inquired as to why Request 3 had been omitted from the estimate. On May 26, 2023, ISU provided an itemized invoice showing that the actual time spent completing the request was 49.5 hours, resulting in a total cost of \$1,455. The complainant again asked why Request 3 had not been included in the invoice. On June 9, 2023, ISU stated that no responsive records existed for Request 3, which was why Request 3 had been omitted. ISU refunded the complainant the difference between the estimated and actual costs.

On August 15, 2023, ISU released the responsive records to the Complainant. Thereafter, the Complainant filed this complaint, alleging 1) that ISU did not provide all records requested; and 2) that the fees charged for the request were unreasonable.<sup>1</sup>

In response to the complaint, ISU stated all the records it had withheld were attorney-client privileged or attorney work product. ISU stated that it had released all other responsive documents. Regarding the reasonableness of the fee for the request, ISU stated that the hourly rate it had charged the Complainant was \$30, whereas the public records officer's hourly compensation is \$32.60 per hour.

### Analysis

#### *Reasonableness of fees*

The Complainant alleges that the fee charged for completing his records request was unreasonable. "All reasonable expenses of the examination and copying shall be paid by the person desiring to examine or copy. The lawful custodian may charge a reasonable fee for the services of the lawful custodian or the custodian's authorized designee in supervising the examination and copying of the records." Iowa Code § 23.3(2). "The fee for the copying service as determined by the lawful custodian shall not exceed the actual cost of providing the service. Actual costs shall include only those reasonable expenses directly attributable to supervising the examination of and making and providing copies of public records." *Id.*

Here, ISU has a designated public records officer who handles public records requests, Ann Lelis. Ms. Lelis is compensated at a rate of \$32.60 per hour. Ms. Lelis spent 49.5 hours completing the request. ISU charged the complainant \$30 per hour for the time Ms. Lelis spent completing the request. No other charges were passed on to the Complainant. Therefore, the fee charged to the Complainant did not exceed the actual cost of providing the service.

Regarding the reasonableness of the amount of time spent completing the request, 49.5 hours is not unreasonable given the nature of the request, which was wide in scope and resulted in 9.8 GB of text-based responsive records.

The fee charged for completion of the request did not exceed the actual cost, and the amount of time spent completing the request was reasonable given the nature of the request. Therefore, the Complainant's allegation that the fee was unreasonable lacks merit.

#### *Records withheld*

The Complainant alleges that ISU did not release all the records responsive to his request. In support of this allegation, the Complainant provided emails between his attorney and ISU's legal

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<sup>1</sup> Upon receiving the fee invoice, the Complainant requested copies of the individual billing entries. The University did not provide these entries, and the Complainant noted this in his allegations as well. IPIB staff contacted General Counsel to inquire about this separate records request and was informed that such billing entry records do not exist and thus were not released to the Complainant.

counsel, Paula DeAngelo, which the Complainant contends ISU should have released to him pursuant to his public records request, but did not. In the emails in question, Ms. DeAngelo sent a proposed settlement agreement to the Complainant's attorney.

ISU has stated that all records that were withheld were withheld as privileged attorney-client communications or as attorney work product under Iowa Code § 22.7(4).

Iowa Code section 22.7(4) exempts from disclosure "records which represent and constitute the work product of an attorney, which are related to litigation or claim made by or against a public body."

The attorney-client privilege, which originated as a common law doctrine, is also explicitly codified in the Iowa Code. "Iowa's attorney-client privilege is codified at Iowa Code section 622.10 (2018). 'Any confidential communication between an attorney and the attorney's client is absolutely privileged from disclosure against the will of the client.' The privilege is 'of ancient origin' and 'is premised on a recognition of the inherent right of every person to consult with legal counsel and secure the benefit of his advice free from any fear of disclosure.'" *Konchar v. Pins*, 989 N.W.2d 150, 159 (Iowa 2023) (citations omitted). Attorney-client privileged materials are not subject to disclosure via a public records request: "[T]he [Open Records] Act does not affect other specific statutory privileges recognized by the legislature, such as the attorney-client privilege." *Horsfield Materials, Inc. v. City of Dyersville*, 834 N.W.2d 444, 463 (Iowa 2013).

The attorney-client privilege does not apply to the emails that the Complainant provided because those emails were not communications between attorney and client. However, section 22.7(4) does apply to the emails, as they contain attorney work product in the form of a proposed settlement agreement drafted by ISU's attorney and the mental impressions and opinions of ISU's attorney regarding said agreement.

The Complainant argues that section 22.7(4) does not apply to any of the records withheld, including the emails referenced above, because of the absence of litigation or a claim to which they could be related. The Complainant's argument is unpersuasive. The subject line of the emails is "Swamp Fox/ISU - Fence Boundary Issue." The Complainant's attorney states in the initial terms sent to ISU (to which ISU responded with its own proposed terms) that "Swamp Fox is prepared to take further legal action, including but not limited to mediation or litigation." Thus, the subsequent emails from ISU's attorney were clearly related to a legal claim and litigation.<sup>2</sup>

In its response to the complaint, ISU stated that the Complainant is currently in a property dispute with ISU over the fence boundary of the parties' adjoining properties. It is therefore unsurprising that many of the records sought through this public records request concerning these adjoining

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<sup>2</sup> In interpreting whether a document is prepared in anticipation of litigation in the context of disputes over discoverability of attorney work product under Iowa R. Civ. P. 1.503(3), the Iowa Supreme Court has stated, "If a document or tangible thing may fairly be said to have been prepared or obtained because litigation is foreseeable or ongoing, it constitutes work product; litigation need not be the primary reason for creating or obtaining the materials." *Iowa Ins. Inst. v. Core Group of Iowa Ass'n for J.*, 867 N.W.2d 58, 70 (Iowa 2015).

properties are confidential—either as attorney-client privileged communications between ISU and its attorneys, or as attorney work product related to the boundary dispute.

### Conclusion

The Complainant alleged that the fee ISU charged for the records request was unreasonable. The fee did not exceed the actual cost of the service provided: the hourly rate charged was less than the hourly rate of the employee who completed the work. The amount of time ISU spent completing the request, while large, was reasonable given the extensive nature of the request and the number of records involved. Therefore, the Complainant’s allegation that the fee was unreasonable lacks merit.

The Complainant also alleged that ISU did not release all the records it was required to release. ISU claims all records that were withheld were exempt from disclosure either as attorney-client privileged communications or as attorney work product. The Complainant provided emails that he contends should have been released, but were not. Upon examination of the emails, it appears that they are confidential attorney work product under section 22.7(4). The Complainant’s request concerns properties over which there is an ongoing property dispute. Therefore, the allegation that ISU did not release all the records it was required to release also lacks merit.

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 does not meet those requirements.

IT IS SO ORDERED: Formal complaint 23FC:0060 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 December 21, 2023. Pursuant to IPIB rule 497-2.1(4), the parties will be notified in writing of its decision.

By the IPIB Executive Director

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Erika Eckley, J.D.



This document was sent on December 13, 2023, to:

Todd Banner

Michael E. Norton, General Counsel for Iowa State University

## The Iowa Public Information Board

In re the Matter of:	Case Number: 23FC:0104
Hendrik van Pelt, Complainant	Dismissal Order
And Concerning:	
City of West Des Moines, Respondent	

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

### Facts

Hendrik van Pelt filed formal complaint 23FC:0104 on October 25, 2023, alleging that the City of West Des Moines (“City”) violated Iowa Code chapter 22 on October 25, 2023.

Mr. van Pelt alleges the City did not provide all records that he believes should have been included in his public records request he made on October 2, 2023. In his record request, he asked the city for “a copy of the agreement between the city of West Des Moines and Flock Safety, including any addenda like the deployment plan and reinstall fee schedule.”

Mr. van Pelt believes the City provided a partial response to his request. He claims the documents provided incorporate other documents by reference. Mr. van Pelt states that the documents also show that West Des Moines would arrange any permits needed for Flock Safety to install their hardware on the agreed-upon locations, of which there is no record. He goes on to state, “In the very likely case that those locations include primary roadways, the city would have sent Right of Way Use Permit applications and related documents to Iowa DOT, per the DOT’s Utility Accommodation program.” He believes the City should have these documents and characterizes the absence of them as “an unusual lapse in record-keeping.”

In response, the City stated that it provided a response to Mr. van Pelt’s request on October 3, 2023, which included copies of the April 2023 agreement and July 2023 amendment between the City and Flock Safety. On October 4, 2023, Mr. van Pelt replied by requesting the "Reinstall Policy" and the "Deployment Plan(s)," he believed would be needed to complete the agreement. On October 5, 2023, the City responded to Mr. van Pelt and verified the records provided included all the records in the City’s possession.

The City explained to Mr. van Pelt that “the company [Flock] creates and retains the deployment plan, but it is not retained at the City.” The “Deployment plan” is a working map created and maintained by Flock. City staff reviewed a map online to approve it, but did not create the map,

print it, or save the record in any other means. As for the “Reinstall Fee Schedule,” no such document was provided to the City.

The City contends that “Since the record is not retained by the City in any medium, it does not meet the definition of ‘public record’ under Iowa Code Ch. 22.”

### **Law**

“‘Lawful custodian’ means the government body currently in physical possession of the public record. The custodian of a public record in the physical possession of persons outside a government body is the government body owning that record.” Iowa Code § 22.1(2).

“‘Public records’ includes all records, documents, tape, or other information, stored or preserved in any medium, of or belonging to this state or any county, city, township, school corporation, political subdivision ....” Iowa Code § 22.1(3)(a).

### **Analysis**

IPIB staff reviewed the record request, email communication, and contract. Mr. van Pelt acknowledges he received a portion of the records but believes others records, including the map with the location of the “Falcon” hardware, should have been provided. If the City did not have the document, they should obtain it from Flock or recreate the information from other public works or “as-built surveys.”

The City provided Mr. van Pelt all the records in their possession. The City communicated the records they do not have are the property of the vendor and not subject to Iowa Code chapter 22.<sup>1</sup> The contract stated that Flock would advise the City on “deployment plan” through suggested “designated locations” that the City must approve. This aligns with the City’s statement that it merely signed on and viewed the map provided by Flock, but did not store or preserve the document. The City did not own the record, the vendor did.

Mr. van Pelt suggested that the City work to re-create the document from another source, but that is not required under Iowa Code chapter 22.

Because the City provided all requested documents within its possession, and additional documents requested were the property of the Vendor rather than a public document belonging to the City, there is no violation of Iowa Code.

### **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.

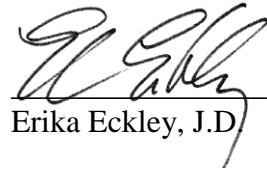
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<sup>1</sup> In fact, the contract includes a web page address for the “re-install policy” that links directly to Flock’s website.

IT IS SO ORDERED: Formal complaint 23FC:0104 is dismissed as legally insufficient pursuant to Iowa Code section 23.8(2) and Iowa Administrative Rule 497-2.1(2)(b). The City provided all records responsive to the request within its possession.

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 December 21, 2023. Pursuant to IPIB rule 497-2.1(4), the parties will be notified in writing of its decision.

By the IPIB Executive Director



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Erika Eckley, J.D.

CERTIFICATE OF MAILING

This document was sent by electronic mail on the December 13, 2023, to:

Hendrik van Pelt  
Jessica Grove, West Des Moines assistant City Attorney

**essica Grove**

Dec 18, 2023, 11:27 AM (1 day ago)

to Erika, Hendrik, Jill, Ryan, me

Good morning,

The City still intends to not participate via telephone at the hearing due to a scheduling conflict, but please respectfully requests the written statement below be submitted to the Board:

“The City of West Des Moines stands on its response to the complaint filed by Hendrik van Pelt (copy attached for convenience). The City would highlight that Mr. van Pelt, by his own statements, understands the City is not in possession of the document he requests. See City’s Exhibit “D” wherein Mr. van Pelt requests the City “re-obtain” the requested documents from Flock. The City will reiterate that it does not and never had any documents pertaining to a “Reinstall Policy” or “Deployment Plan” retained in its records. These documents are created and retained by Flock; thus, do not meet the definition of “public record” contained within Iowa Code Ch. 22. The City respectfully requests the Board adopt the proposed order and dismiss this complaint.

Thank you,

Jessica Grove, Assistant City Attorney for the City of West Des Moines”

## The Iowa Public Information Board

In re the Matter of:  Jeff Law and Kourtney Mammen, Complainant  And Concerning:  River Valley School Board, Respondent	Case Number: 23FC:0105  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 29, 2023, Jeff Law and Kourtnee Mammen (“Complainants”) filed formal complaint 23FC0105, alleging that River Valley School Board (“Board”) violated Iowa Code chapter 21.

### Facts

Complainants allege River Valley School Board had a Board meeting and took a vote on October 16, 2023, to establish sports-sharing activities with the Kingsley Pierson School District (“KPSD”). They allege considering the sport-sharing with KPSD was a very secretive process pushed by a small number of individuals, including two members of the Board. The Complainants allege the vote by the Board on October 16, 2023, was illegitimate because 1) the agenda was not physically posted anywhere (except on the website); 2) the agenda was posted online at 5:00 on Sunday; 3) the agenda posted on Sunday did not have any mention of any kind of sports discussion, let alone a vote; and 4) it was discovered that, someone associated with the Board, modified the agenda after the meeting to include sports sharing with KPSD and there was no vote by the Board at the meeting to change the agenda.

They provided the following additional context. The week prior to the Board meeting there was a meeting with two of the Board members and two of KPSD's members. There were rumors going around among the volleyball athlete's parents about the potential for sports sharing, but no announcements were made to the public. Mr. Law discussed the matter with two of the Board members on Friday, October 13 but neither confirmed the fact they were planning a vote for the meeting on the 16th.

On the day of the Board meeting there were over 100 concerned parents and students in attendance. At the end of the meeting the Board voted to approve sports-sharing. Complainants further allege the vote included no stipulations any high school sports would remain in Correctionville. They are

upset the change is scheduled to begin immediately, even though River Valley had coaches and players lined up for the basketball season and people donated \$5,000 for new jerseys for the high school girls.

In response, the Board admits that no agenda was physically posted, but that they substantially complied with the notice requirement because the agenda was emailed out and posted on the District's website. Further, the Board has taken steps to ensure that physical notices are posted moving forward.

### **Applicable Law**

Iowa Code § 21.4 requires 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. Reasonable notice shall include advising the news media who have filed a request for notice with the governmental body and posting the notice on a bulletin board or other prominent place which is easily accessible to the public and clearly designated for that purpose at the principal office of the body holding the meeting, or if no such office exists, at the building in which the meeting is to be held.”

### **Analysis**

#### ***Agenda not physically posted; instead Agenda posted online at 5:00 p.m. on Sunday***

The Complainants allege that the Board's agenda was not physically posted, but was emailed out and posted on the website. The Board admits that the agenda was not physically posted. Iowa Code § 21.4 requires that an agenda be physically posted.<sup>1</sup> The Board's policies also state that an agenda will be physically posted.<sup>2</sup>

The purpose of open meetings statutes is to require meetings of governmental bodies to be open and permit the public to be present. *KCOB/KLVN, Inc. v. Jasper County Bd. Of Sup'rs*, 473 N.W.2d 171 (Iowa 1991) (citing *Dobrovolny v. Reinhardt*, 173 N.W.2d 837, 84-41 (Iowa 1970)). “When procedures are imposed on county governmental bodies, the standard is substantial rather than absolute compliance with the statutory requirements.” *Id.* at 176 (citing Iowa Code §§ 331.301(1), (5)).

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<sup>1</sup> Reasonable notice shall include ... posting the notice on a bulletin board or other prominent place which is easily accessible to the public and clearly designated for that purpose at the *principal office* of the body holding the meeting, or if no such office exists, *at the building* in which the meeting is to be held.

<sup>2</sup> Policy 210.05: Meeting Notice: Public notice will be given for meetings and work sessions held by the board. Public notice will indicate the time, place, date and tentative agenda of board meetings. The public notice will be posted on the bulletin board in the central administration office at least three days before it is scheduled, but, at the minimum, twenty-four hours' notice needs to be given. Available at <https://simbli.eboardsolutions.com/Policy/ViewPolicy.aspx?S=36030888&revid=So4CTYKB2QT9QrWqMj0vaQ=&ptid=Q9JK4Eqdy16plusdAplusyItEMslshQ==&secid=&PG=6&IRP=0&isPndg=false>

The agenda was posted online and notice of the meeting was sent at least twenty-four hours in advance of the meeting. An email was sent to Complainants (and presumably others) on Friday, October 13 with a link to the agenda that would be available at 5:00 p.m. on Sunday, October 15. The meeting was scheduled for 5:00 p.m. on October 16, so the agenda was provided within the timeframe required in advance of the meeting.

While the agenda was not physically posted on a bulletin board as required under Iowa Code § 21.4, the agenda was electronically delivered. The purpose of requiring that an agenda be posted is to ensure the community has notice of the time, place, and tentative agenda for a scheduled meeting. The Board should have physically posted the agenda as required, but there is no doubt that the community was notified of the time, place, and tentative agenda for the meeting at least twenty-four hours in advance through the direct email communications sent by the Board.

Further, the Complainants state that 100 people attended the Board meeting, so there is no doubt that there was the requisite notice to the community. The Board technically violated the requirement to physically post the agenda, but by emailing out the notice and posting it on the website provided sufficient notice as Complainants state that 100 people attend the meeting. Based on the purpose of providing notice, the fact that notice was given and a significant number of people attended the meeting, the Board substantially complied with the required notice of the time and place for the meeting.<sup>3</sup>

***The agenda did not have mention of any kind of sports discussion, let alone a vote.***

In *KCOB/KLVN*, the Court held that an agenda item that included the employee's name and the well-known company that addressed employee terminations, combined with previous agendas including deliberations on firing the custodian and publicity surrounding the termination of the employee in the community was specific enough to provide sufficient notice to the community. 473 N.W.2d at 173. "[T]he issue to be resolved is not whether the notice given by the governmental body could have been improved, but whether the notice sufficiently apprised the public and gave full opportunity for public knowledge and participation." *Id.*

In *Barrett v. Lode* the court explained that "adequacy of the notice must be determined on the basis of what the words in the agenda would mean to a typical citizen or member of the press who reads it." 603 N.W.2d 766, 770 (Iowa 1999) (explaining the rationale for *KCOB/KLVN* decision). In *Barrett*, the court found a violation when the agenda included only a potential closed session for the school's superintendent, but the Board discussed the administrative needs of the community, contracts, and other items. The Court held that there was "a deliberate decision to discuss an additional topic without showing it on the agenda." *Id.*

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<sup>3</sup> The Board should comply with physically posting the notice as required under the statute in the future.



In an unpublished decision, the court reviewed a challenge to the specificity of an agenda item. *Vandaele v. Board of Education ex rel. Wapsie Valley Community School District*, 2002 WL 575666, \*1 (Iowa App. Mar. 13, 2002). The agenda item stated “building closing study.” *Id.* This item came after the school superintendent sent out a newsletter article about the financial condition of the school and the need to start a process. *Id.* There was also a newspaper article in which he stated that the junior high school should be closed. *Id.* Despite the complaint that the agenda item did not apprise the public about the potential to establish a building study committee, approximately 200 people attended the meeting and the meeting was publicized by members distributing flyers. *Id.* at \*3. The court found, “the tentative agenda, when viewed in the context of surrounding events, sufficiently apprised the public and gave full opportunity for public knowledge and participation in the meeting. *Id.*”

This matter is more similar in nature to *KCOB/KLVN* and *Vandaele*. The Complainant stated that the community was aware that discussions regarding sports sharing were occurring, the Mr. Law had conversations prior to the Board meeting with members regarding the subject, and more than 100 parents and students attended the meeting. The minutes reflect that a number of people took the opportunity to talk about their position on sports sharing during the public comment portion of the meeting, which was at the beginning of the meeting before the agenda item had even come up or been discussed. Based on the knowledge in the community, the extensive participation by the community on the topic during the meeting, it is difficult to find the agenda item was not sufficient to alert the community to the potential deliberations and action by the Board on the topic.

### ***The agenda was modified after the meeting***

Complainants further allege that the Board agenda was revised after the meeting to include more detailed information than what was provided prior to the meeting, but there was no Board vote to amend the agenda.

In regards to this portion of the Complaint, revising the agenda after the fact is certainly not best practice and is not a practice IPIB would condone. There is nothing within Chapter 21 that addresses this as a violation.

### **Conclusion**

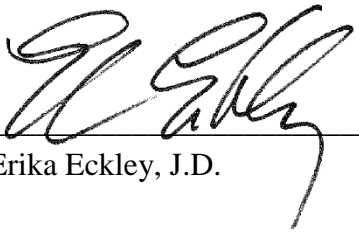
Iowa Code § 23.8 requires that a complaint be within the IPIB’s jurisdiction, appear legally sufficient, and have merit before the IPIB accepts a complaint. Following a review of the allegations on their face, it is found that this complaint does not meet those requirements.

[Click or tap here to enter text.](#)

IT IS SO ORDERED: Formal complaint [Click or tap here to enter text.](#) is dismissed as [Choose an item.](#) 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 [Click or tap to enter a date.](#) 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 [Click or tap to enter a date.](#), to:

[Click or tap here to enter text.](#)

[Click or tap here to enter text.](#)

## The Iowa Public Information Board

In re the Matter of: Clint Fichter, Complainant And Concerning: Iowa Ethics and Campaign Disclosure Board, Respondent	Case Number: 23FC:0106  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

Clint Fichter filed formal complaint 23FC:0106 on November 3, 2023, alleging that the Iowa Ethics and Campaign Disclosure Board violated Iowa Code § 22.7(18) on November 3, 2023.

Mr. Fichter alleges the Iowa Ethics and Campaign Disclosure Board (IECDB) denied his public records request for a complaint that was filed against him. The position of the IECDB is that complaints are exempt pursuant to Iowa Code §22.7(18).<sup>1</sup>

The IECDB replied to Mr. Fichter that a copy of the complaint is not available pursuant to Iowa Code §22.7(18). Mr. Fichter alleges the IECDB improperly denied his request for the complaint filed against him.

Zach Goodrich, Executive Director for the IECDB provided a response to the complaint on behalf of the Board. He stated that on November 3, 2023, his agency received a telephone call from a member of the public regarding a newspaper advertisement placed by Mr. Fichter promoting his candidacy for the Avoca City Council. After the caller described the newspaper advertisement to him, it appeared to be a violation of a campaign disclosure law, and Mr. Goodrich requested the caller email to IECDB a copy of the advertisement. The email only contained a copy of the advertisement.

A copy of the advertisement was provided to Mr. Fichter by email when IECDB informed him of the violation and the remedy set forth in the Iowa Administrative Code. After this contact, Mr. Fichter filed a public records request on November 3, 2023 by emailing "I'd also like a copy of the

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<sup>1</sup> Mr. Fichter argues that "this provision is extremely vague and I am aware of at least one instance in which IPIB has not allowed this theory to protect a complaint." He goes on to explain, "Specifically, earlier this year, IPIB found the City of Sidney to be in violation of Chapter 22 when the Mayor of that City failed to provide emails related to a complaint about an employee to be exempt under that section." [Mr. Fichter miscategorizes the Acceptance, which was that the Mayor refused to turn over any of his emails even to the city attorney to determine whether any records were confidential. Refusal to provide any records and deletion of the records is a violation.]

complaint." The ICEDB responded to Mr. Fichter by saying the complaint, was not available pursuant to Iowa Code section 22.7(18).

According to Mr. Goodrich, the communications regarding the potential violation to the ICEDB office were not required, were made by a member of the public, and ICEDB reasonably believed the individual would be discouraged from making those communications if their identity were released. ICEDB provided all non-identifiable documents related to the request to Mr. Fichter. This was the campaign advertisement provided to ICEDB. The only public document withheld was the name and email address of the individual that contact ICEDB.

Subsequent communications from Mr. Fichter to the agency have reinforced Mr. Goodrich's reasonable belief that the individual who reported this violation would not want their personal information to be disclosed to him. Immediately following the agency's outreach to bring his campaign into compliance, Mr. Fichter sent multiple communications which served no purpose other than to intimidate, harass, and attempt to deter our agency from enforcing the laws he broke.<sup>2</sup>

Mr. Goodrich suggests, "It appears Mr. Fichter filed this complaint with the IPIB (1) to retaliate against our agency in our efforts to enforce the laws in Iowa Code chapter 68A, and (2) to obtain the name and contact information of the individual who reported his illegal conduct in an attempt to retaliate against them as well."<sup>3</sup>

## Law

Iowa Code §22.7(18) allows for the following documents to be withheld as confidential:

"Communications not required by law, rule, procedure, or contract that are made to a government body or to any of its employees by identified persons outside of government, to the extent that the government body receiving those communications from such persons outside of government could reasonably believe that those persons would be discouraged from making them to that government body if they were available for general public examination. ....

Notwithstanding this provision:

- a. The communication is a public record to the extent that the person outside of government making that communication consents to its treatment as a public record.
- b. Information contained in the communication is a public record to the extent that it can be disclosed without directly or indirectly indicating the identity of the person outside of

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<sup>2</sup> Transcript of voicemail left by Clint Fichter to the Iowa Ethics and Campaign Disclosure Board on November 3, 2023 12:20 p.m.: "Hey Zach this is Clint Fichter. I got your message. I'm real disappointed that apparently, people can complain about your stupid rules and you don't even have to tell me anything. And I want you to know that I am going to push you as far as I possibly can. You and your stupid little state agency with your b--ch f---ing bureaucrat job, you are part of the administrative state, you are scum, and I am tired of this government doing these things to the people. I am going to fight you every way I can. Have a great day."

<sup>3</sup> Clint Fichter, November 3, 2023, "I would just as soon fight this ridiculous rule in court. I'm not going to do anything."

government making it or enabling others to ascertain the identity of that person.

c. Information contained in the communication is a public record to the extent that it indicates the date, time, specific location, and immediate facts and circumstances surrounding the occurrence of a crime or other illegal act....”

### **Analysis**

IPIB staff reviewed the record request, email communications between Mr. Fichter and IECDB.

Mr. Fichter asserts that the IECDB response and denial is a plain violation of the law. According to Mr. Fichter, “The administrative rule, 351.9, for the IECDB requires a written complaint on a form provided by the agency under the penalty of perjury. Hence any complaint made to the board is a communication required by law, rule, or procedure. This requirement means that any complaint received by the agency is in fact a public record. The language of the statute is plain and 22.7(18) only applies to "communications NOT required by law, rule, procedure, or contract." Additionally, information contained in the communication is a public record to the extent that it indicates the date, time, specific location, and immediate facts and circumstances surrounding the occurrence of a crime or other illegal act, except to the extent that its disclosure would plainly and seriously jeopardize a continuing investigation or pose a clear and present danger to the safety of any person. The communication received by the IECDB is clearly related to a crime or illegal act and is a public record.”

IECDB stated that the communication was merely an informal complaint made by a phone call to the office with a follow-up email with a copy of the newspaper advertisement. No formal complaint was filed. IECDB will take an informal complaint as a way to help bring campaigns into compliance through efficient informal action.<sup>4</sup>

Mr. Fichter received a copy of the campaign advertisement. Mr. Fichter’s complaint is that IECDB withheld the name and email address of the individual who brought the advertisement to IECDB’s attention. The determination regarding whether the personally identifiable information should be withheld because of a fear that it would discourage others from providing information in the future is to be made by IECDB.<sup>5</sup>

It is reasonable to consider that the member of the public who alerted the IECDB to a possible violation would not want their identity revealed. Mr. Fichter’s aggressive communications to IECDB following contact regarding his advertisement demonstrates IECDB’s reasonable calculation. Mr. Fichter was provided with a redacted email that protected the identity while supplying the evidence regarding the campaign violation.

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<sup>4</sup> IECDB states it has statutory authority to investigate without a formal complaint being filed if there is reason to believe a law has been broken.

<sup>5</sup> “It is the legislative goal to permit public agencies to keep confidential a broad category of useful incoming communications which might not be forthcoming if subject to public disclosure.” *City of Sioux City v. Greater Sioux City Press Club*, 421 N.W.2d 895, 898 (Iowa 1988).

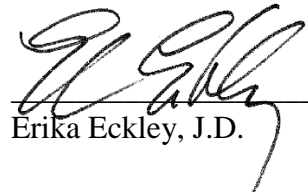
## Conclusion

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.

IT IS SO ORDERED: Formal complaint 23FC:0106 is dismissed as legally insufficient pursuant to Iowa Code section 23.8(2) and Iowa Administrative Rule 497-2.1(2)(b). IECDB redacted personally identifiable information from a public records request pursuant to Iowa Code 22.7(18). A review of the facts and circumstances establishes that the redacted information was not improperly withheld.

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 December 21, 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 December 13, 2023, to:

Clint Fichter

Zach Goodrich, Executive Director, Iowa Ethics and Campaign Disclosure Board

**Re: 23FC:0106 Draft Order**

1 message

**Clint Fichter** <clint.fichter@gmail.com>

Wed, Dec 13, 2023 at 2:56 PM

To: "Eckley, Erika" &lt;erika.eckley@iowa.gov&gt;

Cc: Zach Goodrich &lt;zachary.goodrich@iowa.gov&gt;, "Toresdahl, Brett" &lt;brett.toresdahl@iowa.gov&gt;

I have requested copies of the email you were sent and copies of your phone records. I realize you bureaucratic fools want to ignore the violations of the state like all good bureaucrats do, but they are in violation and this pathetic order doesn't seem to mention that. I am not going to let bags of trash such as yourselves violate my rights and I won't be going away.

On Wed, Dec 13, 2023 at 2:52 PM Eckley, Erika <erika.eckley@iowa.gov> wrote:

Good Afternoon:

The Iowa Public Information Board (IPIB) will review this Order at its meeting on December 21, 2023. The meeting will begin at 1:00 p.m. The meeting agenda and call-in instructions will be posted to the IPIB website on Tuesday, December 19, 2023.

The IPIB meeting is open to the public. You can also attend by telephone. You will need to call into the meeting yourself, we do not contact you. The information to join the meeting will be posted on the agenda.

The IPIB normally allows brief (under five minutes) comments from the parties. If you wish to speak at the meeting, please reply to this email and indicate your agreement to this statement:

\_\_\_\_\_ I want to address the Board and respond to any questions Board members may have when the initial processing of this complaint is considered. In the event this complaint proceeds to a contested case, I waive any objection that I might have concerning personal investigation of this complaint by a Board member.

If you prefer, you can provide brief, written comments to the Board prior to the meeting, please forward those to me no later than 12 p.m. on Monday, December 18, 2023.

**Erika Eckley, JD, MPA**

Executive Director

Iowa Public Information Board (IPIB)

502 East 9th Street

Wallace Building, 3rd Floor

Des Moines, Iowa 50319

(515) 725-1783

[erika.eckley@iowa.gov](mailto:erika.eckley@iowa.gov)[www.ipib.iowa.gov](http://www.ipib.iowa.gov)

**Re: 23FC:0106 Draft Order**

1 message

**Clint Fichter** <clint.fichter@gmail.com>  
To: "Eckley, Erika" <erika.eckley@iowa.gov>  
Cc: Zach Goodrich <zachary.goodrich@iowa.gov>, "Toresdahl, Brett" <brett.toresdahl@iowa.gov>

Wed, Dec 13, 2023 at 2:57 PM

Zach,

I will just copy the IPIB fools on this email.

I am requesting your phone records and the unredacted email you were sent. Please provide those.

Thanks - you bags of shit.

Clint

On Wed, Dec 13, 2023 at 2:52 PM Eckley, Erika &lt;erika.eckley@iowa.gov&gt; wrote:

Good Afternoon:

The Iowa Public Information Board (IPIB) will review this Order at its meeting on December 21, 2023. The meeting will begin at 1:00 p.m. The meeting agenda and call-in instructions will be posted to the IPIB website on Tuesday, December 19, 2023.

The IPIB meeting is open to the public. You can also attend by telephone. You will need to call into the meeting yourself, we do not contact you. The information to join the meeting will be posted on the agenda.

The IPIB normally allows brief (under five minutes) comments from the parties. If you wish to speak at the meeting, please reply to this email and indicate your agreement to this statement:

\_\_\_\_\_ I want to address the Board and respond to any questions Board members may have when the initial processing of this complaint is considered. In the event this complaint proceeds to a contested case, I waive any objection that I might have concerning personal investigation of this complaint by a Board member.

If you prefer, you can provide brief, written comments to the Board prior to the meeting, please forward those to me no later than 12 p.m. on Monday, December 18, 2023.

**Erika Eckley, JD, MPA**

Executive Director  
Iowa Public Information Board (IPIB)  
502 East 9th Street  
Wallace Building, 3rd Floor  
Des Moines, Iowa 50319  
(515) 725-1783  
[erika.eckley@iowa.gov](mailto:erika.eckley@iowa.gov)  
[www.ipib.iowa.gov](http://www.ipib.iowa.gov)



# The Iowa Public Information Board

In re the Matter of:  Jacob Ballard, Complainant  And Concerning:  Perry Community School District, Respondent	Case Number: 23FC:0116  <b>Dismissal Order</b>
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COMES NOW, Erika Eckley, Executive Director for the Iowa Public Information Board (IPIB), and enters this Dismissal Order:

## Background

On November 8, 2023, Jacob Ballard (“Complainant”) filed formal complaint 23FC:0116, alleging that the Perry Community School District (“District”) violated Iowa Code chapter 21.

The District is governed by the Perry Community School Board, which consists of five members. The Complainant alleges that after the adjournment of the board meeting on October 9, 2023, he saw three of the five board members gather with the superintendent and overheard them discussing the District’s early retirement policy.

The Complainant alleges that this discussion was a violation of chapter 21 as it consisted of a majority of the board members and dealt with matters within the scope of the government body’s policy making duties.

The District’s attorney, Miriam Van Heukelem, submitted the District’s response to the complaint. Attached to the response, the District provided four affidavits: one from each of the three board members involved in the alleged violation (Eddie Diaz, Linda Andorf, and Travis Landgrebe) and one from the superintendent, Clark Wicks.

In its response, the District states that board members Diaz and Landgrebe approached Superintendent Wicks after the regular board meeting to schedule a time to discuss forming a committee to explore early retirement policy options for the District. In their respective affidavits, Diaz, Landgrebe, and Wicks all stated that the scope of this conversation was limited to scheduling a time to meet and did not include discussion of substantive policy.

The District states that board member Andorf was not involved in this discussion, but was seated nearby signing documents with the Board's secretary. In her affidavit, Andorf stated the same, noting that she could hear the discussion and that its scope was limited to scheduling a meeting between Diaz, Landgrebe, and Superintendent Wicks to discuss potential early retirement options.

The District states that when Andorf finished signing the documents, she walked over to Landgrebe, Diaz, and Wicks, at which point Landgrebe left the group and exited the room. All of the affidavits state the same.

Thus, the District argues that the events referred to in the complaint do not amount to a violation of chapter 21 because the discussion never consisted of a majority of the Board and, even if it did, the discussion was ministerial in nature, as it related only to the scheduling of a meeting, not the discussion of policy.

### 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."

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.

Here, the Board is five-member body. The discussion with Superintendent Wicks consisted of a gathering of two of the five members. When Andorf approached Diaz, Landgrebe, and Superintendent Wicks, Landgrebe removed himself from the conversation and exited the room. Thus, the gathering was not of a majority of the board members.

Further, the scope of the discussion here was limited to the scheduling of a meeting to discuss the potential formation of a committee for exploring early retirement options for the District. "[A] gathering of members of a governmental body for purely ministerial or social purposes when there is no discussion of policy or no intent to avoid the purposes of this chapter" does not constitute a meeting under chapter 21. Iowa Code § 21.2(2).

Discussion to schedule a meeting is ministerial in nature. Such discussion does not involve deliberation or action within the scope of the governmental body's policy-making duties. Therefore, the discussion here was ministerial in nature and did not violate chapter 21.

### Conclusion

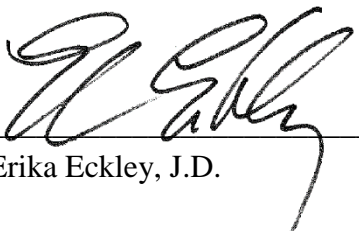
The discussion at issue in this complaint consisted of less than a majority of the Board. Further, the discussion was ministerial in nature because it dealt merely with scheduling rather than matters within the scope of the Board's policy making duties. For these reasons, the complaint lacks merit.

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 on their face, it is found that this complaint does not meet those requirements.

IT IS SO ORDERED: Formal complaint 23FC:0116 is 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 December 21, 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 December 13, 2023, to:

Jacob Ballard  
Miriam Van Heukelem, attorney for Perry Community School District

# The Iowa Public Information Board

In re the Matter of:  Zachary Vulich, Complainant  And Concerning:  City of Leland, Respondent	Case Number: 23FC:0120  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 November 13, 2023, Zachary Vulich filed formal complaint 23FC:0120, alleging that City of Leland (“City”) violated Iowa Code chapter 22.

## Facts

Mr. Vulich alleges he personally handed a “FOIA REQUEST” to the city clerk, the Mayor, the city attorney, the city superintendent, and the City Council. Upon further communications, Mr. Vulich stated that his request was for the personnel records of the city clerk and city superintendent.

In response to the Complaint, the City provided a copy of an email sent to Mr. Vulich stating that the personnel records were confidential, but that additional information required under Iowa Code 22.7(11) could be provided,<sup>1</sup> but Mr. Vulich never responded to the email.

Upon further investigation and communications with Mr. Vulich and counsel for the City, it was determined that the email sent by the City used an old email address for Mr. Vulich that was no longer valid, so he did not receive it.

## Applicable Law

“ Personal information in confidential personnel records of government bodies relating to identified or identifiable individuals who are officials, officers, or employees of the government

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<sup>1</sup> The City’s response had some inaccurate analysis under Iowa Code § 22.7(11), but the matter was cleared up and resolved as appropriate under Iowa Code § 22.7(11).

bodies. However, the following information relating to such individuals contained in personnel records shall be public records:

- (1) The name and compensation of the individual including any written agreement establishing compensation or any other terms of employment ....
- (2) The dates the individual was employed by the government body.
- (3) The positions the individual holds or has held with the government body.
- (4) The educational institutions attended by the individual, including any diplomas and degrees earned, and the names of the individual's previous employers, positions previously held, and dates of previous employment.
- (5) The fact that the individual resigned in lieu of termination, was discharged, or was demoted as the result of a disciplinary action, and the documented reasons and rationale for the resignation in lieu of termination, the discharge, or the demotion. For purposes of this subparagraph, "demoted" and "demotion" mean a change of an employee from a position in a given classification to a position in a classification having a lower pay grade."

### **Analysis**

The delay in responding to this records request was caused by sending the City's response to an inaccurate email for Mr. Vulich. After working with the City and Mr. Vulich, the nonconfidential personnel information sought by Mr. Vulich was provided by the City. IPIB confirmed the information was received by Mr. Vulich.

### **Conclusion**

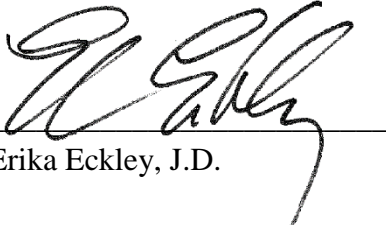
Iowa Code § 23.8 requires that a complaint be within the IPIB's jurisdiction, appear legally sufficient, and have merit before the IPIB accepts a complaint. Following a review of the allegations on their face, it is found that this complaint does not meet those requirements.

Mr. Vulich has received the requested records.

IT IS SO ORDERED: Formal complaint 23FC:0120 is dismissed as it involves harmless error 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 December 21, 2023. Pursuant to IPIB rule 497-2.1(4), the parties will be notified in writing of its decision.

By the IPIB Executive Director

A handwritten signature in black ink, appearing to read 'E. Eckley', is written over a horizontal line. The signature is fluid and cursive.

Erika Eckley, J.D.

CERTIFICATE OF MAILING

This document was sent on December 13, 2023, to:

Zachary Vulich  
Matt Brick, attorney for city of Leland



Strawhun, Daniel <daniel.strawhun@iowa.gov>

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## FW: Fw: IPIB Complaint 23FC:0093 / Phelps Record Request

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**Randy Phelps** <randy.phelps77@yahoo.com>

Thu, Nov 16, 2023 at 11:23 AM

Reply-To: Randy Phelps <randy.phelps77@yahoo.com>

To: daniel.strawhun@iowa.gov, John Slotter <jslotter@booneiowa.gov>

I wish to withdraw my complaint. Thank you all for your time.

[Sent from Yahoo Mail - Shop Smart, Shop Organized](#)

On Thu, Nov 16, 2023 at 10:48 AM, Strawhun, Daniel  
<daniel.strawhun@iowa.gov> wrote:

[Quoted text hidden]



Toresdahl, Brett &lt;brett.toresdahl@iowa.gov&gt;

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**Iowa Public Information Board complaint 23FC:0124**

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**Erik Abderhalden** <eabderhalden@salesforce.com>

Thu, Nov 30, 2023 at 8:20 AM

To: "Bond, Stefanie" &lt;stefanie.bond@dia.iowa.gov&gt;

Cc: "Toresdahl, Brett" &lt;brett.toresdahl@iowa.gov&gt;, Ashleigh Hackel &lt;ashleigh.hackel@dia.iowa.gov&gt;, "PIO [DIA]" &lt;PIO@dia.iowa.gov&gt;, Ed.Wallace@salesforce.com

Ms. Bond,

Thank you for taking the time and effort to review my FOIA request. I would like to formally withdraw my FOIA request to DIAL immediately. I'm appreciative of the office move most recently experienced by DIAL and understand the timing of my request is unfavorable.

Mr. Torresdahl,

I would like to withdraw my formal complaint -IPIB Case Number 23FC:0124 filed last month. I have withdrawn my FOIA request with Iowa DIAL and will have no further need for assistance at this time. Thank you for confirming my case closure.

Sincerely,  
Erik

[Quoted text hidden]

--

Erik Abderhalden  
Lead Solution Engineer | Salesforce  
Mobile: 630/779-5209

--



**Re: Iowa Public Information Board Complaint 23FC:0129**

1 message

**Angie Grote** <agrote@alumni.iastate.edu>  
To: "Eckley, Erika" <erika.eckley@iowa.gov>

Thu, Nov 30, 2023 at 2:08 PM

Yes, you can withdraw my complaint since it doesn't fall within your jurisdiction.

Thanks!  
Angie

On Thu, Nov 30, 2023 at 2:03 PM Eckley, Erika <erika.eckley@iowa.gov> wrote:

Ms. Grote,

I'm sorry, I do not know whether there is a specific state agency that would oversee Chapter 26.

Because it has been determined that your complaint is based on chapter 26 rather than something within our jurisdiction, would you be willing to withdraw your complaint?

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

----- Forwarded message -----  
From: **Angie Grote** <agrote@alumni.iastate.edu>  
Date: Thu, Nov 30, 2023 at 9:30 AM  
Subject: Re: Iowa Public Information Board Complaint 23FC:0129  
To: Toresdahl, Brett <brett.toresdahl@iowa.gov>

Hi Brett -

I'm just following up to see if you know who oversees Chapter 26 of Iowa Code.

Thank you!  
Angie Grote  
712-310-1819

On Tue, Nov 28, 2023, 9:47 AM Angie Grote <agrote@alumni.iastate.edu> wrote:  
Mr. Toresdahl -

Thank you for following up on my complaint. I apologize for Mr. Fichter's unprofessional and demeaning remarks regarding my concerns I brought to the City. I have no personal problem with Mr. Fichter; I don't even know him. But I do have a problem with unlawful practices, and that's where Mr. Fichter should be representing the City of Shelby as he is their attorney. The City Council Meetings are recorded, so anyone can watch to draw their own conclusions by requesting a copy from Marne Elk Horn in Avoca.

To elaborate on my complaint, the City has failed to hold public hearings for public improvement projects over the last 2.5 years. So that would be in violation of Chapter 26 of Iowa Code. I apologize for wasting your time if this is out of your jurisdiction. Do you happen to know which agency can handle my complaint for violating Chapter 26?

Thank you for your time.

Angie Grote

On Mon, Nov 27, 2023 at 11:19 PM Small City Resource Institute <frontdesk@smallcity.org> wrote:  
This complainant alleges no violations of Chapter 21 or Chapter 22 of the Code of Iowa.

This complaint fails to fall within the jurisdiction of IPIB.

For background, this complainant has appeared at two council meetings making bizarre and racist attacks on the City for its discussions with a developer for an affordable housing project.

I'm assuming she named me because she has some petty personal problem with me. The city engaged an engineer for these projects and processes so perhaps she should contact them.

The City has nothing further to provide.

Thanks  
Clint

On Mon, Nov 27, 2023, 11:12 PM Toresdahl, Brett <brett.toresdahl@iowa.gov> wrote:  
Ms. Grote -

The Iowa Public Information Board is in receipt of the formal complaint that you filed against the City of Shelby.

The complaint has been assigned the following number: 23FC:0129.

In your complaint, you indicate that you believe there is a violation to the public records law. Please be more specific about the specific violation of the public records code section that you are alleging. If you made a public records request of the City, please provide a copy of your request.

If you have any additional comments or information, please forward them to the IPIB.

--

*Brett J. Toresdahl, CPM*  
Deputy Director  
Iowa Public Information Board  
[502 E. 9th Street](#)  
[Des Moines, Iowa 50319](#)  
515-725-1781  
[brett.toresdahl@iowa.gov](mailto:brett.toresdahl@iowa.gov)  
Pronouns: he/him/his

--

*Brett J. Toresdahl, CPM*  
Deputy Director  
Iowa Public Information Board  
[502 E. 9th Street](#)  
[Des Moines, Iowa 50319](#)  
515-725-1781  
[brett.toresdahl@iowa.gov](mailto:brett.toresdahl@iowa.gov)  
Pronouns: he/him/his

Active Cases Report

51

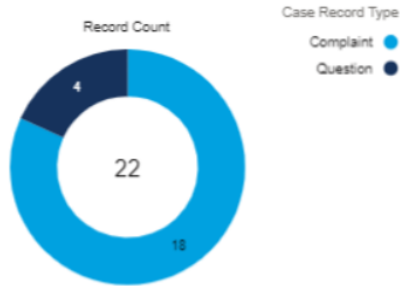
[View Report \(Active Cases Report\)](#)

Active Questions Report

1

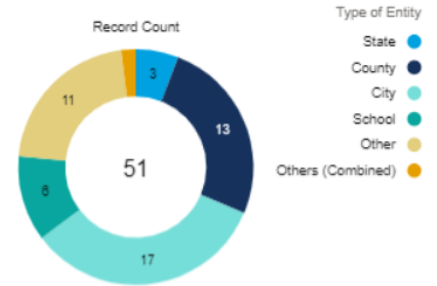
[View Report \(Active Questions Report\)](#)

New complaints &/or question last 30 day



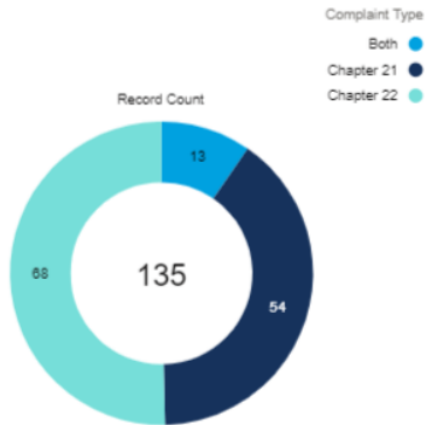
[View Report \(New complaints &/or question last 30 day\)](#)

Cases by Entity



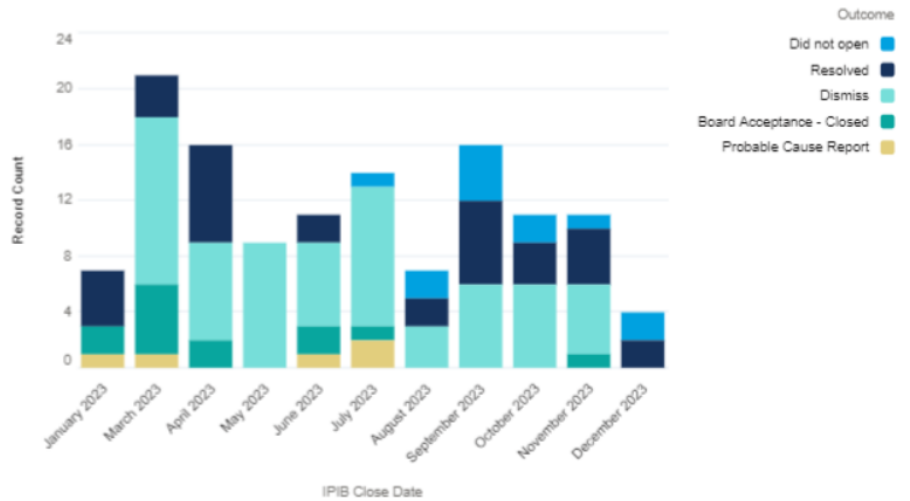
[View Report \(Cases by Entity\)](#)

Broad Type (Filed in Current)



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

Closed cases 2023

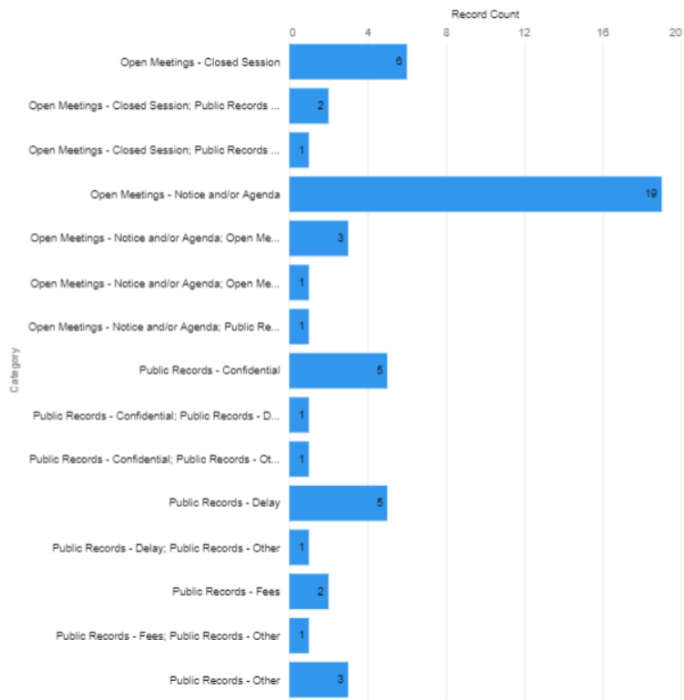


[View Report \(Closed cases 2023\)](#)

Dashboard  
**Cases by Type**

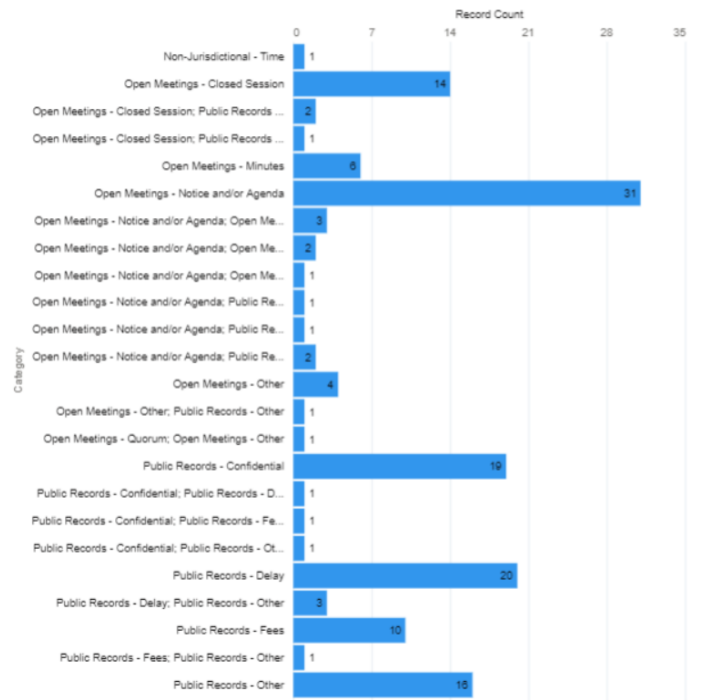
As of Dec 14, 2023 2:16 PM-Viewing as Erika Eckley

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: 12/05/2023

Spec Dept: All Fund: All Unit Detail: All

Run Time: 11:40:19 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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<b>Appropriations TOTAL:</b>		<b>357,407</b>	<b>357,407</b>	<b>358,039</b>
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Receipts

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

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

Expenditures

101	Personal Services-Salaries	118,172	286,459	288,030
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202	Personal Travel In State	443	5,298	117
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301	Office Supplies	637	3,000	2,178
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309	Printing & Binding		500	1
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313	Postage	16	150	54
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401	Communications	1,189	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

FINANCIAL INFORMATION SCHEDULE BY APPROPRIATION

Run Date: 12/05/2023

Spec Dept: All Fund: All Unit Detail: All

Run Time: 11:40:19 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
405	Professional & Scientific Services		9,000	8,050
406	Outside Services	975		325
414	Reimbursement to Other Agencies	4,345	17,000	12,424
416	ITS Reimbursements	12,629	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
<b>Expenditures TOTAL:</b>		<b>138,546</b>	<b>370,950</b>	<b>350,377</b>
<b>Other Dispositions</b>				
91B	Balance Carry Forward (Approps)			13,543
93R	Reversions			13,543
<b>Other Dispositions TOTAL:</b>				<b>27,086</b>
<b>TOTAL DISPOSITION OF RESOURCES:</b>		<b>138,546</b>	<b>370,950</b>	<b>377,462</b>

FTE

FTE Summary

FTE	FTE	3	3
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FTE Summary TOTAL: 3 3

TOTAL FTE: 3 3

Report ID: SCHED 6 DEPT/APPR

STATE OF IOWA

Page: 3 of 3

Source: I/3 Budget

FINANCIAL INFORMATION SCHEDULE BY APPROPRIATION

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**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):	232,404	(0)	
Appropriation P22 FTE:		3.00	2.59
Fund 0001 Net:	232,404	(0)	
Fund 0001 FTE:		3.00	2.59
Department 592 Net:	232,404	(0)	
Department 592 FTE:		3.00	2.59
Special Department 760SD Net:	232,404	(0)	
Special Department 760SD FTE:		3.00	2.59
Report Total Net:	232,404	(0)	
Report Total FTE:		3.00	2.59