

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

Note: This month we are adding a video option to watch the IPIB meeting. If you are unable to connect, the conference call option is still available.

Use the following link to watch the IPIB meeting live:

<https://youtube.com/@IowaPublicInformationBoard?si=g1BNRIAzpZqo8p0N>

or

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

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

Agenda

January 18, 2024, 1:00 p.m.
3rd Floor E/W Conference Room
Wallace Building
502 East 9th Street, Des Moines

1:00 PM – IPIB Meeting

- I. Approval of agenda*
- II. Approval of the December 21, 2023 minutes *
- III. Public Forum (5-minute limit per speaker)
- IV. Comments from the board chair. (McHugh)

- V. Advisory Opinion – Deliberation/Action.
 1. **24AO:0001** – Chapter 21 – Notices for Budget Work Sessions – 1/3/24 - Pending

- VI. Cases involving Board Deliberation/Action. (Eckley)
 1. **23FC:0086** Todd Banner – Chapter 22 – Iowa State University – 8/23/23 – * Dismissal
 2. **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 – * Informal Resolution Report
 3. **23FC:0098** Joseph Foran – Chapter 21 – Audubon City Council 10/10/23 – * Dismissal
 4. **23FC:0104** Hendrik van Pelt – Chapter 22 – City of West Des Moines 10/25/23 – * Dismissal

5. **23FC:0105** Jeff Law/Kourtnee Mammen – Chapter 21 – River Valley School Board 10/29/23 – * Acceptance
6. **23FC:0117** Ellen O’Mally – Chapter 21 – Pleasant Grove Trustees 11/9/23 - * Dismissal
7. **23FC:0125** Adam McCall – Chapter 22 – City of Elk Horn 11/17/23 – * Dismissal
8. **23FC:0128** Scott Flynn – Chapter 22 – Mid-Prairie Comm. School District 11/17/23 – * Dismissal
9. **23FC:0130** Keegan Jarvis – Chapter 21 – Swan City Council 11/27/23 – * Acceptance
10. **23FC:0132** Michael Merritt – Chapter 22 – Powesheik County 11/25/23 – * Dismissal
11. **23FC:0136** Vickie Garske – Chapter 21 – Montour City Council – 12/19/23 – * Dismissal

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 Matters Withdrawn, No Action Necessary.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

1. **23FC:0056** Ruth Bolinger - Chapter 21- Creston City Council 5/22/2023 – * withdrawl
2. **24FC:0002** Cliff Sheakley – Chapter22 – Pocahontas County Assessor – 1/5/24 – * withdrawl

VIII. Pending Complaints. Informational Only (Eckley)

1. **23FC:0053** Debra Schiel-Larson – Both Chapters – Indianola Community School District – 5/1/23 pending
2. **23FC:0060** Dina Raley - Chapter 22- Delaware County Sheriff 6/16/2023 - Pending
3. **23FC:0074** Chad Miller - Chapter 21- Scott County Board of Review 7/18/2023 – Pending
4. **23FC:0082** Mellisa Mattingly – Both Chapters – McCallsburg City Council – 8/3/23 – Pending
5. **23FC:0083** Brendan Chaney – Chapter 21 – City of Iowa Falls – 8/14/23 – Pending
6. **23FC:0100** Travis Johnson – Chapter 21 – Eddysville Blakesburg Fremont CSD Board 10/18//23 – Pending
7. **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 – Consolidation
8. **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 Rempé – Chapter 21 – South Central Regional Airport Agency 11/17/23; **23FC:0123** Drew McGee – Chapter 21 – South Central Regional Airport Agency 11/17/23 – Consolidation
9. **23FC:0118** Leah Schwery – Both Chapters – City of Ute 11/9/23 – Information Gathering
10. **23FC:0119** Richard Hageman – Both Chapters – City of Ute 11/9/23 – Information Gathering
11. **23FC:0126** Tracy Stillwell – Chapter 22 – Hampton Public Library 11/19/23 –
12. **23FC:0127** Hendrik van Pelt – Chapter 22 – City of Clive 11/22/23 –
13. **23FC:0131** Amy McCabe – Chapter 22 – Pleasant Valley School District 11/27/23 – Information Gathering
14. **23FC:0133** Matthew Knowles – Chapter 22 – Crawford Co. Attorney – 12/7/23 – Information Gathering
15. **23FC:0134** Todd Oetken – Chapter 22 – Iowa Dept. of Education – 12/11/23 – Information Gathering
16. **23FC:0135** Andrew Keller – Chapter 22 – City of Webster City – 12/20/23 – Information Gathering
17. **23FC:0137** Adam Callanan – Chapter 21 – Des Moines City Council – 12/21/23- Information Gathering
18. **24FC:0001** Steve St.Clair – Chapter 21 – Winneshiek Co. Bd of Supervisors – 1/3/24 – Information Gathering
19. **24FC:0003** Andrew Kida – Chapter 22 – Clinton County – 1/6/24 – Information Gathering
20. **24FC:0004** Janelle Lund – Chapter 21 – Cedar Rapids Community School District – 1/5/24 – Information Gathering

- IX. Committee Reports
1. Communications – (Toresdahl) – Upcoming meeting February 15, 2024
 2. Legislative – (Eckley)
 3. Rules – (Strawhun) * memo
- X. Office status report.
1. Office Update * (Eckley)
 2. Annual IPIB Report * (Toresdahl)
 3. Financial/Budget Update (FY23) * (Toresdahl)
 4. Presentations/Trainings (Eckley) – City of Elgin; County Assessors Group; Drake Journalism Class
 5. District Court Update (Strawhun)
- XI. Next IPIB Board Meeting will be held in the Wallace Building, 2nd Floor, N/S Conference Room
February 15, 2024 at 11:00 a.m.
- XII. Adjourn *** Attachment**

IOWA PUBLIC INFORMATION BOARD

December 21, 2023

Unapproved Minutes

The Board met on December 21, 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: Joan Corbin, Pella; E. J. Giovannetti, Urbandale; Barry Lindahl, Dubuque (phone); Joel McCrea, Pleasant Hill; Monica McHugh, Zwingle; Jackie Schmillen, Urbandale (phone). Absent: Daniel Breitbarth; Julie Pottorff, Des Moines. 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: Randy Evans, Brendan Chaney, Jody Anderson. Todd Banner, Michael Norton, Hendrik van Pelt, Kourtney Mamman, Kristi Latta, Taylor McDonald, Miriam VanHeukelem.

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

On a **motion** by Lindahl, **second** by McCrea, to approve the November 16, 2023 minutes. Unanimously adopted 5-0.

Public Forum – Randy Evans provided comments regarding complaint #23FC:0105.

Board Chair Comments – McHugh brought to attention that several Board positions will be expiring and if interested in continuing, the Governor’s Office must be notified.

Advisory Opinions –

1. 23AO:0008 Debra Schiel-Larson – Chapter 22 - Draft documents confidentiality exception. 10/11/23. A motion by Giovannetti and second by Corbin to adopt the advisory opinion. Unanimously approved, 5-0.

Note: *Schmellin joined the meeting at 1:13pm by phone*

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

1. 22FC:0069 Mari Radtke - Chapter 22- City of Paulina 7/25/2022. A motion by Giovannetti and second by Lindahl to make a determination that probable cause exists to believe a violation has occurred, but, as an exercise of administrative discretion, dismiss the matter. Approved, 5-1, with McCrea voting nay.
2. 23FC:0063 Laurie Kramer - Chapter 21- City of Delhi 6/19/2023; & 23FC:0063 Greg Preussner – Chapter 21– City of Delhi. A motion by Giovannetti and second by Lindahl to accept the informal resolution final report and to dismiss the complaint as being satisfactorily resolved. Unanimously approved, 6-0.
3. 23FC:0072 Don Benedict – Chapter 22 – City of Sidney – 7/11/23. A motion by Corbin and second by McCrea to accept the informal resolution final report and to dismiss the complaint as being satisfactorily resolved. Unanimously approved, 6-0.

4. 23FC:0082 Mellisa Mattingly – Both Chapters – McCallsburg City Council – 8/3/23. A motion by McCrea and second by Giovannetti to approve the informal resolution report. Unanimously approved, 6-0.
5. 23FC:0083 Brendan Chaney – Chapter 21 – City of Iowa Falls – 8/14/23. Brendan Chaney and Jody Anderson spoke. A motion by Giovannetti and second by Corbin to approve the acceptance order. Unanimously approved, 6-0.
6. 23FC:0086 Todd Banner – Chapter 22 – Iowa State University – 8/23/23. Todd Banner and Michael Norton spoke. A motion by McCrea and second by Lindahl to table the matter for further review. Unanimously approved 6-0.
7. 23FC:0104 Hendrik van Pelt – Chapter 22 – City of West Des Moines 10/25/23. Hendrik van Pelt spoke. A motion by McCrea and second by Corbin to table the matter for further review. Unanimously approved 6-0.
8. 23FC:0105 Jeff Law/Kourtnee Mammen – Chapter 21 – River Valley School Board 10/29/23. Kourtney Mamman and Kristi Latta spoke. A motion by Lindahl and second by Corbin to table the matter to redraft order as an acceptance and bring back to the Board. Unanimously approved 6-0.
9. 23FC:0106 Clint Fichter – Chapter 22 – Iowa Ethics and Campaign Board 11/3/23. Taylor McDonald spoke. A motion by Giovannetti and second by McCrea to approve the dismissal order. Unanimously approved, 6-0.
10. 23FC:0116 Jacob Ballard – Chapter 21 – Perry Community School Board 11/8/23. Miriam VanHeukelem spoke. A motion by Lindahl and second by Giovannetti to approve the dismissal order. Unanimously approved, 6-0.
11. 23FC:0120 Zachary Vulich – Chapter 22 – City of Leland 11/13/23. A motion by McCrea and second by Giovannetti to approve the dismissal order. Unanimously approved, 6-0.

Matters Withdrawn. No Action -

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

Pending complaints that required no board action. Informational

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
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 – Eddyville 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

Committee Reports

1. Communications – Possible meeting next month
2. Legislative – Legislative session starts January 8, 2023
3. Rules – The meeting scheduled for November 21, 2023 did not have a quorum.
Strawhun will begin the process of the Red-Tape review for the committee to
consider.

Updates for the board.

- a. Eckley provided an office update and current statistics. Daniel is anticipating being on paternity leave at some point in January.
- b. Toresdahl shared the FY24 financials.
- c. Upcoming presentations:
 - City of Elgin
 - County Assessors Group
 - Drake Journalism Class
- 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**, January 18, 2024 at 1:00 p.m.

At 3:45 p.m. the meeting adjourned on a motion by Giovannetti and a second by Corbin. Unanimously approved.

Respectfully submitted
Brett Toresdahl, Deputy Director

IPIB, Chair
Approved

The Iowa Public Information Board

In re the Matter of: Todd Banner, Complainant And Concerning: Iowa State University, Respondent	Case Number: 23FC:0086 Revised 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 August 23, 2023, 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”).

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.

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.

At the December 21, 2023, IPIB meeting, a proposed dismissal order of the complaint was presented to the Board. After hearing the parties' comments, the Board tabled the proposed dismissal order and directed IPIB staff to conduct further investigation. Specifically, the Board asked ISU clarify what types of files the records that were reviewed consisted of. The Board also asked ISU to explain in more detail why the records request took 49.5 hours to complete.

ISU provided the following response to the Board's additional questions:

1. The search terms requested by Mr. Banner resulted in the identification of 248,904 pages of records, all of which had to be reviewed at some level. Ms. Lelis' review of these records took 49.5 hours, meaning that she reviewed approximately 5,208 pages per hour or 84 pages per minute on average. These numbers suggest that her review was incredibly efficient. Obviously, because much of the data on its face was not related to the issue identified by Mr. Banner, she was able to move through some material very quickly. However, each record had to have some level of review. Some files that hit search terms did contain videos, excel files, .pdfs and other larger data items that were not related to Mr. Banner's request. The amount of data was a direct result of Mr. Banner's broad request.
2. Mr. Banner's request sought those documents "related" to the property boundary issue. Had the University been required to produce all records that hit the identified search terms, Ms. Lelis' review would have taken much longer. While many of the records were clearly not related to the boundary dispute, they may have included student, employee, or other confidential categories of information. Once they were deemed to not relate to the boundary dispute, they were not reviewed closely for other confidentiality issues. If they had be subject to closer review in contemplation of production, many more hours would have been needed and charged.

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 sought information related to an ongoing property dispute between the parties. As ISU stated, the Complainant’s request “resulted in the identification of 248,904 pages of records, all of which had to be reviewed at some level.”

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 scope of the request and the nature of the information sought. 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 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 privileged attorney-client communications or attorney work product confidential under Iowa Code § 22.7(4).

“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). “[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).

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 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.¹

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

¹ 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).

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. Furthermore, the amount of time ISU spent completing the request, 49.5 hours, was reasonable given the scope of the request and the nature of the records sought. 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 it 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 information related to an ongoing boundary dispute between the parties. It is unsurprising that much of the information sought would consist of privileged attorney-client communications and attorney work product. For these reasons, the allegation that ISU improperly withheld records 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 January 18, 2024. 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 January 9, 2024, to:

Todd Banner

Michael E. Norton, General Counsel for Iowa State University

In re the Matter of: Leslie Wiles & Pauletta Cox, Complainants And Concerning: Redfield Public Library, Respondent	Case Number: 23FC:0096 & 23FC:0097 Informal Resolution Report
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Leslie Wiles filed formal complaint 23FC:0096 on October 9, 2023, alleging that the Redfield Public Library violated both Iowa Code chapter 21 & 22 on August 11, 2023 & August 30, 2023.

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

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

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

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

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

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

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

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

agenda or minutes were not done for the August 11th meeting as we were considering this as an informal meeting.

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

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

Law

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

Iowa Code §21.4(2)(a): ...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.

Iowa Code §21.3: Meetings of governmental bodies shall be preceded by public notice as provided in section 21.4 and shall be held in open session unless closed sessions are expressly permitted by law. Except as provided in section 21.5, all actions and discussions at meetings of governmental bodies, whether formal or informal, shall be conducted and executed in open session.

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

Analysis

Both of these complaints make the same allegations regarding the same meetings. IPiB staff reviewed the allegations and responses in these two complaints. The meeting held on August 11,

2023 does not appear to have included a quorum of the Board. The meetings held on August 30, 2023 and October 8, 2023 did have a quorum present but did not provide notice to the public or provide an agenda for their meeting. Staff finds it concerning that this Board considers that some meetings are not official meetings and therefore they do not follow the requirements included in Iowa Code chapter 21.

Staff believes that training of this Board is necessary to ensure that the public has access to business of this governmental body and the Board functions in a transparent manner. The Redfield Public Library Board violated Iowa Code chapter 21 on two occasions. There were no allegations presented regarding a violation of chapter 22.

The formal complaint was accepted by the IPIB on November 16, 2023.

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

1. The Redfield Public Library Board will acknowledge at an open meeting that there are sufficient facts to show that the notice, agenda, and minutes of a meeting held on August 30, 2023 and October 8, 2023 was insufficient pursuant to Iowa Code §21.3 and §21.4. This acknowledgement shall be recorded in the minutes of said meeting and minutes shall be provided to the IPIB.
2. The Redfield Library Board shall conduct training during an open meeting for all board members and staff on Iowa Code chapters 21 and 22 (Sunshine Laws). The Board shall work with Adam Doll, attorney and the Iowa Public Information Board to provide the training to the Board and staff.
3. The Redfield Library Board 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 terms of this informal resolution will be completed within 60 days of acceptance by all parties. Upon showing proof of compliance, the IPIB shall dismiss this complaint as successfully resolved.

Ms. Wiles approved the informal resolution on December 4, 2023.

Ms. Cox approved the informal resolution on December 4, 2023.

The Redfield Public Library Board approved the informal resolution on December 4, 2023.

The IPIB Deputy Director recommends that the IPIB approve the informal resolution and authorize the IPIB Chair to sign the informal resolution on behalf of the IPIB.

By the IPIB Deputy Director

Brett J. Toresdahl

The Iowa Public Information Board

In re the Matter of: Joseph Foran, Complainant And Concerning: City of Audubon, Respondent	Case Number: 23FC:0098 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 10, 2023, Joseph Foran filed formal complaint 23FC:0098, alleging that City of Audubon violated Iowa Code chapter 21.

Facts

Mr. Foran alleges the City Council is conducting meetings via email to decide on contractors and committee members outside of public meetings and with the complete exclusion of one council member. He alleges he has been told of some of these decisions and at a meeting members for a board were placed on a future resolution without advertising to the public the opportunity or trying to make it gender-balanced.

In response, the City states that the email communications may have included a majority of the City Council, but the communications involved only ministerial or social issues rather than deliberative matters within the scope of the City's policy-making duties.

Applicable Law

The requirements set forth in chapter 21 of the Iowa Code apply to meetings of governmental bodies. A meeting is defined as "a gathering in person or by electronic means, formal or informal, of a majority of the members of a governmental body where there is deliberation or action upon any matter within the scope of the governmental body's policy-making duties. Meetings shall not include 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." Iowa Code § 21.2(2). Thus, a meeting subject to chapter 21 consists of four elements:

1. A formal or informal gathering of members of a governmental body;

2. In such a number so as to constitute a majority;
3. During which deliberation or action occurs; and
4. Such deliberation or action is within the scope of the governmental body's "policy-making duties."

See 1981 Iowa Op. Att'y Gen. 162 (1981).

"The distinction between ministerial gatherings and policy-making gatherings is subtle. A gathering for 'purely ministerial' purposes may include a situation in which members of a governmental body gather simply to receive information upon a matter within the scope of the body's policy-making duties. During the course of such a gathering, individual members may, by asking questions, elicit clarification about the information presented. We emphasize, however, that the nature of any such gathering may change if either "deliberation" or "action" [as defined earlier in the opinion] occurs. A meeting may develop, for example, if a majority of the members of a body engage in any discussion that focuses at all concretely on matters over which they exercise judgment or discretion." *Dooley v. Johnson Cnty. Bd. of Supervisors*, 2008 WL 5234382, *4 (Iowa App. Dec. 17, 2008). The topic of the conversations and the intent behind the gathering are important ... "[p]ersons serving on governmental bodies should be constantly aware that their activities are subject to public scrutiny and should avoid even the appearance of engaging in unauthorized closed sessions." *Id.* (citations omitted).

Analysis

IPIB staff reviewed the emails provided in support of the Complaint. The emails provided were sent to five council members, the mayor, and the city clerk.

The emails provided included the following:

- An email sharing some success of another city and raising the question of whether the city is applying for grants. There were two replies to the full Council. One was from the city clerk and one was from a council member. A majority of the Council did not participate in this discussion.
- An email is sent making a recommendation regarding a specific wage adjustment percentage rate to be discussed at the special meeting on the 26th. No replies to this email were included. A majority of the Council did not participate in this discussion.
- An email provided is a quote for completion of a comprehensive plan forwarded by the city clerk. The email reply to the entire Council states the item is not on the agenda for the meeting, but that the quote seems too high for a document they rarely use. No other responses were provided. A majority of the Council did not participate in this discussion.
- Another email includes concerns about the sale of a property, including the tax consequences based on its eventual use and the need to print the notice of the sale in the paper. A reply suggests involving the city attorney to draft a notice. A majority of the Council did not participate in this discussion.

- An email includes follow up with an individual to get a quote for a mural with a request to get a key to allow measurements for the quote. There is one reply acknowledging it. A majority of the Council did not participate in this discussion.

In reviewing the emails, the issues are whether inclusion of the entire Council on the email chain constitutes a majority of the members in a gathering and whether the email discussion amounted to “deliberation.”

Was There Deliberation?

In *Dooley*, the court found that the when a contractor sought feedback, opinions, and input from the council members on its draft, the decision to meet as a majority on a project to be voted on in a public meeting was “dangerously close to ‘deliberation.’” *Id.* at * 5. The court warned that “absent any intention to deliberate, such discussions could arise effortlessly. We believe that the board’s decision to review the draft in this fashion was a poor one.” *Id.* (citations omitted).

“Gathering for ‘purely ministerial’ purposes may include a situation in which members of a governmental body gather simply to receive information upon a matter within the scope of the body’s policymaking duties. During the course of such a gathering, individual members may, by asking questions, elicit clarification about the information presented. We emphasize, however, that the nature of any such gathering may change if either ‘deliberation’ or ‘action’, as defined above, occurs. A ‘meeting’ may develop, for example, if a majority of the members of a body engage in any discussion that focuses at all concretely upon matters over which they may exercise judgment or discretion.” 1981 Iowa Op. Atty. Gen. 162 (Iowa A.G.), 1981 WL 178383.

The topics of some of the emails included subjects within the scope of the Council’s policy-making duties. There were emails about applying for grants for the City, recommendations on the sale of property, the costs of comprehensive plans, and raises for city staff. Some of the email chains began with an email sharing information, but the replies included questions and comments regarding the matters.

The email chains likely amounted to deliberation by the Council.

Was there a majority?

The formation of a meeting under Chapter 21, requires that a majority of the government body participate in the gathering of members. The entire Council was copied on the emails, but at no time did a majority of the members participate in the discussion. In fact, most of the replies were from the same council member.

In a previous Complaint before the IPIB, it was determined that when government officials were merely copied on an email, but did not actively participate as a group in deliberation in such

numbers constituting a majority of the members that the formation of a meeting could not be inferred from passively being copied on the email chain. 13FC:0007 - 11/14/2013 - Wallace D. Parrish / Cedar Falls Iowa City Council.

In these email chains, because no majority ever actively participated, a meeting under Chapter 21 was never formed. A majority of the members of the Council is a necessary element for the formation of a meeting.

While these email chains did not constitute a meeting in violation of Chapter 21 requirements, the City is cautioned with the following advice the IPIB has previously provided:

- “It is prudent for governmental bodies to advise members to avoid engaging in deliberation through electronic means such as text or email without following the requirements of an electronic meeting set forth in Iowa Code section 21.8.” 21FC:0110 Ellen Heather/Mitchellville Library Board - Dismissal Order
- “[T]he City is cautioned to avoid sending mass communications to all council members and to avoid using the ‘reply all’ feature to emails. Utilizing the ‘bcc’ feature for addressing emails to all council members is considered the best practice.” 17FC:0086 Anthony Schrad/City of Eldora - Dismissal Order

Conclusion

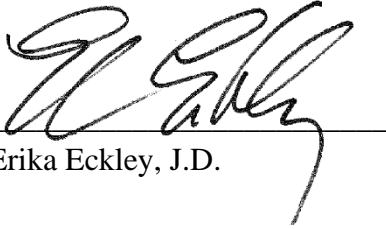
Iowa Code § 23.8 requires that a complaint be within the IPIB’s jurisdiction, appear legally sufficient, and have merit before the IPIB accepts a complaint. Following a review of the allegations on their face, it is found that this complaint does not meet those requirements.

The City Council was copied on email chains that included “deliberation”, but the entire Council’s inclusion in the email chain constituted only passive activity and a majority of members did not participate, so the emails never constituted a meeting subject to Chapter 21.

IT IS SO ORDERED: Formal complaint 23FC:0098 is dismissed as it is legally insufficient pursuant to Iowa Code § 23.8(2) and Iowa Administrative Rule 497-2.1(2)(b).

Pursuant to Iowa Administrative Rule 497-2.1(3), the IPIB may “delegate acceptance or dismissal of a complaint to the executive director, subject to review by the board.” The IPIB will review this Order on January 18, 2024. 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.

Erika Eckley, J.D.

CERTIFICATE OF MAILING

This document was sent on January 10, 2024, to:

Joseph Foran
Ted Wonio, attorney for city of Audubon

The Iowa Public Information Board

In re the Matter of:	Case Number: 23FC:0104
Hendrik van Pelt, Complainant	Revised 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.”

Following the IPIB Board meeting on December 21, 2023, staff was asked to seek additional information from the City regarding questions they had about the records response. Staff contacted Ms. Grove to confirm that the City did not possess the records identified by Mr. van Pelt as the “deployment plan” and the “reinstall fee schedule.” She confirmed this was true. She also indicated that the City would not seek to acquire the documents from the third party vendor as that is not required under Iowa Code chapter 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 22.¹ 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

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

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 also alleges that the failure by the City to create or retain these documents from the vendor results in poor record keeping. Chapter 22, however, does not outline any retention requirements, so there is no violation for failing to create or retain a document.

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, 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.

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 January 18, 2024. 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 January 10, 2024, to:

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

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 Acceptance 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.¹ The Board's policies also state that an agenda will be physically posted.²

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 *Dobrovlny 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

¹ 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.

² 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>

absolute compliance with the statutory requirements.” *Id.* at 176 (citing Iowa Code §§ 331.301(1), (5)). The agenda was posted online and notice of the meeting was sent at least twenty-four hours in advance of the meeting. At the previous IPIB Board meeting, it was stated that an email was sent out to Board members on Friday, October 13 with a link to the agenda that would be available at 5:00 p.m. on Sunday, October 15. The website posted the agenda on Sunday, October 15 at 5:00 p.m. for the District constituents. 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.

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. Currently, posting an agenda on a website does not meet the plain language of Iowa Code § 21.4.

The Complainants admit that 100 people attended the Board meeting, so there is no doubt that there was notice to the community. The Board did, however, technically violate the requirement to physically post the agenda.

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.*

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, 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.

The IPIB at its meeting on December 21, 2023, determined the agenda item listed was insufficient to alert the community to the potential deliberations and action by the Board and directed staff to issue an Acceptance Order in this matter.

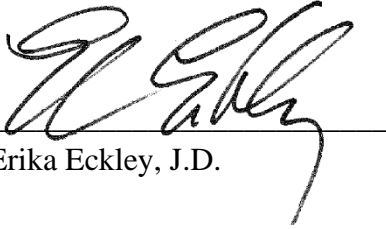
Conclusion

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

IT IS SO ORDERED: Formal complaint 253FC:0105 is accepted pursuant to Iowa Code § 23.8(1) and Iowa Administrative Rule 497-2.1(2)(a).

Pursuant to Iowa Administrative Rule 497-2.1(3), the IPIB may “delegate acceptance or dismissal of a complaint to the executive director, subject to review by the board.” The IPIB will review this Order on January 18, 2024. 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', written over a horizontal line.

Erika Eckley, J.D.

CERTIFICATE OF MAILING

This document was sent on January 10, 2024, to:

Jeff Law

Kourtnee Mammen

Kristy Latta, attorney for River Valley School Board

The Iowa Public Information Board

In re the Matter of: Ellen O’Mally, Complainant And Concerning: Pleasant Grove Township Respondent	Case Number: 23FC:0117 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

Ellen O’Malley filed formal complaint 23FC:0117 on November 9, 2023, alleging the Pleasant Grove Township Trustees (Trustees) violated Iowa Code § 21.3 on September 29, 2023.

Ms. O’Malley alleges that on September 29th, 2023, Trustee Norm Frye and Township Clerk Ray White removed the Pleasantville cemetery grave digger from his duties. No other trustees were present to approve such action. A meeting was scheduled for Saturday October 7, 2023. The Trustees wanted to have the meeting and then go to the cemetery and view damaged stones. The Township Clerk told two Trustees the meeting was cancelled. But the meeting was still conducted by Mr. White and Trustee Frye. No agenda was noticed nor minutes taken.

Trustee Aubrey Burress provided a response to the complaint. She stated that she received an email from Mr. White indicating that a meeting was scheduled for October 7, 2023, but due to a conflict, the Trustees would only have two hours to hold their meeting. Trustee Burress contacted Trustee DeJoode and they both agreed that the meeting should be rescheduled because they would need more time than two hours to conduct all the business necessary. On Friday, October 6, 2023, both she and Mr. DeJoode received emails from Mr. White that said “No Meeting.” Trustee Burress later found out that Mr. White and Trustee Frye went ahead with the meeting. Neither she nor Trustee DeJoode attended the meeting.

Mr. White also provided a response to the complaint. He stated that the scheduled meeting could not take place because they did not have a quorum of Trustees. Mr. White explained he went ahead and held the meeting because some citizens planned to attend. He did not want the citizens to think the Trustees were intentionally postponing meetings. He stated the meeting on October 7, 2023 was not an official Township meeting. No quorum was met, so minutes were unnecessary.

Law

“‘Meeting’ means a gathering in person or by electronic means, formal or informal, of a majority of the members of a governmental body where there is deliberation or action upon any matter within the scope of the governmental body’s policy-making duties. Meetings shall not include 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.” Iowa Code § 21.2.

Analysis

IPIB staff reviewed the issues alleged in this complaint. The township has three elected trustees which would mean that a quorum would consist of two members. It is also staffed by a Township Clerk.

Both of the situations stated in this complaint occurred with only one Trustee present and the Clerk. The definition of a meeting requires a quorum of the governmental body. Without a quorum, no meeting under Chapter 21 was held. Without a quorum, no action could be taken by the Trustees.¹

Conclusion

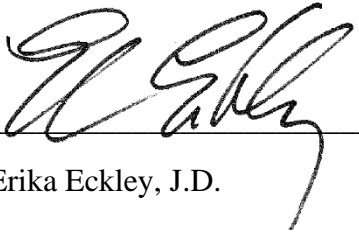
Iowa Code section 23.8 requires that a complaint be within the IPIB’s jurisdiction, appear legally sufficient, and could have merit before the IPIB accepts a complaint. This complaint does not meet those requirements.

IT IS SO ORDERED: Formal complaint 23FC:0117 is dismissed as legally insufficient pursuant to Iowa Code section 23.8(2) and Iowa Administrative Rule 497-2.1(2)(b). The Pleasant Grove Township Trustees did not violate any part of the open records code section.

Pursuant to Iowa Administrative Rule 497-2.1(3), the IPIB may “delegate acceptance or dismissal of a complaint to the executive director, subject to review by the board.” The IPIB will review this Order on January 18, 2023. Pursuant to IPIB rule 497-2.1(4), the parties will be notified in writing of its decision.

¹ It is strongly suggested the Marion County Attorney meet with the Pleasant Grove Township Trustees at an open meeting to review Iowa Code chapter 21.

By the IPIB Executive Director



Erika Eckley, J.D.

CERTIFICATE OF MAILING

This document was sent by electronic mail on the January 10, 2023, to:

Ellen O'Malley
Ross Gibson, Assistant County Attorney, Marion County

The Iowa Public Information Board

In re the Matter of:	Case Number: 23FC:0125
Adam McCall, Complainant	Dismissal Order
And Concerning:	
City of Elk Horn, Respondent	

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

On November 17, 2023, Adam McCall filed formal complaint 23FC:0125, alleging that City of Elk Horn violated Iowa Code chapter 22.

Facts

Adam McCall alleges that he requested records on October 27, 2023, and the City had not replied or acknowledged the request.

In response, the city, through their attorney, stated that the city had identified 86 records that were not confidential or closed session records that would be released upon payment of the costs by Mr. McCall.

The parties agreed to work to ensure the record requests were addressed and completed.

Applicable Law

“Every person shall have the right to examine and copy a public record and to publish or otherwise disseminate a public record or the information contained in a public record.” Iowa Code § 22.2(1).

Analysis

After this Complaint was filed, the parties agreed to work together on the records request. IPIB staff continued to monitor the status of the matter. Completion of the request took some additional time due to some technical issues with audio files. On January 8, 2024, Mr. McCall confirmed that he had received all of his record requests.

Conclusion

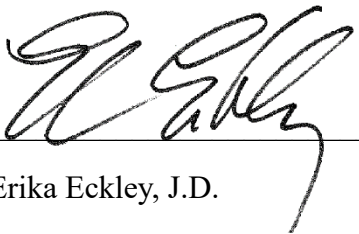
Iowa Code § 23.8 requires that a complaint be within the IPIB's jurisdiction, appear legally sufficient, and have merit before the IPIB accepts a complaint. Following a review of the allegations on their face, it is found that this complaint does not meet those requirements.

The parties have worked together to complete the records request.

IT IS SO ORDERED: Formal complaint 23FC:0125 is dismissed as it involves an incident that has been resolved.

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 January 18, 2024. 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 January 10, 2024, to:

Adam McCall

Clint Fichter, attorney for City of Elk Horn

The Iowa Public Information Board

In re the Matter of: Scott Flynn, Complainant And Concerning: Mid-Prairie Community School District, Respondent	Case Number: 23FC:0128 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 17, 2023, Scott Flynn filed formal complaint 23FC:0128, alleging that Mid-Prairie Community School District (“District”) violated Iowa Code chapter 22.

Facts

Mr. Flynn states he submitted a public records request with the District on September 29, 2023, requesting: “a copy of all exit interviews completed with respect to all employees that ended their employment during or at the conclusion of the 2022-23 school year. This request would include all forms completed, summaries and reports based upon said exit interviews.”

Minutes from the August 15, 2023, District meeting indicate that “Superintendent Stone provided the Board with a Summary of findings from the Exit Surveys completed with Human Resource Coordinator, Carmela Ulin. He noted the items that were themes, both liked and disliked. He discussed some of the points of emphasis and focus areas for the upcoming school year for himself and the Administrators both at the building levels and at the district level.”

Through a series of communications with the District’s records custodian, Mr. Flynn was notified that the District was withholding any responsive documents as confidential under Iowa Code § 22.7(18). The District further stated that “summaries and reports based upon said exit interviews” did not exist and the District is not obligated to create such records; and none of the records requested have been previously disclosed by the District. The District states that the report provided to the Board was oral and nothing written was available to provide beyond what is shown in the meeting minutes.

Mr. Swartzentruber's letter addressed the concerns raised in the Complainant's October 11, 2023 letter and specifically stated: (1) the exit interviews were completed after the individuals had ended their employment with the District; (2) specifically addressed the three exceptions set out in section 22.7(18) and explained why they were not applicable to the requested records; and (3) stated the District had no records of summaries and reports based upon the exit interviews and the District was not required to create records that did not exist in response to the Complainant's request.

The District also states that the exit interviews would also be confidential under Iowa Code § 22.7(11) "personal information in confidential personnel records of government bodies relating to identified or identifiable individuals who are officials, officers, or employees of the government bodies." "Although the exit interviews were completed by individuals who had submitted their resignations, the exit interviews were included in the individual's confidential personnel records as they related to their employment similar to the practice of including employment applications in confidential personnel records of individuals who are hired as employees."

Applicable Law

A communication to a government body can be kept confidential under Iowa Code section 22.7(18) only if all of the following exist:

1. The communication is not required by law, rule, procedure, or contract.
2. It is from identified persons outside of government.
3. The government body could reasonably believe those persons would be discouraged from communicating with government if the information was made public.
4. And, nevertheless, the information can still be released if the person communicating with government consents to its release or if it can be released without identifying the person.

There are three exceptions to the area of confidentiality described in this statute. These relate to (a) consent of the communicating party, (b) information which may be disclosed without identifying its source, and (c) information surrounding the occurrence of a crime. *City of Sioux City v. Greater Sioux City Press Club*, 421 N.W.2d 895, 898 (Iowa 1988).

Under Iowa Code § 22.7(11)(a), with the exception of the name and compensation, dates of employment, positions held, education and previous employment, and whether the individual was terminated or demoted, "[p]ersonal information in confidential personnel records of government bodies relating to identified or identifiable individuals who are officials, officers, or employees of the government bodies" is confidential. *See also ACLU v. Atlantic Cmty. Sch. Dist.*, 818 N.W.2d 231 (Iowa 2012).

Analysis

IPIB staff confirmed that no document summarizing the results of the exit interviews exist. Chapter 22 does not require a government entity to create a document that does not exist. The question, therefore, is whether the exit interviews of the individual former employees are confidential under Iowa Code §§ 22.7(11)(a), 22.7(18).

In *City of Sioux City*, the court held that employment applications were records that fell within the confidentiality permitted under Iowa Code § 22.7(18). The court found that the applications were not communications “required by law, rule, or procedure” within the meaning of the act. *City of Sioux City*, 421 N.W.2d at 898. The court has also found that investigations into a school principal could be withheld as confidential under Iowa Code § 22.7(18). In *Ripperger v. IPIB*, the court held the “assessor could reasonably believe that persons would be deterred from requesting removal from the website search-by-name function if doing so put them on a public list.” *Ripperger v. Iowa Pub. Info. Bd.*, 967 N.W.2d 540, 544 (Iowa 2021).

In this Complaint, the exit interviews conducted by the District are not required by law, rule, procedure or contract, so the first part of the test is met. Exit interviews can include important information about ways the employer could improve the working environment or address issues before others choose to leave employment. It can be important that the information be treated as confidential to allow for candor in the interviews. Because if the nature of the interviews, the District could reasonably believe that individuals would be discouraged from communicating with the District if the information was going to be made public. Therefore, the third element of the test is met.

As to the fourth element, the District stated that “individuals submitting exit interview responses did not consent to the release of the exit interviews and since only individuals who resigned from the District were provided exit interviews, the results of the exit interviews could not be released without identifying the individuals who submitted the exit interview.”

The issue in this Complaint is whether employees who have resigned employment are individuals “outside the government.” In *City of Sioux City*, the court held that job applications were communications from individuals outside the government before they started employment. 421 N.W.2d at 898. In this Complaint, the District stated that “exit interviews were only provided to and completed by individuals after the individuals submitted their resignation from employment with the District.” Once an individual has resigned from the governmental body, the individual would no longer be “inside” the governmental body in a similar fashion to individuals who have submitted applications before their employment started. Because the individuals had resigned employment with the District, the exit interviews were with individuals “outside” the government.

In the event that an employee who has resigned, could still be considered a person who is not “outside” the government, their exit interview would fall within the confidentiality perimeters of Iowa Code § 22.7(11). An exit interview can serve as an investigation into the resignation of an employee. A resignation letter, outside the limited scope of a resignation in lieu of termination, is confidential as part of the “confidential personnel file” of the employee. The court has held that the confidential personnel file of an employee is categorically a confidential record. *See ACLU*, 818 N.W.2d at 236. There is no reason an exit interview would not receive the same confidential treatment as a resignation letter. *See also* 23FC:0041: James Stratton/Iowa Department of Corrections- Dismissal Order (finding no violation when resignation letter withheld as confidential.)

For these reasons, the District was not in violation of Iowa Code chapter 22 when it withheld the exit interviews from individual employees who resigned from the District.

Conclusion

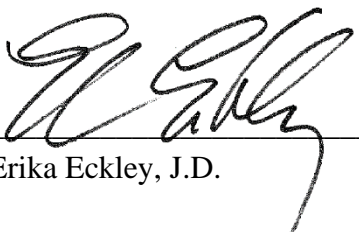
Iowa Code § 23.8 requires that a complaint be within the IPIB’s jurisdiction, appear legally sufficient, and have merit before the IPIB accepts a complaint. Following a review of the allegations on their face, it is found that this complaint does not meet those requirements.

Exit interviews conducted by the District can be withheld as confidential. There is no violation of Iowa’s public records law.

IT IS SO ORDERED: Formal complaint 23FC:0128 is dismissed as it is legally insufficient pursuant to Iowa Code § 23.8(2) and Iowa Administrative Rule 497-2.1(2)(b).

Pursuant to Iowa Administrative Rule 497-2.1(3), the IPIB may “delegate acceptance or dismissal of a complaint to the executive director, subject to review by the board.” The IPIB will review this Order on January 18, 2024. 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 January 10, 2024, to:

Scott Flynn

Brett Nitzschke, attorney for Mid-Prairie Community School District

The Iowa Public Information Board

In re the Matter of: Keegan Jarvis, Complainant And Concerning: Swan City Council, Respondent	Case Number: 23FC:0130 Acceptance Order
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COMES NOW, Erika Eckley, Executive Director for the Iowa Public Information Board (IPIB), and enters this Acceptance Order.

Facts

Keegan Jarvis filed formal complaint 23FC:0130 on November 27, 2023, alleging that the Swan City Council (Council) violated Iowa Code chapter 21 on November 14, 2023.

Mr. Jarvis alleged that at the Council meeting on November 14, 2023, Councilmen Bill Gobble declared, “we are now going into the closed session portion of our meeting. Any people not on the current council must leave and will be invited back in after the session is over.”

Mr. Jarvis points out that several violations occurred as they relate to Iowa Code § 21.5. There was no individual vote taken to indicate the approval of each member to enter closed session. The reason for the closed session was not stated. Mr. Jarvis believes that minutes of the closed session were not taken and that an audio recording of the session was not made. He claims that the discussion of the closed session was not kept confidential, and he understands that bringing action against residents was discussed.

Mr. Nicholas Bailey, attorney for the Council provided the IPIB with the Council meeting notice/tentative agenda, minutes, closed session minutes, and audio recording of the closed session. He was made aware of the specific situation at the November 14, 2023, meeting, the purported closed session held at that time, and a purported vote therein by Councilman Gobbel.

Mr. Bailey stated that the Council’s normal procedure is to have one meeting per month. The council keeps minutes of all its public meetings as required by Iowa Code Chapter 21. The council does record any closed session and keeps separate meeting minutes for those sessions. Mr. Bailey was not aware the Council would attempt to go into closed session on November 14. Following that meeting, he discussed with Councilman Gobbel, the Council’s ability to go into closed session at a future meeting at which he would be present. He stated that it was apparent that the Council

was under the mistaken belief it could go into closed session on November 14. A vote was taken during that closed session that resulted in a final decision.

The City Attorney, Mr. Bailey has discussed with the City as to how they can rectify the actions taken at the November 14, 2023 meeting. He believes that his proposed actions remedy any potential non-compliance with Iowa Code chapter 21 and follow the spirit of open and full disclosure in the Open Meetings provisions of the Iowa Code.

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.” Iowa Code § 21.4

“A governmental body may hold a closed session only by affirmative public vote of either two-thirds of the members of the body or all of the members present at the meeting. A governmental body may hold a closed session only to the extent a closed session is necessary for any of [the enumerated reasons]. ...The vote of each member on the question of holding the closed session and the reason for holding the closed session by reference to a specific exemption under this section shall be announced publicly at the open session and entered in the minutes. A governmental body shall not discuss any business during a closed session which does not directly relate to the specific reason announced as justification for the closed session.” Iowa Code § 21.5

Analysis

IPIB staff reviewed the allegations and response in this complaint. The City provided an audio recording and detailed minutes of the closed session they took during their meeting. There were several significant other deficiencies, however. The agenda does not indicate the Council would be going into closed session pursuant to Iowa Code §21.4(1)(a). A stated purpose aligning with Iowa Code §21.5 was not provided. A motion was not made to enter into closed session. A vote of the Council was not taken indicating each individual member’s determination to enter a closed session. Iowa Code §21.5(2). Minutes of the closed session indicate that a final vote was taken during the closed session in violation of Iowa Code §21.5(3).

Each of these violations have been acknowledged by the City. 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).

Based on these deficiencies and the admission of the Council to them, it is recommended this Complaint be accepted.

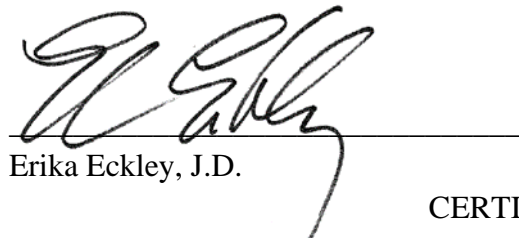
Conclusion

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 meets those requirements.

IT IS SO ORDERED: Formal complaint 23FC:00130 is accepted as legally sufficient pursuant to Iowa Code section 23.8(2) and Iowa Administrative Rule 497-2.1(2)(b). The City Council did violate the open meeting code section.

Pursuant to Iowa Administrative Rule 497-2.1(3), the IPIB may “delegate acceptance or dismissal of a complaint to the executive director, subject to review by the board.” The IPIB will review this Order on January 18, 2024. 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 January 10, 2024, to:

Keegan Jarvis, Complainant
Nicholas Bailey, City Attorney, City of Swan



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

23FC:0130**Kegan jarvis** <ratrocket127@yahoo.com>

Mon, Jan 15, 2024 at 1:09 PM

Reply-To: Kegan jarvis <ratrocket127@yahoo.com>

To: nbaileylaw@gmail.com, "Eckley, Erika" <erika.eckley@iowa.gov>

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

Erika,

I'd like to submit the following written statement to the board in regard to complaint: 23FC:0130

To accurately capture the motivations and actions of the council culpable in this complaint, I need to mention a few brief things that led up to this event. About July, a neighbor tipped me off that one of the council members (Bob Harding) the mayors dad, and councilwoman Harding's father in law (now current mayor) had remarked on open record that he was going to run me out of the town. I located the exact remarks in the June meeting minutes. In July Mayor Harding called a company that provided a dumpster to me and threatened them with his towns weight limits threatening "further action" if the dumpster returned. I called mayor Harding and presented him with the Iowa legislative code 321.471 which states in the first paragraph a town can only weight restrict a road for 90 days, and with valid reason. Once restricted nothing passes on the road. Not garbage trucks, or vehicles delivering construction materials to a house he's building. I told him he needed to immediately call the company he had illegally interfered with, and never try a stunt like that again. I told him he's not a king, and his chorny council are not his private gestapo. The meeting minutes of this council make it clear, they have an axe to grind, with me for standing up to them. Councilman Bill Gobble says on record after being presented with Iowa Law "If Keegan keeps talking like this, we are going to have to get our lawyer involved" (August council meeting minutes)

On November 14th 2023, at 1830 hrs the Swan city council commenced a scheduled monthly city council meeting. I (Keegan Jarvis) was in attendance. I had ran against our current mayor at the encouragement of many in our small town. Our government had been known to act above its authority, act against the will of our small town, and operate in a deceptive dishonest manner, getting by with whatever the felt like. They have a "deal with the slap on the wrist, if anyone even calls me out" mentality. Unfortunately, I lost the election with 11 votes to her 19. In the previous election only 8 people voted. A little under 4 times the normal amount of people voted in the mayoral race. The citizens of our town were energized, like never before. That speaks volumes. I conceded my loss, prayed for our town and its new leadership, and mentioned the solutions I found whilst knocking doors and conversing with neighbors. Lastly I presented the council with a petition of 26 signatures, demanding an ordinance be passed requiring 75 percent of the signatures of the adult population of our town, to sign on to a petition, before the City council could even discuss taking legal action against a property owner. That means our town of less than 50, it would require about 25 signatures or so. The city council immediately said we will run this past our lawyer, and quickly moved on.

It was then that council member Bill Gobble mentioned that they had a closed session item up on the agenda. He mentioned that under protocol advised by The League of Cities, that closed session was to insue for this item. He also stated that he was in 100 percent understanding of closed session rules and was acting on literature provided by The league of cities.

I immediately knew they were using the closed session improperly, and to further a series of harassment made blatantly clear in the previous meeting minutes. I also knew that the protocol for going into closed session was not adhered to. I have body camera video footage of the meeting. Councilman Gobble declared closed session every body leave, we will reinvite you back when done. No vote was taken to enter closed session. No lawful reason was individually given by each member along with their vote.

Per the audio Councilman Bill Gobble knows exactly what to do with minutes, and they had an audio record. This is a man who KNEW WHAT HE WAS DOING, AND INTENTIONALLY DID IT WRONG! Once in closed session: not once was substantive conversation about the matter discussed. For that matter, nor was the property owner, legal description, or even the most basic of an adress given. Pros and cons of the action being taken, necessity of preservation of the town, nothing of any prudence was discussed. The discussion, tone of voice, enthusiasm, and mannerisms used, were that of a pack of punk 5th graders who just stole, and dumstereed an honor student's meticulously crafted science project. Let it speak for itself!!! They are discussing action which, if seen thru fruition could cost the town as much as 60 thousand dollars! Every member in that chamber, knew they were following their ring leader! They knew they had to hide what they were doing! I even think to myself where would we be if I wasn't here to sound the alarm? Though I appreciate the thought of grace, for a first time, inadvertent oops. THIS IS CLEARLY NOT AN OOPS! As a military cop, I hated writing

tickets! It's all too easy to go a little too fast, on the new asphalt perimeter road, I get it! I'd stop people, make contact, chat with them, and ask them not to become a statistic! I think that was more effective, than taking someones money. However. If you were cruising down the road with a kid strapped to your roof, I'd write that ticket with no shame! Training is appropriate for an oops! A law is only as strong as its enforcement; especially, for those that think they are above it.

In my 17 years in the military, I've carried our flag on my sleeve and our rifle in my hand in war zones. The detail that struck me the most was 2 weeks of carrying our fallen Heros, who gave the ultimate sacrifice! (Carrying flag draped remains from an aircraft to the morgue) It gave me an appreciation and imposed a duty of care on me! They preserved our FREEDOM! Democracy, absent maintenance in the form of government, at all levels, being held to account, as prescribed by the consequence of law; will erode, decay, and crumble! According to my quick Google search approximately 1,186,000 servicemen have given the ultimate sacrifice to keep us FREE, since 1776. In being members of the very board you are; and holding governments/public governing units accountable for their actions, with the most appropriate consequence, you are saying thank you for your service! You are doing so in the loudest, most impactful way, yet without even a raised voice.

If this board has the authority to carry out the enforcement as outlined in Iowa legislative code 21.6 and 22.10, you must. Per paragraph 3 A "Upon finding that a member of a governmental body knowingly participated in such a violation, damages in the amount of not more than two thousand five hundred dollars, and not less than one thousand dollars SHALL be assessed." This wrong doing is a wanton, evident, ego motivated, molestation of these council members oath to the US, State of Iowa, and our beloved city of Swan. Nothing less than the fullest weight, of maximum consequence, will suffice to preserve ONE NATION, INDIVISIBLE, WITH LIBERTY AND JUSTICE FOR ALL! Not more than 100 meters from the very city hall building where these tortuous tyrants art, sits a Fallen Heros Memorial. May each member see that every time they pass it with disgrace and scorn that comes from actively defiling the values those men died for, with their heinous perverted pride! The current mayor Stacy Harding should step down from her post, as she has betrayed it in her participation in this debauchery. If this board has the authority, I implore it to seek the oppion of the Attorney General of Iowa, for her removal from office. Her ill actions as a council member certainly, show an inability to have a position of higher power in our government.

In conclusion, I thank this board for the important work it does! I pray for the preservation of democracy, and freedom. I pray that justice hits every individual just as hard as the sucker punch hit the victim of their crimes. I leave you with one parting thought. No man is scared of the law they break, they might be scared of the consequence, but they will realize the penalty of its outcome!

Have a blessed day,

Keegan Jarvis

Sent from Yahoo Mail on Android

[Sent from Yahoo Mail on Android](#)

[Quoted text hidden]

The Iowa Public Information Board

In re the Matter of: Michael Merritt, Complainant And Concerning: Poweshiek County, Respondent	Case Number: 23FC:0123 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 25, 2023, Michael Merritt filed formal complaint 23FC:0123, alleging that Poweshiek County (County) violated Iowa Code chapter 22.

Facts

Mr. Merritt alleges that the County failed to provide a required response within the time frames articulated in Iowa Code Section 22.8(4.)(d.). He alleges numerous status requests were sent to county employees on several occasions requesting status updates that evidence indicates were disregarded for weeks. Mr. Merritt provided copies of email correspondence with various County employees from the County Sheriff's office regarding his Complaint.

In response, the County stated that Mr. Merritt made a request for an audio recording of a call to the County dispatch related to an incident he was involved in on August 4, 2023. According to the documents provided by Mr. Merritt, this request was made both over the phone and by email. The email request from Mr. Merritt was made on September 26, 2023. The civil deputy, Dawn Disney, received the request and forwarded it to the record custodian, deputy Joseph Meyer. Deputy Meyer replied to Deputy Disney on September 26, 2023, that the recording was not available.

The County's attorney confirmed with Deputy Meyer that his response "not available" meant that the record did not exist. There is no record to provide to Mr. Merritt responsive to his request. Mr. Merritt was informed by Deputy Disney on September 27, 2023, that the record was "not available." The documents provided by Mr. Merritt plainly show that the Poweshiek County Sheriff's Office promptly responded to Mr. Merritt's request.

This Complaint was filed two months after Mr. Merritt was notified the record did not exist.

Applicable Law

“Iowa Code chapter 22 is silent as to the time for response to a records request. The time to locate a record can vary considerably depending on the specificity of the request, the number of potentially responsive documents, the age of the documents, the location of the documents, and whether documents are stored electronically.

The large number of variable factors affecting response time makes it very difficult, and probably unwise, to establish any hard and fast objective standards. The statute was initially adopted almost fifty years ago. Today’s electronic records environment adds to the complexity of this issue.” 22AO:0004: Timeliness of responding to record requests.¹

“Based on our review of section 22.8(4)(d), we believe it is not intended to impose an absolute twenty-day deadline on a government entity to find and produce requested public records, no matter how voluminous the request. Rather, it imposes an outside deadline for the government entity to determine ‘whether a confidential record should be available for inspection and copying to the person requesting the right to do so.’ We do not think we should extrapolate section 22.8(4)(d)’s twenty-day deadline to other contexts, when the legislature chose not even to include that deadline in other portions of section 22.8(4).” *Horsfield Materials, Inc. v. City of Dyersville*, 834 N.W.2d 444, 461 (Iowa 2013).

Analysis

IPIB staff reviewed the timeline of communications provided by Mr. Merritt. Within them, there were two records requests made by Mr. Merritt. This Complaint is based on the second request made to the County, which was for the dispatch telephone audio on August 4, 2023. The first request, for body camera footage from August 4, 2023, was promptly provided to Mr. Merritt upon receipt of costs by the Grinnell Police Department and is not part of this Complaint.

After thorough review of the emails provided, it appears Mr. Merritt made his first request for the telephone recording from the County on August 8, 2023. This request, however, was buried within the text of a lengthy, single-spaced email that covered the gamut from jokes to bible verses. At the beginning of this same email, Mr. Merritt had clearly stated he was making a records request for the body camera footage from the Grinnell Police Department. Grinnell Police Department promptly responded to and provided the footage to Mr. Merritt, which, again, is not a subject of this Complaint.²

¹ <https://ipib.iowa.gov/timeliness-responding>

² It is not difficult to see why the original request directed to the County was missed when it was separated by 2,200 words in an email that had clearly articulated a different request at the beginning of the same email. Best practices

On August 30, 2023, Mr. Merritt made an email request to the County's sheriff for the "audio recording for my 04 AUG 2022 [sic] phone call that led to the assistance the Grinnell, IA PD provided."³

On September 26, 2023, Mr. Merritt made a request to the County's records custodians for the August 4, 2023, audio. He made the request by phone and email. Receipt of this request was promptly acknowledged by the County.

On September 27, 2023, the County informed Mr. Merritt by email the audio recording did not exist, so it could not be provided.

On September 29, 2023, Mr. Merritt questioned the County's response stating, "Please advise regarding the reason why a dispatch recording that was requested days after it was produced is not available."

It is not unreasonable that the County did not find the request buried within an email sent to multiple parties on August 8, 2023. A records request should be clearly communicated, rather than hidden within a lengthy email of unrelated text and information.

A second request was made on August 30, 2023. It is not known whether this email was read by the sheriff. The sheriff had responded to previous emails he received, but there is no communication from him regarding this email, which was part of the existing email chain that contained the August 8, 2023, request.

Mr. Merritt contacted the records custodian at the end of September regarding the status of his request, which the custodian promptly acknowledged. Within a day, the County notified Mr. Merritt the record did not exist.⁴ This was promptly communicated to Mr. Merritt by email.

Even if the August 30, 2023, request was received by the County, Mr. Merritt received notice that the record he requested did not exist on September 27, 2023. This response was provided one day after the request was clearly submitted to the records custodian and twenty-nine days after the

by IPiB state that "[i]n whatever format a records request is made, it is important to ensure that the request is made clearly and as concisely as possible. The request should clearly state that records are being sought." 23AO:0005 available at <https://ipib.iowa.gov/23ao0005-limits-electronic-records-requests>

³ The request was included in an ongoing chain of emails previously received that all had the same subject line: Ryan Eaton - Alleged and Evidence of Continued Violations of Iowa Code Section 708.7. It is not certain from this subject line that a record request was being made or that a request was being sought. It is also not certain whether the email was received.

⁴ Iowa Code chapter 22 does not have a retention requirement, so it is beyond IPiB jurisdiction to determine whether the County should have the record requested.

request was emailed to the sheriff. Iowa Code chapter 22 does not have an absolute deadline for responding to records requests.

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.

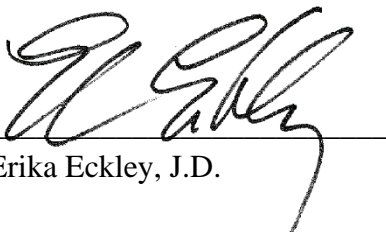
Mr. Merritt's complaint is that the county did not respond to his records request within the timeframe articulated in Iowa Code Section 22.8(4)(d). The Iowa Supreme Court has stated that the twenty-day period for determining whether a record is confidential is not a timeframe that is extrapolated to other contexts, so there is no violation under these facts when the initial records request was not clearly communicated to the government body and the County responded within at least twenty-nine days to the request.

According to an Iowa Attorney General Sunshine Advisory Opinion from August 2005, "Delay is never justified simply for the convenience of the governmental body, but delay will not violate the law if it is in good faith or reasonable." In this situation, any delay caused by a failure to identify a records request buried within a lengthy email, a request that may or may not have been received, and the fact that once the request was clearly articulated to the records custodian, it was promptly acknowledged and communicated, was reasonable.

IT IS SO ORDERED: Formal complaint 23FC:0123 is dismissed as it is legally insufficient pursuant to Iowa Code § 23.8(2) and Iowa Administrative Rule 497-2.1(2)(b).

Pursuant to Iowa Administrative Rule 497-2.1(3), the IPIB may "delegate acceptance or dismissal of a complaint to the executive director, subject to review by the board." The IPIB will review this Order on January 18, 2024. 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 January 10, 2024, to:

Michael Merritt
Bart Klaver, Poweshiek County Attorney

Monday, August 7, 2023 1:01 PM Michael Merritt “Sheriff Halferty, I respectfully request that you review the recordings of your two dispatchers who hung up on me and then refused to provide R Dispatch number identifiers for the original dispatcher on Friday night. I will request audio video recordings stored and preserved by the Grinnell, IA Police Department and Poweshiek, IA Sheriff’s Department regarding the elevation of my panic attack after I received an electronic mail...”

Tue, Aug 8, 2023 at 8:09 AM John R. Halferty, Sheriff “Mr. Merritt, I received your email. As is our normal procedure I have assigned a supervisor to review the citizen complaint and he will provide me with an update. If there was an issue that needs corrected, it will done so. I will provide a response to you upon completion of that review. Please allow me a couple of days to complete. Thanks and take care!”

On Tuesday, August 8, 2023 11:36 AM, Michael Merritt writes:

“I would like to respectfully request the chest cam footage from the two events the Grinnell, IA Police Department interacted with me on Friday 04 AUG 2022 [sic]. ...”

[Buried more than 2275 words and several pages later in the same email, after listing his grievances and issues, as well as citing scripture, telling jokes, and giving dictionary definitions, the following request can be found]

“I am respectfully requesting the audio recording of your dispatch call involving my call be provided to Jasper County, IA Sheriff Halferty so that he can compare the evidence of your dispatcher with the two that handled my call Friday night from Jasper County, IA. I am also requesting a copy be sent to myself and the following personnel included in the email.

Jasper County, IA Attorney Scott Nicholson

The Jasper County, IA Attorney's Office

City of Newton, IA Mayor Hansen

City of Newton, IA Attorney Brick

Members of the City of Newton, IA City Council

City of Newton, IA Chief of Police Burdess

LT Cook

LT Wing

LT Winchell (I currently have no evidence supporting a connection with: https://en.wikipedia.org/wiki/Winchell%27s_Donuts (Wayne I think you would enjoy having me as a subordinate, you would probably experience a few laughs before telling me to complete the Iowa Incident Reports you tasked me with a few hours ago.)

Every Iowa Senator/House of Representative Member.”

Tue, Aug 8, 2023 at 12:41 PM County responded with

“Our open records fee for videos on a DVD or flash drive is \$25, cash or check. At this time, credit/debit card payments are not an option at the PD. I have a total of four body camera videos for two separate incidents on August 4, 2023. I have placed the videos and a pdf of the calls from that evening on a flash drive , which is available for you to pick up during our Monday through Friday business hours of 7:30 AM - 4:30 PM.”

August 28, receipt dated 8/28 provided by Mr. Merritt from Grinnell Clerk that he paid cash for flash drive of August 4, 2023, incident and free call for service pdf

Aug 30, 2023 at 12:52 PM Michael Merritt <cipher.hunter@cipherphoenix.com> wrote:

“Sheriff Kriegel, The Grinnell, IA Police Department has communicated to me that your government body has the audio recording for my 04 AUG 2022 [sic] phone call that led to the assistance the Grinnell, IA PD provided. I am respectfully requesting this phone call recording. Have a good day Sir.”

Date: 9/12/2023, 10:32 AM Michael Merritt

“Good morning Sir, On Tue, Aug 8, 2023, at 11:36 AM, Michael Merritt<cipher.hunter@cipherphoenix.com>, you received an electronic mail requesting a dispatch audio recording. This request was submitted to your office in accordance with Iowa Code Section 22.4(2.). The dispatch call recording that was requested was for the Grinnell, IA PD Call for Service (CFS) documented in the following link...”

Wed, Sep 13, 2023 at 5:07 PM Michael J. Merritt <cipher.hunter@cipherphoenix.us> wrote:

“...

Sheriff Kriegel, would you like to provide me with an application for volunteer service? In that case, I will recalibrate your public record request internal protocol to produce results that are within the requirements of Iowa Code Section 22.8(4.)(d.). If tomorrow is a reflection of yesterday, you will have me teaching the class within your office as the United States Navy determined.

If the logistics are available tomorrow, I look forward to sitting across from you at your desk with my chest cam. I have many jokes to tell and many laughs to hear while we feast on the very best of Casey's donuts.”

...”

"Michael J. Merritt" cipher.hunter@cipherphoenix.us Date: 9/15/2023, 5:40 PM

“I am still waiting for a response from your office regarding my public record request. I expect that I will have a ride to take me to the front door of your office tomorrow, where I will contact your dispatch and inform them where your on-duty deputy can drop off the requested dispatch recording. I appreciate your time, Sir.

You may not be accustomed to citizen inquiries of this nature. At the same me, I guess you could say I am at a point where I am tired of my time being wasted in a world that indicates its evidence (Truth) is allegedly concealed in the desk drawers by the very officers who allegedly enforce our laws while they allegedly burn their victims in a sea of lies.

Suppose, I am not provided the non-emergency audio recording with you dispatch I have requested in accordance with Iowa Code Chapter 22. In that case, it would seem logical to serve your court paperwork so that we can investigate what the root of our breakdown in communication is.”

Tuesday, September 26, 2023 12:13 PM Michael Merritt wrote:

“Record Requested: Dispatch Recording Eveining of 04 AUG 2023 initiating Grinnell, IA PD CFS enclosed Caller: Michael J. Merritt, 308 East Street, Grinnell, IA
Grinnell, IA Police Department CFS attached with detailed information regarding original call.”

September 26, 2023 2:17 PM Dawn Disney [County] wrote:

“Mr. Merritt,

I have received your request, and per our telephone conversation once the information you have requested has been prepared I will send you an invoice for the costs. Once payment is received the information will be sent to you.

Thank you!"

27 Sep 2023 10:45:29 -0700 (PDT) Dawn Disney <DDisney@poweshiekcosherriff.com> wrote:

"Michael,

Please be advised that I reached out to Deputy Meyer, and as you can see below, he has advised that the audio recording of the call that you have requested is not available."

Date: 9/29/2023, 8:32 AM Michael J. Merritt <cipher.hunter@cipherphoenix.us>

"Mrs. Disney:

Please advise regarding the reason why a dispatch recording that was requested days after it was produced is not available. I could tell from our conversation Mrs. Disney that you are a good person and I believe that you do care about others. At the same time, I have dealt with a level of public record concealment that caused me to lose a year of my life pursuing evidence of why I lost the ability to be a Father based on the evidence of the negligence of the Newton, IA Police Department and Jasper County. At the same time, both have produced evidence of a desire to conceal public records I have requested. My daughter was drugged and sexually assaulted in the State of Montana while I pursued those public records within Jasper County, IA that evidence shows were cancelled for over a year.

The evidence below clearly shows that I attempted repeatedly while contacting numerous employees within Poweshiek County, IA to get assistance with this request. The evidence indicates that Sheriff Kriegel and his deputies are either:

1. Incompetent.
2. Negligent
3. Assisting Jasper County, IA with concealing evidence regarding a panic attack I had related to the harassment I have experienced from a Jasper County, IA employee as supported by the evidence and as defined by Iowa Code Section 708.7(1.)(a.)(4.).

If these conclusions are not accurate then please have your County Attorney contact me and explain why the government body he represents regarding legal issues failed to provide a proper response to a record request.

At the same time, my opening correspondence was thanking a Sheriff's office at the time I believed was comparable to Jasper County, IA Sheriff Halferty's office.

I am aware of the paradigm of what seems to be required, expected, and demanded, respect by Iowa Law Enforcement possibly without evidence of delivered performance as manifested by a lot of the Iowa law"

The Iowa Public Information Board

In re the Matter of: Vickie Garske, Complainant And Concerning: City of Montour, Respondent	Case Number: 23FC:0136 Dismissal Order
--	--

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

On December 19, 2023, Vickie Garske (“Complainant”) filed formal complaint 23FC:0136, alleging that the City of Montour (“City”) violated Iowa Code chapter 21.

Background

The Montour City Council consists of five members: Heckman, Hermanstorfer, Green, Bidwell, and Kelley. The Complainant is the current mayor of Montour.

The City Council held a regular meeting on December 5, 2023. Upon the meeting’s adjournment, the Complainant left the building. Shortly after, the Complainant alleges that she received a call from the city clerk informing her that three of the five council members—Hermanstorfer, Bidwell, and Green—had gathered together in discussion after the meeting.

In response to the complaint, the city clerk stated that she did see the council members gathered in discussion after the meeting and advised them that “the three of them standing together in council chambers talking could be construed as a quorum.” The council members stated in response to the clerk that they were not discussing city business. The clerk stated that she “reminded them that anyone from the outside would not be able to tell what they were discussing, only that they were a quorum.”

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). Such meetings must comply with the open meetings requirements of chapter 21.

Here, the issue is whether the gathering of the three council members was a meeting as defined by section 21.2(2). While the gathering did consist of a majority of the Council, the Complainant did not allege that the members were discussing matters within the scope of their policy making duties. Nor did the clerk claim to have overheard the council members discussing such matters. The council members themselves stated that they were not discussing such matters.

In order for a meeting to occur, there must be deliberation or action on matters within the scope of the governmental body's policy making duties. That element is absent here.

Conclusion

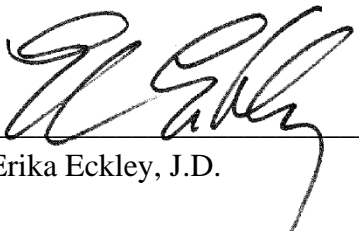
Because there is no indication that the council members were discussing matters within the scope of their policy making duties, the complaint lacks merit and should be dismissed.

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

IT IS SO ORDERED: Formal complaint 23FC:0136 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 January 18, 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 January 10, 2024, to:

Vickie Garske
Jody Wallen, City Clerk for the City of Montour



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

Fwd: 23FC:0056 Bolinger v Creston City Council

1 message

Eckley, Erika <erika.eckley@iowa.gov>
To: "Toresdahl, Brett" <brett.toresdahl@iowa.gov>

Tue, Jan 9, 2024 at 12:05 PM

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

----- Forwarded message -----

From: **Eckley, Erika** <erika.eckley@iowa.gov>
Date: Wed, Jan 3, 2024 at 12:59 PM
Subject: Fwd: 23FC:0056 Bolinger v Creston City Council
To: Ruth <ruth@bolinger.org>, Marc Elcock <melcock@msn.com>, <mike@crestoniowa.org>, <jocelynblazek@gmail.com>

Received. Thank you, Ruth.

I appreciate the work by both sides to resolve this complaint.

IPIB will close this complaint. If there is additional work done by this or other committees, I have no doubt it will be done in a transparent way.

Please remember that IPIB is here to help with any questions that come up on how to proceed with Chapter 21 or 22 in the future.

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

----- Forwarded message -----

From: **Ruth** <ruth@bolinger.org>
Date: Wed, Jan 3, 2024 at 12:38 PM
Subject: re: 23FC:0056 Bolinger v Creston City Council
To: Eckley, Erika <erika.eckley@iowa.gov>

Director Eckley ;

Attached you will find the Creston City Council Agenda for 01-02-2024 with the approved minutes from 12-19-2023 that you requested.

I would like to note that I spoke during the open forum at the 01-02-2024 Council meeting in an attempt to ensure that the balance of the Council understood that multiple times during our December 14th meeting, former Mayor Gabe Carroll stated that the housing committee that would be appointed on 12-19-2023 would only be in place through the end of 2023 and that the new Mayor would need to appoint or reappoint their own committee members. I found the former Mayor's statements confusing and attempted to call the Council's attention to this issue. I asked how agenda item number 2 regarding the rental housing administrative policy could be on the agenda without this being addressed. With that said, I do understand that the fact that the Housing Committee was formally created is what the Iowa Public Information Board would look for in meeting our Iowa Code requirements. And, that the City of Creston created the Housing Committee due to complaint 23FC:0056 on 12-19-2023.

Item number 2 on the 01-02-2024 agenda was adopted.

The intervention of the Iowa Public Information Board (IPIB) did make a difference. I want to thank Director Eckley and the IPIB for your time and attention to my complaint. I am asking for 23FC:0056 to be closed.

I understand my email notice can and will be shared.

Ruth Bolinger

1129 150th Street

Creston , IA 50801

Mobile : 641-202-2255

ruth@bolinger.org



01-02-24 Creston Council Agenda 12-19-23 approved minutes.pdf

15683K

Brett

Just checking to see if Dan dismissed my complaint with the Pocahontas County Auditor, we reached an agreement?

Cliff Sheakley

[Quoted text hidden]

--

Cliff Sheakley
President/Owner
Farm and Home Publishers LTD
P.O. Box 290
Clear Lake, Iowa 50428
641-444-3508 ext 2614
www.farmandhomepublishers.com



Toresdahl, Brett <brett.toresdahl@iowa.gov>
To: Cliff Sheakley <cliff.sheakley@farmandhomepublishers.com>

Tue, Jan 16, 2024 at 8:55 AM

Cliff
So you would like to withdraw your complaint against Pocahontas County?
Brett
[Quoted text hidden]

Cliff Sheakley <cliff.sheakley@farmandhomepublishers.com>
To: "Toresdahl, Brett" <brett.toresdahl@iowa.gov>

Tue, Jan 16, 2024 at 8:56 AM

Correct, they agreed to send the shape files to me at no cost and I donated 10 books to them.
[Quoted text hidden]

Toresdahl, Brett <brett.toresdahl@iowa.gov>
To: Cliff Sheakley <cliff.sheakley@farmandhomepublishers.com>

Tue, Jan 16, 2024 at 8:58 AM

Thank you
[Quoted text hidden]

To: Members of the Public Information Board
From: Daniel Strawhun
Date: 12/21/23
Re: Red Tape Review

Members of the Public Information Board,

This is an outline of the initial steps that must be taken in order to complete the Red Tape Review mandated by Executive Order 10.

The Red Tape Review is a comprehensive review, repeal, and repromulgation of all administrative rules in Iowa. Each agency is responsible for conducting the review of its chapters in the Iowa Administrative Code. I have put together this outline to explain the initial steps of the process to you and apprise you of my plans and progress toward completing the review.

Initial steps in completing the Red Tape Review:

1. Rule Report:
 - a. Must review each rule chapter within our agency's section of the administrative code (497) and evaluate each rule within each chapter according to the following criteria:
 - i. a cost/benefit analysis w/r/t the public
 - ii. Identify whether there are less restrictive ways to accomplish the benefit
 - iii. Identify obsolete, outdated, inconsistent, or redundant/duplicative rules
 - iv. Identify rules that should be re-promulgated and note any changes that should be made to the language of re-promulgated rules, if any.
 - v. Identify any suggested statutory changes, including codifying specific rules.
 - b. We have 10 rule chapters to review.
 - i. Chapters 1, 2, 8, and 10 relate to the implementation of Iowa Code chapters 21, 22, or 23.
 1. These chapters will likely require more attention.
 - ii. Chapters 3, 4, 5, 6, and 9 relate to the implementation of chapter 17a (Iowa Administrative Procedure Act)
 1. These chapters will likely require less attention.
 - iii. Chapter 7 implements the rules required by the Fair Information Practices Act from section 22.11.
 - c. The state has contracted with Esper, a third-party software vendor, to manage the Red Tape review process. I've been meeting with Esper to help them tailor the Red Tape Review workflow to our agency. We just recently got our log-ins to Esper, and I've begun working on the Rule Report.

- d. Once I complete the Rule Report, the Rules Committee will need to meet to discuss and finalize the Report. The finalized report will be presented to the Board for approval.
 - e. Once the Board approves, the Report will need to be posted on the IPIB website.
 - f. We will then move on to the next step in the process, which entails drafting the proposed re-promulgated chapters, including any revisions or deletions identified in the Rule Report, presenting the proposed repromulgated chapters to external stakeholders for comment, and conducting the Regulatory Analysis to allow for the re-promulgation of the rules.
2. Promulgating any new rules during the moratorium will be difficult. The following are the requirements for promulgating any new rules during the period:

This new rulemaking action is narrowly-tailored to achieve the following objective(s):

Reduce or remove a regulatory burden, including reducing restrictive terms.

Remove obsolete, outdated, inconsistent, incompatible, redundant, or unnecessary regulations, including instances where rule language is duplicative of statutory language.

Comply with a new statutory requirement, court order, or federal mandate where no waiver is permitted. [Could potentially justify promulgation of a rule to implement the recent changes made to section 22.3 (attorney fees) on this basis.]

Provide bill# or statutory citation or attach copy of court order.

Prevent a substantiated and well-documented threat to public health, peace, or safety.

Attach substantiated and well-documented evidence of threat to public health, peace, or safety.

Reduce state spending

Attach fiscal estimate

Repeal a rule chapter as specified in Executive Order 10

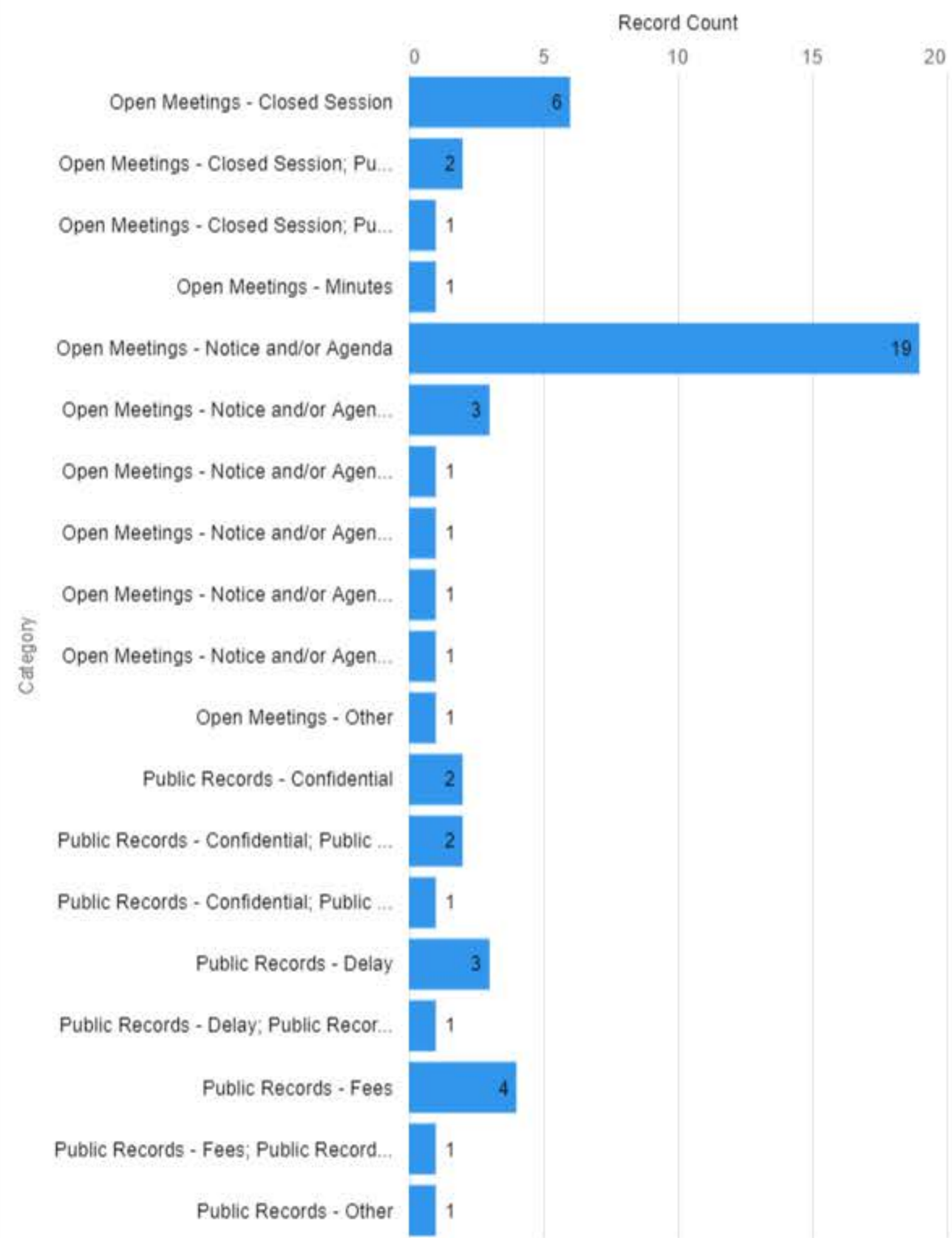
Re-promulgate a rule chapter as specified in Executive Order 10

3. That being said, I will still identify and discuss the need for additional rules with the Rules Committee when it meets to review the Rule Report. Any additional rules that the committee recommends be implemented can be brought to the Board for review once the moratorium is lifted (or, if they are justified under the regulatory analysis above, they can be brought sooner).

Cases by Type

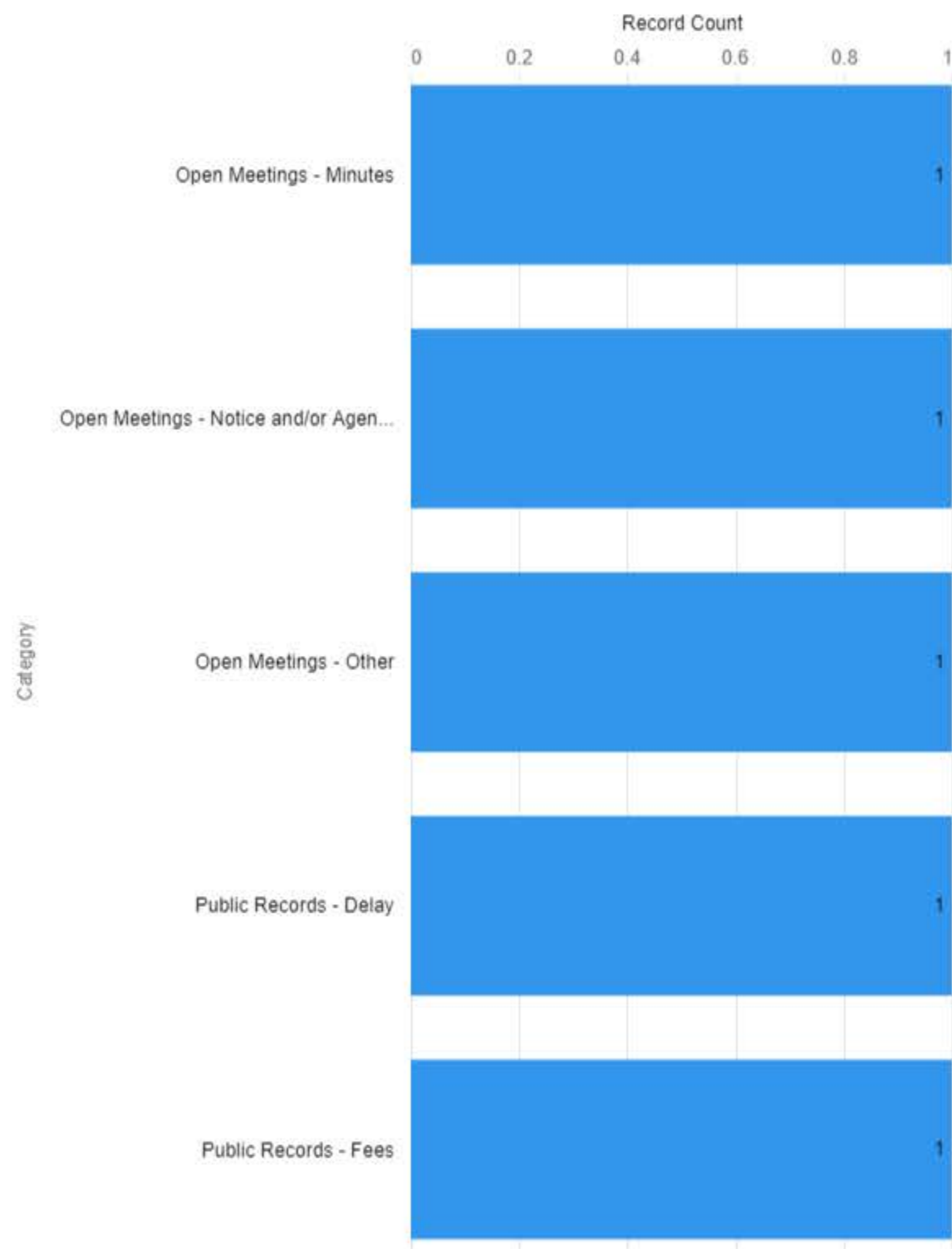
As of Jan 11, 2024 2:48 PM-Viewing as Erika Eckley

Cases by Type (Active)



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

Cases by Type (Filed in Current Year)

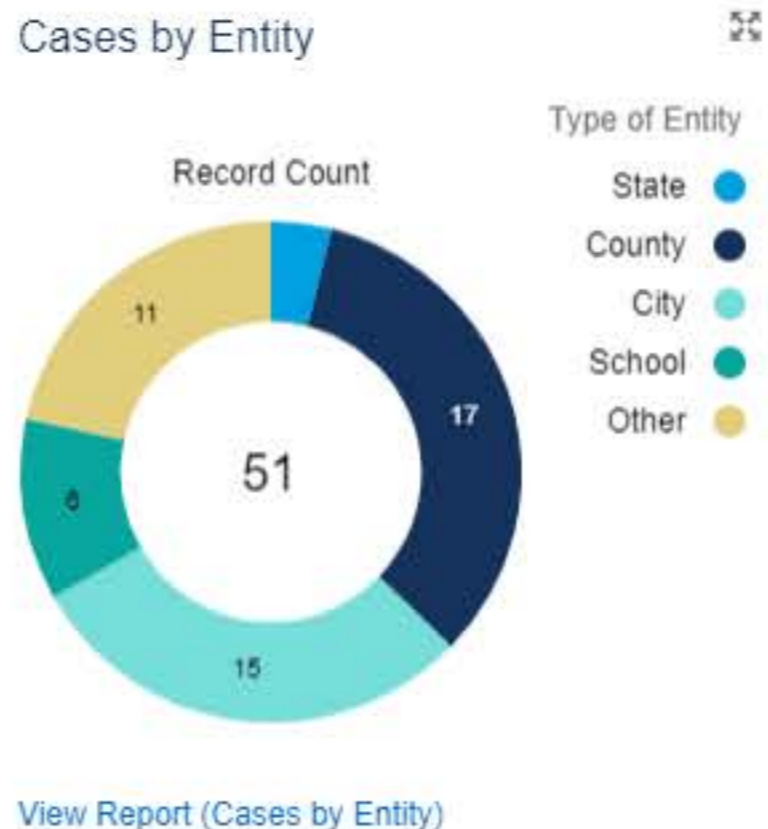


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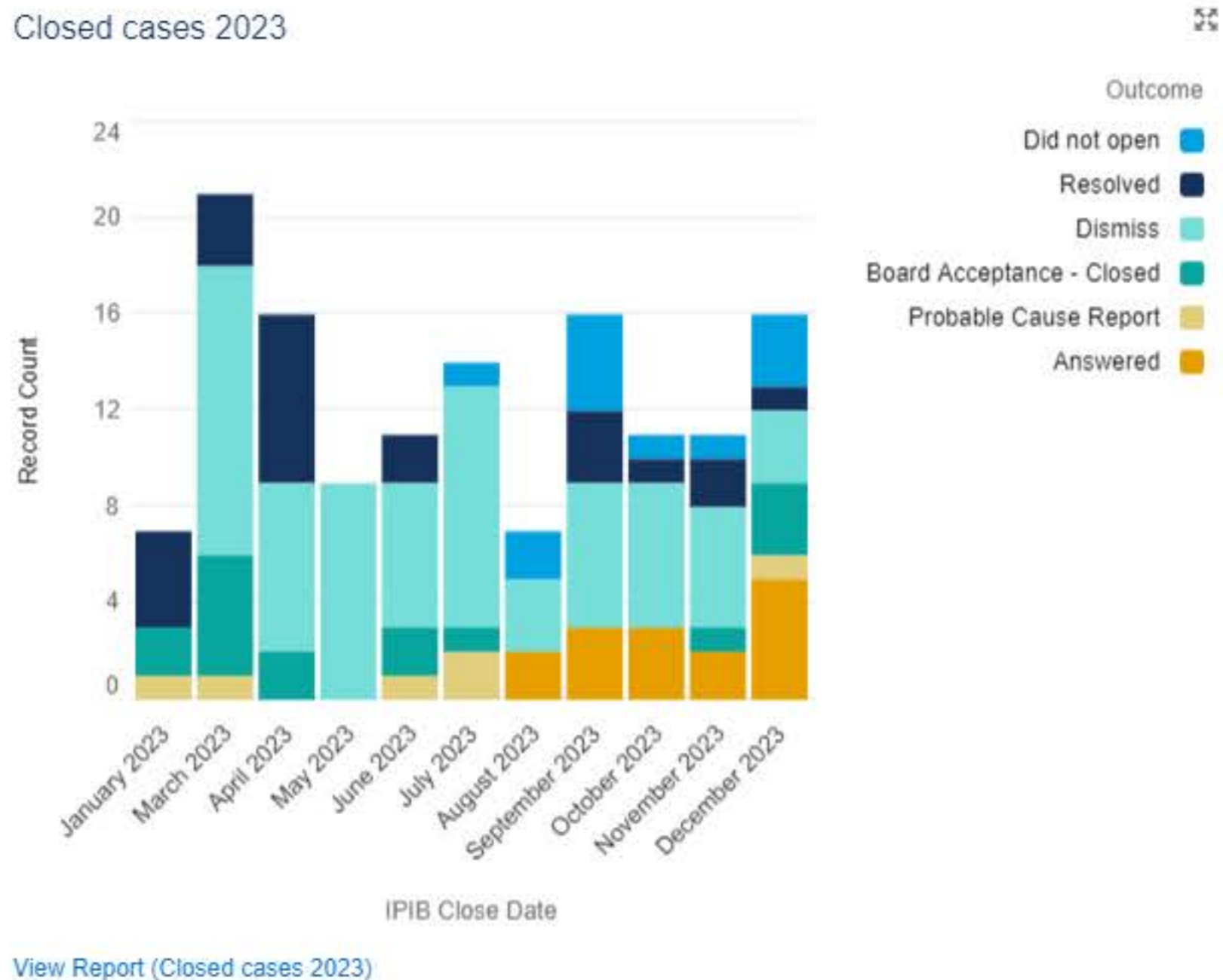


New complaints &/or question last 30

No data.
 Try refreshing the dashboard.



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





IPIB

Iowa Public Information Board

Providing a free, efficient way for Iowans to receive information and resolve complaints related to chapters 21 and 22, Iowa's open meetings and public records laws.

From the Executive Director –

There have been a lot of changes this year at IPIB. Margaret Johnsn retired in April after serving IPIB since its inception. Since, April IPIB has had several changes besides a new Executive Director. In July, IPIB upgraded to a fully electronic case management system. Since July, this has allowed individuals to file questions and complaints directly into the system, enabling efficiencies to IPIB. IPIB is also able to better track and analyze the types of formal questions and complaints coming in to the agency as well as the outcomes of Complaints and other data.

Annual Report

As Required by Iowa Code Section 23.6(12)

Iowa Code chapter 23, establish the Iowa Public Information Board (IPIB or Board), requires the Board to “prepare and transmit to the governor and to the general assembly, at least annually, reports describing complaints received, board proceedings, investigations, hearings conducted, decisions rendered, and other work performed by the board.”

As part of the overall state-wide web redesign, IPIB continues to work to ensure all of our Advisory Opinions, Board materials, and Formal Complaint decisions are easily accessible and searchable on the site. In 2023, we also worked to increase training opportunities and outreach and participated in 10 events from June to December.

In 2024, we expect Formal Complaints will continue to increase. We will continue to work to provide additional training opportunities, including uploading training videos on our website focused on open meetings and public records requirements as well as IPIB's advisory opinions and common questions received. IPIB is also taking steps to conduct our board meetings electronically, enabling livestreaming and archives of the meetings. IPIB is a small agency, but will continue to focus on greater outreach and transparency to meet the mission of IPIB established since its inception: to be an inexpensive and convenient, one-stop service providing consistent and uniform information on Iowa Code chapters 21 and 22.

Erika Eckley, J.D., M.P.A.
Executive Director

2023 at a Glance:

137

**Formal
Complaints**

8

**Advisory
Opinions**

10

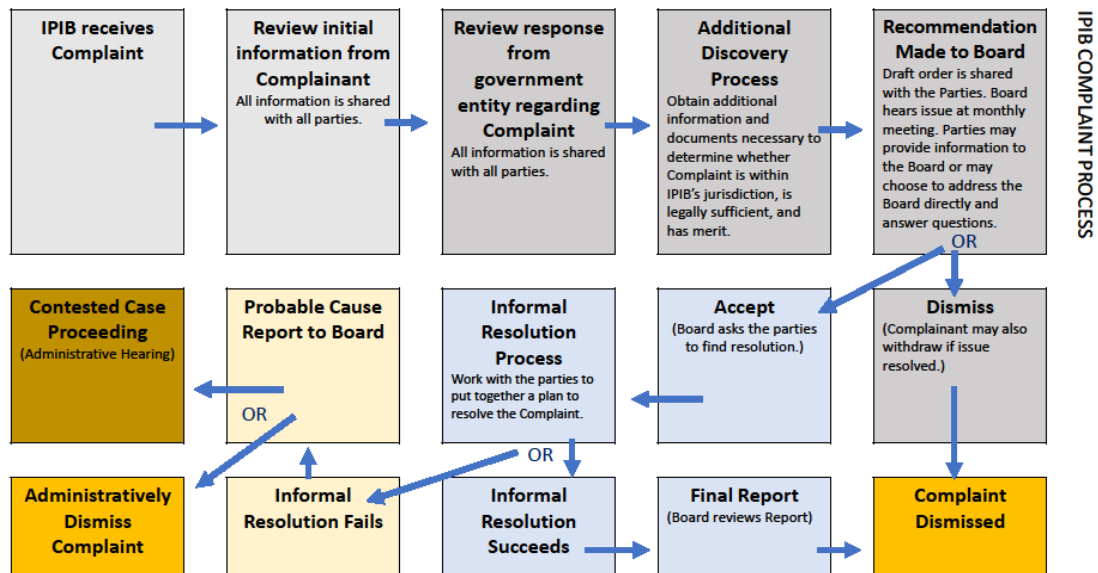
**Training
Sessions**

12

**Board
Meetings**

Complaints

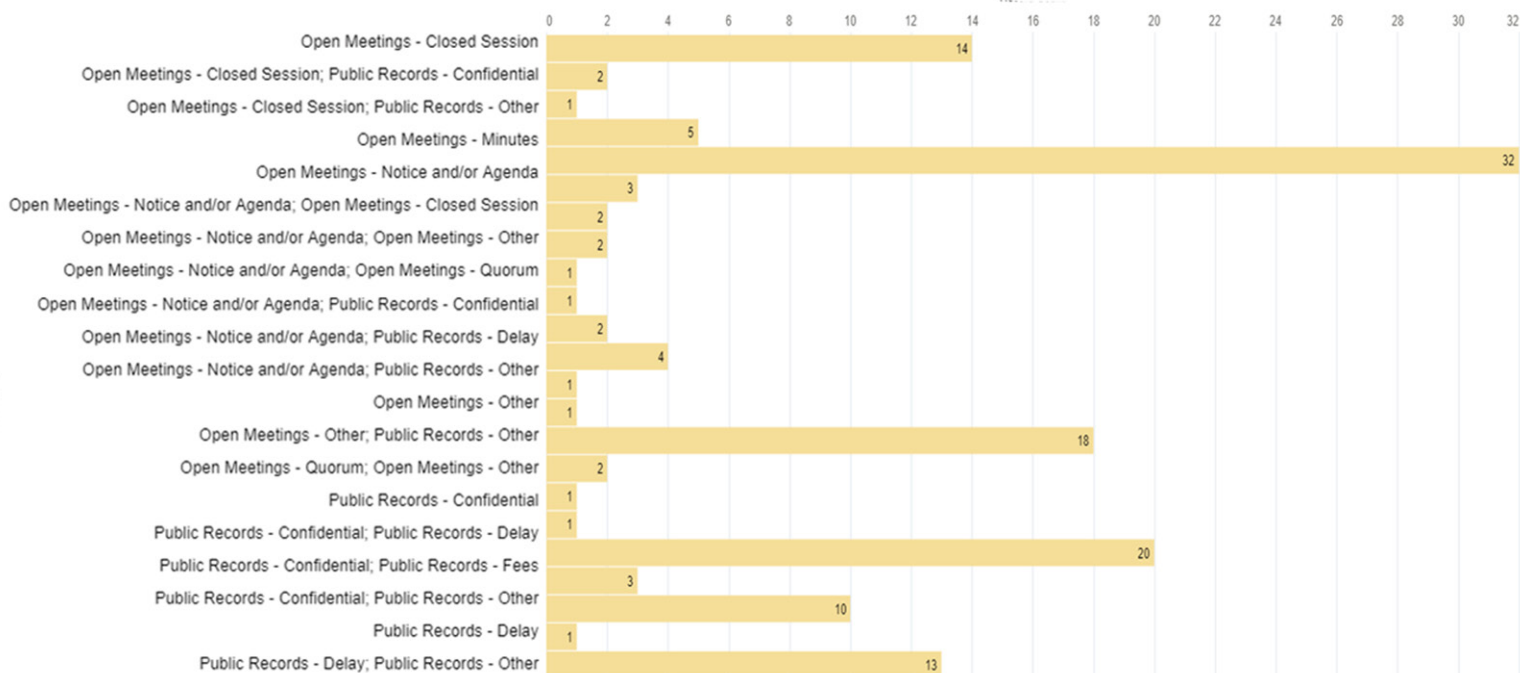
IPIB received 137 Formal Complaints in 2023. This was an increase over 2022. The Complaints involved governmental bodies of all kinds and covered slightly more public records issues than open meetings. Of the Formal Complaints filed in 2023, there were 47 Formal Complaints still open at the end of the year primarily to complete the intake or achieve an informal resolution

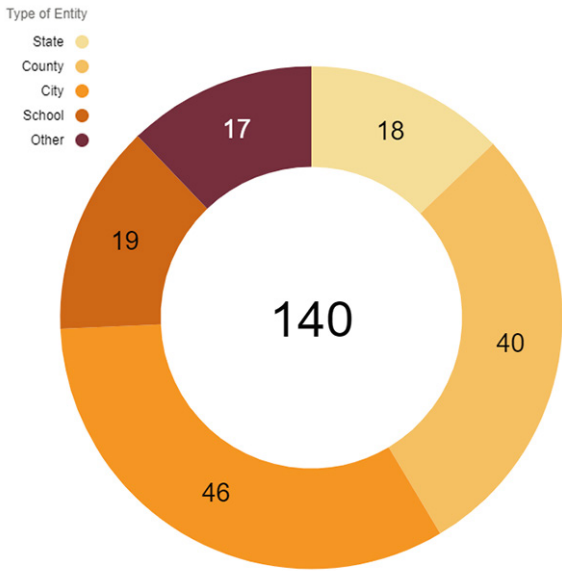


At year's end, there were no contested case proceedings pending. Two cases are on appeal in the district court. One concerned a public record (chapter 22) request to the City of Altoona Police Department. The other involves a closed session under Iowa Code section 21.5(1)(c) To discuss strategy with counsel in matters that are presently in litigation or where litigation is imminent where its disclosure would be likely to prejudice or disadvantage the position of the governmental body in that litigation.

IPIB also issued 8 Advisory Opinions on issues such as when legal fees can be charged as actual costs of a public records request; cybersecurity and electronic records requests; and guidance on the "draft document" exception to public records.

With the new case management system fully operational in August, IPIB has been able to track formal questions and complaints that have been submitted. Since August IPIB, has reviewed 15 complaints that were not opened due to a lack of jurisdiction; answered 15 questions either through issuing an advisory opinion or providing guidance regarding the law; 23 Complaints have been resolved; 67 Complaints were Resolved; 6 Complaints were Resolved through the Informal Settlement process under the direction of the Board; and 6 Complaints reached the Probable Cause stage.





The most common area for Formal Complaints and Questions were for public notice and agendas and closed sessions under Iowa Code chapter 21 and for delays and confidential documents under chapter 22.

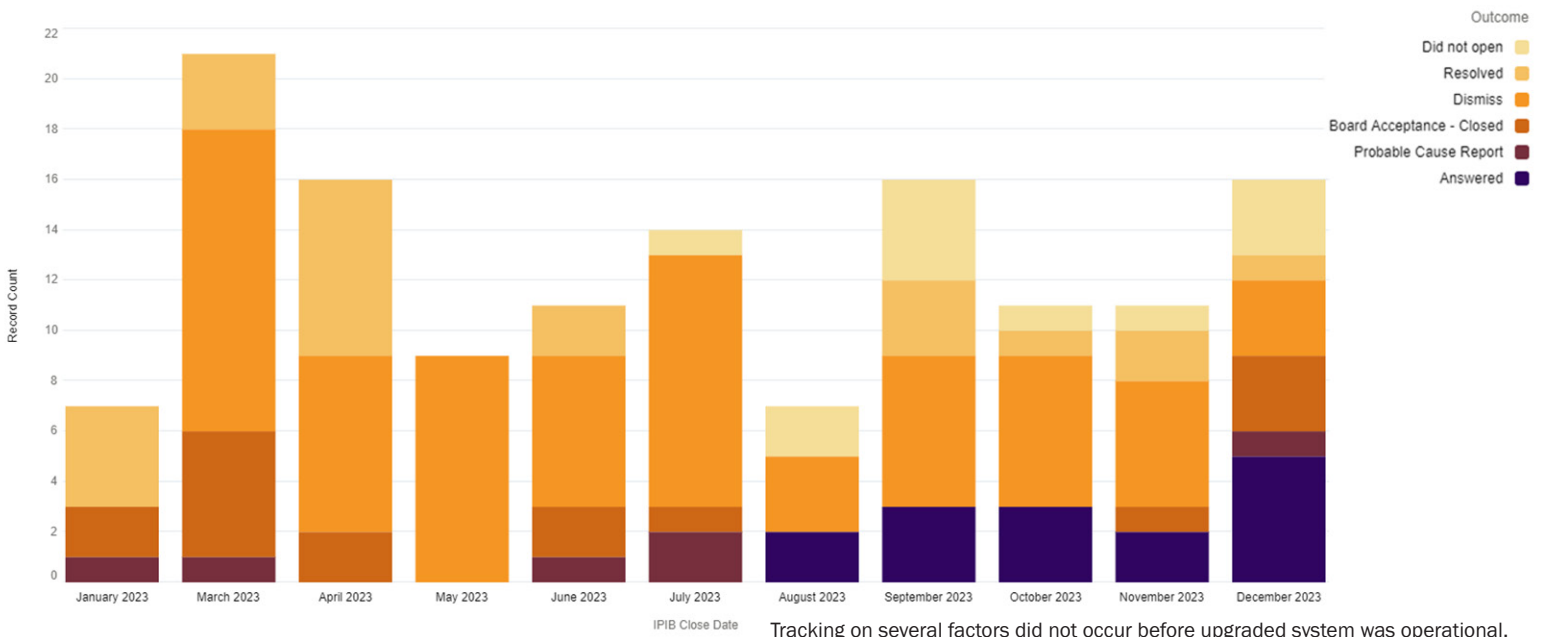
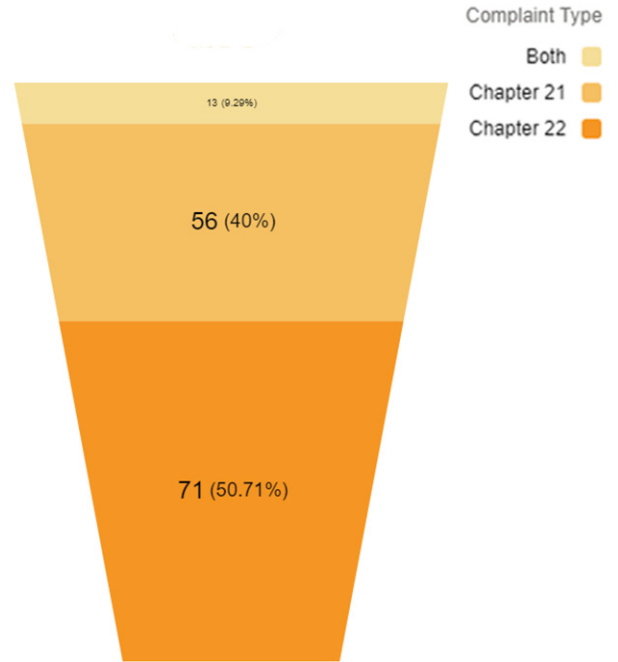
Formal Complaints were distributed across all governmental bodies. Thirty-three percent were filed against cities, 29% were against counties, 14% against school boards, 13% against state agencies, and 12% against other types of entities, such as library boards or townships.

IPIB continues to work to settle Complaints where appropriate, with the Board staff negotiating a

Includes 140 as some Complaints were consolidated.

compromise that satisfied both parties. Most settlements require training and a focus on addressing the cause of the Complaint with a focus on reducing community conflict and increasing government transparency.

While the numbers were not formally tracked in 2023, IPIB continues to provide informal guidance and assistance to citizens in obtaining records or accessing meetings and governmental bodies in the interpretation of Chapters 21 and 22. These informal requests require review and research, including occasional mediation assistance from IPIB. They do not require Board review and action under the Rules.



Tracking on several factors did not occur before upgraded system was operational.

All Formal Complaint Orders, Advisory Opinions, and Board Agendas and Minutes are available on IPIB's website.
www.ipib.iowa.gov

The Board

Iowa Code chapter 23 states no more than three members of the nine-member board shall represent the media and not more than three shall represent cities, counties, or other local governments. The members serve staggered four-year terms. The Board must be balanced by political party and gender. The Board appoints a chair and vice chair from among its members. The Board is an independent agency.

In 2023, the Board met for twelve monthly meetings. In 2024, three members' current terms will be ending, with the current vacant position, this will mean four appointments to the Board will be needed.

- **Daniel Brietbarth, JD, Des Moines – (Government Representative) (Republican) (2022-2026)** – Dan is the Assistant Attorney General for Legislative Affairs with the Attorney General, Brenna Bird. He previously was an Assistant County Attorney in Boone, and a graduate of Iowa State University and Drake Law School.
- **Joan Corbin, Pella – (Government Representative) (Democrat) (2020-2024)** – Joan is a community volunteer and serves on the Pella Community School District Board. She currently serves as the President of the school board and is in her fifth term with the district. She served on the Iowa Association of School Boards for 12 years, including two years as President, just completing her last year in December of 2022.
- **E.J. Giovannetti, JD, Urbandale – (Public Representative) (Republican) (2022-2026)** – E.J. is currently active as an attorney for Hopkins & Huebner, P.C. and has been a public servant for the past 40 years, including being Mayor of the City of Urbandale (20 years) and member of the Board of Supervisors (10 years).
- **Barry A. Lindahl, JD, Dubuque – (Vice Chair) (Government Representative) (Democrat) (2020-2024)** - Barry served in the City of Dubuque City Attorney's Office from 1975 to the present. He was City Attorney from 1983 to 2016. He is now Senior Counsel. Barry was a University of Iowa College of Law Adjunct Faculty Member from 1978-2018. Barry is the author of West Publications Iowa Practice: vol.9-10 Civil Practice Forms and vol.11-12 Civil and Appellate Procedure.
- **Joel McCrea, Pleasant Hill – (Media Representative) (Republican) (2022-2026)** – Joel is Market President of iHeartMedia Des Moines since 2000. Past President of the Iowa Broadcasters Association (2010) and currently a member of the board of directors of the IBA.
- **Monica McHugh, CPA, Zwingle, (Chair) (Public Representative) (Republican) (2022-2026)** – Monica is Regional Controller for Sonac USA LLC in Maquoketa, IA and owns JM Farm Accounting, a small tax and accounting practice. She also serves as chair of the Jackson County Zoning Board of which she has been a member of since 2010.
- **Julie Pottorff, JD, Des Moines, (Public Representative) (Democrat) (2020-2024)** – Julie worked in the Iowa Department of Justice over thirty years. She joined the Department in 1979 as a staff attorney, was appointed as the Division Director for the Administrative Law Division in 1990, and then appointed as a Deputy Attorney General in 1994. She retired from the Department in 2013.
- **Jackie Schmillen, Urbandale (Media Representative) (Democrat) (2022-2026)** - Jackie has been a broadcast journalist for nearly 20 years throughout the state of Iowa. She has worked in promotions, producing, writing, editing, reporting and anchoring with local TV newscasts. Jackie now works as the Director of Public Affairs for the Iowa National Guard.
- **Vacant, (2020-2024)** - since January 2022 due to the resignation of a Board member.

IPIB strives to model government transparency. IPIB routinely sends notice out earlier than the required 24 hours prior to all meetings and to anyone who requests. Over 150 citizens, media, and agencies are sent meeting notices, board packets, and other information related to IPIB activities.

Board Staff



Erika Eckley, JD, MPA, was named the Executive Director on March 3, 2023. Previous to this appointment, she worked for Iowa-based Intoxalock and the Iowa Hospital Association. She received a bachelor's degree in Creative and Performing Arts from Grand View University, a Master's of Public Administration from Iowa State University and a law degree from Drake Law School. Her prior legal experience includes staff attorney with the Center for Agricultural Law and Taxation, and attorney with Wiedenfeld and McLaughlin.

Brett J. Toresdahl, CPM, serves as Deputy Director for the Board. He received his bachelor's degree in Political Science from Iowa State University. Prior to coming to work with the Board in July 2017, he led the ISBA Public Service Project as its Executive Director for 24 years working on pro bono and access to justice issues. Before that he served a term as Executive Assistant in the Office of Lieutenant Governor in Iowa which at that time was a stand-alone state agency and served as the President of the Senate. In 2019, he earned the Certified Public Manager designation through Drake University.



Daniel M. Strawhun, JD, serves as legal counsel for the Board. He received his juris doctor from the University of Iowa College of Law and his bachelor of arts in English from the University of Missouri-St. Louis. Prior to his current position, Daniel worked as a business litigation associate at a law firm in Sioux City, Iowa. He also served as a board member on the Sioux City Parks & Recreation Advisory Board. During law school, Daniel worked as a judicial extern for the Honorable Thomas D. Waterman, Associate Justice of the Iowa Supreme Court. Daniel joined the IPIB staff in December 2022.

Reviewed and approved on January 18, 2024
Monica McHugh, Chair

“The intervention of the Iowa Public Information Board (IPIB) did make a difference. I want to thank Director Eckley and the IPIB for your time and attention to my complaint.”- citizen from Southwest Iowa

“Thank you very much for leading the ‘Sunshine Laws’ training session ... [We] were very pleased with the participation from city and county boards and commissions and numerous elected officials. We all learned something together today.” - county official

“Thank you very much for the time and effort this advisory opinion involved.”- citizen from central Iowa

“On behalf of the staff, the city council and the newly elected officials, I would like to thank you for coming to give the presentation/training. The information presented will benefit all of us.” - city clerk

Report ID: SCHED 6 DEPT/APPR

STATE OF IOWA

Page: 1 of 3

Source: I/3 Budget

FINANCIAL INFORMATION SCHEDULE BY APPROPRIATION

Run Date: 01/12/2024

Spec Dept: All Fund: All Unit Detail: All

Run Time: 01:59:08 PM

Department: All Appropriation: All Recap Unit: All

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

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

RESOURCES

Appropriations

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

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

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

Expenditures

101	Personal Services-Salaries	154,055	286,459	288,030
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202	Personal Travel In State	758	5,298	117
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301	Office Supplies	757	3,000	2,178
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309	Printing & Binding		500	1
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313	Postage	17	150	54
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401	Communications	1,475	5,000	3,352
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STATE OF IOWA

Page: 2 of 3

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Object Class		Year to date	Revised Budget	Actuals
		Actuals	I/3 Financial	
		FY 2024	FY 2024	FY 2023
405	Professional & Scientific Services		9,000	8,050
406	Outside Services	975		325
414	Reimbursement to Other Agencies	5,352	17,000	12,424
416	ITS Reimbursements	12,966	22,000	33,965
418	IT Outside Services	702		1,826
434	Gov Fund Type Transfers - Other Agencies Services		9,000	
602	Other Expense & Obligations		13,543	55
Expenditures TOTAL:		177,056	370,950	350,377
Other Dispositions				
91B	Balance Carry Forward (Approps)			13,543
93R	Reversions			13,543
Other Dispositions TOTAL:				27,086
TOTAL DISPOSITION OF RESOURCES:		177,056	370,950	377,462

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

Run Date: 01/12/2024

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Department: All Appropriation: All Recap Unit: All

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

Object Class	Year to date	Revised Budget	Actuals
	Actuals	I/3 Financial	
	FY 2024	FY 2024	FY 2023
Appropriation P22 Net (Res-Disp):	193,894	(0)	
Appropriation P22 FTE:		3.00	2.59
Fund 0001 Net:	193,894	(0)	
Fund 0001 FTE:		3.00	2.59
Department 592 Net:	193,894	(0)	
Department 592 FTE:		3.00	2.59
Special Department 760SD Net:	193,894	(0)	
Special Department 760SD FTE:		3.00	2.59
Report Total Net:	193,894	(0)	
Report Total FTE:		3.00	2.59