

**IOWA PUBLIC INFORMATION BOARD**  
**MEMBERS**

**Joan Corbin, Pella (Government Representative, 2024-2028)**  
**E. J. Giovannetti, Urbandale (Public Representative, 2022-2026)**  
**Barry Lindahl, Dubuque (Government Representative, 2024-2028)**  
**Luke Martz, Ames (Public Representative, 2024-2028)**  
**Joel McCrea, Pleasant Hill (Media Representative, 2022-2026)**  
**Monica McHugh, Zwingle (Public Representative, 2022-2026)**  
**Jackie Schmillen, Urbandale (Media Representative, 2022-2026)**  
**Vacant**  
**Vacant**

**STAFF**

**Erika Eckley, Executive Director**  
**Brett Toresdahl, Deputy Director**  
**Kim Murphy, Legal Counsel**

**Use the following link to watch the IPIB meeting live:**  
<https://youtube.com/@IowaPublicInformationBoard>

**Note: If you wish to make public comment to the Board, please send an email to [IPIB@iowa.gov](mailto:IPIB@iowa.gov) prior to the meeting.**

**Agenda**

**June 27, 2024, 9:00 a.m.**  
**3<sup>rd</sup> Floor IPIB Office Conference Room**  
**Wallace Building**  
**502 East 9<sup>th</sup> Street, Des Moines**

**9:00 AM – IPIB Meeting**

- I. Approval of agenda\*
- II. Approval of the May 16, 2024 minutes \*
- III. Public Forum (5-minute limit per speaker)
- IV. Comments from the board chair. (McHugh)
  - Board Vacancy
  - Eckley's Evaluation
  - Committee Assignments
- V. Advisory Opinion – Deliberation/Action.
  - 1. 24AO:0003: Data in governmental databases
  - 2. 24AO:0004: Government officials' attendance at social events \*
  - 3. 24AO:0005: Required notice \*
  - 4. 24AO:0006: What is required under changes to electronic meetings \*
- VI. Cases involving Board Deliberation/Action. (Eckley)
  - 1. 23FC:0074 Chad Miller - Chapter 21- Scott County Board of Review 7/18/2023 – \* Final Report
  - 2. 23FC:0126 Tracy Stillwell – Chapter 22 – Hampton Public Library 11/19/23 – \* Report

3. 24FC:0014 Keegan Jarvis – Chapter 22 – Swan City Council – 2/6/24 – \* Dismissal
4. 24FC:0031 Regina Warnke; Jessie Austin; Chandra Swink – Chapter 22 – City of Urbana – 4/16/24 – \* Dismissal
5. 24FC:0032 Old Davenport Dump – Chapter 21 – City of Davenport – 3/28/24 – \* Dismissal
6. 24FC:0035 Shaylea Caris – Chapter 21 – Shelby City Council – 3/23/24 – \* Dismissal
7. 24FC:0036 Jason Foust; Katie Milhollin – Chapter 21 – City of Eldridge – 3/27/24 – \* Dismissal
8. 24FC:0037 Christine Knapp – Chapter 22 – Henry Co. Sheriff Dept. – 4/15/24 – \* Dismissal
9. 24FC:0040 James Warnke; Jamie Slife – Chapter 22 – City of Urbana – 4/28/24 – \* Dismissal

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

1. 23FC:0060 Dina Raley - Chapter 22- Delaware County Sheriff 6/16/2023 - \* Withdrawn

VIII. Pending Complaints. Informational Only (Eckley)

1. 23FC:0053 Debra Schiel-Larson – Both Chapters – Indianola Community School District – 5/1/23
2. 23FC:0107 Dana Sanders – Both Chapters – Benton Co. Board of Supervisors 10/31/23; 23FC:0109 Valerie Close 11/3/23; 23FC:0110 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 – Pending
3. 24FC:0009 Brett Christensen – Chapter 21 – City of Silver City – 1/23/24 – Pending
4. 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 – Pending
5. 23FC:0130 Keegan Jarvis – Chapter 21 – Swan City Council 11/27/23 –
6. 24FC:0010 Tirzah Wedewer – Chapter 21 – Manchester City Council – 1/29/24 –
7. 24FC:0013 Bonnie Castillo – Both Chapters – Union Co. Emergency Management Agency – 2/2/24 – Pending
8. 24FC:0017 Latrice Lacey – Chapter 22 – City of Davenport – 2/12/24 – Pending
9. 24FC:0018 Zach Vulich – Chapter 22 – City of Leland – 2/13/24 – Pending
10. 24FC:0034 Keegan Jarvis – Chapter 21 – Swan City Council – 4/9/24 –
11. 24FC:0038 Joe Monahan – Chapter 22 – Ames Public Library – 4/17/24 – Information Gathering
12. 24FC:0041 Laurie Kramer; Nancy Preussner; Emily Preussner – Chapter 21 - City of Delhi – 4/23/24 – Information Gathering
13. 24FC:0042 Ken Brown – Chapter 21 – City of Sidney – 5/3/24 – Information Gathering
14. 24FC:0043 Blake Jones – Both Chapters – City of Eldora – 5/19/24 – Information Gathering
15. 24FC:0044 Kaila Benson -Chapter 22 – Fort Dodge Police Dept. – 5/23/24 – Information Gathering
16. 24FC:0045 Arthur Anderson – Chapter 22 – City of Davenport – 5/31/24 – Information Gathering
17. 24FC:0046 Hannah Koppenhaver – Chapter 21 – Gilmore City-Bradgate Comm. Sch.Dist. -5/31/24 – Information Gathering
18. 24FC:0048 Ethan Vorhes – Both Chapters – Floyd County – 6/9/24 – Information Gathering
19. 24FC:0049 Lindsie Gallardo – Chapter 22 – Cedar Rapids Police Department – 6/10/24- Information Gathering
20. 24FC:0050 Beckett – Chapter 22 – Iowa Department of Corrections – 5/31/2024 – Information Gathering
21. 24FC:0051 Laurie Kramer – Both – City of Delhi – 5/30/2024 – Information Gathering
22. 24FC:0052 Erik Johnson – Chapter 22 – Delaware Township – 6/6/2024 – Information Gathering
23. 24FC:0053 Blake Jones – Chapter 22 – City of Eldora – 6/18/2024 – Information Gathering
24. 24FC:0054 Samuel Kleiss – Chapter 21 –City of Hudson – 6/17/2024 – Information Gathering
25. 24FC:0055 Chandler Trautwein Chapter 22 – Marshalltown Police Department – 6/17/2024 – Information Gathering

- IX. Committee Reports
1. Training – (Toresdahl) –
  2. Legislative – (Eckley)
  3. Rules – (Murphy)
- X. Office status report.
1. Office Update \* (Eckley) -
  2. Financial/Budget Update (FY23) \* (Toresdahl)
  3. Presentations/Trainings (Eckley) –  
Silver City Council  
Clinton County
  4. District Court Update (Eckley)  
Teig v Chavez Case \*
- XI. Next IPIB Board Meeting will be held in the Wallace Building, TBD Conference Room  
July 18, 2024 at 1:00 p.m.
- XII. Adjourn **\* Attachment**

# IOWA PUBLIC INFORMATION BOARD

May 16, 2024

## unapproved Minutes

The Board met on May 16, 2024 for its monthly meeting at 1:01p.m. in the 2nd floor N/S Conference Room in the Wallace Building with the following members participating: Daniel Breitbarth, Des Moines; Joan Corbin, Pella (remote); E. J. Giovannetti, Urbandale; Barry Lindahl, Dubuque (remote); Luke Martz; Monica McHugh, Zwingle; Jackie Schmillen, Urbandale (remote). Absent: Joel McCrea, Pleasant Hill. Also present were IPIB Executive Director Erika Eckley; Brett Toresdahl, Deputy Director. A quorum was declared present.

Others identified present or by phone: Brendan Chaney, Jody Anderson, Nicholas Bailey, Akosua Wiafe, Bri O'Hern, Kevin Foley, Kristin Stone, Shawn Shearer, Amy Beattie.

On a **motion** by Giovannetti, **second** by Lindahl, the agenda was unanimously adopted 6-0.

On a **motion** by Brietbarth, **second** by Lindahl, to approve the April 18, 2024, minutes. Unanimously adopted 6-0.

**Public Forum** – None.

**Board Chair** Comments – Introduced new Board member Luke Martz. Eckley introduced Kim Murphy as the new Legal Council for the IPIB starting in June.

**Legislative Committee** – Eckley shared a letter that was drafted and sent to the Governor regarding HF2539. A motion by Giovannetti and second by Lindahl to ratify the content of the letter and it being sent to the Governor. Approved 5-0 with Brietbarth abstaining.

It was also discussed and suggested that staff draft an advisory opinion to clarify ability to attend social events.

**Advisory Opinions** – no action

1. **None.**

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

1. 24FC:0026 Dan Nugteren – Chapter 21- South Central Regional Airport Agency – 3/7/24 – A motion by Brietbarth and second by Lindahl to approve the dismissal order. Unanimously approved, 6-0.
2. 23FC:0083 Brendan Chaney – Chapter 21 – City of Iowa Falls – 8/14/23 – Brendan Chaney and Jody Anderson spoke. A motion by Brietbarth and second by Martz to accept the probable cause report and dismiss the complaint as a matter of administrative discretion. Unanimously approved, 6-0.
3. 23FC:0130 Keegan Jarvis – Chapter 21 – Swan City Council 11/27/23 – Nicholas Bailey spoke. A motion by Brietbarth and second by Lindahl to accept the informal resolution report. Unanimously approved, 6-0.

Note: Corbin joined the meeting remotely at 1:37 P.M.

4. 24FC:0009 Brett Christensen – Chapter 21 – City of Silver City – 1/23/24 – A motion by Brietbarth and second by Giovannetti to accept the informal resolution report. Unanimously approved, 7-0.
5. 24FC:0016 Valerie Close – Chapter 21 – Benton Co. Board of Supervisors – 2/8/24 – Akosua Wiafe spoke. A motion by Brietbarth and second by Martz to approve the dismissal order. Approved, 6-0 with Giovannetti abstaining.
6. 24FC:0019 Kenneth Brown – Chapter 21 – City of Sidney – 2/21/24 – Bri O’Hern spoke. A motion by Giovannetti and second by Brietbarth to approve the dismissal order. Unanimously approved, 7-0.
7. 24FC:0022 Maher Waad – Both Chapters – Des Moines Airport Authority – 2/26/24 – Kevin Foley and Kristine Stone spoke. A motion by Brietbarth and second by Lindahl to approve the dismissal order. Unanimously approved, 7-0.
8. 24FC:0023 Shawn Shearer – Chapter 22 – City of Iowa City - 2/19/24 – Shawn Shearer spoke. A motion by Brietbarth and second by Martz to approve the dismissal order. Unanimously approved, 7-0.
9. 24FC:0027 Valerie Close – Chapter 21 – Benton Co. Board of Supervisors – 3/8/24 – Akosua Wiafe spoke. A motion by Brietbarth and second by Lindahl to approve the dismissal order. Approved, 6-0 with Giovannetti abstaining.
10. 24FC:0033 Amy Hagan – Chapter 21 – Oskaloosa School District – 4/9/24 – A motion by Brietbarth and second by Corbin to approve the dismissal order. Unanimously approved, 7-0.
11. 24FC:0039 Steven Menke – Chapter 22 – Kossuth County Board of Supervisors – 4/9/24 – A motion by Brietbarth and second by Lindahl to approve the dismissal order. Unanimously approved, 7-0.

**Matters Withdrawn. No Action -**

1. 24FC:0025 Dana Sanders – Both Chapters – Benton Co. Board of Supervisors

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

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:0107 Dana Sanders – Both Chapters – Benton Co. Board of Supervisors 10/31/23; 23FC:0109 Valerie Close 11/3/23; 23FC:0110 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 – Pending
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8. 24FC:0013 Bonnie Castillo – Both Chapters – Union Co. Emergency Management Agency – 2/2/24 – Pending
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20. 24FC:0041 Laurie Kramer; Nancy Preussner; Emily Preussner – Chapter 21 – 4/23/24 – Information Gathering

### **Committee Reports**

1. Communications – No report
2. Legislative – Eckley gave an updated report of legislation and status to the Board.
3. Rules – No report

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

- a. Eckley provided an office update and current statistics. She also shared with the Board an update about office and meeting space in the Wallace Building.
- b. Toresdahl shared the FY24 financials.
- c. Upcoming presentations:
  - Iowa Municipal Officials Academy
  - Swan City Council
  - Silver City Council
  - Delaware County
  - Benton County
- e. District court cases:
  - Van Pelt appeal
  - Ward appeal
  - Swarm case

The next IPIB meeting will be in the Wallace Building, room TBD, June 20, 2024, at 1:00 pm.

At 2:54 p.m. the meeting adjourned on a motion by Brietbarth and a second by Martz. Unanimously approved.

Respectfully submitted  
Brett Toresdahl, Deputy Director

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IPIB, Chair  
Approved



502 East 9<sup>th</sup> Street  
Des Moines, Iowa 50319  
www.ipib.iowa.gov

Erika Eckley, JD  
Executive Director  
(515) 725-1783  
erika.eckley@iowa.gov

## **Advisory Opinion 24AO:0006**

**DATE:** June 27, 2024

**SUBJECT:** Chapter 21 – Recent Law Changes

This Advisory Opinion provides information regarding recent amendments to Chapter 21 to ensure public awareness of and compliance with the changes.

During the 2024 legislative session, the Iowa Legislature passed Senate File 2385, an Act relating to boards, commissions, committees, councils, and other entities of state government that was more than 200 pages. This legislation was signed into law by Governor Kim Reynolds on May 17, 2024.

Division VII was included within Senate File 2385. (“Amendments”) It amends Chapter 21 of the Iowa Code as it relates to electronic meetings and requires options for electronic meetings for all governmental bodies. The Amendments also define the types of electronic meetings that can be utilized by all governmental bodies. This law takes effect on July 1, 2024.

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

This advisory opinion is provided to assist governmental bodies regarding application of and compliance with the new Amendments.

### **CHAPTER 21 AMENDMENTS:**

The following Amendments have been made to Chapter 21. Governmental bodies conducting public meetings must comply with these changes effective July 1, 2024:

**Amendments to section 21.8, subsection 1:** The Amendments mandate that, “A governmental body shall provide for hybrid meetings, teleconference participation, virtual meetings, remote participation, and other hybrid options for the members of the governmental body to participate in official meetings.” This law change requires that governmental bodies provide for electronic meetings for members of the governmental body and establishes options to be utilized. These options are defined in the new subsection 4 of section 21.8, below.

**Amendments to section 21.8, subsection 1, paragraph c:** The Amendments eliminate the requirement that minutes include a statement explaining why a meeting in person was impossible or impracticable.

#### **Board Members**

Joan Corbin ● E. J. Giovannetti ● Barry Lindahl ● Luke Martz  
Joel McCrea ● Monica McHugh ● Jackie Schmillen ● vacant ● vacant



**New subsection 4 to section 21.8:** This new subsection creates definitions for the following types of meetings:

- “Hybrid meeting” means a meeting involving both remote participation and in-person participation by members.
- “Remote participation” means real-time participation by a remotely located individual in a meeting which is being held in a different physical location using integrated audio, video, and other digital tools.
- “Teleconference participation” means participation using audio conference tools involving multiple participants in at least two separate locations.
- “Virtual meeting” means a meeting involving real-time interaction using integrated audio, video, and other digital tools, in which participants do not share physical location.

Governmental bodies should carefully review these definitions and the requirements for each type of meeting.

**Is a governmental body required to provide electronic access to meetings for members of the governmental body pursuant to the new law?**

Yes. Effective July 1, 2024, Iowa Code § 21.8 requires that a governmental body provide for electronic meeting options for members of the governmental body. The new law states, “A governmental body *shall* provide for hybrid meetings, teleconference participation, virtual meetings, remote participation, and other hybrid options for the members of the governmental body to participate in official meetings.” The use of the word “shall” requires that electronic meetings, in at least one of the forms identified by the new law, be made available to members of the governmental bodies.

**Is a governmental body required to provide electronic meeting options if none have been requested or it is believed none will be utilized?**

The language is mandatory that the option be provided for official meetings of the governmental body. A governmental body, therefore, must make an electronic meeting option available for participation of the members of the governmental body. The law does not use the terminology “may” and does not distinguish between governmental bodies that will and will not utilize an electronic meeting for participation. For this reason, governmental bodies should provide an electronic meeting option for all meetings.

**Is a governmental body required to provide *all* electronic meeting options?**

No. A governmental body is not required to utilize all options for every meeting. The amended language includes a variety of options and defines what could be considered an electronic meeting. Several of the types of meetings would be contradictory.

For instance, a “hybrid meeting” involves both remote and in-person participation by members of the governmental body, but a “virtual meeting” involves members that do not share a physical location. By definition, it would be impossible to use all available options for each meeting of the governmental body because a governmental body could not hold a “hybrid meeting” and a “virtual meeting” at the same time.

The governmental body should choose the electronic meeting option that best meets the needs of the members of the governmental body. For example, if all members of the governmental body will be participating from differing remote locations, and the governmental body has the technical ability, the governmental body should consider holding a virtual meeting. If some members of the governmental body will be in-person and others will

be attending from alternative locations, the governmental body should consider holding a hybrid meeting or teleconference participation.

The governmental body should utilize the electronic meeting method(s) that allows for participation of members of the governmental body while also ensuring the meeting meets Iowa Code chapter 21 requirements.

**Are there new requirements for governmental bodies related to quorum and voting that must be observed when meeting electronically?**

No. The Amendments do not change quorum or voting requirements. Members of governmental bodies should be allowed to vote electronically utilizing the electronic method chosen by the governmental body. A member of a governmental body participating in an electronic meeting and following existing requirements of Iowa Code chapter 21 should be considered in attendance and counted toward quorum.

**What are the requirements for public participation in an electronic meeting pursuant to the new law?**

The new law does not change existing requirements as it relates to public access to the meeting and compliance with public notice requirements. Iowa Code § 21.8(a) still requires “The governmental body provides public access to the conversation of the meeting to the extent reasonably possible.” The law also does not change requirements that minutes be produced, but does eliminate the requirement that minutes include a statement as to why a meeting in person was impossible or impracticable. Governmental bodies should continue to adhere to public participation and notice requirements within Iowa Code Chapter 21.

**Must the general public be granted access to the electronic meeting options. For example, if a member of the governmental body uses remote participation, must the public be granted the same remote participation options?**

A cornerstone of Chapter 21 is that members of the public must have access to open sessions of meetings of governmental bodies. “Open session” is defined as a meeting to which all members of the public have access. Iowa Code § 21.2(3). Chapter 21 does not provide a definition of public access or provide specific detail on how the public must access open sessions.

Governmental bodies should carefully consider public access to meetings depending on the electronic meeting method utilized. For example, governmental bodies utilizing the “hybrid meeting” should allow public access at the in-person location and should also consider allowing an option for the public to listen remotely. Governmental bodies may consider providing live-streaming options to allow the public to observe hybrid or virtual meetings. If governmental bodies provide teleconference options for the members of the governmental body, consideration should be given as to whether the teleconference will be provided as an option for the public to utilize or whether the members participating through the teleconference will be placed on speaker for the public to hear at the in-person location.

A related question involves “remote participation.” Remote participation may represent that a singular member of the governmental body is participating from a remote location or could include a situation in which a specialist presenter appears remotely. This has prompted the question of whether the public must be provided remote participation if a member of the governmental body or a presenter appears in such a manner. Iowa Code § 21.8 requires only that the members of the governmental body be given electronic meeting access. The law differentiates the type of access granted to the public by stating that the governmental body provide “public access to the **conversation of the meeting** to the extent reasonably possible.” Iowa Code § 21.8(1)(a) (emphasis added). The law does not specifically require that the public be given a virtual platform to make public comment or otherwise participate. Governmental bodies should determine how to accommodate public

participation based on the unique circumstances of each case and the scope of the electronic method used within the requirements of Iowa Code Chapter 21.<sup>1</sup>

The amendments do not change how access to the public is provided. It is the responsibility of the governmental body to comply with public access requirements pursuant to Iowa Code § 21.8. Governmental bodies should carefully consider the electronic meeting approach utilized and the best methods to ensure public access to open sessions of meetings.

### **How should notice of the meeting with electronic participation options be handled?**

Iowa Code § 21.4 requires that a governmental body give notice of the tentative agenda, the time, date, and place of each meeting. Iowa Code § 21.8(b) states that for notice requirements “the place of the meeting is the place from which the communication originates or where public access is provided to the conversation.” If the governmental body will be holding a “hybrid meeting,” then the public should be notified where the in-person meeting will occur. If a live-streaming, teleconference, or other electronic option will be provided to the public, that should also be included within the notice of the meeting. If a “virtual meeting” is being held, then the public should be given notice of the electronic or telephonic location in which the public can watch and/or participate in the meeting.

### **If a “virtual meeting” is scheduled, must a governmental body provide an in-person location for the public?**

Nothing within the new Iowa Code § 21.8 language requires a governmental body include an in-person option for the public. In fact, the amended language allows the governmental body to provide the option of a “virtual meeting” to its members in which participants do not share physical location. The amended language also eliminated the need for the governmental body to have a specific reason why it could not meet in person. It would be impractical if the governmental body members could meet virtually, but would still be required to host an in-person location for the public to watch the “virtual meeting.” So long as notice of how to watch and/or participate in the virtual meeting is provided to the public as required under Iowa Code §§ 21.4 and 21.8, there is no requirement an in-person option be provided to the public when a virtual meeting is held.

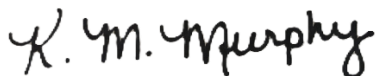
### **BY DIRECTION AND VOTE OF THE BOARD:**

Joan Corbin  
E.J. Giovannetti  
Barry Lindahl  
Luke Martz  
Joel McCrea  
Monica McHugh  
Jackie Schmillen

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<sup>1</sup> When balancing the interests of public participation, governmental bodies should consider Iowa Code § 21.7. “Nothing in this chapter shall prevent a governmental body from making and enforcing reasonable rules for the conduct of its meetings to assure those meetings are orderly, and free from interference or interruption by spectators.” Iowa Code § 21.7. While several electronic options are convenient for the public, disruptions to meetings of governmental bodies can occur over electronic platforms and can interfere with the ability of members of the public to participate and observe governmental meetings. This can be a consideration in determining whether and how to grant participation by electronic access while ensuring the security and conduct at the public meeting can be maintained. *See, e.g.* “Zoom call organized by Black Iowa lawmakers reportedly interrupted by racist incident”, WHO News, January 8, 2022; “Zoom bombings’ disrupt Iowa Senate meetings with profanity, pornography and racial slurs”, The Des Moines Register, February 14, 2023.

**SUBMITTED BY:**



Kimberly Murphy, J.D.  
Legal Staff  
Iowa Public Information Board

**ISSUED ON:**

June 27, 2024

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

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



502 East 9<sup>th</sup> Street  
Des Moines, Iowa 50319  
[www.ipib.iowa.gov](http://www.ipib.iowa.gov)

Erika Eckley, JD  
Executive Director  
(515) 725-1783  
[erika.eckley@iowa.gov](mailto:erika.eckley@iowa.gov)

**Advisory Opinion 24AO:0005 – Required Notice**

**DATE:** June 27, 2024

**SUBJECT:** Required notice pursuant to Chapter 21

Dustin Ganfield  
Via email [redacted]

Dustin Ganfield,

We are writing in response to your request dated May 21, 2024, requesting an advisory opinion from the Iowa Public Information Board (IPIB) pursuant to Iowa Code Chapter 23 and Iowa Administrative Code 497-1.3.

This Advisory Opinion concerns the public notice requirements for meetings of governmental bodies under Iowa Code § 21.4. We note at the outset that the IPIB’s jurisdiction is limited to the application of Iowa Code chapters 21, 22 and 23, as well as rules in Iowa Administrative Code chapter 497. Advice in a Board opinion, if followed, constitutes a defense to a subsequent complaint based on the same facts and circumstances.

**QUESTION POSED:**

A local School Board normally meets at City Hall on the 2<sup>nd</sup> and 4<sup>th</sup> Mondays at 5:30 p.m. They typically publish agendas for these meetings, as public notice, on their website and physically at their Admin facility, which is not their typical place of meeting. If a public notice was not posed on their website until after 8 a.m. on the day of their public meeting, but a physical notice and agenda was posted at their admin facility, even though that is not their typical place of meeting, AND no notice was physically posted at their typical place of meeting, does this provide enough legal notice, or was their an open meetings violation because of the late publication?

One last clarification on the availability of the physical posting, given the meeting is on a Monday and the Admin building is closed over the weekend. Would posting it inside the building, where it couldn’t be viewed by the public after hours on Friday be compliant? I am asking does the notice need to be “accessible” for at least 24 hours prior to the meeting, or simply posted at least 24 hours prior, even if that only leaves eight or nine hours of visible time? A simpler way to ask this concern might be, how long does the notice need to be accessible prior to the meeting, and are “business hours” considered in the 24 hour requirement?

**Board Members**

Joan Corbin • E. J. Giovannetti • Barry Lindahl • Luke Martz  
Joel McCrea • Monica McHugh • Jackie Schmillen • vacant • vacant

## OPINION:

Iowa Code § 21.4(1)(a) provides the requirements that a governmental body must comply with for public notice:

“Except as provided in subsection 3, a governmental body shall give notice of the time, date, and place of each meeting including a reconvened meeting of the governmental body, and the tentative agenda of the meeting, in a manner reasonably calculated to apprise the public of that information. Reasonable notice shall include advising the news media who have filed a request for notice with the governmental body and posting the notice on a bulletin board or other prominent place which is easily accessible to the public and clearly designated for that purpose at the principal office of the body holding the meeting, or if no such office exists, at the building in which the meeting is to be held.” Iowa Code § 21.4(1)(a).

Iowa Code § 21.4(2)(a) is also applicable to the question posed in this Advisory Opinion:

“Except as otherwise provided in paragraph “c”, 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 § 21.4(2)(a).

The question posed relates to the location of the notice and the timing of the notice. Both issues are addressed in Iowa Code Chapter 21.

**Location of Notice:** The cornerstone of Iowa Code § 21.4 is that notice must be provided in a manner reasonably calculated to apprise the public of that information. The law provides examples of what constitutes a reasonably calculated manner, which include posting the notice on a bulletin 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. If no such office exists, the posting is to be placed the building in which the meeting is being held.

In the question posed, the local school board posts the notice at their administrative facility. The administrative facility of the local school board is likely considered the principal office of the body holding the meeting. This location meets the requirements of the law, assuming the public notice is posted in this location on a bulletin or other prominent place which is easily accessible to the public and clearly designated for the purpose.

Governmental bodies are not required to post the public notice in the building in which the meeting is being held unless there is no clearly designated place that meets the requirements of Chapter 21 at the principal office of the body holding the meeting.

**Timing of Notice:** A notice that conforms with the requirements of Iowa Code chapter 21 must be provided within twenty-four hours prior to the commencement of the meeting of the governmental body. This means that the public notice must be posted at a location, as defined in the above paragraphs, within twenty-four hours of the commencement of the meeting. It appears, based on the information in the question posed, that the governmental body posted the public notice at the required location within twenty-four hours prior to the commencement of the meeting.

The question raises a concern regarding public access at the location in which the notice is posted. The law specifically states that notice must be provided in a manner reasonably calculated to apprise the public of the information. The law also states that the location of posting must be easily accessible. Posting the notice in a location that is not accessible to the public would defeat the purpose and intent of the law. Best practice would be to post the notice in a manner that allows the public to access the notice. This could include posting the notice on the window of city hall so it is still accessible when the city hall is closed. Iowa Code chapter 21 does

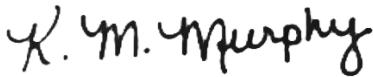
not have any requirement that notice of a meeting be posted on the governmental entity's website, but choosing to post the public notice on the website within the twenty-four-hour timeframe established by Chapter 21 would also enable better access for the community.

The question also raises a concern regarding public notice on the governmental entity's website that was not posted within twenty-four hours prior to the commencement of the meeting. There is no violation of Iowa Code chapter 21 if the public notice was provided at the required location within the required timeframe. But, there would be a violation if the notice was not physically posted and was only posted on the website.

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

Joan Corbin  
E.J. Giovannetti  
Barry Lindahl  
Luke Martz  
Joel McCrea  
Monica McHugh  
Jackie Schmillen

**SUBMITTED BY:**



Kimberly Murphy, J.D.  
Legal Staff  
Iowa Public Information Board

**ISSUED ON:**

June 27, 2024

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

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



502 East 9<sup>th</sup> Street  
Des Moines, Iowa 50319  
www.ipib.iowa.gov

Erika Eckley, JD  
Executive Director  
(515) 725-1783  
erika.eckley@iowa.gov

**Advisory Opinion 24FC:0006**

**DATE: June 27, 2024**

**SUBJECT: Attendance at social and ministerial events**

This opinion concerns attendance at social and ministerial events. Advisory opinions may be adopted by the board pursuant to Iowa Code section 23.6(3) and Rule 497–1.2(2): “[t]he board may on its own motion issue opinions without receiving a formal request.” We note at the outset that IPIB’s jurisdiction is limited to the application of Iowa Code chapters 21, 22, and 23, and rules in Iowa Administrative Code chapter 497. Advice in a Board opinion, if followed, constitutes a defense to a subsequent complaint based on the same facts and circumstances.

**QUESTION POSED:**

**Can government officials subject to Iowa Code chapter 21 attend ministerial and social events without violating open meetings law?**

**OPINION:**

Iowa Code § 21.2 defines what constitutes a meeting under Iowa Code chapter 21.<sup>1</sup> “‘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...”

Specifically excluded from the definition of a meeting under chapter 21 is “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.

Chapter 21 excludes events attended by members of a government body, such as social, political and civic events, so long as the members avoid deliberation on policy issues within their policy-making duties and their attendance at the event is not to avoid the transparency requirements of the open meetings law. “[T]he second sentence of section [21.2] merely reaffirms the right of a majority of a governmental body’s members to meet for a purely ministerial function, or in a social setting (as is often the case in a small community), without being

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<sup>1</sup> “1. Members of a governmental body, as defined under Iowa Code § 21.2, meet; 2. This meeting is in person or by electronic means; 3. A majority of the governmental body is in attendance; 4. There is deliberation or action taken by the body; and 5. The deliberation or action is within the body’s policy-making duties.” 24AO:0001 - Chapter 21 Requirements for Work Sessions

**Board Members**

Joan Corbin ● E. J. Giovannetti ● Barry Lindahl ● Luke Martz  
Joel McCrea ● Monica McHugh ● Jackie Schmillen ● vacant ● vacant



required to follow chapter [21] provisions, so long as there is no discussion of policy and no intent to avoid the purposes of the act.” *Telegraph Herald, Inc. v. City of Dubuque*, 297 N.W.2d 529, 533 (Iowa 1980).

### **What is a purely ministerial event?**

The Iowa courts have examined what is a purely ministerial event or purpose. Generally, gathering merely to receive information that will be reported on and acted upon at an open meeting does not constitute a meeting under Iowa Code § 21.2. *See Id.* at 534.

Situations in which members of a governmental body gather only to “**receive** information upon a matter within the scope of the body’s policy-making duties.” “[I]ndividual members may, by asking questions, **elicit clarification** about the information presented.” *Hettinga v. Dallas Cnty. Bd. of Adjustment*, 375 N.W.2d 293, 295 (Iowa Ct. App. 1985) (quoting Op.Att’y Gen. # 81–7–4(L) at 10) (emphasis added).

The court has held the following have been ministerial events (*although the Court, in some cases, urged caution about concerns the government bodies in these situations were close to creating a chapter 21 meeting*):

- When a majority of members were in a room outside a courtroom and received only information from the county attorney about the applicable law of a county zoning ordinance, but the merits of a case before the members was not discussed and no intention to avoid the statute was found. *Hettinga v. Dallas Cnty. Bd. of Adjustment*, 375 N.W.2d 293, 295 (Iowa Ct. App. 1985) (note the court cautions about concerns).
- Board members met with an engineering firm to elicit information about a report the firm prepared. Testimony established there was no deliberation. *Dooley v. Johnson Cnty Bd. Of Sup’rs*, 2008 WL 5234382 (Iowa Ct. App. Dec. 17, 2008).
- Three council members went to view rock the city administrator was considering buying, but facts established no deliberation occurred and bill for the rock was approved at a council meeting. *Gavin v. City of Cascade*, 500 N.W.2d 729, 732 (Iowa Ct. App. 1993)

Some circumstances in which IPIB has found the gathering was very purely ministerial purposes:

- A gathering with the purpose of introducing volunteers to supervisors and providing training to volunteers. 13FC:0011 11/14/2013 Lauris Olson / Story County Board of Supervisors
- A meet and greet social event in which members were tasked with set-up and clean-up of the event when no evidence showed any deliberation during these duties. 14FC:0067 08/28/2014 Karen Roode / City of Low Moor
- Discussion of three members after a meeting to schedule interviews of job applicants. 20FC:0027 Logan Nehman/Fonda City Council
- Board signing tax exemptions documents after the conclusion of a meeting. There was no evidence of deliberation occurring during the task. 24FC:0016 Valerie Close/Benton County Board of Supervisors

A ministerial or social event can become a “meeting” when there is deliberation or action taken by the government body.

### **How to avoid creating a “meeting” at a purely ministerial event?**

“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.” *Hettinga*, 375 N.W.2d at 295 (quoting Op.Att’y Gen. # 81–7–4(L) at 10). Basically, deliberation occurs when “the information gathering evolves into discussion of [the government body] member opinions and the reasoning behind those opinions,” *See Hettinga*, 375 N.W.2d at 295. When the governmental body members begin talking about their thoughts, concerns, opinions, or potential action on the matters, the government body is deliberating and, by definition, the discussion has become a meeting subject to open meeting requirements.

To avoid deliberation, the members of a governmental body should ensure they take in the information received and ask clarifying questions if needed, but avoid providing any commentary on the topic. They should avoid any comments that begin with phrases similar to the following, which will likely lead toward deliberation.

- “I think we should..”
- “I feel this could..”
- “I support/won’t support this...”
- “My opinion on this matter is...”
- “I want to take a poll/see what you all are thinking”

A better option, if there will be information gathering on matters within the policy-making duties of the governmental body, is to conduct the conversation in an open meeting following the requirements of chapter 21, so there is no concern with the ministerial gathering becoming an improper meeting.

### **How to avoid creating a “meeting” at a social event or the appearance of a meeting?**

When a quorum of members of a government body choose to participate in a social event, such as a business opening, civic event, or party, they can attend, but like ministerial gatherings, the members must avoid deliberating on matters within their policy-making responsibilities.

“Persons 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 [meetings]. The public is entitled to openness in the making of public policy by governmental bodies.” *Hettinga*, 375 N.W.2d at 295–96. Keeping this in mind, members should also consider taking steps to avoid creating the appearance of deliberation or any intention to avoid the purposes of the law.

- Follow best practices. Provide notice the members of the government body will be attending the social event. Providing notice when the government body will be attending the event demonstrates transparency about why a quorum of the members are there.
- Do not sit together or gather in a majority at the event. Ensuring members are socializing with other attendees at the event prevents any deliberation on matters within the members’ scope.
- If members are together, make sure the conversation topics are social in nature to avoid bringing up government business.

### **Conclusion**

Government officials can attend ministerial and social events, like political and civic events, without violating the open meetings law. But, officials need to make sure they take steps to avoid deliberation on areas within their policymaking duties and take common sense steps to avoid the appearance of improper deliberation or attempting to avoid chapter 21 requirements.

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

Joan Corbin  
E.J. Giovannetti  
Barry Lindahl  
Luke Martz  
Joel McCrea  
Monica McHugh  
Jackie Schmillen

**SUBMITTED BY:**

Erika Eckley  
Executive Director  
Iowa Public Information Board

**ISSUED ON:**

June 27, 2024

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

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# The Iowa Public Information Board

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

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

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

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

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

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

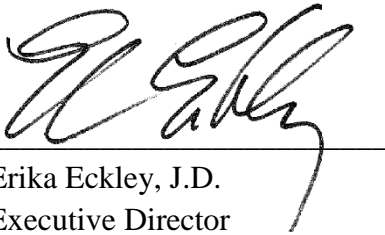
The Scott County Board of Review was in session beginning May 1 and concluded May 31 as required by statute.

The Board, through the County Assessor, provided the minutes from the meetings in 2024. The format of the results of the individual protests was changed to be sorted and provided with the additional details of the open meeting held. The new format shows the date of the hearing and decision, the votes of the Board, and the final disposition of the Board on the protest. Previously, this information was not consolidated and did not include the information necessary.

The Board is encouraged to continue to find ways to make their protest meetings as transparent and open as possible, including ensuring the public and individuals filing a protest are informed of processes and procedure of the Board in reviewing the disputes.

Because the terms of the Informal Resolution were met, the Board should dismiss the Complaint as resolved.

Respectfully submitted,



Erika Eckley, J.D.  
Executive Director

#### CERTIFICATE OF MAILING

This document was sent on June 13, 2024, to:

Chad Miller  
Thomas McManus, Scott County Assessor

## The Iowa Public Information Board

In re the Matter of:	Case Number: 23FC:0126
Traci Stillwell, Complainant	Informal Resolution Report
And Concerning:	
Hampton Public Library, Respondent	

Traci Stillwell filed formal complaint 23FC:0126 on November 19, 2023, alleging the Hampton Public Library (“Library”) violated Iowa Code chapter 22 on November 14, 2023.

Ms. Stillwell alleges she submitted a public records request on October 22, 2023, to the Library and received an estimate for fees that were not reasonable or actual estimates.

Ms. Stillwell records request included the following, “I would like copies of all correspondence, both written and digital including any and all social media platforms, emails, and text messaging between you and the members of the Hampton City Council, City Manager, Iowa Library Association, The American Library Association, members of press i.e.: news outlets, newspapers, radio, correspondence with directors of other public libraries, present and past Board of Trustees including the board president, employees of the Hampton Public Library, The Hampton Iowa City Attorney, and with any individual who has challenged a book in Hampton Public Library from January 1, 2023 to present day.”

Ms. Stillwell alleges she received a reply from the Library on October 26, 2023 which included an initial estimate of the fees, but with the possibility of additional, open-ended fees. She responded to the library following a conversation with the Iowa Public Information Board on November 3, 2023. A letter was sent to the custodian of the records the same day asking for further explanation of the fees. She received no correspondence in reply from the custodian.

Ms. Kim Manning, Librarian for the Library provided a response. Ms. Manning provided the following estimated fees to Ms. Stillwell. Upon review of the request, the IT firm estimated the work would take approximately four hours at a rate of \$75.00 per hour (\$300 total). She stated that Ms. Stillwell did not object to this expense. Ms. Manning also provided an estimate of \$300 per hour for the review of the requested records by the Library’s local counsel. Ms. Manning states that she is unable to provide additional estimates of fees until the materials are retrieved, how much of it needs to be reviewed by counsel, and how much time it will take.

In a response to the Library, Ms. Stillwell questions the estimate of an IT professional needing four hours to retrieve these records. She also believes reasonable fees should not include attorney fees to verify compliance for the release of requested records. She disagrees that the request would include any confidential information. She also states that a total fee must be agreed upon prior to the records retrieval process.

IPIB staff attempted to work with the parties to put together a reasonable estimate for the records request. Ms. Manning was asked to work with her IT people to determine the number of records used in determining the initial estimate of four hours. Based on this number the Library's counsel, Ms. Rosenberg was asked to determine an estimate for the time and fees to review and redact the records.

During the course of these conversations, it was discovered that the Library had only 30 days of emails available on Ms. Manning's computer and no one has been able to locate where Library emails are hosted and stored. Apparently, the emails are set to automatically delete after 30 days. The Library does not have access to the server and are unclear as to who is hosting the server.

At this juncture, after several meetings with the parties, the matter has not been resolved and more questions have been raised regarding the Library's emails and response to a records request. Ms. Manning has retired from the Library and attempts to resolve these questions and obtain updates and information from the Library have been fruitless. At this time, it is unclear if the requested records exist or if they can be recovered.

The formal complaint was accepted by the IPIB on April 18, 2024.

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

1. The Hampton Public Library Board will acknowledge at an open meeting that there are sufficient facts to show that the Library has failed to provide public records requested within a reasonable time and failed to provide a complete estimate of fees pursuant to Iowa Code chapter 22. This acknowledgement shall be recorded in the minutes of said meeting and minutes shall be provided to the City of Hampton and the IPIB.
2. The Hampton Public Library will identify the location, quantity, and availability of the public records requested by Ms. Stillwell. A report reflecting this information will be provided to Ms. Stillwell and the IPIB.
3. All available records, except those identified as confidential shall be provided to Ms. Stillwell at no cost.
4. The Hampton Public Library Board will draft and adopt a policy regarding responding to public record requests. This policy will comply with Iowa Code chapter 22 and shall be reviewed and approved by IPIB staff.
5. The Hampton Public 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 30 days of acceptance by all parties and approved by the Iowa Public Information Board. Upon showing proof of compliance, the IPIB shall dismiss this complaint as successfully resolved.

Ms. Stillwell approved the informal resolution on May 15, 2024.

Wendy Lamos, President of the Hampton Public Library Board approved the informal resolution on May 15, 2024.

The IPIB Deputy Director recommends that the IPIB approve the informal resolution.

By the IPIB Deputy Director

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Brett J. Toresdahl



## The Iowa Public Information Board

In re the Matter of: Keegan Jarvis, Complainant And Concerning: Swan City Council, Respondent	Case Number: 24FC:0014  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

Keegan Jarvis filed formal complaint 24FC:0014 on February 6, 2024, alleging that the Swan City Council ("City") violated Iowa Code chapter 22 on January 11, 2024.

Mr. Jarvis alleged that at Swan City Council meeting on January 9, 2024, he provided the city with a public record request. On February 6, 2024, he had not received any answer.

Mr. Nicholas Bailey, attorney for the City, provided a response on February 26, 2024. Mr. Bailey stated Mr. Jarvis had provided a six-page letter to the City that contained questions and record requests. Mr. Bailey was asked by the City to reply to the letter, but he had been delayed due to illness. On February 13, 2024, Mr. Bailey sent a letter to Mr. Jarvis explaining his delay.

He also wrote, "Your six-page request actually contains a lot more than just record requests pursuant to Iowa Code chapter 22. There are a series of itemized questions for the Council and/or Clerk that are more properly categorized as interrogatories or questions of the Council and Clerk. Those are not open records requests." He went on to ask Mr. Jarvis for a list of documents he was requesting. As of the date of that letter, Mr. Jarvis had not responded to the City's request for clarification regarding the records requested. Mr. Bailey indicated that the City was prepared to respond as soon as they receive the clarification.

On April 18, 2024, Mr. Jarvis provided clarification to his records request. His request is reflected in **(bold type)** and Mr. Bailey's response on April 27, 2024, is in *(italics)*:

**1) "If self-insured, please provide documentation of the bond instrument. If the town is insured under contract, please provide the policy information in (long form)?"**

*\*I will consult with the City Clerk and we pull copies of any insurance policies in place for the City and get you a cost estimate for the actual cost of producing those copies.*

**2) "Pertaining to the consultation of the city's retained attorney. Are email, audio, or any other records of these conversations available? If so please provide these."**

*\*There are no audio or video records available of any consultations with the city's retained attorney. With respect to emails between the city and the city's retained attorney, those items are confidential attorney-client communications and privileged and specifically excepted from disclosure by Iowa Code Section 22.7(4) to the extent they are attorney work product and related to a claim made by or against a public body.*

**3) "Pertaining to the Mayor's conversation with the company providing the roll-off dumpster to Mr. Jarvis. Are email, audio, or any other records of these conversations available? If so please provide these."**

*\*There are no such records in existence in the records of the City of Swan.*

On April 29, 2024, Mr. Bailey provided a copy of the insurance policy documents to IPIB and Mr. Jarvis. He stated, "We have now provided all documents in the possession of the city for the three specific requests in your email, save the attorney-client privileged information from emails between the city and council or the mayor." No further information was provided by Mr. Jarvis.

### **Analysis**

IPIB staff reviewed the allegations and response in this complaint. The City's delay in responding was due to their attorney's illness. Communication to Mr. Jarvis was provided when Mr. Bailey was able to return. The City needed additional information from Mr. Jarvis regarding the actual records he was requesting. Once Ms. Jarvis clarified what records he was seeking, the City provide the documents or explained why documents were withheld as confidential. Mr. Jarvis has received his documents. There was no violation of Iowa Code chapter 22.<sup>1</sup>

### **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 24FC:0014 is dismissed as legally insufficient pursuant to Iowa Code section 23.8(2) and Iowa Administrative Rule 497-2.1(2)(b).

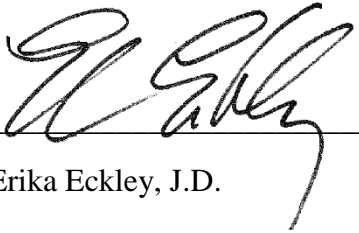
The City provided records requested or explained why records were withheld to Mr. Jarvis. The City did not violate Iowa Code chapter 22.

Pursuant to Iowa Administrative Rule 497-2.1(3), the IPIB may "delegate acceptance or dismissal of a complaint to the executive director, subject to review by the board." The IPIB will review this Order on June 20, 2024. Pursuant to IPIB rule 497-2.1(4), the parties will be notified in writing of its decision.

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<sup>1</sup> In addition, in relation to IPIB Complaint 23FC training provided by the IPIB to the City Council and staff on May 16, 2024 sufficiently covered Iowa Code chapter 22 that would address any concerns expressed in this complaint.

By the IPIB Executive Director



Erika Eckley, J.D.

CERTIFICATE OF MAILING

This document was sent by electronic mail on the June 12, 2024, to:  
Keegan Jarvis, Complainant  
Nicholas Bailey, City Attorney, City of Swan

# The Iowa Public Information Board

In re the Matter of:  Jessie Austin, Chandra Swink, and Regina Warnke, Complainants  And Concerning:  City of Urbana, Respondent	Case Number: 24FC:0031  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 April 16, 2024, Jessie Austin, Chandra Swink, and Regina Warnke (“Complainants”) filed formal complaint 24FC:0031, alleging that City of Urbana violated Iowa Code chapters 21 and 22.

## Facts

Individually, the Complainants filed complaints against the City related to the same general issues. They allege the City’s manager fired the police force in the City and put the police chief on administrative leave. Complainants allege the City is refusing to provide information to the community. Ms. Warnke alleges copies of a City ordinance was not provided when requested, but Ms. Warnke was allowed to review and take photographs of the ordinance. Complainants allege they were not informed about a City Council meeting on April 17 on Facebook, and the City refuses to post the agenda online. They allege the City only posts the agendas at the city building, the bank, and the coffee shop, all of which close at 4:00 p.m., which prevents access to them by citizens. They also allege a lack of transparency because the Council does not disclose the details of what they are voting on and agendas only include bullet points rather than full details. Meeting minutes also do not disclose additional details. They also allege the City does not publish minutes and agendas as required under Iowa Code.

The Complaints can be broken down into the following:

1. Failure to provide a public records request.
2. Failure to post information about a Council meeting on Facebook and instead post in locations that close in the evening.

3. Failure to provide details on agendas and minutes
4. Failure to publish minutes and agendas as required by statute.

In response, the City provided a response for the City Administrator. The City responded that Ms. Warnke viewed the ordinance at City Hall and took pictures of the ordinance at no charge. The City also provided social media posts that state how to locate a copy of the ordinance on the City's website.

In regards to an April 17 meeting, the City stated that there was no meeting on the 17<sup>th</sup>. It was a date mentioned when working to schedule a meeting with the Council, but no meeting was scheduled on that date, so no agenda was prepared.

The City provided copies of the publication of the minutes from the Council meeting on April 9, 2024 as well as information regarding where agendas and minutes are posted and published.

### **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. Unless otherwise provided for by law, the right to examine a public record shall include the right to examine a public record without charge while the public record is in the physical possession of the custodian of the public record.” Iowa Code § 22.2(1).

“[A] governmental body shall give notice of the time, date, and place of each meeting including a reconvened meeting of the governmental body, and the tentative agenda of the meeting, in a manner reasonably calculated to apprise the public of that information. Reasonable notice shall include advising the news media who have filed a request for notice with the governmental body and posting the notice on a bulletin board or other prominent place which is easily accessible to the public and clearly designated for that purpose at the principal office of the body holding the meeting, or if no such office exists, at the building in which the meeting is to be held.” Iowa Code § 21.4(1)(a).

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

“Within fifteen days following a regular or special meeting of the council, the clerk shall cause the minutes of the proceedings of the council, including the total expenditure from each city fund, to be published in a newspaper of general circulation in the city. The publication shall

include a list of all claims allowed and a summary of all receipts and shall show the gross amount of the claims.” Iowa Code § 372.13(6).

## **Analysis**

### ***Failure to Provide a Public Records Request***

In this situation, there was no violation of Chapter 22 because the Ordinance requested was provided for Ms. Warnke to view at City Hall and she photographed it at no cost. She was not required to complete a form or pay for her review of the document.

In responding to this Complaint, however, the City provided information about its public records policy. The policy appears to require any requestor complete a form and pay \$12 per hour supervision and \$.50 per page copy. The City is encouraged to review this policy, if it is the official policy of the City. Iowa Code § 22.4 requires that a records request can be made: in person, by telephone, in writing, and by electronic means. Requests can be made anonymously as well. IPIB has stated that a government body may have a form to keep track of records requests, but cannot mandate that any requestor complete the form if they choose not to. *See, e.g.* 22FC:0050 Mari Radtke/City of Paullina - Acceptance Order.<sup>1</sup> Further, the costs that may be charged for records requests must be reasonable and based on the actual costs of collecting and/or copying the records. The City is encouraged to review the costs cited in the information provided to IPIB. It is likely that the individual collecting or supervising a records request does make \$12 per hour, but it is unlikely the actual cost of photocopies is \$.50 per page.<sup>2</sup> While there was no violation under these facts, the City is highly encouraged to review and, if necessary, revise its records request policy before a violation does occur.

### ***Failure to post the agenda on Facebook***

According to the City, no Council meeting was scheduled for April 17, 2024, so no agenda was prepared or posted. The notice provision in Iowa Code § 21.4 requires only physically posting of the tentative agenda at the office of the government body or where the meeting will be held. The City, according to its website, physically posts Council agendas at First Federal Credit Union- 205 Union Avenue N; City Hall Vestibule – 102 Capitol Avenue; Urbana Post Office – 304 Wood Street W; JAMS Coffee Shop - 100 Towne Centre. Agendas are also posted on the City’s website.

Nothing within chapter 21 requires agendas to be posted on Facebook. There is no violation for failing to post the agenda on Facebook. Further, if no meeting was actually scheduled for April 17, then there was no requirement to prepare an agenda or post notice.

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<sup>1</sup> <https://ipib.iowa.gov/22fc0050-mari-radtkecity-paullina-acceptance-order>

<sup>2</sup> IPIB’s costs per photocopied page is \$.01/page. For-profit companies charge less than \$.50 per page for photocopies. Actual costs cannot include costs for overhead and must be based on the actual cost of providing the copy itself. Iowa Code § 22.3(2).

***Failure to provide details on agendas and minutes***

Iowa Code section 21.4 requires that notice be given “in a manner reasonably calculated to apprise the public...” Thus, the 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.” *KCOB/KLVN, Inc. v. Jasper Cnty. Bd. of Sup'rs*, 473 N.W.2d 171, 173 (Iowa 1991) (citations omitted).

Iowa Code § 21.3 requires “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.” See 23AO:0007: Editing meeting minutes before publishing.<sup>3</sup>

No specific deficiency was identified by the Complainant. IPIB staff reviewed several of the agendas and minutes posted on the City’s website as well as the copies of the published minutes. They include the required information. There is no violation.

***Failure to publish minutes and agendas as required by statute.***

While outside the parameters of Iowa Code chapter 21, the City provided copies of publication of the minutes from April 9, 2024, in the Vinton Eagle.<sup>4</sup> (Nothing within Iowa Code chapter 21 nor Iowa Code § 372.13(6) requires that agendas be published in the newspaper.) Minutes and agendas are posted on the City’s website. Iowa Code chapter 21 does not have a publication requirement, so regardless there is no violation under chapter 21.

**Conclusion**

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

Complainant was given access to review and photograph a copy of the ordinance in the City Hall. No Council meeting was scheduled for April 17, 2024, so no notice or agenda was required to be posted. Nothing in Iowa Code chapter 21 requires notice be posted on Facebook. No specific deficiency was identified regarding the agendas or minutes and a review of a sample of documents shows required items are included by the City. There is no violation under Iowa Code chapter 21 for publication, but the City provided proof of publication.

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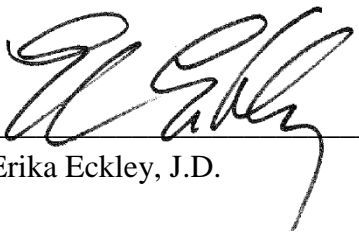
<sup>3</sup> <https://ipib.iowa.gov/23ao0007-editing-meeting-minutes-publishing>

<sup>4</sup> IPIB was unable to locate online public notices for the Vinton Eagle or Vinton Today without a subscription. Neither newspaper is part of the Iowa Newspaper Association’s online public notice website: <https://www.iowapublicnotices.com/>

IT IS SO ORDERED: Formal complaint 24FC:0031 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 June 20, 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 June 12, 2024, to:

Jennifer Burkhart  
Jessie Austin  
Chandra Swink  
Regina Warnke



# The Iowa Public Information Board

In re the Matter of:	Case Number: 24FC:0032
Old Davenport Dump, Complainant	Dismissal Order
And Concerning:	
City of Davenport, Respondent	

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

On March 28, 2024, Old Davenport Dump filed formal complaint 24FC:0032, alleging that City of Davenport (“City”) violated Iowa Code chapters 21 and 22.

## Facts

Old Davenport Dump alleges the following violations. The City consistently disregarded Iowa Open Records Law, refusing to waive fees for public records requests serving the public interest, despite legal provisions allowing fee waivers. The City abused its authority by denying access to public records, potentially violating 18 U.S.C. § 242. The City denied FOIA requests based on alleged unpaid fees, despite allowing other requests to proceed without full payment, raising questions about impartiality. The City refused to release security camera footage involving the city attorney potentially retaliating against requesters and undermining transparency.

Old Davenport Dump alleges the City’s actions violate Iowa Code Chapter 21 and 22, infringing upon rights to anonymously submit public records requests. Their demand for good faith submission disregards legal protections for anonymous requests. Furthermore, their response intimidates and harasses requesters, undermining transparency and accountability. The City’s demand for good faith submission of public records requests violates Iowa Code § 22.3(2), which prohibits the establishment of fees that would prohibit any person from making a request for access to public records. This violation imposes unjust barriers to accessing public information, contravening the principles of transparency and accountability enshrined in Iowa law.

The City responded through counsel, and stated allegations of federal law are beyond the scope of IPIB, Iowa Code allows for the recoupment of costs for records requests, and the City had responded to records requests about which it was aware from Old Davenport Dump. The City withheld the requested security footage as confidential under Iowa Code § 22.7(50). In responding to Old Davenport Dump, the City stated, “The City’s digital technology is intended solely for use in conducting City business and security camera footage is restricted to law enforcement in the case of an emergency, or to the Human Resources Director, City Administrator, or City Attorney with prior approval by one of the other two employees. See Iowa Code §22.7(50) and Davenport Administrative Policy 3.8. The purpose of §22.7(50) is to protect the integrity of security systems (i.e., range of cameras, quality of camera, frequency of recording, frequency of panning, whether the camera is operational or a dummy, how the camera might be compromised, etc.). Therefore, it is within the scope of Iowa Code §22.7(50) to withhold security camera footage.”

### **Applicable Law**

“The lawful custodian shall not require the physical presence of a person requesting or receiving a copy of a public record and shall fulfill requests for a copy of a public record received in writing, by telephone, or by electronic means. Although fulfillment of a request for a copy of a public record may be contingent upon receipt of payment of reasonable expenses, the lawful custodian shall make every reasonable effort to provide the public record requested at no cost other than copying costs for a record which takes less than thirty minutes to produce. In the event expenses are necessary, such expenses shall be reasonable and communicated to the requester upon receipt of the request.” Iowa Code § 22.3.

“Thus, for requests taking more time to fulfill, the amendments to section 22.3(1) clarify that in addition to copying costs, custodians can charge for other expenses incurred in producing the records, as long as they are ‘reasonable and communicated to the requester upon receipt of the request.’ *Id.* The general assembly’s continued use of the same word ‘expenses’ in relation to recovery of costs incurred in fulfilling a request for public records reveals that it considered such expenses to not be limited to copying costs” *Teig v. Chavez*, No. 23-0833, 2024 WL 2869282, at \*9 (Iowa June 7, 2024).

“The following public records shall be kept confidential, unless otherwise ordered by a court, by the lawful custodian of the records, or by another person duly authorized to release such information: . . . Information and records concerning physical infrastructure, cyber security, critical infrastructure, security procedures or emergency preparedness information developed, maintained, or held by a government body for the protection of life or property, if disclosure could reasonably be expected to jeopardize such life or property.” Iowa Code § 22.7(50).

## Analysis

Old Davenport Dump's allegations regarding federal violations of 18 U.S.C. § 242 are outside the jurisdiction of IPIB. IPIB has no authority to address allegations of federal law. In addition, Old Davenport Dump, alleges a violation of Iowa Code chapter 21, but provided no facts or evidence of any violation under this chapter, so there is no violation of Iowa Code chapter 21.

Old Davenport Dump alleges violations of Chapter 22 for the City's failure to waive fees or for requiring payment of fees prior to fulfillment of the request. Nothing within Iowa Code chapter 22 requires fees be waived in responding to requests. The City may charge for the actual costs of retrieving and copying the records. Iowa Code § 22.3; *see also Teig v. Chavez*, No. 23-0833, 2024 WL 2869282, at \*9 (Iowa June 7, 2024). Iowa Code § 22.3 allow the City to require payment in full for fulfillment of the request- "[F]ulfillment of a request for a copy of a public record may be contingent upon receipt of payment of reasonable expenses." Old Davenport Dump fails to provide evidence similarly situated requestors were treated differently.

Old Davenport Dump alleges the City's failure to provide security video footage is a violation of Iowa Code chapter 22. The City stated the footage was being withheld as confidential under Iowa Code § 22.7(50). The City provided their security camera policy stating security cameras may be utilized, but can be viewed for violations of civil or criminal law or adverse situations. Security footage is only available for business purposes with advanced written approval or for emergency use by emergency personnel. Old Davenport Dump does not provide any additional evidence as to why the videos should not be considered confidential under Iowa Code § 22.7(50). IPIB has agreed security footage could be withheld as confidential in previous decisions.<sup>1</sup>

## 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.

Iowa Code chapter 22 does allow for the recoupment of actual costs. It also allows for an estimate of costs to be paid prior to fulfillment of the requested records. Iowa Code § 22.7(50) allows for security footage to be retained as confidential.

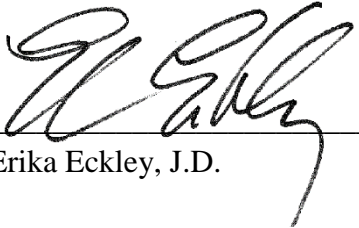
IT IS SO ORDERED: Formal complaint 24FC:0032 is dismissed as it is legally insufficient pursuant to Iowa Code § 23.8(2) and Iowa Administrative Rule 497-2.1(2)(b).

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<sup>1</sup> 22FC:0116 Michael Merritt/City of Newton; 15FC:0002 Timothy Miller/Buchanan County

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 June 20, 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 June 12, 2024, to:

Old Davenport Dump  
Wendy Meyer, attorney for City of Davenport



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

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**Re: 24FC:0032 Draft Order**

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**Old Davenport Dump** <olddavenportdump@gmail.com>

Mon, Jun 17, 2024 at 4:20 PM

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

Cc: "Cullett, Beth" &lt;BCullett@l-wlaw.com&gt;, "Meyer, Wendy" &lt;WMeyer@l-wlaw.com&gt;

Thank you, Erika. To uphold my anonymity, I do not wish to speak at the meeting, however I have prepared a written response to the City's claims;

Dear Iowa Public Information Board,

I appreciate the IPIB's efforts in investigating this matter and addressing the critical issues of government transparency and accountability, as well as the opportunity to address the concerns and clarify the points raised.

I write to formally respond to the City of Davenport's assertions regarding my complaint against Brian Heyer and Mallory Bagby. Despite their claims, I must emphasize the extensive violations of Iowa Code Chapters 21 and 22 that have occurred, undermining the principles of transparency and accountability enshrined in our laws.

### Refutation of the City's Claims

#### 1. Disregard for Open Records Law and Denial of Access to Public Records

The City contends that it has not disregarded the Open Records law nor denied access to public records, however, the pattern of unethical behavior exhibited by Mr. Heyer and Ms. Bagby has resulted in repeated arbitrary blanket denials coupled with selective enforcement and the imposition of unjustifiable fees, clearly indicating a disregard for the law. At the time this complaint was initially filed, at least 10 of my FOIA requests had either been denied or canceled due to the unethical tactics used by Mr. Heyer and Ms. Bagby to circumvent access to public records.

Iowa Code § 21.1 mandates that government records be accessible to the public to ensure transparency, a standard that has not been met.

#### 2. Reasonableness of Fees and Requests for Fee Waivers

Contrary to the City's assertion, my claim is not that all fees should be waived indiscriminately. My contention is that the fees imposed were excessive, unjustified, and intentionally used to create financial barriers to accessing public information.

Furthermore, given that the legal review conducted resulted in minimal or no redactions, the fees charged for "legal review" of PRR-535-2023 did not involve substantial redaction or confidentiality concerns, and were therefore unreasonable and in violation of this provision.

According to 23AO:002 and Iowa Code § 22.3(2), fees for legal services should only apply to the redaction or review of legally protected confidential information.

### 3. Volume of Requests and the City's Capacity

The City references the high volume of public records requests and the associated workload as a defense for its actions, however the City's argument overlooks the fundamental right of citizens to access public records, a right that must be upheld without prejudice or undue delay. While I acknowledge the burden of processing numerous requests, this does not absolve the City of its legal obligations.

Iowa Code § 22.8 outlines the requirement for timely access to public records, regardless of the volume of requests.

### 4. Anonymity and Retaliatory Conduct

Given the City's ongoing litigation against a public citizen for making records requests—a case in which the IPIB has intervened—my concerns about maintaining anonymity are both valid and legally protected.

However, Ms. Bagby's unethical attempt to coerce me into revealing my identity by threatening fees underscores a retaliatory motive and directly violates Iowa Code § 22.7(18), which protects the anonymity of requesters.

Iowa Code § 21.8 requires government bodies to ensure fairness and transparency, which includes clear communication and consistent application of rules.

#### Summary of Violations:

Improper Rulemaking, Lack of Transparency and Access (Iowa Code §§ 21.1, 21.2, 21.3, 21.4, 21.8):  
Arbitrary denials, selective enforcement, and improper rulemaking without following proper procedures.

Reasonable Fees and Legal Review (Iowa Code §§ 22.3(1), 22.3(2)):  
Imposition of excessive legal fees without sufficient justification. See: 23AO:002

Anonymity and Retaliation (Iowa Code §§ 22.7(18), 22.8):  
Coercion to reveal identity and blanket denials of requests.

I trust that the IPIB will recognize the gravity of these violations and take decisive action to protect the public's right to access government records without fear of retaliation or unjust financial barriers.

Thank you for your attention to this matter.

On Wed, Jun 12, 2024, 4:03 PM Eckley, Erika <[erika.eckley@iowa.gov](mailto:erika.eckley@iowa.gov)> wrote:

Good Afternoon:

The Iowa Public Information Board (IPIB) will review this Order at its meeting on **June 20, 2024**. **The meeting will begin at 1:00 p.m.** The meeting agenda will be posted to the IPIB website ([ipib.iowa.gov](http://ipib.iowa.gov)) on the afternoon of Tuesday, June 18, 2024.

The IPIB normally allows brief (under five minutes) comments from the parties. You are under no obligation, but if you wish to speak at the meeting, please reply to this email and indicate your agreement to this statement:

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

**The IPIB meeting is open to the public. We are now utilizing Google Meet and live streaming of our meetings. You may attend in person at the Wallace Building in Des Moines or remotely. If you would like to attend remotely, you may log into the following meeting:**

**Google Meet joining info**

**Video call link:** <https://meet.google.com/noo-nuzv-zfz>

**Or dial: (US) +1 435-612-2063 PIN: 422 628 922#**

If you prefer, you can provide brief, written comments to the Board prior to the meeting, please forward those to me no later than 4:30 p.m. on Monday, June 17, 2024, so they may be included in the meeting packet. Please make sure you copy all parties on the email as well.



**Erika Eckley, JD, MPA**

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

## The Iowa Public Information Board

In re the Matter of:	Case Number: 24FC:0035
Shaylea Caris, Complainant	<b>Dismissal Order</b>
And Concerning:	
Shelby City Council, Respondent	

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

On March 23, 2024, Complainant filed formal complaint 24FC:0035, alleging that the Shelby City Council (City) violated Iowa Code Chapter 21.

### Facts

On March 23, 2024, Complainant filed a complaint alleging that the City violated Iowa Code Chapter 21 by holding a closed session that failed to comply with legal requirements. The Complainant states “the council held a vote to enter into a Memorandum of Understanding with an Investor who wants to buy city property for sale.” The Complainant points to minutes from the City’s meeting held on March 5, 2024, as evidence of illegal use of a closed session.

The agenda for the Shelby City Council meeting on March 5, 2024, indicates under Other Business that a possible closed session will be held pursuant to Iowa Code 21.5 to discuss the sale of a particular real estate – industrial site.

The minutes from the Shelby City Council meeting held on March 5, 2024, state as follows:

- On motion by Honeywell, 2<sup>nd</sup> by Schlueter, the council moved to go into closed session to discuss the sale of real estate according to Code of Iowa Section 21.5. A roll call vote was held and the motion carried with a vote of at least 2/3rds of the members.
- On motion by Honeywell, 2<sup>nd</sup> by Frank, the council directed Attorney Fichter to draft a Memorandum of Understanding to Damien Shull for sale of real estate. The motion passed with the Council voting 4-1.

It should be noted that the motion was to direct a draft of the Memorandum of Understanding and was not a vote to enter into a Memorandum of Understanding. The discussion of, and vote on, the actual Memorandum of Understanding was held at the council meeting on March 19, 2024.



The City's attorney responded to this Complaint on April 22, 2024, and indicated that the closed session was used to determine "how to proceed forward with negotiations related to a land sale for a development project" and the City acted to have the City's attorney draft a Memorandum of Understanding. This occurred in open session immediately following the closed session.

### **Applicable Law**

Iowa Code § 21.5 provides the requirements that governmental bodies must meet to conduct a closed session. "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 following reasons: ...To discuss the purchase or sale of particular real estate only where premature disclosure could be reasonably expected to increase the price the governmental body would have to pay for that property or reduce the price the governmental body would receive for that property. The minutes and the audio recording of a session closed under this paragraph shall be available for public examination when the transaction discussed is completed." Iowa Code § 21.5(1)(j).

Iowa Code §§ 21.5(2) and (3) provide additional detail regarding requirements a governmental body must meet to hold a closed session:

"(2) 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 into 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.

(3) Final action by any governmental body on any matter shall be taken in an open session unless some other provision of the Code expressly permits such action to be taken in closed session."

### **Analysis**

A best practice for governmental bodies is to include within the minutes reference to the specific provision within Iowa Code § 21.5 that justifies the closed session. It is also a best practice when relying on Iowa Code § 21.5(j) to indicate that premature disclosure could be reasonably expected to increase the price the governmental body would receive for that property. This will ensure public clarity regarding the reason for the closed session.

While the minutes of the meeting held on March 5 do not specifically reference Iowa Code § 21.5(1)(j), the minutes of the meeting do reference the closed session will be held to "discuss the sale of real estate according to Code of Iowa Section 21.5." While it would be better to ensure the specific Code provision being invoked is directly referenced, the community would have enough

knowledge regarding the purpose of the closed session, so the City substantially complied with Iowa Code § 21.5(1).

As reflected in the minutes, the City announced publicly and entered into the minutes the vote of each member on holding the closed session and the reason for the closed session. The final action taken by the City was taken in open session. The City was not required to publicly state the confidential details of the real estate transaction in open session. The City's action to approve the drafting of a Memorandum of Understanding for the sale of real estate in the open session was sufficient. For this reason, there is no violation of Iowa Code §§ 21.5(2) and (3).

### **Conclusion**

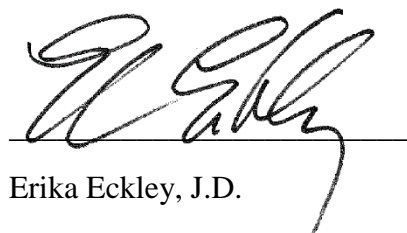
Iowa Code § 23.8 requires that a complaint be within the IPIB's jurisdiction, appear legally sufficient, and have merit before the IPIB accepts a complaint. Following a review of the allegations on their face, it is found that this complaint does not meet those requirements.

After review of the facts, the agendas and minutes provided by the City demonstrate the City appropriately used a closed session pursuant to Iowa Code § 21.5(1)(j) and that actions pursuant to the closed session were taken in open session. To ensure full public understanding of actions taken by the City, it is recommended in the future the City cite to the specific exemption being used for a closed session pursuant to Iowa Code § 21.5(1) and that the full language of that exemption be referenced during the open session of the meeting and included in the minutes.

IT IS SO ORDERED: Formal complaint 24FC:0035 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), 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 June 20, 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 June 13, 2024, to:

Shaylea Caris, Complainant

Clint Fichter, Attorney for City

# The Iowa Public Information Board

In re the Matter of:  Jason Foust and Katie Milhollin, Complainants  And Concerning:  City of Eldridge, Respondent	Case Number: 24FC:0036  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 March 27, 2024, Jason Foust and Katie Milhollin filed formal complaint 24FC:0036, alleging that City of Eldridge (“City”) violated Iowa Code chapter 21.

## Facts

Mr. Foust and Ms. Milhollin allege the City held a special meeting without 24-hour notice to the public to remove a board member from the Utility Board.

In response, the City, through Counsel, agreed the City did not provide 24-hours’ notice for a special meeting of the Council, but stated the City was responding to an emergency created by the Utility Board’s actions in setting a special meeting.

The following context is important. For several months, the City and the Utility Board were in conflict regarding control of the Utility. A meeting was scheduled on March 26 for the City Council to meet with the Chair of the Utility Board. The Chair did not meet with the City and a Special Meeting was scheduled by the Utility Board for 4:00 p.m. on March 27. The agenda included taking actions to reinstate employees who were placed on administrative leave by the City pending an investigation. The agenda also included actions to make the Utility a separate entity and other matters that were in dispute with the City. There was also litigation regarding the removal of a previous Utility Board member.

The City noticed a meeting at 9:21 p.m. on March 26 for a meeting at 8:00 a.m. on March 27 after discovering the Utility Board meeting and agenda for March 27 at 4:00 p.m. At the beginning of the meeting, the mayor read the following statement:

It is with great concern for the City that we call this meeting to order today. Today's meeting was required to be called in a manner that departs from the normal requirements of Iowa Code Chapter 21 because compliance would be both impossible and impracticable- and at this time- I would like to state on the record the good cause which warrants and justifies such a departure. Yesterday afternoon, the City's Utility Board released an agenda with several items that – if acted upon – would violate state law, City ordinances and the Utility Board's own established policies. The City has worked tirelessly to get the Utility Board members to act in compliance with these governing authorities – but they have continued to ignore them. I called a meeting with acting Utility Board Chairman, Jim Skadal, for yesterday March 26, 2024, at 10:00 AM. The meeting was to take place at City Hall. Jim showed up to City Hall at 10:00 AM but refused to meet with me as directed.

Several utility employees were placed on paid leave pending an investigation into their misconduct, which involves allegations involving financial improprieties and unauthorized use of utility funds. The Utility Board agenda released demonstrates that – despite there being financial improprieties under review – the Utility Board is looking to provide these individuals with access to these public funds once again – with no oversight or accountability.

Due to the severity of these issues and the Utility Board's efforts to compromise the integrity of the investigation and utility's funds, the City Council called this special meeting today for this morning as all such circumstances certainly warrant good cause for the departure from the 24-hour requirement.

Mr. Foust disagreed that an emergency existed and that the City moved so quickly to remove Mr. Skadal [the Utility Board Chair] was not to prevent the Utility Board from doing something illegal, but to stop them from doing something the City did not want them to do, which was legal. If the Utility Board had carried out an illegal action they would have had every opportunity to challenge the action. He stated that the City was actively trying to squash a third party investigation that the Utility Board was trying to initiate as opposed to the City's investigation being done by the City Administrator and City Attorney.

### **Applicable Law**

Iowa Code § 21.4(2) “[N]otice conforming with all of the requirements of subsection 1 shall be given at least twenty-four hours prior to the commencement of any meeting of a governmental

body unless for good cause such notice is impossible or impractical, in which case as much notice as is reasonably possible shall be given....When it is necessary to hold a meeting on less than twenty-four hours' notice, or at a place that is not reasonably accessible to the public, or at a time that is not reasonably convenient to the public, the nature of the good cause justifying that departure from the normal requirements shall be stated in the minutes.”

The Iowa courts have found emergency situations permitting less than twenty-four hours' notice in *KCOB/KLVN, Inc. v. Jasper County Board of Supervisors* when there was proof the county would lose money and would be unable to provide required services unless immediate action was taken on funding of the departmental program. 473 N.W.2d 171, 174 (Iowa 1991). In *KCOB/KLVN*, a meeting had been properly noticed, but there was not time to amend the tentative agenda. Despite this, the Court found not violation in discussing the program because of the need to take immediate action. *Id.* at 174-75.

In *Short v. Green Bay Levee & Drainage Dist. No. 2* the Iowa Court of Appeals found no violation for failing to provide twenty-four hours' notice when the drainage district acted to prevent “possible disastrous flooding.” 2004 WL 1072273, \*2 (Iowa Ct. App. May 14, 2004).

### **Analysis**

In most circumstances, government bodies can and should delay taking actions until it is possible to provide appropriate and timely notice under Iowa Code § 21.4(2). Iowa courts have found when an emergency situation arises, government bodies can proceed to act to address the emergency with less than twenty-four hours' notice.

In this situation, the City had placed individuals on administrative leave to investigate potential financial matters, the City had attempted to address the matter with the Utility Board Chair, but the Chair refused to meet with the City. Instead, the Utility Board posted notice of a meeting with actions of potentially re-instating the individuals subject to investigation in conflict with the City. If there were improper financial activities occurring, reinstating the individuals prior to an investigation concluding could have very likely jeopardized the investigation or resulted in further financial concerns. It is not unreasonable to find the City needed to take immediate action to prevent the reinstatement of the employees. This is similar to the need by the Jasper County Board needing to take immediate action upon notice a program required funding without the appropriate notice being provided under Iowa Code. *See KCOB/KLVN*, 473 N.W.2d at 174-75.

## Conclusion

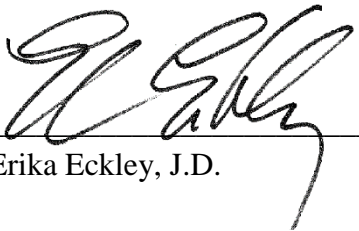
Iowa Code § 23.8 requires that a complaint be within the IPIB's jurisdiction, appear legally sufficient, and have merit before the IPIB accepts a complaint. Following a review of the allegations on their face, it is found that this complaint does not meet those requirements.

The City needed to respond quickly to an issue that could have impacted an investigation into financial improprieties that had potential impacts on the City and the City's utility. It is not unreasonable to find an emergency existed requiring action with less than twenty-four hours' notice.

IT IS SO ORDERED: Formal complaint 24FC:0036 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 June 20, 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 June 12, 2024, to:

Jason Foust  
Katies Milhollin  
Allison Wright, attorney for City of Eldridge

*Submitted Via Electronic Mail: [erika.eckley@iowa.gov](mailto:erika.eckley@iowa.gov)*

June 17, 2024

Ms. Erika Eckley, J.D., MPA  
Iowa Public Information Board  
502 E. 9<sup>th</sup> Street, 3<sup>rd</sup> Floor  
Des Moines, IA 50319

Re: Complainants: Jason Foust & Katie Milhollin  
Complaint: Chapter 21  
Name of Entity: City of Eldridge  
IPIB Case Number: 24FC:0036  
Web Case No: 00008825

Dear Ms. Eckley:

Our office represents the City of Eldridge (hereinafter “the City”) and we are in receipt of your proposed Dismissal Order which shall be considered by the Iowa Public Information Board (“the Board”) at its June 20, 2024 meeting. Pursuant to and in accordance with your instructions emailed on June 12, 2024, this letter is provided as the City’s written comments to be considered by the Board when this matter comes before it during the meeting.

The City does not intend this written response to suggest the City is unwilling to address any comments or questions the Board may have during its meeting. The undersigned will be present at the June 20, 2024 meeting and will be available to address any items pertaining to this matter or the proposed Dismissal Order at the Board’s request. It is simply the City’s position that its prior filing and the proposed Dismissal Order sufficiently and accurately cover the issue pending before the Board on this complaint.

**I. UPDATE SINCE CITY’S LAST FILINGS WITH IPIB**

The City’s prior response was filed with the Board on May 6, 2024. On May 9, 2024, Complainant Foust submitted an additional email including several false allegations. Since that time, several developments have occurred and this response is intended to update the Board on those developments since they further support the lawfulness of the City’s special city council meeting held on March 27, 2024 and necessarily clarify the inaccurate information presented by Mr. Foust to the Board.

**QUAD CITIES OFFICE**  
1617 Second Avenue, Suite 300  
Rock Island, Illinois 61201  
Phone: 309.788.7110 Fax: 309.788.2773



In his May 9, 2024 email communication, Mr. Foust claims the City Council engaged in several actions, including: (1) declining to reappoint a Utility Board member, (2) engaging in an alleged “illegal effort” to disqualify the Chair of the Board on the basis of a residency requirement which was in litigation as of May 9, 2024, (3) holding an allegedly “illegal meeting” to remove Jim Skadal from the Utility Board, (4) removing two other Utility Board members who were subjects of the City’s investigation, (5) placing two City Utility employees on leave, allegedly “outside of their jurisdiction” and (6) allegedly “trying to squash a third party investigation that the Utility Board is trying to initiate.”

The aforementioned claims are not only wholly without merit but also entirely irrelevant to the complaint pending before the Board. In fact, Mr. Foust acknowledges the same in his own email communication (see May 9, 2024 communication conceded, “*I understand your role here is only to determine if an illegal meeting was held...*”) Despite these issues, the City provides the following response to ensure the Board is fully apprised of the true facts and current status of the referenced matters, addressed in the same order as brought up by Mr. Foust:

1. The Mayor has discretion to determine who is appointed to the Utility Board. Mr. Foust claims the City Council “declined to reappoint a Board member.” Mike Anderson’s term expired in March 2024. He was not reappointed to the Utility Board and there is no requirement that the Mayor or Eldridge City Council do so. Mr. Anderson served his full term. Neither the natural expiration of his term nor the fact that he was not reappointed has anything to do with whether the City had good cause to call an emergency meeting on March 27, 2024. As such, this fact should be disregarded in its entirety.
2. Mr. Foust claims the City Council engaged in an “illegal effort” to disqualify the former Board Chair which, as of May 9, 2024, was involved in pending litigation. As of the date of this communication to the Board, the litigation referenced in Mr. Foust’s second point has been dismissed with prejudice. While the City maintains that the litigation had no bearing on the complaint before the Board, we feel compelled to ensure the Board has an accurate record before it at the June 20, 2024 hearing. The former Board chair’s litigation was dismissed with prejudice and there remains no pending actions related to his position as a member of the Utility Board.
3. Mr. Foust claims the City held an “illegal meeting” to remove Jim Skadal from the Utility Board on March 27, 2024. The proposed Dismissal Order from the Executive Director confirms the City had good cause to call a special meeting with less than 24-hours’ notice. The City maintains that this is the correct position

and an accurate application of governing Iowa law. Further, Mr. Skadal, whose removal was the sole agenda item at the March 27, 2024 meeting, subsequently waived his right to contest his removal and tendered a written resignation from the Utility Board, effective immediately upon receipt. As such, there are no pending actions related to his position as a member of the Utility Board.

4. Mr. Foust further claims that the City Council removed two (2) remaining Board members as a result of its investigation. The two remaining Board members referenced here also waived their rights to contest their removals and there are no pending actions related to their positions as members of the Utility Board.
5. Mr. Foust also claims that the City Council placed two City Utility employees on leave “outside of their jurisdiction.” The City’s investigation resulted in findings of misconduct against these individuals and disciplinary action. Further, the policies of the City and the City Utility Board provide supervisory authority to the City Administrator, who placed the employees on leave. This fact is entirely irrelevant to the pending complaint before the Board. However, again, the City provides this response to ensure a fair and accurate record exists before the Board.
6. Lastly, Mr. Foust claims the City Council tried to “squash a third party investigation the Utility Board is trying to initiate.” The Utility Board recently voted to terminate any prior authorization given by the previous Utility Board members, including those who were removed. While this action has nothing to do with the pending complaint, it bears mentioning that Mr. Foust’s allegation is false and has been affirmatively voted on by the Utility Board.

## II. *CONCLUSION*

Currently, the Utility Board is working collaboratively with the City to ensure continued utility service and operations without interruption despite the efforts of the wrongdoers involved in this situation. The Utility Board members have all since been confirmed in their appointments and there is no pending litigation related to any of their positions.

Mr. Foust openly concedes that the IPIB’s role is to determine if an illegal meeting was held by the City Council on March 27, 2024. For the reasons stated in the City’s response and the Executive Director’s proposed Dismissal Order, the City respectfully requests the Board adopt the Dismissal Order and confirm a finding that the City did not violate Chapter 21 and properly held its meeting on March 27, 2024 for all the reasons provided in the record previously. Because the City’s meeting was consistent with Iowa Code Ch.

21, including Section 21.4, the City requests that this complaint be dismissed in its entirety and the proposed Dismissal Order be adopted by the Board.

Very truly yours,

PAPPAS WRIGHT, P.C.

/s/ Allison K. Wright

Allison K. Wright

CC: Jason Faust via Electronic Mail: [fousty915@gmail.com](mailto:fousty915@gmail.com)  
Katie Milhollin via Electronic Mail: [katm85@yahoo.com](mailto:katm85@yahoo.com)

## The Iowa Public Information Board

In re the Matter of: Christine Knapp, Complainant And Concerning: Henry County Sheriff Office, Respondent	Case Number: 24FC:0037  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

Christine Knapp filed formal complaint 24FC:0037 on April 15, 2024, alleging the Henry County Sheriff Office (“Sheriff”) violated Iowa Code chapter 22 on April 15, 2024.

Ms. Knapp alleged that she was unable to acquire records requested from the Sheriff on April 15, 2024. She states that on multiple occasions she has requested records only to be pushed off into another department who in turn completely ignored her requests. Her records request included investigative reports, calls for service, and body cam footage. The initial request was made on March 21, 2024, by form and submitted to the Sheriff.

Sheriff Rich McNamee provided the response to this complaint. He received the records request on April 10, 2024. He forwarded the request to his civil department for processing. That office was closed from April 15-17 for training. Office Manager Lacey Vandegriff returned on April 18, 2024 and prepared the information. She sent the records to the Henry County Attorney for review and approval on the same day.

Ms. Vandegriff received a response from the attorney on April 30, 2024. On the same day, Ms. Vandegriff emailed Ms. Knapp that the requested records were ready and gave her an invoice for the cost of the records. Ms. Knapp was informed that she would need to prepay with cash for the records prior to receiving them.<sup>1</sup> As of May 2, 2024, when Sheriff McNamee provided this response, Ms. Knapp had not picked up the records or paid for the records. However, she has been in contact with the Sheriff’s office to inquire about what the records include. Email correspondence has been back and forth since that time.

IPIB staff contacted Ms. Vandegriff by phone on June 10, 2024. As of that day, Ms. Knapp had not picked up the records. They were still sitting at the front counter.

### Analysis

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<sup>1</sup> Ms. Knapp has requested records in the past and used an unfunded check that was dishonored when presented to the bank.

The Sheriff provided an explanation as to the timeline for processing this record request. There does not appear to be an unreasonable delay in responding to Ms. Knapp or producing the records. There was frequent communication between Ms. Knapp and the Sheriff's office. Ms. Knapp has not picked up the records she requested, which have been prepared. She was notified the records were available for pick up on April 30. Based on these facts, there is not sufficient information to find the Sheriff violated Iowa Code chapter 22.

### **Conclusion**

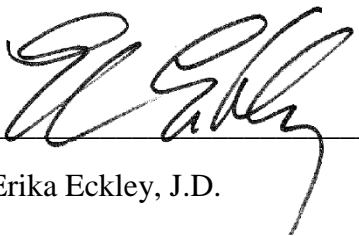
Iowa Code section 23.8 requires that a complaint be within the IPIB's jurisdiction, appear legally sufficient, and could have merit before the IPIB accepts a complaint. This complaint does not meet those requirements.

The Sheriff's office has been responsive to Ms. Knapp's records request. The request is available to Ms. Knapp upon payment of the cost of fulfilling the request. Ms. Knapp has not paid for or collected the records.

IT IS SO ORDERED: Formal complaint 24FC:0037 is dismissed as not being legally sufficient pursuant to Iowa Code section 23.8(2) and Iowa Administrative Rule 497-2.1(2)(b). The Henry County Sheriff Office did not violate 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 June 20, 2024. Pursuant to IPIB rule 497-2.1(4), the parties will be notified in writing of its decision.

By the IPIB Executive Director



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Erika Eckley, J.D.

### **CERTIFICATE OF MAILING**

This document was sent by electronic mail on the June 13, 2024, to:  
Christine Knapp, Complainant  
Sheriff Rich McNamee, Henry County Sheriff Office



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

---

**Re: 24FC:0037 Draft Ordermy**

1 message

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**christineknapp333@gmail.com** <christineknapp333@gmail.com>  
Reply-To: "christineknapp333@gmail.com" <christineknapp333@gmail.com>  
To: erika.eckley@iowa.gov

Thu, Jun 13, 2024 at 12:26 PM

Good afternoon Ms.Eckley

I would like to submit a brief in regards to this order that is scheduled for June 20th. Being present for the hearing is unmanageable for myself, mainly due to the travel necessary for my attendance. I will attempt to join the meeting live thru Google Meet, but due to unstable Internet connection in my rural area, I fear I may get disconnected ( and probably at the most inconvenient time such as my time to give my statement)

I read the statement that I am to consent agreement and do not feel comfortable in doing so. Specifically the line staying my agreement to waive any objections I may have

I do not agree.

My long standing issue with Henry County officials refusing to provide public records and my taking this issue to the Public Information Board, has never acknowledged Henry County officials have, in fact, not complied the law and be merited for their violations. Dismissing my complaint BECAUSE Henry County complied with the law ONLY AFTER MY COMPLAINT IS SUBMITTED, is unconditional and unethical.

I believe this is my 4th, possibly 5th, complaint to IPIB about Henry County refusing to provide public records. And each case ends with dismissal, ALTHOUGH HENRY COUNTY DID INDEED VIOLATE THE OPEN RECORDS LAW, AND ONLY PROVIDED REQUESTED RECORDS AT THE ORDER OF THE IPIB

I propose that reprimand is due.

Henry County Sheriff deserves punishment for their continuous refusal to comply with Chapter 22.

I will write a brief to be officially submitted prior to the June 18 deadline

Thank you Ms Eckley

Christine Knapp

On Thu, Jun 13, 2024 at 11:01 AM, Eckley, Erika  
<erika.eckley@iowa.gov> wrote:

Good Morning:

The Iowa Public Information Board (IPIB) will review this Order at its meeting on **June 20, 2024. The meeting will begin at 1:00 p.m.** The meeting agenda will be posted to the IPIB website ([ipib.iowa.gov](http://ipib.iowa.gov)) on the afternoon of Tuesday, June 18, 2024.

The IPIB normally allows brief (under five minutes) comments from the parties. You are under no obligation, but if you wish to speak at the meeting, please reply to this email and indicate your agreement to this statement:

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

**The IPIB meeting is open to the public. We are now utilizing Google Meet and live streaming of our meetings. You may attend in person at the Wallace Building in Des Moines or remotely. If you would like to attend remotely, you may log into the following meeting:**

**Google Meet joining info**

**Video call link:** <https://meet.google.com/noo-nuzv-zfz>

**Or dial: (US) +1 435-612-2063 PIN: 422 628 922#**

If you prefer, you can provide brief, written comments to the Board prior to the meeting, please forward those to me no later than 4:30 p.m. on Monday, June 17, 2024, so they may be included in the meeting packet. Please make sure you copy all parties on the email as well.



**Erika Eckley, JD, MPA**

Executive Director

Iowa Public Information Board (IPIB)

502 East 9th Street

Wallace Building, 3rd Floor

Des Moines, Iowa 50319

(515) 725-1783

[erika.eckley@iowa.gov](mailto:erika.eckley@iowa.gov)

[www.ipib.iowa.gov](http://www.ipib.iowa.gov)



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

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**Re: Fwd: Response to processed dismissal**

1 message

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**christineknapp333@gmail.com** <christineknapp333@gmail.com>  
Reply-To: "christineknapp333@gmail.com" <christineknapp333@gmail.com>  
To: erika.eckley@iowa.gov

Mon, Jun 24, 2024 at 4:28 PM

Good afternoon Ms Etchley

For my hearing rescheduled for June 27th involving Henry County Sheriff Dept, it needs to be added to record that ,

I have , in fact, received requested records on June 24 2024. and paid the \$30 fee in full in the method of cash. All documents requested were received on a flash drive. And as of yet, can confirm that what I've requested I did indeed receive.

I still stand my ground of reprimand against Henry County Sheriff Department. As in fact, none of my requests have been complied without first involving the Iowa Public Board of Information complaint of violation of Chapter 22 of the Iowa Code and the Open Records law by Henry County Sheriff Department.

I appreciate your time in including this into my case record .

Thank you and I hope you have a good afternoon.

Christine Knapp

On Thu, Jun 20, 2024 at 1:01 PM, Eckley, Erika  
<erika.eckley@iowa.gov> wrote:

Received. Thank you.

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

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

From: [christineknapp333@gmail.com](mailto:christineknapp333@gmail.com) <christineknapp333@gmail.com>  
Date: Thu, Jun 20, 2024 at 12:35 PM  
Subject: Response to processed dismissal  
To: Erika Eckley <erika.eckley@iowa.gov>

I'm attached a brief and email correspondence for my complaint against Henry County Sheriff .

Thank you for your time and work in this Ms.Eckley.

Christine Knapp



# The Iowa Public Information Board

In re the Matter of:  Jamie Slife and James Warnke, Complainants  And Concerning:  City of Urbana, Respondent	Case Number: 24FC:0040  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 April 28, 2024, Jamie Slife filed formal complaint 24FC:0040, alleging that City of Urbana (“City”) violated Iowa Code chapter 22. On April 29, 2024, James Warnke filed his complaint alleging the City of Urbana violated Iowa Code Chapter 22.

## Facts

Ms. Slife alleges she requested a detailed budget ahead of a budget meeting but was told she needed to fill out an open records request and that it could take 10 business days for the request to go through the City Attorney. She was requesting, however, a copy of the detailed budget which is required to be available to the public ten days prior to the city’s budget meeting. She further alleges she was met with hostility from Jennifer Burkhart, the City Administrator, who claimed she was lying. She also alleges Ms. Burkhart was seen leaving city hall late Sunday evening 4/21/24 with a box and files and placed them in her personal vehicle. Ms. Slife states she does not believe Jennifer Burkhart is following the law when it comes to open records and open transparency from our city government and that Ms. Burkhart belittles and intimidates anyone trying to request public records. On May 2, 2024, Ms. Slife notified IPIB that she has received the information requested and has no open request pending, but that she still wanted to proceed with her complaint and whether all open records requests should go through the city attorney.

Mr. Warnke alleges the City’s budget hearing was scheduled for April 23, 2024, but was not posted publicly until April 22, 2024. He alleges on April 22, he went to City Hall, requested a detailed copy of the budget, but was only provided with the first page, not the whole packet. He alleges he did not receive the full packet until he arrived at the budget meeting on April 23, just

15 minutes before the start of the meeting, which did not give enough time to review it or prepare. He states that budget hearings are supposed to be announced at least ten days prior and the city is supposed to have the full detailed report available at city hall. He states he feels Ms. Burkhart deliberately tried to prevent citizens access to this meeting by not announcing it until Mr. Warnke's wife asked about it on Facebook the evening of April 21, and by not making the packets available upon request, in compliance with the laws. He feels there are ongoing issues with getting public information from our city government.

In response, the City, through Ms. Burkhart, provided a response. She stated the Budget Hearing Notice was published in the Cedar Valley News, copies of the detailed budget were available at City Hall and on the Department of Management website. Ms. Burkhart stated she moved boxes to her vehicle to take with her for a meeting with the City's attorney/ Ms. Burkhart also provided a copy of the Records Request Policy.

### **Applicable Law**

“Each municipality shall file with the secretary or clerk thereof the estimates required to be made in sections 24.3 through 24.8, at least twenty days before the date fixed by law for certifying the same to the levying board and shall forthwith fix a date for a hearing on the estimates, and shall publish such estimates and any annual levies previously authorized as provided in section 76.2, with a notice of the time when and the place where such hearing shall be held not less than ten nor more than twenty days before the hearing. ... For any other municipality such publication shall be in a newspaper published in the municipality, if any, if not, then in a newspaper of general circulation in the municipality. The department of management shall prescribe the form for public hearing notices for use by municipalities.” Iowa Code § 24.9(1).

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

“[A] governmental body shall give notice of the time, date, and place of each meeting including a reconvened meeting of the governmental body, and the tentative agenda of the meeting, in a manner reasonably calculated to apprise the public of that information. Reasonable notice shall include advising the news media who have filed a request for notice with the governmental body and posting the notice on a bulletin board or other prominent place which is easily accessible to the public and clearly designated for that purpose at the principal office of the body holding the meeting, or if no such office exists, at the building in which the meeting is to be held.” Iowa Code § 21.4(1)(a).

## **Analysis**

The Complaints allege violations of the statutory process for municipal budgets under Iowa Code § 24.9. Determining whether a violation of Iowa Code § 24.9 is beyond the scope of IPIB's statutory authority. IPIB only has authority to determine violations of Iowa Code chapters 21 and 22. *See* Iowa Code 23.

Further, IPIB does not have authority to address the demeanor of public officials or employees as they interact with constituents and others. Iowa Code Chapter 22 also does not include any retention policy, so IPIB is not able to address whether Ms. Burkhart's placement of boxes or files in her personal vehicle was a violation of Iowa Code chapter 22.

Ms. Slife has stated that she has received her records requests, but wants IPIB to determine whether it would be proper for a records request to be required to go through the City's attorney. Under the facts of this case, there is no proof this was required. The policy provided states merely that there is a potential a records request may be required to be sent to the City's attorney for review and that this review will not take more than 10 business days nor more than 20 calendar days to provide an answer. This provision is essentially a restatement of Iowa Code § 22.8(4)(d), which states: "Good-faith, reasonable delay by a lawful custodian in permitting the examination and copying of a government record is not a violation of this chapter if the purpose of the delay is any of the following: ... To determine whether a confidential record should be available for inspection and copying to the person requesting the right to do so. A reasonable delay for this purpose shall not exceed twenty calendar days and ordinarily should not exceed ten business days."

## **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.

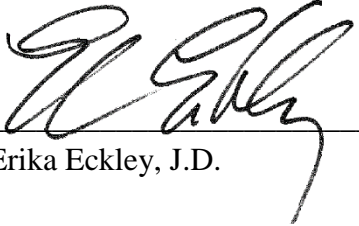
Complaints allege violations of the statutory process for Iowa Code § 24.9, which is outside the jurisdiction of IPIB.

**IT IS SO ORDERED:** Formal complaint 24FC:0031 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 June 20, 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 June 12, 2024, to:

Jennifer Burkhart  
James Warnke  
Jamie Slife



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

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**Re: [External] [External] 23FC:0060 Draft Order**

1 message

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**Dina Nesheiwat** <dina@neshlawgroup.com>  
To: "Eckley, Erika" <erika.eckley@iowa.gov>

Tue, Jun 18, 2024 at 10:26 AM

Good morning, Erika:

Thank you for providing this information. In light of this positive development, we agree to withdraw our complaint filed against the Sheriff's Office. Thank you for providing the training, and mostly, for facilitating this resolution. We truly appreciate it. Please let me know if you need any further information from me.

Warm regards,

Dina

---

Dina Nesheiwat Raley, Esq.

The Nesheiwat Law Group, PLLC  
426 Century Court, Suite 102  
Franklin, TN 37064  
Office: (615) 903-9888  
Direct: (615) 903-9891  
Fax: (615) 903-9899  
Email: [dina@neshlawgroup.com](mailto:dina@neshlawgroup.com)  
[www.TheNesheiwatLawGroup.com](http://www.TheNesheiwatLawGroup.com)

Notice: This communication is work product, including any attachments, and is intended only for the person or entity to which it is addressed. It may contain confidential and legally privileged information or material. Any unauthorized review, use, disclosure or distribution is prohibited. Unauthorized attempts to intercept, use or disclose contents of this communication are in violation of 18 U.S.C. 2511(1) of the Electronic Communications Privacy Act (ECPA), which subjects offenders to fines, imprisonment and/or civil damages. If you are not the named addressee and receive this communication in error, please immediately notify sender by email.

On Jun 13, 2024, at 10:30 AM, Eckley, Erika <erika.eckley@iowa.gov> wrote:

Dina,

Thanks for your response. I provided the training in person in Delaware County. I did not collect names of the individuals in attendance, but I know there were several staff members from at least 2 nearby cities, a sheriff's deputy and other staff members were present for the entire training, the sheriff was in attendance as available as he had to respond to some calls, there were also representatives from other county departments, such as the conservation board.

If you would prefer to withdraw your complaint, you are certainly welcome to do so. I would just need you to send an email indicating your preference to withdraw.

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

On Wed, Jun 12, 2024 at 4:47 PM Dina Nesheiwat <dina@neshlawgroup.com> wrote:

Good Afternoon, Erika:

I hope you are well. Thank you for providing this info. Would you provide any additional details surrounding the training? Who provided the training and what other governmental bodies attended, that are referenced in your attachment? I was not aware there was a training scheduled or had on June 6th and would be grateful for that information.

Lastly, is there a particular procedure for withdrawing the complaint now that it has been resolved? I noticed the proposed order says dismissal, but my understanding was that after the appropriate training, the complaint would be withdrawn. If easier, please feel free to call me directly on my cell. 561-789-8680. I look forward to hearing from you.

Warm regards,

Dina

---

Dina Nesheiwat Raley, Esq.

The Nesheiwat Law Group, PLLC  
426 Century Court, Suite 102  
Franklin, TN 37064  
Office: (615) 903-9888  
Direct: (615) 903-9891  
Fax: (615) 903-9899  
Email: [dina@neshlawgroup.com](mailto:dina@neshlawgroup.com)  
[www.TheNesheiwatLawGroup.com](http://www.TheNesheiwatLawGroup.com)

Notice: This communication is work product, including any attachments, and is intended only for the person or entity to which it is addressed. It may contain confidential and legally privileged information or material. Any unauthorized review, use, disclosure or distribution is prohibited. Unauthorized attempts to intercept, use or disclose contents of this communication are in violation of 18 U.S.C. 2511(1) of the Electronic Communications Privacy Act (ECPA), which subjects offenders to fines, imprisonment and/or civil damages. If you are not the named addressee and receive this communication in error, please immediately notify sender by email.

On Jun 12, 2024, at 3:58 PM, Eckley, Erika <[erika.eckley@iowa.gov](mailto:erika.eckley@iowa.gov)> wrote:

Good Afternoon:

The Iowa Public Information Board (IPIB) will review this Order at its meeting on **June 20, 2024. The meeting will begin at 1:00 p.m.** The meeting agenda will be posted to the IPIB website ([ipib.iowa.gov](http://ipib.iowa.gov)) on the afternoon of Tuesday, June 18, 2024.

The IPIB normally allows brief (under five minutes) comments from the parties. You are under no obligation, but if you wish to speak at the meeting, please reply to this email and indicate your agreement to this statement:

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

**The IPIB meeting is open to the public. We are now utilizing Google Meet and live streaming of our meetings. You may attend in person at the Wallace Building in Des Moines or remotely. If you would like to attend remotely, you may log into the following meeting:**

**Google Meet joining info**

**Video call link:** <https://meet.google.com/noo-nuzv-zfz>

**Or dial: (US) +1 435-612-2063 PIN: 422 628 922#**

If you prefer, you can provide brief, written comments to the Board prior to the meeting, please forward those to me no later than 4:30 p.m. on Monday, June 17, 2024, so they may be included in the meeting packet. Please make sure you copy all parties on the email as well.



**Erika Eckley, JD, MPA**

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

Active Cases Report

48

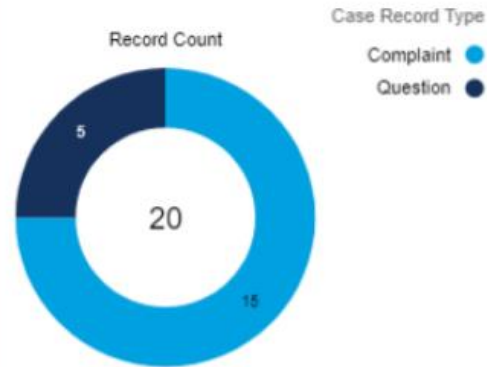
[View Report \(Active Cases Report\)](#)

Active Questions Report

4

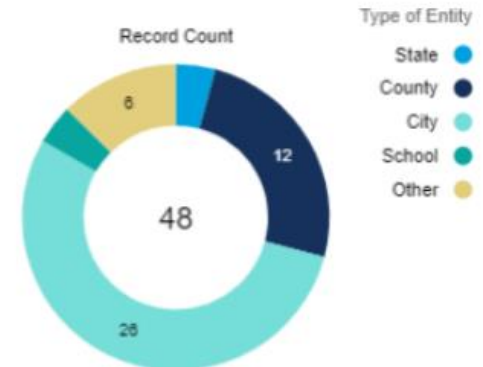
[View Report \(Active Questions Report\)](#)

New complaints &/or question last 30 day



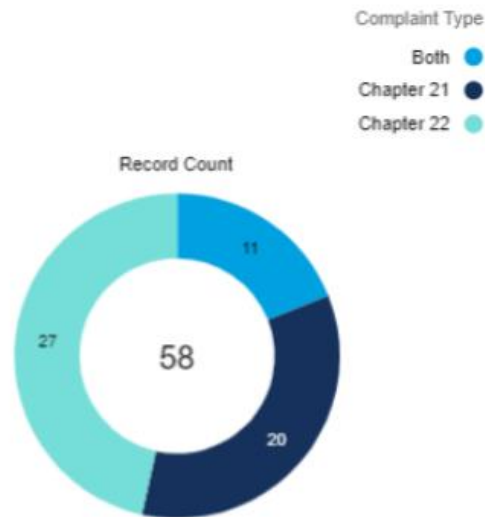
[View Report \(New complaints &/or question last 30 day\)](#)

Cases by Entity



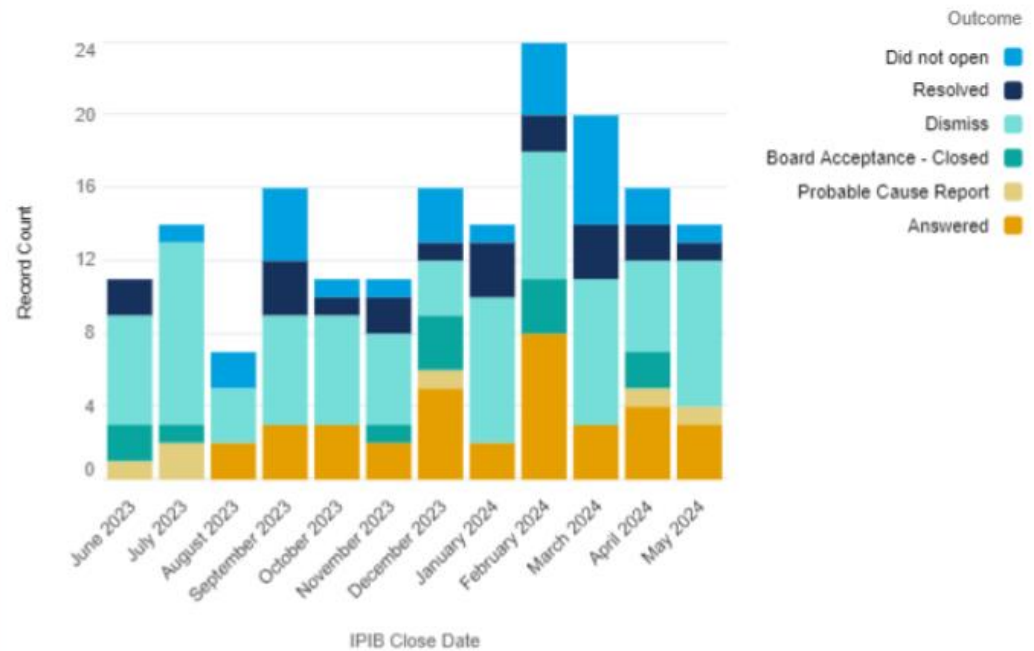
[View Report \(Cases by Entity\)](#)

Broad Type (Filed in Current



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

Closed cases (past 12 months)



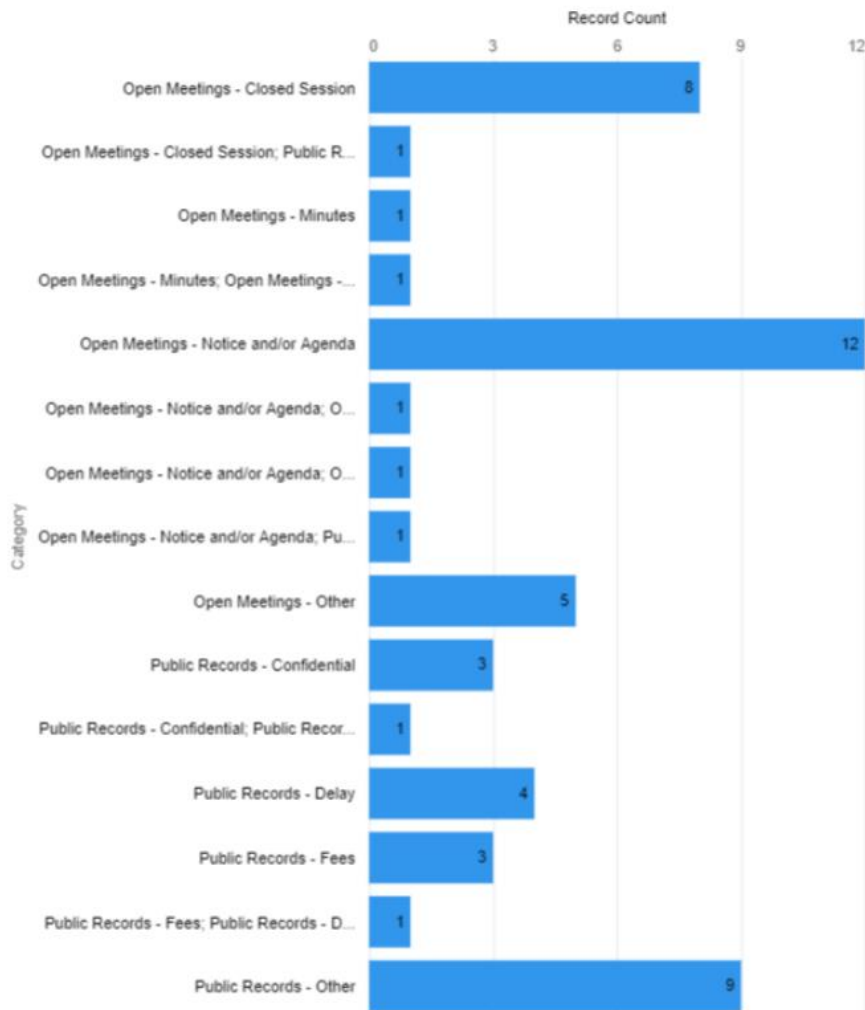
[View Report \(Closed cases \(past 12 months\)\)](#)



### Cases by Type

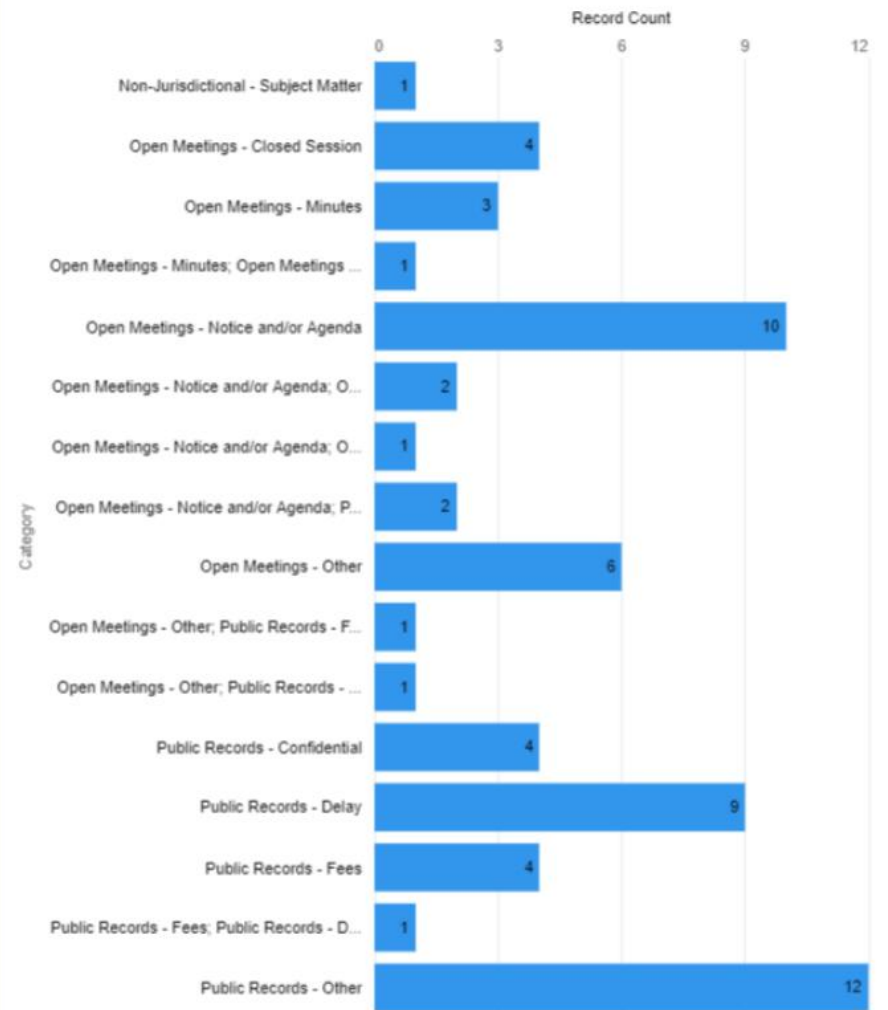
As of Jun 14, 2024 7:13 AM-Viewing as Erika Eckley

Cases by Type (Active)



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

Cases by Type (Filed in Current Year)



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

Report ID: SCHED 6 DEPT/APPR

STATE OF IOWA

Page: 1 of 3

Source: I/3 Budget

FINANCIAL INFORMATION SCHEDULE BY APPROPRIATION

Run Date: 06/10/2024

Spec Dept: All Fund: All Unit Detail: All

Run Time: 10:13:32 AM

Department: 592 Appropriation: All Recap Unit: All

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

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

**RESOURCES**

**Appropriations**

05A Appropriation	357,407	357,407	358,039
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<b>Appropriations TOTAL:</b>	<b>357,407</b>	<b>357,407</b>	<b>358,039</b>
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**Receipts**

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

04B Balance Brought Forward (Approps)	13,543	13,543	11,374
---------------------------------------	--------	--------	--------

<b>Other Resources TOTAL:</b>	<b>13,543</b>	<b>13,543</b>	<b>11,374</b>
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<b>TOTAL RESOURCES:</b>	<b>370,950</b>	<b>370,950</b>	<b>377,462</b>
-------------------------	----------------	----------------	----------------

**DISPOSITION OF RESOURCES**

**Expenditures**

101 Personal Services-Salaries	255,315	286,459	288,030
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202 Personal Travel In State	2,730	5,298	117
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301 Office Supplies	2,759	3,000	2,178
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309 Printing & Binding	0	500	1
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313 Postage	32	150	54
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401 Communications	2,578	5,000	3,352
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Report ID: SCHED 6 DEPT/APPR

STATE OF IOWA

Page: 2 of 3

Source: I/3 Budget

FINANCIAL INFORMATION SCHEDULE BY APPROPRIATION

Run Date: 06/10/2024

Spec Dept: All Fund: All Unit Detail: All

Run Time: 10:13:32 AM

Department: 592 Appropriation: All Recap Unit: All

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

Object Class		Year to date	Revised Budget	Actuals
		Actuals	I/3 Financial	
		FY 2024	FY 2024	FY 2023
405	Professional & Scientific Services		9,000	8,050
406	Outside Services	975		325
414	Reimbursement to Other Agencies	10,516	17,000	12,424
416	ITS Reimbursements	15,590	22,000	33,965
418	IT Outside Services	1,402		1,826
434	Gov Fund Type Transfers - Other Agencies Services		9,000	
503	Equipment - Non-Inventory	6,644		
602	Other Expense & Obligations		13,543	55
<b>Expenditures TOTAL:</b>		<b>298,540</b>	<b>370,950</b>	<b>350,377</b>
<b>Other Dispositions</b>				
91B	Balance Carry Forward (Approps)			13,543
93R	Reversions			13,543
<b>Other Dispositions TOTAL:</b>				<b>27,086</b>
<b>TOTAL DISPOSITION OF RESOURCES:</b>		<b>298,540</b>	<b>370,950</b>	<b>377,462</b>

FTE

FTE Summary

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

STATE OF IOWA

Page: 3 of 3

Source: I/3 Budget

FINANCIAL INFORMATION SCHEDULE BY APPROPRIATION

Run Date: 06/10/2024

Spec Dept: All Fund: All Unit Detail: All

Run Time: 10:13:32 AM

Department: 592 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
<b>TOTAL FTE:</b>		<b>3</b>	<b>3</b>
<b>Appropriation P22 Net (Res-Disp):</b>	<b>72,409</b>	<b>(0)</b>	
<b>Appropriation P22 FTE:</b>		<b>3.00</b>	<b>2.59</b>
<b>Fund 0001 Net:</b>	<b>72,409</b>	<b>(0)</b>	
<b>Fund 0001 FTE:</b>		<b>3.00</b>	<b>2.59</b>
<b>Department 592 Net:</b>	<b>72,409</b>	<b>(0)</b>	
<b>Department 592 FTE:</b>		<b>3.00</b>	<b>2.59</b>
<b>Special Department 760SD Net:</b>	<b>72,409</b>	<b>(0)</b>	
<b>Special Department 760SD FTE:</b>		<b>3.00</b>	<b>2.59</b>
<b>Report Total Net:</b>	<b>72,409</b>	<b>(0)</b>	
<b>Report Total FTE:</b>		<b>3.00</b>	<b>2.59</b>

**IN THE SUPREME COURT OF IOWA**

No. 23–0833

Submitted February 20, 2024—Filed June 7, 2024

**ROBERT TEIG,**

Appellant,

vs.

**VANESSA CHAVEZ, ALISSA VAN SLOTEN, PATRICIA G. KROPF,  
ELIZABETH JACOBI, BRAD HART, and TERESA FELDMANN,**

Appellees.

---

Appeal from the Iowa District Court for Linn County, Lars G. Anderson,  
Judge.

Private citizen appeals summary judgment granted to city officials on his  
claims for violations of the Iowa Open Records Act. **AFFIRMED IN PART,  
REVERSED IN PART, AND REMANDED.**

Oxley, J., delivered the opinion of the court, in which all justices joined.

Robert Teig (argued), Cedar Rapids, pro se.

Andrew T. Tice (argued) and Kristine R. Stone of Ahlers & Cooney, P.C.,  
Des Moines, for appellees.

Cathy S. Trent-Vilim of Lamson Dugan & Murray LLP, Omaha, Nebraska,  
and Jason Palmer and Ryan Tunink of Lamson Dugan & Murray LLP, West Des  
Moines, for amicus curiae Iowa League of Cities.

Thomas Story and Rita Bettis Austen of ACLU of Iowa, Des Moines, for  
amici curiae Iowa Freedom of Information Council and American Civil Liberties  
Union Foundation of Iowa, Inc.

**OXLEY, Justice.**

Iowa's Open Records Act (the Act) prioritizes "free and open examination of public records." Iowa Code § 22.8(3) (2021). It creates a presumption that the public has a right to access public records, guaranteeing some level of transparency and accountability in the work of state and local governments. However, transparency is not absolute. In this case, we consider the extent of certain limitations the general assembly has placed on open records requests in the context of hiring government employees.

In 2021, the City of Cedar Rapids (the City) hired a new city clerk and city attorney. Plaintiff Robert Teig took an interest in the City's hiring processes and submitted open records requests for job applications and several other documents. The City refused to fulfill many of Teig's requests, claiming the attorney-client privilege and the Act's confidentiality provisions exempted several documents from disclosure. Teig filed suit, seeking production of the requested documents, statutory damages, and declaratory and injunctive relief. The district court granted the City's motion for summary judgment.

On appeal, Teig raises five arguments: (1) job applications submitted to governmental bodies are not confidential under chapter 22, (2) municipalities cannot claim attorney-client privilege in the context of an open records request, (3) search and retrieval fees are not authorized by chapter 22, (4) defendants unreasonably delayed fulfilling certain requests, and (5) the district court should have granted him leave to submit additional interrogatories in the ensuing litigation.

We conclude that the district court correctly found that documents subject to the attorney-client privilege are protected from disclosure under chapter 22 and that chapter 22 authorizes municipalities or governmental bodies to charge search and retrieval fees. While job applications are generally protected from

disclosure, that protection extends only to persons “outside of government.” *Id.* § 22.7(18). Thus, the City was obligated to disclose those applications submitted by current employees of the City, although it properly withheld external applications. The district court failed to address Teig’s claims of undue delay related to billing records on the basis that the request was mooted when Teig later received them. That a document is eventually received from another source does not necessarily moot a claim of unreasonable delay. For the reasons explained below, we affirm in part and reverse in part the district court’s grant of summary judgment and remand for further proceedings. We also affirm the district court’s denial of Teig’s motion to submit additional discovery.

### **I. Factual Background.**

The City hired longtime employee Alissa Van Sloten as its new city clerk in May 2021. After Van Sloten was hired, City Attorney Jim Flitz wrote a letter expressing his legal opinion that job applications were confidential under Iowa’s Open Records Act. That summer, Flitz retired, and the City advertised the city attorney vacancy through a third-party consultant, Novak Consulting Group. Elizabeth Jacobi and Vanessa Chavez submitted applications. At the time they applied, Jacobi was employed by the City as an assistant city attorney, and Chavez was serving as city attorney for Green Bay, Wisconsin.

Some city attorney candidates requested that their applications not be made public. The city council solicited a legal opinion from outside counsel as to whether it could review applications in a closed session. After receiving assurance that the process was allowed, the city council entered a closed session on October 12, 2021, to review applications. Chavez was ultimately hired, and Jacobi stayed on as assistant city attorney.

After learning about this closed session, Robert Teig requested several documents related to the City's hiring process for both the city clerk and city attorney positions. Over several months, he submitted requests to Van Sloten, Chavez, Jacobi, and the other defendants in this case: Cedar Rapids Mayor Brad Hart, Human Resources Director Teresa Feldmann, and Assistant City Attorney Patricia Kropf.

First, Teig requested Van Sloten's job application for the city clerk position. Kropf informed him that the record was confidential. He then requested city attorney applications, Novak's job posting for the city attorney position, applicant "requests to close the interviews," and the legal opinion that precipitated the October 12 closed session. Feldmann asserted attorney-client privilege over the legal opinion, but indicated she would work on producing the other records. She also told Teig that, under City policy, he would be charged \$20 per hour for searches exceeding thirty minutes. On November 23, the city council held another closed session to discuss Teig's request for job applications and the possibility that Teig might file a lawsuit under the Act to seek access to withheld documents.

Having not yet received these documents, Teig filed this suit the following day on November 24 in Linn County District Court.

On December 14, Mayor Hart sent Teig the job posting. Hart also reasserted the City's claims of confidentiality over the job applications and privilege over the legal opinion, and he informed Teig there were no responsive documents related to requests for closed interviews. However, Chavez later provided Teig with redacted copies of requests by applicants for the city attorney position that the City review their applications in a closed session.

Teig made additional requests after filing this suit. On December 6, Teig sought information about the November 23 closed session, requesting "the name



of the litigation, name of any attorney involved, and bills and expenditures related to the matter.” Jacobi, then serving as acting city attorney, sent Teig minutes from the open portion of the November 23 session. However, she claimed there were no documents related to litigation or billing, and the City would review relevant documents it received for privileged information. Teig received redacted billing documents directly from the City’s outside counsel as part of discovery related to this litigation on March 10, 2022, in a file labeled: “FINAL APPROVED BILLINGS TO SEND TO TEIG APPROVED BY CITY.”

Shortly after the December 6 request, Chavez took over as city attorney and asked Teig to direct all future document requests through her office in light of his litigation against City officials. She sent instructions on this procedure to City employees as well. Teig resisted this arrangement and, on March 11, requested a copy of the instructions. Chavez forwarded them to Teig on March 18. Teig filed an amended petition on March 19, 2022, which included claims related to the November 23 closed session and Chavez’s instructions that all requests go through her.

On October 14, 2022, the defendants filed a motion for summary judgment. They argued that the employment applications were confidential and that the legal opinion regarding the closed-session review of applications was protected by attorney–client privilege. They also defended the City’s search and retrieval fees and rejected Teig’s claims that any disclosures were untimely.

Rather than formally resisting summary judgment, Teig filed a motion to compel and for sanctions against Chavez, seeking to force additional discovery. He also sought to serve additional discovery requests on Van Sloten, Feldmann, Jacobi, and Kropf, and to correct a previous interrogatory sent to Hart. Teig claimed he mistakenly sent requests to the wrong defendants, and this war-

ranted exceeding the thirty interrogatories allowed under Iowa Rule of Civil Procedure 1.509(1)(e). The district court denied Teig's request for additional discovery on March 7, finding he had not shown good cause.

The district court granted the defendants' motion for summary judgment on May 18, 2023. The court found that all employment applications were confidential and that the legal opinion was privileged. It also upheld the City's search and retrieval fee policy and rejected all claims of refusal and unreasonable delay. Teig appealed, and we retained the appeal.

## **II. Analysis.**

**A. Interrogatories.** We start by disposing of Teig's claim that the district court erred in its discovery ruling by counting subparts of his interrogatories toward the total number allowed. A district court's evidentiary rulings are reviewed for abuse of discretion. *State v. Helmers*, 753 N.W.2d 565, 567 (Iowa 2008). Iowa Rule of Civil Procedure 1.509(1)(e) limits interrogatories in civil litigation to thirty. The district court concluded that the defendants "arguably responded to *more* than 30 interrogatories." This court has "consistently accorded the trial court[] broad discretion in superintending discovery." *Munzenmaier v. City of Cedar Rapids*, 449 N.W.2d 369, 371 (Iowa 1989). We see no reason to depart from this principle here, and we affirm the district court's denial of Teig's motion to submit additional discovery and request for immediate consideration of discovery issues.

**B. Iowa's Open Records Act.** We turn now to Teig's chapter 22 claims, on which the district court granted summary judgment. We review a district court's grant of summary judgment for corrections of errors at law. *Story Cnty. Wind, LLC v. Story Cnty. Bd. of Rev.*, 990 N.W.2d 282, 285 (Iowa 2023). "The district court should grant summary judgment if 'there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of

law.’” *Id.* (omission in original) (quoting Iowa R. Civ. P. 1.981(3)). We review the record in the light most favorable to Teig as the party opposing the motion. See *Koster v. Harvest Bible Chapel–Quad Cities*, 959 N.W.2d 680, 687 (Iowa 2021).

Under section 22.10 of the Act, “[a]ny aggrieved person . . . may seek judicial enforcement of the requirements of [chapter 22] in an action brought against the lawful custodian and any other persons who would be appropriate defendants under the circumstances.” Iowa Code § 22.10(1).<sup>1</sup> Claimants must meet three requirements to sustain a cause of action under the Act: (1) “the defendant is subject to the requirements” of chapter 22, (2) “the records in question are government records,” and (3) “the defendant refused to make those government records available for examination and copying by the plaintiff.” *Id.* § 22.10(2); see also *Horsfield Materials, Inc. v. City of Dyersville*, 834 N.W.2d 444, 460 (Iowa 2013). If these requirements are met, the burden shifts to the defendant to show, by a preponderance of the evidence, that they have complied with the statute. Iowa Code § 22.10(2)–(3); *Horsfield*, 834 N.W.2d at 460.

Here, there is no dispute that the first two requirements are met. As for the third requirement, the defendants refused to disclose job applications and the legal opinion related to the city council’s October 12 closed session, but they claim their refusals complied with chapter 22. They dispute that their actions in response to Teig’s other requests amounted to a refusal under the Act. We address each contention in turn.

1. *The confidentiality of job applications under chapter 22.* While Iowa Code section 22.2 requires that public records be made available to “[e]very person,”

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<sup>1</sup>None of the defendants have challenged, on appeal or in the district court, whether they are proper parties to this enforcement action. We assume, without deciding, that they fit within the catchall “any other persons who would be appropriate defendants under the circumstances.” Iowa Code § 22.10(1).

section 22.7 provides a long list of exceptions, identifying those public records required to “be kept confidential,” *id.* § 22.7; *see also Kirkwood Inst. Inc. v. Sand*, \_\_\_ N.W.3d \_\_\_, \_\_\_, 2024 WL 1813027, at \*4 (Iowa Apr. 26, 2024) (“The statute contains a long list of exceptions protecting specific categories of records from disclosure.”). The district court concluded there was “no circumstance under which [Teig] would be entitled to the employment applications under Iowa’s open records law,” relying on both Iowa Code sections 22.7(11) and 22.7(18). Section 22.7(11) protects “confidential personnel records” from disclosure. Iowa Code § 22.7(11). Section 22.7(18) protects communications “made to a government body or to any of its employees by identified persons outside of government,” where the government body receiving the communication “could reasonably believe that those persons would be discouraged from making them to that government body if they were available for general public examination.” *Id.* § 22.7(18). Access to job applications for government jobs has been a source of open records disputes for some time, so we start with a brief review of prior caselaw and legislative reaction to it.

We first addressed whether applications for government jobs were subject to the Act in *City of Dubuque v. Telegraph Herald, Inc.* 297 N.W.2d 523, 526 (Iowa 1980), *superseded by statute*, 1984 Iowa Acts ch. 1185 § 6, *as recognized in City of Sioux City v. Greater Sioux City Press Club*, 421 N.W.2d 895 (Iowa 1988). At the time we decided *Telegraph Herald*, Iowa Code section 68A.7(11) (1979), the predecessor to section 22.7(11), exempted “[p]ersonal information in confidential personnel records of public bodies including but not limited to cities, boards of supervisors and school districts.” *See Tele. Herald*, 297 N.W.2d at 526. There was no equivalent to section 22.7(18) at the time. We construed the language in subsection (11) narrowly and determined that it did not shield employment applications from disclosure. *Id.* at 527.

In 1984, the general assembly added a new subsection (18) to section 68A.7. 1984 Iowa Acts ch. 1185, § 6 (originally codified at Iowa Code § 68A.7(11) (1985), now codified as amended at Iowa Code § 22.7(18) (2021)). Four years later, we again considered how the Act (moved from chapter 68A to chapter 22) applied to employment applications in *City of Sioux City v. Greater Sioux City Press Club*. 421 N.W.2d at 897. Relying on section 22.7(18), we concluded the general assembly had “chosen to use broadly inclusive language,” and the narrow construction we applied in *Telegraph Herald* was no longer appropriate. *Id.* (holding that “*Telegraph Herald* . . . no longer provide[d] a useful guidepost for resolving” questions related to employment applications). Rather, subsection (18) represented a “legislative goal to permit public agencies to keep confidential a broad category of useful incoming communications which might not be forthcoming if subject to public disclosure,” and we concluded that “employment applications fall within this area of legislative concern.” *Id.* at 898. More than a decade later, in *Clymer v. City of Cedar Rapids*, we observed that “the legislature . . . amended the statute [after *Telegraph Herald*] to cloak employment applications with privacy.” 601 N.W.2d 42, 46 (Iowa 1999).

With this background, we consider the parties’ arguments as applied to the job applications Teig requested.

a. *Section 22.7(11)*. Section 22.7(11) exempts from disclosure “[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.” Iowa Code § 22.7(11)(a) (2021).

The defendants argue that under *Press Club* and *Clymer*, job applications are categorically exempted from disclosure. Their reliance on these cases is misplaced. While *Press Club* directly addressed employment applications, the decision did not rely on section 22.7(11) like *Telegraph Herald* had. *See Press*

*Club*, 421 N.W.2d at 898. Rather, *Press Club* exempted employment applications from disclosure as “useful incoming communications” under section 22.7(18). *Id.* *Clymer* fares no better. While that case did apply section 22.7(11), the plaintiffs were requesting records related to sick leave compensation rather than employment applications. *Clymer*, 601 N.W.2d at 43. The observation about employment applications was not related to a section 22.7(11) analysis, but to section 22.7(18). *See id.* at 45–46 (discussing caselaw under various provisions of chapter 22 in an effort to delineate the scope of the “privacy exemption” in § 22.7(11)). *Telegraph Herald* remains good law to the extent it held that job applications are not protected as personnel records for purposes of section 22.7(11). *See* 297 N.W.2d at 526. Thus, section 22.7(11) does not protect any of the employment applications Tieg requested from disclosure.

b. *Section 22.7(18)*. Iowa Code section 22.7(18) exempts certain voluntary communications made to government bodies by persons outside of government from disclosure. The exemption applies to a communication if it fits four criteria: it “is (1) not required by law and (2) made to a government body (3) by someone outside government, and (4) the [government body] could reasonably believe that the sender would be discouraged from making such communications if [the government body] publicly disclosed it.”<sup>2</sup> *Kirkwood Inst.*, \_\_\_ N.W.3d at \_\_\_, 2024 WL 1813027, at \*10 (applying § 22.7(18) to emails unconnected to the documents requested and sent to the auditor’s office by a member of the public).<sup>3</sup> In

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<sup>2</sup>Teig argues the first requirement is not met for any job application, claiming no person could apply for any government position without submitting an application. We rejected this argument in *Press Club*, where we held that “[t]he candidates were not required to submit these applications because they were not required to apply for the job.” 421 N.W.2d at 898. Teig’s reprise of his *Press Club* predecessors’ argument must meet the same fate.

<sup>3</sup>Section 22.7(18) includes three express exceptions to its confidentiality protection: (1) the communication’s sender consents; (2) the information can be disclosed without identifying

*Press Club*, we held that employment applications fit within the “broad category of useful incoming communications” protected by subsection (18), limiting our holding to “[t]he employment applications which are involved in the present litigation.” 421 N.W.2d at 898–99.

However, *Press Club* did not address Iowa Code section 22.7(18)’s limitation to “persons outside of government,” the third criterion identified above. See *Kirkwood Inst.*, \_\_\_ N.W.3d at \_\_\_, 2024 WL 1813027, at \*10. And that case was decided before the general assembly amended section 22.7(18) in 2001. See 2001 Iowa Acts ch. 108, § 1. That amendment expressly excludes two categories of individuals from being considered “persons outside of government”:

As used in this subsection, “persons outside of government” does not include persons or employees of persons who are communicating with respect to a consulting or contractual relationship with a government body or who are communicating with a government body with whom an arrangement for compensation exists.

*Id.* (codified at Iowa Code § 22.7(18) (Supp. 2001)). The protection provided for voluntary communications under subsection (18) applies only to persons outside of government; people who fit either of these categories do not qualify for that protection. Teig argues that this amendment exempts all employment applications submitted to government entities from section 22.7(18)’s protection.

The scope of this limitation came before us recently in *Ripperger v. Iowa Public Information Board*, 967 N.W.2d 540 (Iowa 2021). That case involved a request for a list of property owners who asked the Polk County Assessor to remove them from the name search function of the assessor’s website. *Id.* at 552. Notably, in defining this type of communication as fitting within the “broad category of useful incoming communications [under section 22.7(18)] which might not be

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the provider; and (3) information must be provided to the extent it identifies specifics surrounding the commission of a crime. Iowa Code § 22.7(18)(a)–(c). Teig does not suggest any of these exceptions apply to the job applications.

forthcoming if subject to public disclosure,” *id.* at 553 (alteration in original) (emphasis omitted) (quoting Iowa Code § 22.7(18)), we cited with approval to *Press Club*, explaining that “[p]resumably some of those job applicants would have thought twice about applying if doing so put them on a public list that could be seen by their current employer,” *id.* at 551. Ripperger also argued that even if some requests from property owners were protected from disclosure, that protection should not apply to government employees because they were not “persons outside of government.” *Id.* at 552. We declined to address that argument because it had not been adequately briefed or decided in earlier proceedings. *Id.* (noting that “[t]he ‘outside of government’ issue was thinly briefed below” but was not reached by the district court).

The broad categories of useful incoming information covered by Iowa Code section 22.7(18) are protected from disclosure only if the communication is received from “persons outside of government.” The 2001 revision sought to clarify two specific groups of individuals who are deemed not “outside of government” and whose communications are therefore not protected from disclosure under section 22.7(18). The provision identifies two specific categories of people: (1) those “communicating with respect to a consulting or contractual relationship with a government body,” or (2) those communicating with a government body with whom they have an “arrangement for compensation.” Iowa Code § 22.7(18). The first focuses on communications *about* a particular relationship, while the second focuses on communications *between parties* to a particular relationship.

The district court addressed the first part of the provision, agreeing with the defendants that “the persons ‘outside of government’ language . . . appears to apply to consultants and contractors,” concluding that nothing in the lan-



guage negated the holding in *Press Club* that employment applications are confidential. Teig argues the general assembly chose the word “contractual,” not “contractor,” and applications for employment are submitted “with respect to a . . . contractual relationship.”

A familiar principle of statutory construction is that “when identical language is used in several places in an enactment, we ordinarily give it the same meaning.” *B.A.A. v. Chief Med. Officer, Univ. of Iowa Hosp.*, 421 N.W.2d 118, 125 (Iowa 1988). The converse also holds true—use of materially *different* language indicates different meanings are intended. See *Chiodo v. Section 43.24 Panel*, 846 N.W.2d 845, 853 (Iowa 2014) (“If the drafters intended the two concepts to be coextensive, different words would not have been used.”); see also *Sw. Airlines Co. v. Saxon*, 596 U.S. 450, 457–58 (2022) (applying the “meaningful-variation canon” and citing Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 170 (2012), for the proposition that “[w]here [a] document has used one term in one place, and a materially different term in another, the presumption is that the different term denotes a different idea.” (second alteration in original)). We also consider the *noscitur a sociis* canon, under which we interpret groups of words in light of their association with each other so long as they “ordinarily have a similar meaning.” *Fleur de Lis Motor Inns, Inc. v. Bair*, 301 N.W.2d 685, 690 (Iowa 1981) (quoting 2A J.G. Sutherland & C. Dallas Sands, *Statutes and Statutory Construction* §§ 47.16–.17 (4th ed. 1973)).

In section 22.7(18), the general assembly refers separately to “consulting or contractual relationship” and “arrangement for compensation.” Iowa Code § 22.7(18). “[A]rrangement for compensation” used in the second definition would clearly cover an employment relationship. *Id.* Employment is often at-will

(so not covered by a contract), but by definition it always includes an “arrangement for compensation.” Teig argues that “contractual relationship” also encompasses employment contracts. But we cannot ignore this difference in terminology. See *Chiodo*, 846 N.W.2d at 853. Nor can we ignore the pairing of “contractual” with “consulting” in the phrase “consulting or contractual relationship,” neither of which suggest an employment relationship—especially when paired together. See *Wright v. State Bd. of Eng’g Exam’rs*, 250 N.W.2d 412, 413 (Iowa 1977) (“[T]he meaning of a word is ascertained in the light of the meaning of words with which it is associated.”). Given this shift in language, we agree with the district court that “consulting or contractual relationship” refers to consultants and contractors, whose relationship with governmental bodies is different than the compensation arrangements extended to government employees.

However, that does mean that *Press Club* protects all employment applications from disclosure, as the district court concluded. The second category of persons excluded from protection under the 2001 revision are persons “who are communicating with a government body with whom an arrangement for compensation *exists*.” Iowa Code § 22.7(18) (emphasis added). As discussed, an “arrangement for compensation” clearly covers employees. And use of the present tense “exists” limits the reach to only current employees of the particular governmental body—the one “with whom [the] arrangement for compensation exists.” *Id.* Thus, communications between current (but not prospective) employees and the governmental body that employs them—including applications for a new position with the employing body—are not made by persons “outside of government” and therefore are not protected from disclosure under section 22.7(18).

While subsection (18) is intended to protect a “broad category of useful incoming communications,” *Press Club*, 421 N.W.2d at 898, we cannot ignore the general assembly’s additional limitation that the protection covers only those

communications received from “persons outside of government,” Iowa Code § 22.7(18). It may be that the threat of possible disclosure of an application may deter both internal and external candidates for a government job, but that is a policy consideration best left to the legislative branch. *See Press Club*, 421 N.W.2d at 897 (“[I]t is not the responsibility of this court to balance the competing policy interests. The balancing of those interests is the province of the legislature . . .”). It is not unreasonable for the general assembly to conclude that any deterrent effect chapter 22 may have on potential applicants will be felt most acutely by external applicants.

Section 22.7(18) protects applications received from external candidates, meaning anyone not employed by the City when the application was submitted. But it does not exempt from disclosure applications submitted by then-current employees of the City, such as Van Sloten and Jacobi.

2. *Attorney–client privilege*. Next, we address Teig’s claim that the legal opinion solicited by the City about closing city council sessions was not protected from disclosure under chapter 22 by the attorney–client privilege. Teig argues the privilege does not apply to open records requests because chapter 22 protects work product, *see* Iowa Code § 22.7(4) (exempting “[r]ecords which represent and constitute the work product of an attorney, which are related to litigation or claim made by or against a public body”), but not attorney–client communications. We reject Teig’s argument as contrary to our holding in *Horsfield Materials, Inc. v. City of Dyersville*, 834 N.W.2d 444.

Our cases make clear “that a governmental body may be a client for purposes of invoking the [attorney–client] privilege.” *Tausz v. Clarion–Goldfield Cmty. Sch. Dist.*, 569 N.W.2d 125, 127 (Iowa 1997) (en banc); *see also Horsfield*, 834 N.W.2d at 463 (recognizing the City of Dyersville “properly asserted the attorney–client privilege”). Iowa has enshrined its attorney–client privilege in Iowa Code

section 622.10, and our caselaw recognizes that this provision effectuates a privilege “of ancient origin.” *Bailey v. Chi., Burlington & Quincy R.R.*, 179 N.W.2d 560, 563 (Iowa 1970). The privilege “bars attorneys from disclosing confidential communications.” *Keefe v. Bernard*, 774 N.W.2d 663, 669 (Iowa 2009).

As a general rule of disclosure, chapter 22 does not trump other specific statutory privileges protecting the confidentiality of documents. *See Burton v. Univ. of Iowa Hosps. & Clinics*, 566 N.W.2d 182, 188–89 (Iowa 1997) (holding that physician–patient privilege protected documents held by public hospital despite not being identified in section 22.7). We extended this holding to documents broadly protected by the attorney–client privilege in *Horsfield*, where we held that Iowa Code section 622.10 protected emails exchanged with counsel for the City of Dyersville notwithstanding section 22.2’s disclosure requirement. 834 N.W.2d at 450–51, 463 (“[T]he [Open Records] Act does not affect other specific statutory privileges recognized by the legislature, such as the attorney–client privilege.”). This holding was not dicta, as urged by Teig. Although the City of Dyersville ultimately made the tactical decision to waive the attorney–client privilege and produce the records during litigation, we still had to address whether the city’s initial decision to withhold the documents violated chapter 22. *Id.* at 462–63. It was in this context that we held the attorney–client privilege protected the documents from disclosure through an open records request. *Id.* at 463. *Horsfield* controls here. The legal opinion regarding closing city council sessions was privileged and not subject to disclosure.

3. *Charges for search and retrieval.* The City has adopted an open records policy that provides records to the public at no charge if the request takes less than thirty minutes to fulfill. After the first thirty minutes, the City’s policy provides that it may charge \$20 per hour, prorated to the nearest fifteen minutes. Teig argues that chapter 22 does not authorize such a policy, claiming it only

allows fees related to “examination and copying.” This interpretation cannot be reconciled with the plain language of the statute.

We held that chapter 22 authorized retrieval fees under an earlier iteration of the Act in *Rathmann v. Board of Directors*. 580 N.W.2d 773, 778–79 (Iowa 1998). In *Rathmann*, a schoolboard charged an hourly rate to retrieve documents related to administrative restructuring in the school district. *Id.* at 775–77. At the time, section 22.3 required that “[a]ll expenses of such work shall be paid by the person desiring to examine or copy.” *Id.* at 777 (emphasis omitted) (quoting Iowa Code § 22.3 (1995)). We found the phrase “all expenses of such work” to be “especially significant and indicative of the legislature’s intent” to authorize retrieval fees. *Id.* at 778–79. The general assembly has since removed this language. 2001 Iowa Acts ch. 44, § 2 (codified at Iowa Code § 20.3 (Supp. 2001)). Teig argues that its removal took with it the authority to charge retrieval fees. However, we find that the statute now provides even clearer guidance.

After the general assembly removed the language identified by Teig, it again amended section 22.3 in 2005. *See* 2005 Iowa Acts ch. 103, § 1 (codified at Iowa Code § 22.3 (Supp. 2005)). In addition to examining public records in person, without charge, Iowa Code § 22.2(1), the 2005 amendment enable individuals to request copies of public records “in writing, by telephone, or by electronic means.” 2005 Iowa Acts ch. 103, § 1 (codified at § 22.3(1) (Supp. 2005)). When such a request is made, the lawful custodian cannot “require the physical presence” of the requester but must “fulfill [such] requests.” *Id.* In addition, “[f]ulfillment of a request for a copy of a public record may be contingent upon receipt of payment of expenses to be incurred in fulfilling the request” as long as the estimated expenses are communicated at the time of the request. *Id.* (emphasis added). As relevant to the issue of recovering expenses, this is the version of the statute in effect when Teig made his requests. *See* Iowa Code § 22.3(1) (2021).

Thus, while the general assembly expressly refers to “copying,” “examination,” and “supervision” in section 22.3(1), as Teig points out, *id.*, it expanded access to public records by requiring custodians to fulfill requests made by phone or email. In doing so, it also provided for the recovery of “expenses . . . incurred in fulfilling the request.” *Id.* Because fulfillment of a request necessarily includes the retrieval of the requested documents, we conclude the provision in effect when Teig made his requests allowed the City to recover its expenses in fulfilling them.

The parties and the district court considered the statute as it existed in 2023, after amendments that became effective on July 1, 2022 (after Teig’s requests). *See* 2022 Iowa Acts ch. 1039, § 1 (codified at Iowa Code § 22.3 (2023)). To the extent those amendments have any relevance, they confirm our interpretation of the plain language of section 22.3 as it existed in 2021. *See, e.g., Iowa Individual Health Benefit Reins. Ass’n v. State Univ. of Iowa*, 876 N.W.2d 800, 805 (Iowa 2016) (“When an amendment to a statute adds or deletes words, a change in the law will be presumed *unless the remaining language amounts to the same thing.*” (emphasis added) (quoting *Davis v. State*, 682 N.W.2d 58, 61 (Iowa 2004))). The 2022 amendments limited expenses charged for fulfilling a request to “reasonable expenses,” 2022 Iowa Acts ch. 1039, § 1 (codified at Iowa Code § 22.3(1) (2023)), and also directed custodians to “make every reasonable effort to provide the public record requested at no cost other than copying costs *for a record which takes less than thirty minutes to produce,*” *id.* (emphasis added). Thus, for requests taking more time to fulfill, the amendments to section 22.3(1) clarify that in addition to copying costs, custodians can charge for other expenses incurred in producing the records, as long as they are “reasonable and communicated to the requester upon receipt of the request.” *Id.* The general assembly’s continued use of the same word “expenses” in relation to recovery of

costs incurred in fulfilling a request for public records reveals that it considered such expenses to not be limited to copying costs, as Teig argues.

Teig also argues that the general assembly's use of the word "retrieval" in Iowa Code section 22.2(4)(a) precludes retrieval fees generally because it indicates that the general assembly "knew how to authorize retrieval fees" but chose not to do so. Again, we disagree. Section 22.2(4)(a) allows governmental bodies to restrict public access to "geographic computer database[s]," so long as they "establish reasonable rates and procedures for the retrieval" of requested documents. *Id.* This provision is not an authorization to charge retrieval fees generally, but it is part of a directive to governmental bodies to accommodate requests when public access to certain databases is restricted. That it authorizes retrieval fees in a specific context does not preclude recovery of what might be deemed "retrieval expenses" in a more general sense in a separate section expressly allowing recovery of expenses to fulfill a request for public records.

As Teig and the amici note, retrieval fees may in fact hamper access to public documents. However, such fees may also ensure continuing access to public records through increased funding and deterring excessive or overly broad requests. In any event, weighing these policy interests is for the general assembly. *See Press Club*, 421 N.W.2d at 897. We hold that in allowing for the recovery of expenses incurred in fulfilling requests for public records, Iowa Code section 22.3(1) authorizes reasonable fees for the time spent by the custodian or its employees in fulfilling the request.

4. *Refusal and unreasonable delay.* We turn now to Teig's claim that the defendants either refused or unreasonably delayed producing several requested documents. To sustain a cause of action under chapter 22, claimants must show "that the defendant[s] refused to make [requested] records available for examination and copying." Iowa Code § 22.10(2). While this language "speaks in terms

of a refusal rather than a delay in production,” *Horsfield*, 834 N.W.2d at 463 n.6, we have also recognized that a defendant can “refuse” a request “by (1) stating that it won’t produce records, or (2) showing that it won’t produce records,” *Belin v. Reynolds*, 989 N.W.2d 166, 174 (Iowa 2023). The second category of refusal “can be shown through an unreasonable delay in producing records.” *Id.*

Chapter 22 requires custodians to provide access to requested documents promptly, but “[i]f the size or nature of the request . . . requires time for compliance, the custodian shall comply with the request as soon as feasible.” *Horsfield*, 834 N.W.2d at 461 (quoting Iowa Unif. Rules on Agency Proc., No. X.3(4) (17A, 22) (1999)). Because the statute provides no explicit time constraint, “a reasonable time is implied.” *Belin*, 989 N.W.2d at 175 (quoting 2B Norman J. Singer & Shambie Singer, *Statutes and Statutory Construction* § 55:3, at 457 (7th ed. 2012)). In *Belin*, we delineated six factors for determining whether there had been an unreasonable delay:

(1) how promptly the defendant acknowledged the plaintiff’s requests and follow-up inquiries, (2) whether the defendant assured the plaintiff of the defendant’s intent to provide the requested records, (3) whether the defendant explained why requested records weren’t immediately available . . . , (4) whether the defendant produced records as they became available . . . , (5) whether the defendant updated the plaintiff on efforts to obtain and produce records, and (6) whether the defendant provided information about when records could be expected.

*Id.*

Teig has three claims of undue delay concerning records we have not yet considered: (1) records related to the city attorney position, (2) instructions to direct Teig’s open records request through the city attorney’s office, and (3) information about the November 23 closed session by the city council. We discuss each in turn.



a. *Records related to the city attorney position.* Teig originally requested documents related to the city attorney position on October 21. After exchanging multiple emails with Feldmann, he narrowed his request on November 3. This narrowed list included: the legal opinion related to closing the October 12 city council session, applications for the city attorney position, requests by candidates “to close the interviews,” and the job posting for the position. Having already discussed the legal opinion and applications above, we now consider the requests to close the interviews and the job posting.

On December 14, Hart informed Teig there were no responsive documents relating to candidate requests “to close the interviews.” Despite this denial, Teig later received redacted copies of two requests by candidates. Hart’s update was not erroneous though. The City did not close interviews for the city attorney position, nor was it asked to. Rather, applicants submitted requests for their applications *to be reviewed* in a closed session. Noticing Teig’s inaccuracy, Chavez sent redacted copies of two requests that the applications be considered in a closed session a few weeks after taking office. Because Teig never requested these documents, there can be no finding of undue delay.

Teig also received his request for the city attorney job posting. Feldmann acknowledged the request on November 4, the day after Teig submitted it. She followed up again on November 10 and 24. Hart sent Teig the job posting on December 14. While this delay may not be the most expeditious, several of the relevant factors we identified in *Belin* weigh in favor of the defendants. *See id.* Feldmann responded to Teig’s request the day after receiving it, provided multiple updates, and estimated when the documents may be ready. This conduct does not rise to the level of undue delay.

b. *Instructions on Teig’s open records requests.* After taking over as city attorney in December of 2021, Chavez sent a message to City employees, asking

that all of Teig's future open records requests go through her office. Teig asked for these instructions on March 11, and Chavez provided them on March 18. Teig claims it should "have taken Defendant Chavez only seconds" to locate these documents. This demand for instantaneous compliance ignores the express language of chapter 22.

Section 22.8 allows custodians up to "twenty calendar days" to fulfill requests when it is necessary "[t]o determine whether a *confidential record* should be available for inspection and copying to the person requesting the right to do so." Iowa Code § 22.8(4)(d) (emphasis added). Chapter 22 further defines "confidential records" to include "the work product of an attorney, which are related to litigation." *Id.* § 22.7(4). Teig submitted this request several months after filing the present suit against the City. The document he sought was a communication between the city attorney and employees of the City relating to that litigation. When Chavez disclosed the document, she told Teig that "[a]lthough the record in question was drafted by an attorney, [she had] determined that this record contains no privileged or confidential communication." Chavez's delay was authorized under section 22.7(4).

c. *Records related to the November 23 closed session.* Finally, we consider Teig's request for documents related to the city council's November 23 closed session. The city council closed the session "to discuss strategy with legal counsel with regard to pending litigation." On December 6, Teig requested "records showing the name of the litigation, name of any attorney involved, and bills and expenditures related to the matter." Jacobi replied on December 8, claiming "the city ha[d] not yet received any invoices regarding this representation," but agreed to "examine them upon receipt to determine whether any redactions are necessary to preserve the attorney client privilege."

However, the record shows the City approved a payment of \$3,167.50 to the law firm Lynch Dallas P.C. on December 7, with \$2,167 of that total being paid the same day. On March 11, Teig acquired a redacted billing document related to the November 23 session directly from Lynch Dallas through discovery in this litigation in a file named: “FINAL APPROVED BILLINGS TO SEND TO TEIG APPROVED BY CITY.” There is no indication the City kept Teig apprised of any updates between December 6 and March 11. On a review of a grant of summary judgment, we view evidence of these facts in the light most favorable to Teig. *See Hedlund v. State*, 930 N.W.2d 707, 715 (Iowa 2019).

In their brief, the defendants argue Teig did not file his lawsuit until the day after the closed session, and his request related only to “pending litigation.” Thus, the defendants claim they were under no duty to disclose the requested documents that related instead to “imminent litigation.” However, Teig’s December 6 request does not mention “pending litigation.” While there may not have been any “name of the litigation” to disclose, this does not affect Teig’s request for the name of the attorney or billing records.

The defendants also argue that Teig has already received these documents, implying his claim has been mooted. We rejected a similar argument in *Belin*. *See* 989 N.W.2d at 171. There, we held that production of documents only mooted claims “to produce the already-produced records.” *Id.* It does not prevent plaintiffs from pursuing “any other relief that may be available under the Act.” *Id.*; *see also Kirkwood Inst.*, \_\_\_ N.W.3d at \_\_\_, 2024 WL 1813027, at \* 6 (holding that plaintiff’s “pursuit of a civil penalty, attorney fees, and court costs under chapter 22 based on a refusal to timely produce” requested documents was not mooted by eventual production of documents). Teig has brought claims for damages and injunctive relief, and section 22.10(3) authorizes both remedies.

We have previously declined to set an exact deadline for “undue delay,” but our prior cases are instructive nonetheless. In *Belin*, delays ranging from five to eighteen months amounted to an undue delay. 989 N.W.2d at 169. In *Horsfield*, we found a violation of chapter 22 based on a seventy-day delay. 834 N.W.2d at 460, 462. Here, Teig waited more than ninety days to receive the redacted billing records. Reasonableness is often a fact question, and we conclude the district court—as the fact-finder—should address whether the delayed receipt of the billing records was an unreasonable delay in violation of chapter 22. *See Kirkwood Inst.*, \_\_\_ N.W.3d at \_\_\_, 2024 WL 1813027, at \*7 (concluding fact issue precluded summary judgment with respect to whether delay in producing one email, eventually produced as part of litigation discovery 216 days after initial request and 106 days after petition was filed, was reasonable).

5. *Remedies.* Having determined that the defendants withheld some records required to be disclosed, we now consider what remedies are available to Teig. If a custodian refuses or unreasonably delays production, courts must enjoin the custodian to comply with the statute. Iowa Code § 22.10(3)(a). Courts are also required to assess damages under certain conditions and have discretion to “order the lawful custodian . . . to refrain for one year from any future violations” of the Open Records Act. *Id.* Successful plaintiffs are also entitled to “costs and reasonable attorney fees.” *Id.* § 22.10(3)(c).

Because the defendants failed to disclose job applications from internal applicants, we conclude those applications must be disclosed pursuant to section 22.7(11), and Teig is entitled to costs and attorney fees related to those specific requests. While section 22.10(3)(b) requires courts to assess damages for violations generally, it prohibits such damages when custodians “[r]easonably relied upon a decision of . . . the attorney for the government body, given in

writing.” *Id.* § 22.10(3)(b)(3). The record indicates that Flitz, Chavez’s predecessor as city attorney, provided a letter to the city council explaining that job applications were confidential. Feldmann and Hart stated they received a copy of this letter in their affidavits. They accordingly are exempt from paying damages. *See id.* As for the one-year injunction against future violations of chapter 22, such a remedy is discretionary and to be applied only “if appropriate.” *Id.* § 22.10(3)(a). Given the applicability of an exception to section 22.10’s damages requirement and our previous guidance in *Press Club* concerning protection for job applications, we find this injunctive remedy is not appropriate.

As for Teig’s claim of unreasonable delay, on remand he may pursue all relief authorized under the Act for any proved unreasonable delay in the fulfillment of his December 6, 2021 open records request.

Section 22.10(3)(c) requires courts to order a plaintiff’s “costs and reasonable attorney fees, including appellate attorney fees,” to be paid by defendants who are assessed damages. *Id.* § 22.10(3)(c). However, “[i]f no such persons exist . . . the costs and fees shall be paid . . . from the budget of the offending government body.” *Id.* Here, no defendants are liable for damages for refusal to disclose job applications, and the City is therefore responsible for these costs and fees.

### **III. Conclusion.**

For these reasons, we affirm in part and reverse in part the district court’s grant of summary judgment. We also affirm the district court’s denial of Teig’s evidentiary motions. We remand for further proceedings consistent with this opinion.

**AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.**