

# **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, Des Moines (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**  
**Kimberly Murphy, Deputy Director**

**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**

**July 18, 2024, 1:00 p.m.**

**IDALS 2N Large Conference Room**

**Wallace Building**

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

### **1:00 PM – IPIB Meeting**

- I. Approval of agenda\*
- II. Approval of the June 27, 2024 minutes \*
- III. Public Forum (5-minute limit per speaker)
- IV. Comments from the board chair. (McHugh)
  1. Discussion and action on 6% raise for IPIB Executive Director as continuation of evaluation process
- VI. Advisory Opinion – Deliberation/Action.\* (Eckley)
  1. 24AO:0007 Are private email communications sent from a government email address public records?
- VII. 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:0107, 23FC:0109, 23FC:0112, 23FC:0113, 23FC:0121 (Dana Sanders, Valerie Close, Lu Karr, Molly Rach, Alex Carros - Both- Benton County Board of Supervisors) 11/20/2023 - Probable Cause
  3. 24FC:0010 (Tirzah Wedewer - Chapter 21- Manchester City Council) 1/29/2024 - Dismissal
  4. 24FC:0018 (Zach Vulich - Chapter 22- City of Leland) 2/16/2024 - Informal Resolution
  5. 24FC:0034 (Keegan Jarvis - Chapter 21- Swan city council) 4/10/2024 - Dismissal

6. 24FC:0038 (Joe Monahan - Chapter 22- Ames Public Library) 4/17/2024 - Dismissal
7. 24FC:0041 (Laurie Kramer, Nancy Preussner, Emily Preussner - Chapter 21- City of Delhi) 4/30/2024 - Dismissal
8. 24FC:0042 (Kenneth Brown - Chapter 21- City of Sidney) 5/3/2024 - Dismissal
9. 24FC:0044 (Kaila Benson - Chapter 22- Fort Dodge Polica Department) 5/23/2024 - Dismissal
10. 24FC:0046 (Hannah Koppenhaver - Chapter 21- Gilmore City-Bradgate Community School District) 5/31/2024 - Dismissal
11. 24FC:0051 (Laurie Kramer - Both- City of Delhi) 5/30/2024 – Dismissal

VIII. Matters Withdrawn, No Action Necessary. (Eckley)  
None

IX. Pending Advisory Opinions and Complaints. Informational Only, No Action To Be Taken (Eckley)

1. 24AO:0003 What does Iowa law require with regard to compiling research data in a government database that isn't actually a data point tracked by the government?
2. 24AO:0008 Is a video on a personal cell phone from a work incident a public record?
3. 23FC:0053 (Debra Schiel-Larson - Both- Indianola Community School District) 5/4/2023 - Board Acceptance of IR
4. 23FC:0114, 23FC:0115, 23FC:0122, 23FC:0123 (John Bandstra, Bert Bandstra, Jack Rempe, Drew Mcgee - Chapter 21- South Central Regional Airport Agency) 11/17/2023 - Informal Resolution Process
5. 23FC:0126 (Traci Stillwell - Chapter 22- Hampton Public Library Hampton, IA) 11/19/2023 - Board Acceptance of IR
6. 23FC:0130 (Keegan Jarvis - Chapter 21- City Council of Swan) 11/27/2023 - Board Acceptance of IR
7. 24FC:0009 (Brett Christensen - Chapter 21- City of Silver City) 1/23/2024 - Board Acceptance of IR
8. 24FC:0013 (Bonnie Castillo - Both- Union County Emergency Management Agency) 2/2/2024 - Informal Resolution Process
9. 24FC:0017 (Latrice Lacey - Chapter 22- City of Davenport) 2/12/2024 - Informal Resolution Process
10. 24FC:0035 (Shaylea Caris - Chapter 21- Shelby City Council) 4/18/2024 - Information Gathering
11. 24FC:0043 (Blake Jones - Both- City of Eldora Council and Mayor) 5/19/2024 - Information Gathering
12. 24FC:0045 (Arthur Anderson - Chapter 22- City of Davenport Iowa) 5/31/2024 - Information Gathering
13. 24FC:0048 (Ethan Vorhes - Both- Floyd County Auditor, Board of Supervisors, Floyd County Sheriffs department, Floyd County Attorneys office, Drainage District #2 of Floyd County) 6/9/2024 - Information Gathering
14. 24FC:0049 (Lindsie Gallardo - Chapter 22- Cedar Rapids Police Department) 6/10/2024 - Information Gathering
15. 24FC:0050 (Beckett - Chapter 22- Iowa Department of Corrections) 5/31/2024 - Information Gathering
16. 24FC:0052 (Erik Johnson - Chapter 22- Delaware Township) 6/6/2024 - Information Gathering
17. 24FC:0053 (Blake Jones - Chapter 22- City of Eldora) 6/18/2024 - Information Gathering
18. 24FC:0054 (Samuel Kleiss - Chapter 21- City of Hudson) 6/17/2024 - Information Gathering
19. 24FC:0055 (Chandler Trautwein - Chapter 22- Marshalltown Police Department) 6/17/2024 - Information Gathering
20. 24FC:0056 (Steven Asche - Chapter 22- City of Eagle Grove) 6/20/2024 - Information Gathering

21. 24FC:0057 (Jody Phillips - Chapter 22- Pekin Community School District Board) 7/3/2024 - New / Complaint Information Reviewed
22. 24FC:0058 (Chad Miller - Both- Scott County Board of Review) 7/8/2024 - Information Gathering

X. Committee Reports

1. Training – (Eckley)
2. Legislative – (Eckley)
3. Rules – (Murphy)

XI. Office status report.

1. Office Update \* (Eckley)
2. Financial/Budget Update (FY25) \* (Eckley)
3. Presentations/Trainings (Eckley)
  - a. Redfield Library
  - b. City of Lowden
  - c. UCEMA
4. District Court Update (Eckley)

XII. Next IPIB Board Meeting will be held on August 15, 2024, at 1:00 p.m.

XIII. Adjourn

**\* Attachments**

# **IOWA PUBLIC INFORMATION BOARD**

**June 27, 2024**

## **Unapproved Minutes**

The Board met on June 27, 2024, for its monthly meeting at 9 a.m. at the offices of the Iowa Public Information Board located at 502 East 9<sup>th</sup> Street, Des Moines. The following members participated: Joan Corbin, Pella (remote); Barry Lindahl, Dubuque (remote); Luke Martz, Ames; Monica McHugh, Zwingle; Joel McCrea, Pleasant Hill; Jackie Schmillen, Urbandale (remote). Absent: E.J. Giovannetti, Urbandale. Also present were IPIB Executive Director, Erika Eckley; IPIB Deputy Director, Brett Toresdahl; Kimberly Murphy, Staff Legal Counsel. A quorum was declared present.

Others identified present or by phone: Jason Foust, Rick Morain, Joey Lovan, Charles Nocera (remote), Chad Miller (remote), Traci Stilwell (remote), Suzy Knipfel (remote), Nicholas Bailey (remote), Brian Fagan (remote), Old Davenport Dump (remote), Mikki Schultz (remote), Megan Rosenberg (remote) Shaylea Caris (remote), Allison Wright (remote).

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

On a **motion** by McCrea, **second** by Martz, to approve the May 16, 2024, minutes. Unanimously adopted, 6-0.

### **Public Forum –**

Rick Morain: Discussed Chapter 23 requirements for quorum. Discussed Advisory Opinion 24AO:0005.

Charles Nocera (remote) – Offered services on a volunteer basis to assist with IPIB case load.

### **Board Chair Comments –**

- Board Vacancy: Discussed resignation of Daniel Breitbarth and the corresponding Board vacancy.
- Eckley's Evaluation: Discussed law that allows for increase in salary and salary range for director positions. Discussed pay increase options.

On a **motion** by Martz, **second** by Corbin, to approve a 6% increase for the IPIB director position.

Unanimously adopted, 6-0.

- Committee Assignments: Committee assignments were discussed and the following committees were formed or continued:
  - Rules Committee: Corbin, Giovannetti, McCrea
  - Legislative Committee: Martz, Corbin, Lindahl, Giovannetti
  - Training Committee: McHugh, Schmillen, Martz

**Advisory Opinions** – The Board was briefed on each Advisory Opinion and acted as indicated below:

1. 24AO:0003: Data in governmental databases – Tabled for next Board meeting.

2. 24AO:0004: Government officials' attendance at social events - A **motion** by Martz and **second** by Lindahl to approve the Advisory Opinion. Unanimously approved, 6-0.
3. 24AO:0005: Required notice – A **motion** by McCrea and **second** by Martz to approve the Advisory Opinion as amended. Unanimously approved, 6-0.
4. 24AO:0006: What is required under changes to electronic meetings - A **motion** by Lindahl and **second** by Martz to approve the Advisory Opinion. Unanimously approved, 6-0.

**IPIB Cases** - The board was briefed on each case and acted as indicated below:

1. 23FC:0074 Chad Miller - Chapter 21- Scott County Board of Review 7/18/2023 – Miller spoke (remote). Board discussion occurred. Board recommendation to file another complaint to address remaining issues or issues that have emerged since the development of the informal resolution. A **motion** by Lindahl and **second** by McCrea to table review of the final report. Unanimously approved, 6-0.
2. 23FC:0126 Tracy Stillwell – Chapter 22 – Hampton Public Library 11/19/23 – Stillwell spoke (remote). Suzi Knipfel spoke on behalf of the Hampton Public Library (remote). Board discussion occurred. A **motion** by Corbin and **second** by Lindahl to accept the report. Unanimously approved, 6-0.
3. 24FC:0014 Keegan Jarvis – Chapter 22 – Swan City Council – 2/6/24 – Nicholas Bailey spoke on behalf of the City of Swan (remote). A **motion** by Lindahl and **second** by McCrea to approve the dismissal order. Unanimously approved, 6-0.
4. 24FC:0031 Regina Warnke; Jessie Austin; Chandra Swink – Chapter 22 – City of Urbana – 4/16/24 – Brian Fagan spoke on behalf of the City of Urbana (remote). Board discussion. Board requested review of policy and consideration of reduction of costs to access documents. A **motion** by Martz and **second** by Lindahl to approve the dismissal order. Unanimously approved, 6-0.
5. 24FC:0032 Old Davenport Dump – Chapter 21 – City of Davenport – 3/28/24 – Old Davenport Dump provided electronic comment. Read to the Board by Director Eckley. Mikki Schultz spoke on behalf of the City of Davenport (remote). A **motion** by Martz and **second** by Corbin to approve the dismissal order. Unanimously approved, 6-0.
6. 24FC:0035 Shaylea Caris – Chapter 21 – Shelby City Council – 3/23/24 – Caris spoke (remote). Board discussion occurred. Board recommendation to table to allow IPIB to investigate another issue within the complaint. A **motion** by McCrea and **second** by Lindahl to table review of the case. Unanimously approved, 6-0.
7. 24FC:0036 Jason Foust; Katie Milhollin – Chapter 21 – City of Eldridge – 3/27/24 – Jason Foust spoke. Allison Wright spoke on behalf of the City of Eldridge (remote). Board discussion. A **motion** by Lindahl and **second** by Martz to approve the dismissal order. Unanimously approved, 6-0.
8. 24FC:0037 Christine Knapp – Chapter 22 – Henry Co. Sheriff Dept. – 4/15/24 – A **motion** by McCrea and **second** by Martz to approve the dismissal order. Unanimously approved, 6-0.

9. 24FC:0040 James Warnke; Jamie Slife – Chapter 22 – City of Urbana – 4/28/24 – Brian Fagan spoke on behalf of the City of Urbana. A **motion** by Corbin and second by **Lindahl** to approve the dismissal order. Unanimously approved, 6-0.

**Matters Withdrawn** - No action necessary.

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

**Pending Complaints** – These matters are informational and do not require board action at this time.

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 Rempe – Chapter 21 – South Central Regional Airport Agency 11/17/23; 23FC:0123 Drew McGee – Chapter 21 – South Central Regional Airport Agency 11/17/23 – 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

### **Committee Reports**

1. Training (Toresdahl) – No report
2. Legislative (Eckley) – Eckley discussed a future meeting to begin Committee work for the upcoming legislative session.
3. Rules (Murphy) – Murphy gave an overview of Executive Order 10 and discussed a future meeting in July.

### **Updates for the Board**

1. Eckley provided an office update and current statistics.
2. Toresdahl shared an overview of the IPIB budget and current financials.
3. Upcoming presentations:
  - Silver City Council
  - Clinton County
4. Eckley gave a district court update and discussed the recent Teig v. Chavez decision.

The next IPIB Board Meeting will be held in the Wallace Building, room to be determined, on July 18, 2024, at 1 p.m.

The meeting adjourned at 11:11 a.m. on **motion** by Martz with a **second** by McCrea. Motion unanimously approved.





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Des Moines, Iowa 50319  
www.ipib.iowa.gov

Erika Eckley, JD  
Executive Director  
(515) 393-8339  
erika.eckley@iowa.gov

**Advisory Opinion 24AO:0007**

**DATE: July 18, 2024**

**SUBJECT: Are private email communications sent from a government email address public records?**

Tara Elcock  
The Law Shop  
413 Grant Street  
Van Meter, IA 50261

Ms. Elcock,

We are writing in response to your request dated July 1, 2024 requesting an advisory opinion from the Iowa Public Information Board (IPIB) pursuant to Iowa Code chapter 23 and Iowa Administrative Code rule 497-1.3.

This opinion concerns the use of a government email for private, personal matters. Advisory opinions may be adopted by the board pursuant to Iowa Code section 23.6(3) and Rule 497–1.2(2): “Any person may request a board advisory opinion construing or applying Iowa Code chapters 21, 22, and 23. An authorized agent may seek an opinion on behalf of any person. The board will not issue an opinion to an unauthorized third party. The 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:**

Whether records should be disseminated as public record, and whether there is an exception to the dissemination when information is private information, not utilized in the course of official action.

You report that a police officer, a public employee, has been using his government email for communication in his ongoing personal, family matters, potentially including a district court custody case and juvenile child in need of assistance (“CINA”) cases involving the employee’s children. These emails include communications with the county attorney's office, the children's guardian ad litem, workers from Children and Families of Iowa, the children's mental health providers, school educators, and potentially others.

You state that a formal records request was made around May 8, 2024, for email records requesting the entirety of the email communications under the relevant domain for his work. You state the emails requested are extensive and include communications with Department of Human Services, the children's guardian ad litem,

**Board Members**

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

his former attorney and others at the law firm, the Madison County Attorney and Assistant Madison County Attorney and others in the office, City of Winterset Police Department and specific officers, the children's therapists, former therapist, Children and Families of Iowa and specific personnel, Families First Counseling Services and specific personnel, the court-appointed special advocates involved in the CINA matters, Winterset Community School District, the 5th Judicial Magistrate, the 5th Judicial Court Judge, and his current attorney and her firm. The records request sought the entirety of the email communications under the relevant domain dating back to February 14, 2020. You state the records requests should fall under the exception to dissemination pursuant to Iowa Code §§ 22.7 and 22.8.

You also state information requested is information that is private information involved in the district court custody case and the juvenile court CINA case as they relate to the children of the employee and his ex-wife. You further indicate none of the records were created in the course of business or in an official capacity and they do not provide any benefit to the general public as they related only to family matters.

### **OPINION:**

#### **Interpretation of Public Records**

“By statutory definition, a public record is a record or document *of or belonging to* the state or local government. A document of the government is a document that was produced by or originated from the government. Documents belonging to the government would include those documents that originate from other sources but are held by public officers in their official capacity.” *City of Dubuque v. Dubuque Racing Ass'n*, 420 N.W.2d 450, 452 (Iowa 1988) (emphasis in the original); see also *Diercks v. City of Bettendorf*, 929 N.W.2d 273, ? (Iowa Ct. App. 2019) (looking to whether the records requested are “of or belonging to” a covered governmental body under section 22.1 based on whether they relate to a government function or duty).

In *Dubuque Racing Association*, a records request was made for the records held by city council members who also served on the board of a nonprofit racing association. In determining whether the records were public records, the Court had to determine whether the city council members on the board “were acting in their official capacity as public servants and whether disclosure of the minutes of the DRA board meetings will facilitate public scrutiny of the conduct of public officers. This decision does not turn on the physical location of the documents in question, rather, the appropriate inquiry is whether the documents are held by the city officials in their official capacity.” 420 N.W.2d at 453. “Simply because members of a city council serve on the board of directors of a private nonprofit corporation, the affairs of the corporation do not become the affairs of the government.” *Id.* at 453.

In *United States v. Story County*, the federal court found that “[n]ot every action taken (or email received/sent) by Sheriff Fitzgerald is carried out in his official capacity as Story County Sheriff nor necessarily relates to his elected duties.” 28 F. Supp. 3d 861, 871 (S.D. Iowa 2014). In determining whether Sheriff Fitzgerald’s emails regarding his position with the federal body were subject to Iowa’s public records law, the court found important that the requestor “would not be entitled to access” the emails if they had been sent and/or received from his board email account. Merely sending and/or receiving the emails from his county email address “did not transform the nature of those communications, neither did that use transform [the requestor’s] lack of access to them.” The emails were not “produced by or originated from” the Sheriff’s role as sheriff and were not held in his official capacity with the county. 28 F. Supp. 3d 861, 871–72 (S.D. Iowa 2014).

In *Kirkwood Institute v. Sand*, the Iowa Supreme Court reviewed a situation in which a government employee used his personal email to conduct official government business and whether the government body’s delay in producing the email records was reasonable. In reviewing the situation, the court was clear that the requestor was “entitled to see the actual, complete record.” 6 N.W.3d 1, 9 (Iowa 2024); see also 21AO:0009 Public records maintained on privately-owned electronic devices (“If a government official or employee uses privately owned electronic devices or services, such as cell phones, computers, email accounts, smart phones, or such to

conduct official government business, then the record generated is a public record. What governs the issue is the content of the message.”).<sup>1</sup>

These cases demonstrate the fundamental principle of Iowa’s public records law that the record itself, rather than the location the record is stored, dictate whether it is a public record required to be disclosed under Iowa Code chapter 22. “It is the nature and purpose of the document, not the place where it is kept, which determines its status,” *Linder v. Eckard*, 152 N.W.2d 833, 835 (Iowa 1967); *see also* 18AO:0019 When are documents possessed by public officials “public record” as defined by Iowa Code § 22.1 (3) (a-b)? (whether the various communications constitute public records which must be disclosed depends on the action they memorialized and how the documents were created; if intended to bind the individuals or non-county business entity, they fall outside the scope of Iowa Code chapter 22).<sup>2</sup>

### **Application to the records requested**

The facts provided indicate the records requested include email communications from a city police officer to individuals involved in his child custody case, investigations and juvenile court matters regarding his children. The records request asks for all email communications from February 2020 through May 2024 to identified agencies, individuals, and email addresses.

There are — as this question clearly spells out — highly personal, private and potentially privileged communications. As a police officer, there may also be records responsive to this request created in the officer’s official capacity to some of these agencies as part of his duties to investigate matters within his scope and responsibility as a police officer. Case law has consistently stated, that whether a document is a public record depends on the nature of the document and whether they are created and/or held by the police officer in his official capacity.

Records related to the police officer’s children, his personal court cases, and his personal communications with his attorneys and counselors would not be created or held by him in his official capacity and would not be public records. Records to any of these individuals, agencies, or email addresses as part of his investigative role as a police officer would be public records subject to disclosure according to Iowa Code chapter 22.

As stated in previous IPIB guidance, commingling public communications and reports with private communications creates difficulty in responding to an open records request. Utilizing a government email address for personal and deeply private conversations poses as great a risk as utilizing private resources for public business. Public business communications are public records, and it is the custodian’s responsibility to review all records to determine whether they are within a request for examination and copying to justify any denial of release. Iowa Code chapter 22 does not provide specific guidance concerning how a lawful custodian retrieves, reviews, and releases public records.<sup>3</sup>

Best practices suggest personal and public communications should not be commingled. This situation is a clear illustration of why this practice should be followed. Government bodies should also enact policies to prohibit the commingling, but also address situations in which public and private communications are combined whether it occurs on public devices or on private devices. It is ultimately the custodian’s responsibility to review records responsive to the records request and respond to the requestor as appropriate under their obligation as outlined in Iowa Code chapter 22 and case law.

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<sup>1</sup> <https://ipib.iowa.gov/when-become-public-records>

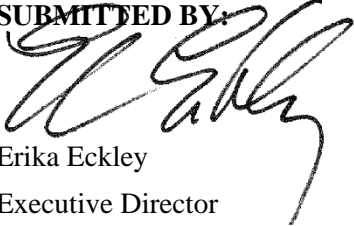
<sup>2</sup> <https://ipib.iowa.gov/privately-owned-electronic-devices>

<sup>3</sup> *See* 1AO:0009 Public records maintained on privately-owned electronic devices; located at <https://ipib.iowa.gov/privately-owned-electronic-devices>

**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:**  
July 18, 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.*

# 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.

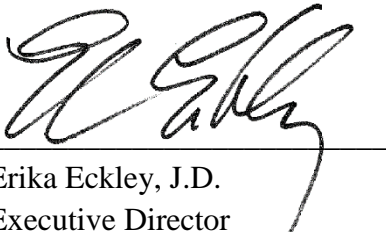
The Scott County Board of Review was in session beginning May 1 and concluded May 31 as required by statute.

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 July 11, 2024, to:

Chad Miller  
Thomas McManus, Scott County Assessor

# The Iowa Public Information Board

In re the Matter of:  Dana Sanders, Valerie Close, Lu Karr, Molly Rach, and Alex Carros, Complainants  And Concerning:  Benton County Board of Supervisors, Respondent	Case Numbers: 23FC:0107; 23FC:0109; 23FC:0112; 23FC:0113; 23FC:0121  Probable Cause Report
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COMES NOW, Erika Eckley, Executive Director for the Iowa Public Information Board (IPIB), and enters this Probable Cause Report:

Between, October 22 and November 20, 2023, Braxton Morrison, Maggie Mangold, Dana Sanders, Kurt Karr, Valerie Close, Kaitlin Emrich, Lu Karr, Molly Rach, and Alex Carros filed formal complaints, alleging that Benton County Board of Supervisors (“Board”) violated Iowa Code chapters 21 and 22.

All of the Complaints allege issues arising from or during Board meetings that occurred September 26 through November 8, 2023. In addition, the allegations within the ten complaints are intermingled and overlapping. Due to the number of Complaints, as well as, the common Respondent and circumstances, the Complaints were Consolidated.

## **Procedural Information**

Shortly after filing Complaints 23FC:0101; 23FC:0102; and 23FC:0110, Complainants also filed a lawsuit in district court based on the same allegations and facts, which was settled. As part of the settlement agreement, Complaints 23FC:0101; 23FC:0102; and 23FC:0110 were dismissed. The IPIB also dismissed Complaint 23FC:0108 in its acceptance order on January 18, 2024, because the requested documents had already been provided to the Complainant by the Board. Some allegations within the remaining complaints were also dismissed as outlined in the Acceptance Order.

The remaining Complaints are the following:

**Closed Session September 26, 2023 for Evaluation of Barb Greenlee  
(Case No. 23FC:0121)**

**Complaint 23FC:0121-** Complainant alleges discussions by the Board regarding termination of the entire Board of Health began on September 26th, 2023, when the Board of Supervisors entered a closed session with Barb Greenlee, a half-time Board of Health employee, the Benton County Auditor Hayley Rippel, and the Human Resources Director Sue Wilber.

During the closed session, the Board decided to fire all five Board of Health members. The minutes reflect that after exiting the closed session at 10:47 a.m., the Board voted “To take action as discussed in closed session.” No further details are provided.

None of the Board of Health members, much less members of the public, were made aware that the Board of Supervisors was considering this action. Thus, none of the Board of Health members could have requested or did request that the performance evaluation take place in closed session, which is required by Iowa Code § 21.5(1)(i). They were notified by letter of their termination after the Board of Supervisors meeting.

No other exception to the Open Meetings Law, aside from § 21.5(1)(i), was given for the Supervisors’ closed session and no other exception would be valid.

**Board Response:** Brent Hinders, attorney for the Board responded to the Complaints. The publicly stated reason that was given for the closed session involved: (1) The evaluation of the professional competency of an individual public employee, (2) the consideration of the appointment, hiring, performance, or discharge of that individual, (3) if conducted in an open meeting this discussion would have caused needless and irreparable injury to that person’s reputation, and (4) this individual public employee requested that the board go into closed session to evaluate their professional competency and performance pursuant to the statute in question and to IPIB guidance on the subject. *See* IPIB Advisory Opinion 14FO:0002, Feb. 20, 2014.

Published Agenda item No. 13, posted Minutes, and YouTube recording of the meeting demonstrate otherwise. The public was properly notified of the closed session by the 13th item listed on the Agenda that was published before the Board Meeting and stated: 10:00 A.M. Sue Wilber Re: Closed Session pursuant to Iowa Code 21.5(1)i. To evaluate the professional competence of an individual whose appointment, hiring, performance, or discharge is being considered when necessary to prevent needless and irreparable injury to that individual’s reputation and that individual requests a closed session.



This closed session was announced publicly during open session and is confirmed by the September 26, 2023, YouTube video of the Board of Supervisors meeting before the Board moves to go into closed session.

If the above-cited Agenda Item No. 13 was in reference to the five members of the Benton County Board of Health, then Complainants would be correct in stating that those employees would have had to request the closed session for it to be lawful. However, the closed session was held to evaluate a completely different public employee. Thus, the complaint is without merit and the minutes and audio recordings of the closed session should remain sealed to prevent needless and irreparable injury to a public employee.

### **IPIB Analysis**

On September 26, 2023, all three members of the Board voted to hold a closed session under Iowa Code § 21.5(1)(i) to evaluate the professional competence of an individual whose appointment, hiring, performance, or discharge is being considered when necessary to prevent needless and irreparable injury to that individual's reputation and that individual requests a closed session. The individual who requested the closed session was Ms. Greenlee.

Iowa Code § 21.5(1)(i) allows for a closed session to evaluate Ms. Greenlee's professional competence when necessary to prevent needless and irreparable injury to that individual's reputation Iowa Code § 21.5(2), however, mandates that 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."

IPIB Staff was provided a copy of the confidential, closed session recording of September 29, 2023. After reviewing the audio of the closed session, the conversation that occurred within the closed session likely exceeded the scope of the stated purpose of the closed session in potential violation of Iowa Code § 21.5(2).

### **Closed Session October 3, 2023 for two Attorney-Client Discussions pursuant to Iowa Code § 21.5(1)(c) (Case No. 23FC:0113)**

**Complaint: 23FC:0113** Complainants allege on October 3rd, the agenda for the meeting included two separate closed sessions the first requested by Sue Wilber, and the second requested by Ray Lough. The YouTube video does not get restarted for the remainder of the Supervisor's meeting on October 3rd, but the minutes reflect that the first closed session was exited, and the Human Resources director was "granted the authority to act on matters discussed in closed session..." A second closed session was then entered into that, again, is not publicly available.

At the November 2 BOS meeting, County Attorney Ray Lough indicated the vote to terminate the Benton County Board of Health (BOH) was taken at the October 3 meeting. Members of the Board of Health had no knowledge of any pending or imminent litigation, or any potential cause for such and were unaware the Board was considering their terminations. The board of health had not pursued any legal action against the county at that point. One Complaint stated, “I do not believe the cause for entering closed session was truthful, and the vote to terminate the board was inappropriately held in closed session.” This board continually uses closed meeting sessions as a way of avoiding transparency. Since July 1, 2023 this board has gone into closed session at least 16 times.

**Board Response:** The Board of Supervisors held the closed session in question using Iowa Code Section 21.5(1)(c) “[t]o discuss strategy with counsel in matters that are presently in litigation or where litigation is imminent where its disclosure would be likely to prejudice or disadvantage the position of the governmental body in that litigation.” Iowa Code Section 21.5(1)(c). County Attorney Ray Lough was present during both of the closed sessions on October 3, 2023, as required by statute, and can attest that Counsel discussed matters that are presently in litigation or where litigation was imminent, and that disclosure would be likely to prejudice or disadvantage the position of the Benton County Board of Supervisors in that litigation.

According to the minutes, Supervisor Bierschenk moved and Supervisor Primmer seconded to enter a closed session to discuss strategy with counsel at 10:16 a.m. The actual vote of all members to enter the closed session was not included in the minutes. This session was ended by affirmative vote of the Board at 11:15 a.m. The Board voted to “To act on matters proposed with Human Resources Director in closed session and to grant authority to Sue Wilber to implement that with appropriate timeline.”

According to the minutes Supervisor Primmer moved and Supervisor Bierschenk seconded to enter another closed session to discuss strategy with counsel at 11:18 a.m. Again, the actual vote of all members was not included in the minutes. This session was ended by affirmative vote of the Board at some point in time. The minutes do not indicate the time. No action was taken by the Board following the second closed session.

In responding to the Complaint, an affidavit was provided by Hayley Rippel attesting that for the first closed session on October 3, the locking mechanism on the flash drive was on and the closed session was not recorded, but Ms. Rippel states she took extensive notes of the session. No additional information was provided.

## **IPIB Analysis**

Because this Complaint involved closed sessions for the purpose of engaging in attorney-client privileged communications and the Board has not waived the privilege, no recordings or notes were provided to IPIB. The minutes, however, twice fail to include the vote of all members as required by Iowa Code 21.5(2) who voted to enter the closed sessions: “The vote of each member on the question of holding the closed session and the reason for holding the closed session by reference to a specific exemption under this section shall be announced publicly at the open session and entered in the minutes.”

The Board should amend the minutes to accurately reflect the vote that was taken to enter the closed session. The recording of the open meeting portion shows the vote was unanimous to go into the first closed session. There is no video for the second closed session. Previously, the Iowa Court has found there is harmless error in this omission in the minutes,<sup>1</sup>but the Board should consider ensuring the actions of the Board are accurately documented.

Complaints 23FC:0111 and 23FC:0113 were accepted for additional investigation. Aside from the need to revise the minutes, there is nothing to indicate the use of the closed session to discuss strategy with counsel in matters that are presently in litigation or where litigation is imminent was improper. Lawsuits in the district court and complaints with IPIB were filed shortly after this meeting, so it is not unreasonable the Board believed litigation was likely or imminent at the time they utilized the closed session. In addition, the county attorney attended the closed sessions.

### **Closed Session October 31, 2023 for Evaluation of Sue Wilber, HR Director (Case Nos. 23FC:0107; 23FC:0109; 23FC:0112)**

**Complaints 23FC:0107, 23FC:0109, 23FC:0112:** The Board of Supervisors went into a closed meeting to discuss an evaluation of Sue Wilber the HR Director. The Board dismissed the Auditor during the closed session and had Ms. Wilber take minutes and record the meeting. This is against Iowa law.

**Board Response:** Complainant alleges potential violations of Iowa law related to the County Auditor not being present during a closed session. However, the Iowa Public Information Board is specifically set up to secure compliance with and enforcement of the requirements of Chapters 21 and 22 through the provision by the Iowa public information board to all interested parties of an efficient, informal, and cost-effective process for resolving disputes. Iowa Code Section 23.1. Furthermore, IPIB’s jurisdiction is limited to the application of Iowa Code chapters 21, 22, and 23, and rules in Iowa Administrative Code chapter 497. Thus, the Board will not address those allegations in this response.

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<sup>1</sup> See *KCOB/KLVN, Inc. v. Jasper Cnty. Bd. of Sup'rs*, 473 N.W.2d 171, 176 (Iowa 1991) (finding substantial compliance when the deputy auditor was asked to leave, so no votes were recorded regarding closed session).

On October 31, 2023, the Board voted to hold a closed session under Iowa Code § 21.5(1)(i) to evaluate the professional competence of an individual whose appointment, hiring, performance, or discharge is being considered when necessary to prevent needless and irreparable injury to that individual's reputation and that individual requests a closed session.

The minutes indicate Sue Wilber requested the board go into closed session to do her employee evaluation. Supervisor Primmer directed Auditor Rippel to also exit the room for this portion of the meeting. Supervisor Primmer moved and Bierschenk seconded: "To enter into closed session pursuant to Iowa Code 21.5(1)i: To evaluate the professional competency of an individual whose appointment, hiring, performance, or discharge is being considered when necessary to prevent needless and irreparable injury to that individual's reputation and that individual requests a closed session. Motion carried at 10:05 a.m." Primmer moved and Bierschenk seconded: "To exit closed session at 11:00 a.m. Motion carried."

### **IPIB Analysis**

Complainants allege the Board did not have the authority to ask the Auditor to leave the closed session. In response, the Board states this issue is beyond the jurisdiction of the IPIB.

In *KCOB/KLVN, Inc. v. Jasper Cnty. Bd. of Sup'rs*, 473 N.W.2d 171, 176 (Iowa 1991), the Iowa Supreme Court found there was substantial compliance by the Board when they asked the deputy auditor, the secretary of the meeting, to leave before the closed session, so no minutes of the vote or the reason for the closed session were taken. In this situation in Benton County, the auditor was asked to leave after the vote in open session was taken. The court in *KCOB/KLVN* did not specifically address whether asking the auditor to leave the closed session was a violation under Iowa Code Chapter 331 as opined by an attorney general opinion 1992 Iowa Op. Atty. Gen. 179 (Iowa A.G.), 1992 WL 470382.

IPIB has advised that "Iowa Code section 21.5 is silent as to who may be invited to attend a closed session, [IPIB is] of the opinion that it is at the discretion of the governing body as to who it may invite to attend. ... This Board lacks the authority to read into the statute a laundry list of who can be invited to attend a closed session and who cannot. Such a determination would require an amendment to the statute by the legislative branch or an interpretation of the statute by the judicial branch." 15AO:0003: Are There Limits on Who May Attend Closed Session?

The violation alleged by all of the Complaints was solely based on the supervisors' actions in asking the auditor to leave the closed session. There is currently litigation<sup>2</sup> between the auditor and the Board to gain access to the closed session recording (in addition to other issues), so any further review by IPIB on this matter would be imprudent. The district court is better positioned

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<sup>2</sup> 06061 CVCV010799, Rippel v Benton County Bd. Of Sup'rs, et al.

to provide guidance as to the auditor's right to obtain the confidential recording and the contents of the recording based on her position as auditor and whether she could attend the closed session.

### **Attempts to Resolve the Complaints and Board Actions**

Following the Board's Acceptance of the complaints on January 18, 2023, IPIB met with the Complainants and the Board's attorney. Three meetings were held to try to come to agreement on a resolution. The parties ultimately did not reach agreement on the terms presented by IPIB staff and the Complainants stated they would not agree to the Informal Resolution terms.<sup>3</sup>

The Board did accept the terms and approved the Informal Resolution at its meeting on April 16, 2024. The terms of the Informal Resolution required the following:

1. The Board acknowledges sufficient evidence exists regarding the closed sessions and failure to follow specific procedures for closed sessions presented in these complaints that a violation of chapter 21 could potentially be found in a contested case proceeding.
2. The Board will provide a transparent timeline of events and actions that occurred during or as a result of the closed sessions at issue. This timeline will include full transparency of any non-confidential facts or matters and will be provided to all parties and retain status as a public document.
3. The Board will work with counsel to develop a checklist for all procedural requirements in holding a closed session and the limitations of deliberation within a closed session to avoid any deficiencies in the future.
4. The Board acknowledges that under Iowa Code § 21.6(3) continued violations of Iowa's Open Meetings Law can result in fines assessed to individual members of the Board, in addition to removal from office.
5. The Board and other county officials and staff will participate in training on Iowa Code chapters 21 and 22 in an open meeting. The IPIB will conduct the training and all elected officials from Benton County will attend. The heads of boards and commissions within the county will be invited.
6. The Council will approve this resolution during an open meeting and include the full text in the minutes of the meeting. A copy of the minutes will be provided to the IPIB.

IPIB staff conducted training in Benton County on May 29, 2024.<sup>4</sup>

A timeline regarding the Board of Health matter was completed and provided to the parties on June 27, 2024.

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<sup>3</sup> An area of contention was the Complainants wanted the confidential closed session records to be released. The records, however, are not public records. "The detailed minutes and audio recording of a closed session shall be sealed and shall not be public records open to public inspection." Iowa Code 21.5(5)(b)(1); *see also Telegraph Herald, Inc. v. City of Dubuque*, 297 N.W.2d 529, 535 (Iowa 1980) (holding legislature weighed against public exposure of closed session recordings as a sanction).

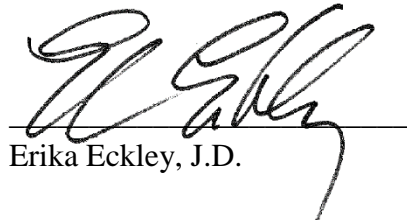
<sup>4</sup> [https://www.bentoncountya.gov/files/meetings/2024-05-29\\_agenda\\_board\\_of\\_supervisors\\_78155.pdf](https://www.bentoncountya.gov/files/meetings/2024-05-29_agenda_board_of_supervisors_78155.pdf)

## Recommendation

Based on investigation of the complaint, I recommend that the Board determine probable cause exists to believe the Benton County Board of Supervisors violated Iowa Code chapter 22 during the closed session on September 26, 2023, but that complaint and the others be dismissed as a matter of administrative discretion based on the following.

- The members of the Board of Health filed a separate lawsuit regarding the closed sessions and their impact on them. That lawsuit has already been settled.
- The Iowa Supreme Court has determined there was substantial compliance under similar circumstances as the Board's failure to include the votes on the minutes for the closed sessions on October 3, 2023.<sup>5</sup> (The Board is encouraged to consider remedying the omission in the minutes, regardless.)
- In regards to the closed session on October 31, 2023, there is active litigation between the auditor and the Board, in part to decide whether she had a right to attend because she is the auditor. IPIB cannot find a violation for asking the auditor to leave the closed session, guidance from IPIB states that the Board can choose who attends a closed session, the court did not find a similar violation in the *KCOB/KLVN* case, and final resolution of the matter is likely outside IPIB's jurisdiction under Iowa Code chapter 21.
- The Board has adopted the terms of the Informal Resolution as outlined by IPIB staff to resolve and remediate the complaints raised.

By the IPIB Executive Director



Erika Eckley, J.D.

## CERTIFICATE OF MAILING

This document was sent on July 11, 2024, to:

Brent Hinders and Ray Lough, attorneys for Benton County Board of Supervisors  
Dana Sanders, Kurt Karr, Valerie Close, Lu Karr, Molly Rach, and Alex Carros, Complainants

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<sup>5</sup> See *KCOB/KLVN, Inc.*, 473 N.W.2d at 176.



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

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**Re: Benton County Probable Cause Order**

1 message

**Dana Sanders, MHEA** <danasandersmhea@gmail.com>

Tue, Jul 16, 2024 at 8:32 AM

To: "IPIB, IPIB" &lt;ipib@iowa.gov&gt;, Vinton Today &lt;vintontoday@hotmail.com&gt;, "Molly Rach (mmrach82@gmail.com)" &lt;mmrach82@gmail.com&gt;, "lu@monkeythis.com" &lt;lu@monkeythis.com&gt;

To be included in the July 18 packet: (I still reserve the right to speak)

This process has been one that nobody wants to have to do. We had very clear evidence on this and on other cases that were brought forth. However, while appreciated that they find probable cause, the lack of follow through is disheartening. The lack of honesty is disheartening. The lack of transparency is disheartening. The inability to understand evidence on other cases is despicable. You should be fining these individuals as I was told in the first negotiation meeting by both their attorney and Erika that you could. I was also told it would come out of their pockets. This appears to be a lie by Brent Hinders and Erika Eckley. Otherwise, wouldn't they make it right? Next came stipulations that we wanted that are not hard to ask for and should not have been hard to grant. We wanted the recordings of the October 31 meeting, which the public deserves. Hopefully the lawsuit in motion on that gets that. That's public record so I will mention it here. Sadly, we were told in negotiations that there would be a complete timeline, which was another lie. It was a lie because we got some adjusted minutes that didn't show anything. What are they hiding? I'm sure they will say nothing, but we've already seen who is lying in this and it's not our side. Where is the apology that they also stated that the board of supervisors would write? No, it was a one sentence meaningless piece of garbage by your staff. Another case, which Brett told me I cannot mention, but I'm going to anyhow, was one where the HR lady had a packet distributed caught on tape in a closed session that you chose to ignore even though it was not on any agenda or noted. This HR individual said it was Valentine's even though numerous others said only the top sheet was as such and underneath was information on payroll companies, etc that she should not be attempting to bring forth. The video even showed a large packet, but you chose to ignore and believe one person over many. There has also been what I would call condescending snarkiness by Eckley towards at least myself, and I'm pretty sure others by the email chains, which I think you should read all of. I would advise others to get a FOIA request on all of our emails even! I've also filed complaints on your staff (Erika and Brett). Did you even read them because I've heard nothing and they definitely do not deserve praise for their abilities in light of everything as far as I'm concerned. I would tell anybody not to waste your time with this board. Thank you!

Dana Sanders

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**From:** Dana Sanders, MHEA <danasandersmhea@gmail.com>**Sent:** Friday, July 12, 2024 7:08:48 AM**To:** IPIB, IPIB <ipib@iowa.gov>; Vinton Today <vintontoday@hotmail.com>; Molly Rach (mmrach82@gmail.com) <mmrach82@gmail.com>; lu@monkeythis.com <lu@monkeythis.com>**Subject:** Re: Benton County Probable Cause Order

I will be speaking at that meeting. However, I decline to release the board from any responsibility as many errors have been stated and done. The Ombudsman even states that the auditor should have those recordings/minutes.

Regards,  
Dana SandersGet [Outlook for iOS](#)

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**From:** erika.eckley@iowa.gov <erika.eckley@iowa.gov> on behalf of IPIB, IPIB <ipib@iowa.gov>**Sent:** Thursday, July 11, 2024 5:25:25 PM**To:** Dana Sanders, MHEA <danasandersmhea@gmail.com>**Subject:** Fwd: Benton County Probable Cause Order

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

From: **Eckley, Erika** <[erika.eckley@iowa.gov](mailto:erika.eckley@iowa.gov)>

Date: Thu, Jul 11, 2024 at 5:22 PM

Subject: Benton County Probable Cause Order

To: Brent Hinders <[BHinders@hhlawpc.com](mailto:BHinders@hhlawpc.com)>, Lu Karr <[lu@monkeythis.com](mailto:lu@monkeythis.com)>, Molly Rach <[mmrach82@gmail.com](mailto:mmrach82@gmail.com)>, Vinton Today <[vintontoday@hotmail.com](mailto:vintontoday@hotmail.com)>, Adam Carros <[adam.carros@kcrq.com](mailto:adam.carros@kcrq.com)>, Ray Lough <[rlough@bentoncountyia.gov](mailto:rlough@bentoncountyia.gov)>

Good Morning:

The Iowa Public Information Board (IPIB) will review this Probable Cause Report at its meeting on **July 18, 2024. The meeting will begin at 1:00 p.m.** The meeting agenda will be posted to the IPIB website (<https://ipib.iowa.gov/2024-board-meetings>) on the afternoon of Tuesday, July 16, 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 12:00 p.m. on Tuesday, June 16, 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

**New phone number (515) 393-8339**



7/16/24, 9:01 AM

State of Iowa Mail - Re: Benton County Probable Cause Order

[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: Benton County Update**

1 message

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**Vinton Today** <VintonToday@hotmail.com>

Thu, Jun 27, 2024 at 4:40 PM

To: "Eckley, Erika" <erika.eckley@iowa.gov>, "Dana Sanders, MHEA" <danasandersmhea@gmail.com>, Lu Karr <lu@monkeythis.com>, Molly Rach <mmrach82@gmail.com>, Adam Carros <adam.carros@kcrq.com>, Brent Hinders <BHinders@hhlawpc.com>, Ray Lough <rlough@bentoncountya.gov>

The job of IPIB is to assure transparency for the public.

In the case of the October 31st, 2024 meeting you yourself stated that the closed session went OUTSIDE the parameters of a closed session and THAT is EXACTLY what the public wants to know about. What were they discussing that they SHOULDN'T have? How do we KNOW that they weren't acting on what was discussed and coming to a conclusion in that closed session only to take action later that day or at another meeting? We don't.

YOUR JOB is to make sure that this DOESN'T happen. Your timeline didn't even note that HR Director, Sue Wilber WHOSE JOB WAS BEING REVIEWED took minutes of her own job review! You glossed over that by stating that a "county employee" took notes, I'd even trust the county janitor to take notes and be honest than the gal whose job is being reviewed. Wilber has NOT been elected, is not part of the Auditor's office, and was selected by the Board of Supervisors who have shown they cannot be trusted.

Basically you told us NOTHING that happened in that meeting that we didn't already know. We want minutes of what was discussed that was ACCORDING TO YOU - OUTSIDE the parameters of a closed session. They broke the law. So what or who did they talk about? Why is this so hush-hush?

Is it embarrassing? Defamatory? I'd bet money that it is.

Do you job, and put the part of the closed session that has NOTHING WHATSOEVER to do with Wilber's job review out there!

You are keeping information from the public that SHOULD BE PUBLIC!

Ironic, that the Iowa PUBLIC INFORMATION Board appears to be in cahoots with elected officials in this county bent on doing anything but being transparent with the public.

You owe the public this information.

You told us yourself that you have NEVER fined elected officials for breaking the law, even though those fines have been INCREASED for you to do so. What EXACTLY is the purpose of IPIB if NOT to be a force for the little guy?

You have done nothing but reinforce to all of us that indeed, "You can't fight City Hall." Shame on you! We asked you to fight FOR us, but you continue to help the BoS cover their underhanded dealings. If there is nothing to hide, put it out there. I suspect things that were discussed should NOT have been discussed, but it's uncomfortable to release the public part of the closed session.

I have been relentlessly covering the behavior of this board, and you guys have done nothing to hold them accountable. You don't even have to be neighborly to these people like those of us who live here. You have just given them more fuel to continue their underhanded dealings and feed the idea in their minds that they can do what they want.

Do your job and release ALL the information that is outside the scope of this closed session where Wilber took notes on Wilber's job review. Come on. In what world is THAT part of this meeting vaguely acceptable/ethical/proper?

It's okay for reporters to report but not for the IPIB to release information!

I am so disappointed in this board. Do your job, and that is to assure the public that you actually care about honesty and hold our officials responsible for their actions.

Valerie Close, Editor  
P.O. Box 7  
Vinton, Iowa 52349  
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**From:** Eckley, Erika <[erika.eckley@iowa.gov](mailto:erika.eckley@iowa.gov)>

**Sent:** Thursday, June 27, 2024 2:04 PM

**To:** Dana Sanders, MHEA <[danasandersmhea@gmail.com](mailto:danasandersmhea@gmail.com)>; Vinton Today <[vintontoday@hotmail.com](mailto:vintontoday@hotmail.com)>; Lu Karr <[lu@monkeythis.com](mailto:lu@monkeythis.com)>; Molly Rach <[mmrach82@gmail.com](mailto:mmrach82@gmail.com)>; Adam Carros <[adam.carros@kcr.org](mailto:adam.carros@kcr.org)>; Brent Hinders <[BHinders@hhlawpc.com](mailto:BHinders@hhlawpc.com)>; Ray Lough <[rlough@bentoncountya.gov](mailto:rlough@bentoncountya.gov)>

**Subject:** Benton County Update

Attached is the following:

1. Updated timeline regarding the public health board matter
2. minutes reflecting Benton County BOS's acceptance of informal resolution
3. minutes reflecting the training by IPIB.

This matter will be presented to the IPIB at our meeting on July 18. Everyone will receive the information the week prior to the meeting.



**Erika Eckley, JD, MPA**

Executive Director  
Iowa Public Information Board (IPIB)  
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[www.ipib.iowa.gov](http://www.ipib.iowa.gov)

## The Iowa Public Information Board

In re the Matter of:	Case Number: 24FC:0010
Tirzah Wedewer, Complainant	<b>Dismissal Order</b>
And Concerning:	
City of Manchester, Respondent	

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

On January 31, 2024, Tirzah Wedewer filed formal complaint 24FC:0010, alleging the City of Manchester (“City”) violated Iowa Code Chapter 21.

### Facts

Ms. Wedewer alleges the City violated Iowa Code Chapter 21 by making changes to the City Council agenda without appropriate notice and that members of the City Council discussed business outside of open session. Ms. Wedewer states as follows:

“We recently had a change in our City Council effective January 2024 and I am deeply concerned about early signs with the newest council members (Joe Dittrick, Bryan Gray and Linda Schmitt) of violations of the Open Meeting Law and Freedom of Information Act in their first month of meetings. Specifically, a controversial item was added to the agenda the Friday before Monday’s meeting. Only three out of the five members were aware of it and the Mayor was not involved in the initial emails. It appears there are meetings/conversations before the meeting to prepare to cause disruption and ultimately distrust within the council and the public.”

Legal counsel to the City replied and provided email communications between members of the City Council and city administrators. The emails provided by legal counsel referenced emails from the personal accounts of some members of the City Council. IPIB staff followed up and requested any additional emails from members of the City Council that were sent from personal accounts and related to City Council business.

Legal counsel for the City followed up and provided additional email that showed communication from personal accounts related to City Council business.

## Applicable Law

**Adding items to the agenda:** Iowa Code Section 21.4 requires that a tentative agenda be posted at least twenty-four hours prior to the commencement of any meeting of a government body. (Iowa Code § 21.4(2)(a)).

**Meetings of members outside of open session:** Iowa Code Section 21.2 defines a “meeting” as a gathering in person or by electronic means, formal or informal, of a majority of the members of a governmental body where there is deliberation or action upon any matter within the scope of the governmental body’s policy-making duties. (Iowa Code § 21.2(2)).

**Access to public records.** Iowa Code Section 22.1 defines “public records as “all records, documents, tape or other information, stored or preserved in any medium.” Subsection 22.2(2) states that a governmental body cannot prevent access to a public record by contracting with a nongovernmental body (such as a cloud storage provider). Section 22.3A addresses public records and data processing software. The cumulative effect of these statutes is that a public record does not lose its public status by being retained on a privately-owned electronic device.

## Analysis

The Complaint alleges a violation of Chapter 21 in the following respects:

- An item was added to the agenda on a Friday before a Monday meeting.
- Meetings occurring outside of public session.

In addition to these issues, IPIB staff reviewed this Complaint for a Chapter 22 violation related to disclosure of public records.

**Adding items to the agenda:** Iowa Code § 21.4 requires a tentative agenda be posted at least twenty-four hours prior to the commencement of any meeting of a government body. Iowa Code § 21.4(2)(a). In this case, Ms. Wedewer alleges items were added to the agenda on a Friday before a Monday meeting. No specific deficiencies were alleged related to public notice requirements. There is nothing in Iowa Code Chapter 21 that prohibits changes to the agenda if those changes are made within the twenty-four hour notice requirement and are in compliance with all of the requirements in Iowa Code § 21.4.

**Meetings of members outside of open session:** Iowa Code § 21.2 defines a “meeting” as a gathering in person or by electronic means, formal or informal, of a majority of the members of a governmental body where there is deliberation or action upon any matter within the scope of the governmental body’s policy-making duties.

Upon review of the emails provided by the City, there is communication that occurs outside of open session between some members of the City Council and city administrators. Other members of the City Council were sometimes included in these emails. These emails were primarily related to requests that information be placed on the agenda for discussion in open meeting. These communications do not include deliberation or action between a majority of the Council. In addition, they primarily focused on ministerial matters, such as requests for an item to be

added to the Council's agenda. For this reason, these communications do not rise to the definition of a meeting pursuant to Chapter 21.

**Chapter 22 review of public records:** Personal email accounts were used to conduct official business. Emails sent from personal accounts related to the business of the Council, constitute public record and must be disclosed upon a records request.<sup>1</sup> Iowa Code Section 22.1 includes "all records, documents, tape or other information, stored or preserved in any medium" in the definition of public records. The determination of whether a document is a public record is based on the content of the document, rather than where it is stored. A public record does not lose its status by being retained on a privately-owned electronic device.<sup>2</sup>

Private emails were provided to IPIB when requested after a delay. Some had been sent to government email recipients, copies of which were easier to collect and provide. But, the delay in retrieving and concern with ensuring all private emails can be collected is cause for concern, not just for the requestor of the records, but also for the government body that is required to collect and provide the records.

Elected, appointed, and employees of government bodies should avoid utilizing private email and texts for government communications.<sup>3</sup> IPIB encourages the City to consider adopting policies and procedures governing the use of privately-owned electronic devices used to conduct government business and retention and disclosure of these public records to avoid any issues in the future.

### **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.

On the face of the information presented, the City did not violate Iowa Code Chapter 21 or Iowa Code Chapter 22.

IT IS SO ORDERED: Formal complaint 24FC:0010 is dismissed pursuant to Iowa Code § 23.8(2) and Iowa Administrative Rule 497-2.1(2)(b).

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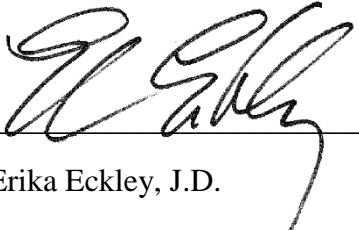
<sup>1</sup> See *Kirkwood Institute v. Sand*, No. 23-0201 (Iowa Apr. 26, 2024) (factual issue as to whether the delay in producing the records requested was reasonable when the auditor's office failed to provide an email thread sent from an employee's personal email to a reporter).

<sup>2</sup> 21AO:0009 Public records maintained on privately-owned electronic devices "If a government official or employee uses privately owned electronic devices or services, such as cell phones, computers, email accounts, smart phones, or such to conduct official government business, then the record generated is a public record. What governs the issue is the content of the message. If it concerns public business relating to public duties of an official or employee, then it is a public record."

<sup>3</sup> IPIB recognizes that the emails sent from private emails were shortly after the elected officials may have taken office, so it is possible the use of private emails to conduct government business has been remedied.

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 July 18, 2024. Pursuant to IPIB rule 497-2.1(4), the parties will be notified in writing of its decision.

By the IPIB Executive Director



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

Erika Eckley, J.D.

#### CERTIFICATE OF MAILING

This document was sent on July 11, 2024, to:

Tirzah Wedewer

James T. Peters, Attorney for the City of Manchester

# The Iowa Public Information Board

In re the Matter of:	Case Number: 24FC:0018
Zachary Vulich, Complainant	Informal Resolution Report
And Concerning:	
City of Leland, Respondent	

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

On February 13, 2024, Zachary Vulich filed formal complaint 24FC:0018, alleging that City of Leland (“City”) violated Iowa Code chapter 22.

## Facts

Mr. Vulich alleges the City is charging an unreasonable fee for the production of records he requested. In response to the Complaint, the City provided the request made and communications with Mr. Vulich.

The records request included:

1. all meeting documents from October 2019 through December 2023: City estimates this would be approximately 380 pages scanned.
2. Copies of City Council meeting recordings: City states there are three.
3. Copies of council oaths of office and ethics: City estimates approximately 30 pages
4. Copies of City Council insurance and bond information: City estimates approximately 100 pages scanned.

Originally, the City had a fee of \$24 per hour for records requests. After discussion with IPIB, the City revised the cost to reflect the City Clerk’s actual hourly cost of \$20 per hour.<sup>1</sup>

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<sup>1</sup> Mr. Vulich objected to this amount as the clerk’s previous hourly rate was \$16.30 as disclosed pursuant to a previous request. See 23FC:0120 Zachary Vulich/City of Leland – Dismissal Order. The City provided the City Council minutes from December 14, 2023, reflecting the clerk’s rate of pay increase to \$20 per hour beginning January 1, 2024.



The City estimated it would take approximately twelve hours to produce and review documents and another four hours to scan and copy the documents to a thumb drive. The estimate also states that if the actual time spent on compiling and producing the records is less, a refund of the difference.

Mr. Vulich still disagreed with the estimated costs and believes compiling and producing the records should not take more than two to four hours. He believes the estimated costs are excessive.

The City explained that the meeting documents were in physical books and would take time to collect and scan as well as the time to pull and review the other documents.

### **Informal Resolution Terms**

The Iowa Public Information Board (IPIB) accepted the complaint on April 18, 2024. Pursuant to Iowa Code section 23.9, the parties have agreed upon the following terms for an informal resolution of this matter:

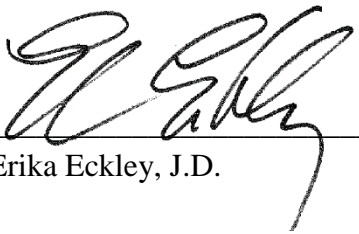
1. Mr. Vulich will provide the specifics (including the dates, documents, whether documents need to be official or can be unofficial and individuals involved) regarding the records request involved in this matter to the City within seven (7) days. IPIB will be copied in on this information.
2. Mr. Vulich will provide payment for four hours of work at Ms. Arispe's hourly rate of \$20/hour (\$80) for collection of the records. Mr. Vulich will also provide an unopened thumb drive to be used to transfer the records electronically to him. IPIB will be notified when this has been done.
3. Upon payment, the City will provide the records in electronic form, these will be provided on the provided jump drive, which is the most efficient way to provide all of the documents and recordings electronically based on the file sizes. If the information is available and collected in less than four hours, any remaining deposit paid by Mr. Vulich will be refunded. If the retrieval and scanning of the records takes longer than four hours, the city will not charge Mr. Vulich any additional fees. IPIB will be copied in on all communications and information.
4. The City will conduct Open Meetings and Public Records training at an open meeting with notice to the public. This training will be conducted by the Iowa Public Information Board. This will be scheduled by the City and IPIB will be notified when this is scheduled and completed. The City will contact IPIB to schedule this training. There is no charge for the training.
5. The City will review its policies and procedures for responding to records requests to ensure it complies with Iowa Code chapter 22, specifically the ability to collect the actual costs of collecting and copying documents and make all necessary changes to any existing policies.
6. The City will approve this agreement at an open meeting and provide a copy of this Informal Resolution in full with its meeting minutes.

The City of Leland approved this Informal Resolution on June 26, 2024, and provided documentation of the adoption and signature to IPIB on June 27, 2024.

Mr. Vulich signed this Informal Resolution on July 10, 2024.

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

By the IPIB Executive Director



Erika Eckley, J.D.

#### CERTIFICATE OF MAILING

This document was sent on July 11, 2024, to:

Zachary Vulich  
Dawn Arispe, City of Leland

## The Iowa Public Information Board

In re the Matter of: Keegan Jarvis, Complainant And Concerning: Swan City Council, Respondent	Case Number: 24FC:0034  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:0034 on April 9, 2024, alleging the Swan City Council (“Council”) violated Iowa Code chapter 21 on April 9, 2024.

Mr. Jarvis alleges the Council improperly entered into and conducted a closed session at its April 9, 2024, meeting.

Mr. Jarvis alleges the Council’s meeting agenda included a potential closed session. He alleges there was no roll call vote taken for the closed session, but there was a regular vote taken for the three council members. In addition, he alleges each member of the Council did not explicitly state their reasoning for going into closed session.

Mr. Jarvis also alleges a former council person and a councilwoman’s baby remained after the public was asked to leave for the closed session. He alleges the former council person dropped off some papers, and only left “because I was video recording him.” He alleges he heard the Council was off topic during the closed session and spoke about him. He alleges a councilwoman’s husband entered the closed session at one point to get the baby. He alleges he observed Council members tending to and playing with the baby intermittently. He stated the Council’s attorney was present for the closed session.

Nicholas Bailey, attorney for the City, provided the response. He provided some background information regarding the matter with Mr. Jarvis. Mr. Bailey had met personally with Mr. Jarvis and his counsel earlier that day on April 9, 2024, in his Altoona office. He stated, “A discussion was held regarding the nuisance action against Mr. Jarvis's property and possible resolutions and compromises that Jarvis and his attorney suggested. Jarvis' counsel, with Mr. Jarvis present, and myself present as well, discussed the closed session to be held that evening to discuss Jarvis' proposals, the potential need for hearing, and so the City Attorney could confidentially discuss the options with the City Council. Jarvis' counsel, Peter Sand, specifically stated he understood the need for a closed session and that they would not stand in the way of having such a session.”

Mr. Bailey stated the Council meeting was properly noticed and held as an open meeting pursuant to Iowa Code Chapter 21. One of the agenda items included a closed session pursuant to Iowa

Code Section 21.5(1)(c) to discuss matters with the attorney presently in litigation or where litigation was imminent. Specifically, the Council and attorney were discussing the nuisance action initiated against property held by Mr. Jarvis.

He stated the published agenda complied with chapter 21 and listed the reason for the closed session. When the closed session came up, one of the council members made a motion to go into closed session and specifically read the exact language from Iowa Code § 21.5(1)(c). Another council member seconded that motion. Each individual council member then voted to go into closed session. All members of the public were asked to leave for the closed session. One member of the public lingered and did not leave immediately, but no discussion was held at that time. The mayor and attorney asked the individual to leave so the closed session could be called to order. The only parties in the closed session were the three council members, the mayor, the city attorney, and the councilwoman's infant.

The closed session included a discussion on the nuisance action regarding Mr. Jarvis's property. No other discussions were held. No action was taken during the closed session. All three council members voted to adjourn the closed session and go back into open session. Members of the public were invited back into the town hall for the remaining open session. No further votes were taken.

Mr. Bailey informed the members of the Council and the public that Mr. Jarvis had requested a hearing on the declaration and notice of his property as a nuisance pursuant to the City Code and a hearing needed to be set. Hearing was set on the nuisance matter for April 18, 2024, and the meeting was adjourned.

Mr. Bailey stated the Council followed the appropriate process and procedures for holding its closed session on April 9, 2024. The proper code section and reason for the closed session was listed on the meeting agenda. The proper code section and reason for the closed session was publicly stated by the Council when it moved to go into closed session by a unanimous vote of the council. No actions were taken in the closed session.

### **Iowa Law**

“To discuss strategy with counsel in matters that are presently in litigation or where litigation is imminent where its disclosure would be likely to prejudice or disadvantage the position of the governmental body in that litigation.” Iowa Code § 21.5(1)(c).

“The vote of each member on the question of holding the closed session and the reason for holding the closed session by reference to a specific exemption under this section shall be announced publicly at the open session and entered in the minutes. A governmental body shall not discuss any business during a closed session which does not directly relate to the specific reason announced as justification for the closed session.” Iowa Code § 21.5(2).

### **Analysis**

The Council held a closed session on Iowa Code § 21.5(1)(c). The agenda included notice of the closed session and the reason for it. The city attorney participated in the closed session. The minutes reflect the reason for the closed session was provided and all council members voted for it.

The public was asked to leave the building so a closed session could occur. One individual did not immediately leave, but he did leave before the closed session started. There is no violation in waiting to start the closed session until the public had left the room.

The only member of the public that did not leave for the closed session was a council woman's infant. The purpose of this closed session was to allow for an attorney-client privileged conversation to occur. An infant present during this conversation is not likely to cause a waiver of this privilege. It is unlikely the infant understands the conversation or would have the capability of disclosing any of the confidential conversation rendering the confidentiality of the session broken. Further, requiring a council woman's infant child to leave a closed session could just as likely unreasonably hinder the council woman's ability to participate in the session herself. No facts have been presented showing allowing the infant remain in the room during a closed would be a violation of Iowa law.

Because the Council followed the process for holding a closed session, including appropriate notice and procedures, there is no violation of Iowa Code chapter 21.

### **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 Council followed required processes for the closed session. The Council waited for the public to leave before beginning the closed session. Allowing a council woman's infant to remain in the closed session does not impact the confidentiality of the session or the discussion.

**IT IS SO ORDERED:** Formal complaint 24FC:0034 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 Council did not violate the open meeting code section.

Pursuant to Iowa Administrative Rule 497-2.1(3), the IPIB may "delegate acceptance or dismissal of a complaint to the executive director, subject to review by the board." The IPIB will review this Order on July 18, 2024. Pursuant to IPIB rule 497-2.1(4), the parties will be notified in writing of its decision.

By the IPIB Executive Director

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Erika Eckley, J.D.

CERTIFICATE OF MAILING

This document was sent by electronic mail on the July 10, 2024, to:

Keegan Jarvis, Complainant

Nicholas Bailey, City Attorney, City of Swan

## The Iowa Public Information Board

In re the Matter of: Joe Monahan, Complainant  And Concerning: Ames Public Library, Respondent	Case Number: 24FC:0038  Dismissal Order
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COMES NOW, Erika Eckley, Executive Director for the Iowa Public Information Board (IPIB), and enters this Dismissal Order.

Joe Monahan filed formal complaint 24FC:0022 on April 17, 2024, alleging the Ames Public Library (“Library”) violated Iowa Code chapter 22 on April 10, 2024.

### Facts

Mr. Monahan requested copies of emails sent by the Library Director or manager containing search terms: “SF496”, “SF 496”, “banned books”, “book ban”, and “diversity.” Mr. Monahan was told approximately 220 emails were found with the terms he requested and the charge would be \$116.22 for the records. The charge included one hour of IT services at \$42.89 and one hour of the director's time to check the records for confidentiality at \$73.33.

In his complaint, Mr. Monahan believes the IT effort should be easily contained within the 30 minutes of free service that the law suggests and the email system, Microsoft Outlook Exchange Mail server, can be searched for tens of thousands of records in a very short period of time. He also believes a lower paid employee, rather than the Library Director could be used to check the records for confidentiality to reduce costs.

Mr. Monahan believes the City should take steps to reduce the time to respond to his records request to below 30 minutes and provided to him at no cost. He believes the current charges essentially make even the simplest FOIA requests financially untenable, essentially thwarting the intentions of our state’s public records legislation.

Mark Lambert, City Attorney, provided a response on behalf of the Library. The IT department of the library conducted the search of emails using the terms provided by Mr. Monahan. The search took one hour and cost \$42.89, which is the hourly wage for the IT staff person who ran the search. The charge is the actual cost for the search and should be considered reasonable.

A review of the records for confidential information was conducted by the Library Director, who is the only staff person with the expertise to do the review. For this record request. the Library

Director spent more than an hour reviewing 220 emails for confidentiality, but her time was rounded down to only one hour. The city's attorney also spent more than one hour reviewing the emails and consulting with the Library on the request. His time was not included in the estimate for fees.

The Library worked with Mr. Monahan on his records request to narrow the search terms and did three separate searches to reduce the emails down to 220. In addition, in an attempt to work with Mr. Monahan, the Library agreed to reduce the quoted IT time in the estimate. The Library provided a new estimate of \$76.90 (\$73.33 for the Library Director's time, plus \$3.57 for the IT staff time) in response to this complaint.

### **Law**

“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.

### **Analysis**

The record request from Mr. Monahan was concise and clearly defined for the Library to conduct a search. The Library ran the search prior to providing an estimate of fees and knew 220 emails were found. The estimate for the IT staff time was based on actual time needed for the search to be completed and based on the employee's actual hourly wage. Mr. Monahan's assertion that there is a quicker or more efficient method for the search does not make the Library's actual search method unreasonable.

The estimate provided to Mr. Monahan only charged for part of the time spent by the Library Director in reviewing the documents and did not include any of the time spent by the city attorney in assisting in the processing or review of documents. Further, the Library agreed to reduce the estimate in response to Mr. Monahan's arguments regarding the IT time spent. The new estimate is \$76.90. This is a reasonable fee based on less than the actual staff time spent and the number of emails retrieved.

While Mr. Monahan would prefer there be no cost for his records request and believes costs make it difficult for individuals to make records requests, the Iowa Supreme Court has recently affirmed the ability of government bodies to charge for the actual costs of responding to records requests. “[R]etrieval 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. (citation omitted) 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.” *Teig v. Chavez*, No. 23-0833, 2024 WL 2869282, at \*10 (Iowa June 7, 2024).

The fee estimate provided to Mr. Monahan is based on the actual costs to the Library of responding to the request and do not violate Iowa Code chapter 22.

### **Conclusion**

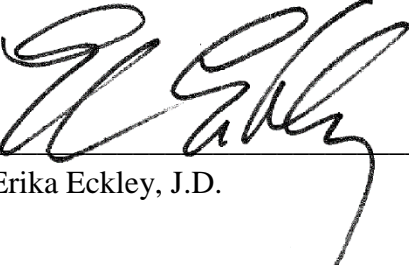
Iowa Code section 23.8 requires that a complaint be within the IPIB’s jurisdiction, appear legally sufficient, and could have merit before the IPIB accepts a complaint. This complaint does not meet those requirements.

The Library provided an estimate based on the actual cost of retrieving Mr. Monahan’s records request.

IT IS SO ORDERED: Formal complaint 24FC:0038 is dismissed as legally insufficient pursuant to Iowa Code section 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 July 18, 2024. Pursuant to IPIB rule 497-2.1(4), the parties will be notified in writing of its decision.

By the IPIB Executive Director



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Erika Eckley, J.D.

### **CERTIFICATE OF MAILING**

This document was sent by electronic mail on the July 11, 2024, to:

Joe Monahan,  
Sheila Shofar, Executive Director, Ames Public Library  
Mark Lambert, City Attorney, City of Ames



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

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**Re: 24FC:0038 Draft Order**

1 message

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**Joe Monahan** <thamnophis@gmail.com>

Thu, Jul 11, 2024 at 7:08 PM

Reply-To: thamnophis@gmail.com

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

Cc: mark.lambert@cityofames.org, sschofer@amespubliclibrary.org, renee.hall@cityofames.org

Thank you.

A couple things. First, attached is an example of an invoice I just received from Iowa State University in response to a public information request. I'm submitting it for the board to review. I would like the board to notice that ISU reduced the total due to \$15.00 after deducting the time and charges that are recommended by the IPIB. We believe that this practice is in keeping with the spirit, if not the letter of the law. It is, in fact, the way every other public entity we have worked with has responded. This is why we were so surprised at the Ames Public Libraries recalcitrance.

Second: We sent an attachment in an earlier email that illustrated the very short amount of time it takes to do a search for emails on modern email servers. If you do not have that file available for the board to review, please let me know so I can provide it.

Also: I agree with the statement below. I will be available to respond to any questions Board members may have when the initial processing is considered.

Thank you,

Joe Monahan  
515-451-3881

On Thu, Jul 11, 2024 at 11:08 AM Eckley, Erika <erika.eckley@iowa.gov> wrote:

Good Morning:

The Iowa Public Information Board (IPIB) will review this Order at its meeting on **July 18, 2024. The meeting will begin at 1:00 p.m.** The meeting agenda will be posted to the IPIB website (<https://ipib.iowa.gov/2024-board-meetings>) on the afternoon of Tuesday, July 16, 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 12:00 p.m. on Tuesday, June 16, 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

**New phone number (515) 393-8339**

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

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

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 **PRR 3567 Invoice(12301.2).pdf**  
112K

# IOWA STATE UNIVERSITY

OF SCIENCE AND TECHNOLOGY

## INVOICE

### Charges for Public Records Request

Invoice Number:	2024-3567
Invoice Date:	July 11, 2024

**From:**

Ann Lelis, Public Records Officer  
 Iowa State University Phone: 515-294-5352  
 3550 Beardshear Hall Fax: 515-294-1799  
 515 Morrill Road Email: alelis@iastate.edu  
 Ames, IA 50011-2045 Website: http://www.ur.iastate.edu/records/#charges

<b>Date of Request:</b>	July 3, 2024	
<b>Requestor/Payor Name:</b>	Joe Monahan	<b>Email:</b> <a href="mailto:thamnophis@gmail.com">thamnophis@gmail.com</a>
<b>Company:</b>		
<b>Address:</b>		
<b>City, State, Zip</b>		

**Request:**  
 IRB-approved protocol for research conducted by ISU Prof Jeanne Dyches and graduate student Deani Thomas. Their published paper that resulted from the research is attached. "Unsettling the "White Savior" Narrative: Reading Huck Finn through a Critical Race Theory/Critical Whiteness Studies Lens"

Description	Items	Charged	Rate	Amount Billed
Labor to respond to request (estimated hours)	1.5	0.5	\$30.00	\$ 15.00
Prints, copies or scans of records (estimated pages)		0.0	\$0.25	\$ -
Computer Programming (estimated hours)		0.0	\$75.00	\$ -
Lists already existing (estimated no. of lists)		0	\$20.00	\$ -
Mailing (estimated carrier charges)				
<b>*TOTAL AMOUNT DUE</b>				<b>\$ 15.00</b>

Please make check payable to: **Iowa State University**

**Remit payment to:**  
 Public Records Office  
 Iowa State University  
 3550 Beardshear Hall  
 515 Morrill Road  
 Ames, IA 50011-2045

\* ISU requires advance payment of all or a part of the estimated fee--  
 · If the estimated charges will exceed \$25, or  
 · If the requester has failed to pay for previously provided records

If actual charges exceed the pre-paid estimate, additional charges will be billed.  
 If actual charges are less than the pre-paid estimate, the difference will be refunded.

**If payment is not received within 30 days, this request will be closed**

## The Iowa Public Information Board

In re the Matter of:  Laurie Kramer, Nancy Preussner, Emily Preussner, Complainant  And Concerning:  Delhi City Council, Respondent	Case Number: 24FC:0041  Consolidation & Dismissal Order
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COMES NOW, Erika Eckley, Executive Director for the Iowa Public Information Board (IPIB), and enters this Consolidation and Dismissal Order.

### Facts

Laurie Kramer, Nancy Preussner, and Emily Preussner (“Complainants”) filed formal complaint 24FC:0041 on April 23 and April 30, 2024, alleging that the Delhi City Council (“Council”) violated Iowa Code chapter 21 on April 22, 2024.

The Complainants all allege the same violation and facts, so the matter has been consolidated into one Complaint. Complainants allege the Council originally scheduled a public hearing for their budget on April 22, 2024, but the meeting was canceled and rescheduled for May 13, 2024. They allege there was no notice or meeting approving the date change for the public hearing. They also allege that issues with the budget caused a delay in getting approval of the budget by the April 30 deadline, but this information was not made public.

DeAnna Hogan, Delhi City Clerk provided a response to this complaint. She does agree the Council scheduled a public hearing on the FY2025 budget for April 22, 2024. A notice was sent to the newspaper to be printed on April 16th, 2024. When the newspaper came out on April 16th, Ms. Hogan noticed that the Proposed Tax Levy was published instead of the Proposed Budget. Therefore, the council could not hold the scheduled meeting on April 22, 2024. The meeting was canceled.

Ms. Hogan states the Council has complied with all requirements regarding notice of meetings to be held. On April 23rd at 5:00pm an agenda was posted for a meeting on April 24th at 5:30pm at the three locations required by city ordinance. The purpose of this special meeting was to set a meeting date for the public hearing for the FY25 Budget. In addition, it was posted online at delhiia.com. There is a guideline set for publication dates by the Department of Management for budget hearings and May 13th was a date that met the requirement for publication of the Proposed budget. The meeting was held on April 24th and the May 13th date was approved.

Ms. Hogan shared that the budget was submitted on May 14.

### **Analysis**

Allegations regarding missed deadlines for completion of the FY25 budget are outside the scope of Iowa Code chapter 21, so are not within the jurisdiction of the IPIB.

The issues raised in the complaint include a failure to publicly notify the cancellation of a scheduled meeting and failing to hold a meeting for the Council to reschedule the public hearing on the budget.<sup>1</sup>

#### **Canceling the Scheduled Public Hearing**

Iowa Code chapter 21 is silent as to a procedure related to the cancellation of a meeting. There is no violation of Iowa Code chapter 21 for canceling a meeting. Under the facts of this complaint, the proper publication to hold a budget hearing had not occurred and the Council needed to address this matter as required under Iowa Code chapter 384, so canceling the meeting was necessary. As a best practice, the Council should provide notice if a meeting is to be canceled or rescheduled, such as posting notice on the website and posting notice of the change where notices are typically posted. There is no violation of chapter 21, however, for canceling the meeting.

#### **Rescheduling the Public Meeting**

The Council held a Special Meeting on April 24, 2024. The agenda and minutes included only one item, which was to set the budget hearing for May 13, 2024. The Council voted to approve this date. Because the Council did hold a meeting and voted to reschedule the public meeting, the allegations regarding the Council's failure to do this are without merit.

### **Conclusion**

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

There is no violation for canceling a scheduled meeting under Iowa Code chapter 21 and the Council held a meeting specifically to reschedule the public hearing for the budget.

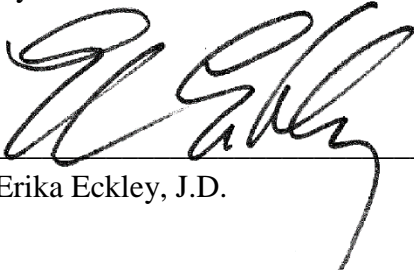
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<sup>1</sup> Complaint 24FC:0051 was filed by Ms. Kramer and addressed public comments about the delay of the budget and the implications to the City's budget because of the delay.

IT IS SO ORDERED: Formal complaint 24FC:0041-1, 24FC:0041-2, and 24FC:0041-3 are consolidated and dismissed as legally insufficient pursuant to Iowa Code section 23.8(2) and Iowa Administrative Rule 497-2.1(2)(b). The City of Delhi did not violate the open meeting code section.

Pursuant to Iowa Administrative Rule 497-2.1(3), the IPIB may “delegate acceptance or dismissal of a complaint to the executive director, subject to review by the board.” The IPIB will review this Order on July 18, 2024. Pursuant to IPIB rule 497-2.1(4), the parties will be notified in writing of its decision.

By the IPIB Executive Director



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Erika Eckley, J.D.

#### CERTIFICATE OF MAILING

This document was sent by electronic mail on the July 11, 2024, to:

Laurie Kramer  
Nancy Preussner  
Emily Preussner  
DeAnna Hogan, Clerk, City of Delhi



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

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**Re: 24FC:0041 Draft Order**

1 message

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**Laurie Kramer** <lauriekramer54@gmail.com>  
To: "Eckley, Erika" <erika.eckley@iowa.gov>

Thu, Jul 11, 2024 at 12:46 PM

Erika,

Yes 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.

I received Ms. Hogan's response to this complaint. If possible I would like my comments be given to the Board at the time of the review. I don't plan to address the Board directly.

This was Ms. Hogan's response: June 18th, 2024

Good afternoon,

I am responding to the complaint by Mrs. Kramer with a copy of the agenda and the meeting minutes for 5-13-24.

If you will notice on the agenda first there is a section right after the Call to Order that is titled Public Comment.

If you then look at the meeting minutes after the Roll Call, there is a section that says Public Comment. At this time there were NO COMMENTS made.

Back to the agenda, under Business there is a Public Hearing for the FY24-25 Budget Adoption.

If you look at the minutes this is where the Public Comment was made with the question about the penalty. In the audio recording Pam Overman states "So, with the school board I believe the county and the cities all received the same information about setting their budgets. Since you're setting yours like tonight, do you get penalized for that, do you get fined or anything? I then stated "**No**, the only thing we have, it happens you are held to the previous year's taxes. So, there is **no additional penalty or anything like that**, you're just held to the previous year's taxes"

In the minutes as you can see the only item I didn't add to them was Pam's name. I have also attached an email I sent to Ted Nellesen and his response about the penalty. He shares Iowa Code 384.16(6) stating that:

Code of Iowa 384.16(6) allows for an extension of the budget submission deadline under certain circumstances (see Code section below). If you feel that there are reasons outside of the city's control that caused this late submission, you can submit a request for extension on city letterhead. The request will need



to include the reasons outside of city control that the budget will be late, the date you want to be extended to and your name / position / signature at the bottom. You can scan and email that request to me if you choose to seek an extension.

Therefore the penalty is the city being held to the prior year's budget amount.

As for Mrs. Kramer's comment about the \$15,000 less revenue, she didn't know that amount until after this

meeting and neither did I. I only stated what I knew at the time of the meeting which is not withholding information or a violation.

Sincerely,

DeAnna Hogan – Delhi City Clerk

My understanding was that Ms. Overman asked her question at the beginning of the meeting, not at the public hearing. That was my mistake.

The fact that her minutes state there was no penalty is misleading to anyone reading them. Because the city is held to last year's tax rate, it is a penalty. Ms. Hogan's inclusion with regard to Ted Nellesen's comments did not include the following:

“Your request for extension did not provide a reason outside of the city's control that the budget will be late, so the extension request has been denied. The City's budget will be considered late and will be subject to the **penalty** of being held to last year's property taxes levied. Attached is the letter of denial for the extension.

As a reminder, your city council must reset the budget adoption hearing date in open meeting before the notice is published. Please be sure that you get a 24-hour notice meeting together and have the council reset the hearing date before the notice hits the newspaper.”

Regarding the \$15,000 in lost revenue, I reached out to the county auditor to find the number. Ms. Hogan could have easily done the same. I do not enjoy having to present continual complaints to the IPIB but when I review the minutes after each meeting there continues to be a pattern of vagueness and/or misinformation.

Laurie Kramer

On Thu, Jul 11, 2024 at 11:46 AM Eckley, Erika <[erika.eckley@iowa.gov](mailto:erika.eckley@iowa.gov)> wrote:

Good Morning:

The Iowa Public Information Board (IPIB) will review this Order at its meeting on **July 18, 2024. The meeting will begin at 1:00 p.m.** The meeting agenda will be posted to the IPIB website

(<https://ipib.iowa.gov/2024-board-meetings>) on the afternoon of Tuesday, July 16, 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 12:00 p.m. on Tuesday, June 16, 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

**New phone number (515) 393-8339**

[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: Ken Brown, Complainant And Concerning: City of Sidney, Respondent	Case Number: 24FC:0042  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

Ken Brown filed formal complaint 24FC:0042 on May 3, 2024, alleging the City of Sidney (“City”) violated Iowa Code chapter 21 on May 3, 2024.

Mr. Brown alleges the City posted notice for a meeting of the zoning board on the front door window of city hall and a bulletin board outside for a meeting on May 2, 2024, at 6:00 pm. No one showed up for the meeting. Mr. Brown was told they held the meeting on May 1, 2024. Mr. Brown alleges it is the second time the city clerk has improperly post a meeting notification in violation of Iowa code chapter 21.

Brianna O’Hearn, Attorney for the City, provided a response to this complaint. Ms. O’Hearn explained there was a typo on the agenda. The zoning board meeting was supposed to be held on Wednesday, May 1, 2024. The Zoning Board usually meets on Wednesdays and it intended to meet on Wednesday, May 1, 2024. The Board met as planned. During the meeting, the Zoning Board realized the posted agenda had an error showing May 2, 2024, as the meeting date. This caused them to reschedule another meeting time.

The gentleman who had requested to be on the agenda was personally notified of the error and advised of the new meeting date. He declined attendance for the rescheduled meeting because the funding for his project had fallen through, so he did not need to meet. The Zoning Board met on May 8, 2024 with the repeated agenda items to remedy the error. Ms. O’Hearn provided the agendas for both meetings.

Ms. O’Hearn acknowledged the City mistakenly placed the incorrect date on the posted agenda, but the City took appropriate and immediate action to remedy the mistake.

### Law

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

### **Analysis**

The City made a typographical error on the Zoning Board meeting agenda and notice. The public did not know the Zoning Board was to meet on May 1, 2024. The Zoning Board typically meets on Wednesdays, so there does not appear to be an intentional error to avoid the requirements of the open meeting requirements. Instead, it was an error that was not caught prior to the Zoning Board meeting at its presumed time and place. Upon discovering the error, the City took steps to correct it by holding the same meeting over again on May 8, 2024 after providing proper notice. The incorrectly noticed meeting was corrected and steps were taken to ensure any deliberation and action was taken at a meeting that was properly noticed. Any violation was harmless error.

### **Conclusion**

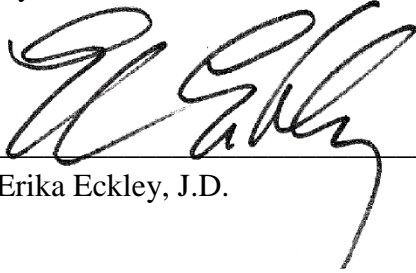
Iowa Code section 23.8 requires that a complaint be within the IPIB’s jurisdiction, appear legally sufficient, and could have merit before the IPIB accepts a complaint. This complaint does not meet those requirements.

The City’s Zoning Board met at its usual time and place, but the notice for the meeting had a typographical error stating the wrong date. Upon discovery, the City repeated the meeting the following week after proper notice occurred.

**IT IS SO ORDERED:** Formal complaint 24FC:0042 is dismissed as harmless error pursuant to Iowa Code section 23.8(2) and Iowa Administrative Rule 497-2.1(2)(b). The City of Sidney did violate part of the open meeting code section but took corrective actions to remedy the error.

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 July 18, 2024. Pursuant to IPIB rule 497-2.1(4), the parties will be notified in writing of its decision.

By the IPIB Executive Director



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Erika Eckley, J.D.

**CERTIFICATE OF MAILING**

This document was sent by electronic mail on the July 10, 2024, to:

Ken Brown

Brianna O'Hearn, Attorney, City of Sidney

## The Iowa Public Information Board

In re the Matter of:  Kaila Benson, Complainant  And Concerning:  Fort Dodge Police Department, Respondent	Case Number: 24FC:0044  <b>Dismissal Order</b>
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COMES NOW, Erika Eckley, Executive Director for the Iowa Public Information Board (IPIB), and enters this Dismissal Order:

On May 23, 2024, Complainant filed formal complaint 24FC:0044, alleging Fort Dodge Police Department (“FDPD”) violated Iowa Code Chapter 22.

### Facts

Ms. Benson alleges she requested a supplemental police report regarding an incident with dog running at large. The FDPD replied on May 30 and indicated the supplemental report should be released and there was a misunderstanding of whether to release the supplemental report due to its connection to an investigation. The FDPD agreed the supplemental report should be released and made it available to Ms. Benson immediately.

Ms. Benson verified receipt of the supplemental report and was agreeable to a dismissal.

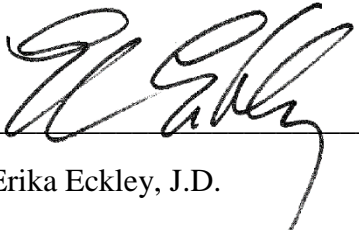
### Conclusion

The issues within this Complaint were resolved immediately to the satisfaction of the Complainant.

IT IS SO ORDERED: Formal complaint 24FC:0044 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 July 18, 2024. Pursuant to IPIB rule 497-2.1(4), the parties will be notified in writing of its decision.

By the IPIB Executive Director



---

Erika Eckley, J.D.

CERTIFICATE OF MAILING

This document was sent on July 11, 2024, to:

Kaila Benson, Complainant

Cory Husske, Assistant Chief of Police, Fort Dodge Police Department

# The Iowa Public Information Board

In re the Matter of:  Hannah Koppenhaver, Complainant  And Concerning:  Gilmore City – Bradgate Community School District, District	Case Number: 24FC:0046  <b>Dismissal Order</b>
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COMES NOW, Erika Eckley, Executive Director for the Iowa Public Information Board (IPIB), and enters this Dismissal Order:

On May 9, 2024, Hannah Koppenhaver filed formal complaint 24FC:0046, alleging the Gilmore-City Bradgate Community School District (“District”) violated Iowa Code Chapter 21.

### Facts

Ms. Koppenhaver alleges the District violated Iowa Code Chapter 21 by holding a closed session that failed to comply with legal requirements. Ms. Koppenhaver states the District failed to announce the conclusions and votes of the closed session during public session, did not document actions in the minutes, and did not provide appropriate reference to Iowa Code justifying the closed session.

The Superintendent for the District, Dr. Robert Olson, responded to the complaint. Dr. Olson indicated the District entered into closed session to discuss a letter the District received from Ms. Koppenhaver’s attorney. The attorney representing the District was present for the conversation. Dr. Olson further indicated the closed session was held for discussion only and no Board action was taken pursuant to the closed session.

The Ms. Koppenhaver responded to the District’s response by citing to Iowa Code §21.5(3), stating final action by any government body on any matter shall be taken in open session unless another Code section expressly permits such actions to be taken in 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:”

Iowa Code § 21.5 (1)(c) states that a reason for closed session is as follows: “To discuss strategy with counsel in matters that are presently in litigation or where litigation is imminent where disclosure would be likely to prejudice or disadvantage the position of the governmental body in that litigation.” Iowa Code § 21.5(1)(c).

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

The Ms. Koppenhaver alleges the District failed to comply with Chapter 21 requirements in the following particulars:

- Failed to announce the conclusions and votes of the closed session during public session;
- Failed to document actions in the minutes; and
- Failed to provide appropriate reference to Iowa Code to justify the closed session.

Each of these arguments is addressed below.

**Failure to announce the conclusion of votes of the closed session during public session:** Not all closed sessions produce votes. Dr. Olson indicated that the closed session was used only for discussion and no action was taken. Iowa Code does not require action be taken after a closed session. It only requires that if action is taken, it must be taken in an open session.

**Failure to document actions in the minutes:** As indicated above, closed sessions do not always produce action. In this case, the District discussed correspondence from the Ms. Koppenhaver’s attorney. No further action was taken; therefore, no action exists to document in the minutes.

## **Failure to provide appropriate reference to Iowa Code to justify the closed session.**

The agenda for the District's Board meeting held on May 8, 2024, states as follows:

“7. Closed session per Iowa Code 21.5 (1) (c) – To discuss strategy with legal counsel in matters presently in litigation, or where litigation is imminent, if disclosure would be likely to prejudice or disadvantage the board.”

The minutes from the District's Board meeting held on May 8, 2024, document a motion was made to enter closed session and includes citation to Iowa Code 21.5(1)(c). The motion, corresponding votes to enter into closed session, and time of closed session are all documented. The minutes further show a motion was made to exit closed session. The minutes include reference to the same citation to Iowa Code to justify the closed session, the corresponding vote to exit closed session, and time that closed session ended and open session reconvened.

The District's agenda, minutes, and each vote for beginning and ending closed session include reference to Iowa Code § 21.5(1)(c) to justify the closed session:

“Closed session per Iowa Code 21.5 (1) (c) – To discuss strategy with legal counsel in matters presently in litigation, or where litigation is imminent, if disclosure would be likely to prejudice or disadvantage the board.”

The closed session was held to discuss a letter received by the District from Ms. Koppenhaver's attorney. It is not unreasonable to find that there would be a need for the District to discuss this letter with their counsel regarding litigation or potential litigation from Ms. Koppenhaver. As such, and as required, the District's attorney was present during the closed session.

### **Conclusion**

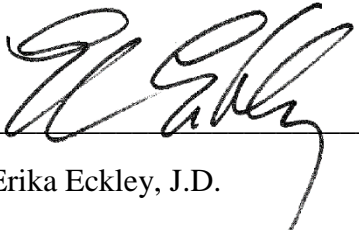
Iowa Code § 23.8 requires that a complaint be within the IPIB's jurisdiction, appear legally sufficient, and have merit before the IPIB accepts a complaint. Following a review of the allegations on their face, it is found that this complaint does not meet those requirements.

On the face of the information presented, the District appropriately documented the use of a closed session pursuant to Iowa Code § 21.5. The closed session was used for attorney-client communications and no action was taken that would require votes or documentation in the minutes. The District appropriately and consistently cited Iowa Code § 21.5(1)(c) in all materials, including agendas, minutes, and votes for closed session. This Complaint is not legally sufficient.

**IT IS SO ORDERED:** Formal complaint 24FC:0046 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 July 18, 2024. Pursuant to IPIB rule 497-2.1(4), the parties will be notified in writing of its decision.

By the IPIB Executive Director



Erika Eckley, J.D.

CERTIFICATE OF MAILING

This document was sent on July 11, 2024, to:

Hannah Koppenhaver

Dr. Robert Olson, Superintendent for the Gilmore City-Bradgate School District

## The Iowa Public Information Board

In re the Matter of:  Laurie Kramer,  And Concerning:  City of Delhi,	Case Number: 24FC:0051  <b>Dismissal Order</b>
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COMES NOW, Erika Eckley, Executive Director for the Iowa Public Information Board (IPIB), and enters this Dismissal Order:

On May 28, 2024, Ms. Kramer filed formal complaint 24FC:0051, alleging that the City of Delhi (“City”) violated Iowa Code Chapter 21.

### Facts

Ms. Kramer alleges the City violated Iowa Code Chapter 21 by failing to provide appropriate minutes. Ms. Kramer stated as follows:

“The City Clerk published minutes from their May 13, 2024 meeting stating that there were no public comments made. In fact, Pam Overman was there and asked what impact the late filing of the FY budget had on the city. The Clerk responded there was no penalty. That statement was false and she knew it because the Dept. Of Management communicated that to her. She then published the minutes stating there was no public comment. This is false and clearly was done to keep this information from the public.”

DeAnna Hogan, the Delhi City Clerk, responded on June 18, 2024. Ms. Hogan indicated the public comment was made during a specific portion of the meeting and captured appropriately in that portion of the minutes.

### Applicable Law

Iowa Code § 21.3(2) outlines the requirements a governmental body must meet to ensure that appropriate minutes are taken. “Each governmental body shall keep minutes of all its meetings showing the date, time and place, the members present, and the action taken at each meeting. The

minutes shall show the results of each vote taken and information sufficient to indicate the vote of each member present. The vote of each member present shall be made public at the open session. The minutes shall be public records open to public inspection.”

### **Analysis**

There are two prongs to this Complaint:

- The minutes were not accurately recorded.
- The City provided false information regarding the City’s budget and corresponding penalties.

Each portion of the Complaint is addressed below.

#### **The minutes were not accurately recorded:**

The minutes from the meeting of the City Council on May 13, 2024, show the City had an agenda item for general public comments at the beginning of the meeting. This portion of the minutes state no public comment for that portion were provided.

Under section E. Business of the minutes, however, the minutes reflect the following:

b. Motion to open public hearing for the Fy24-25 budget by Freiburger, 2nd by Koopmann  
ALL AYES

i. Question about filing the FY24-25 budget later than the April 30th deadline and if there was a penalty, city clerk stated the city will be held to last years’ budget.

ii. Motion to close public hearing by Freiburger, 2nd by Krumviede

The minutes document the exact public comment and question Ms. Kramer alleged were not included in the minutes. The public comment was recorded during the public hearing on the budget during that portion of the City Council meeting agenda.

**The City provided false information:** IPIB’s jurisdiction does not extend beyond Chapters 21 and 22. IPIB is not an appropriate forum to address the accuracy or inaccuracy of a statement made by the City in response to a question regarding the City’s budget process under Iowa Code Chapter 384.

### **Conclusion**

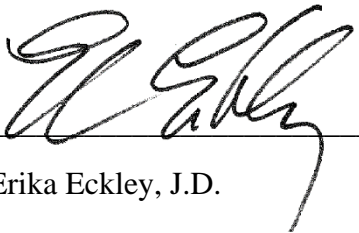
Iowa Code § 23.8 requires that a complaint be within the IPIB’s jurisdiction, appear legally sufficient, and have merit before the IPIB accepts a complaint. Following a review of the allegations on their face, it is found that this complaint does not meet those requirements.

On the face of the information presented, the City appropriately recorded minutes pursuant to Iowa Code § 21.3(2). This portion of the Complaint is not legally sufficient. The second portion of the Complaint related to alleged false information is not within IPIB's jurisdiction.

IT IS SO ORDERED: Formal complaint 24FC:0051 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 July 18, 2024. Pursuant to IPIB rule 497-2.1(4), the parties will be notified in writing of its decision.

By the IPIB Executive Director



Erika Eckley, J.D.

#### CERTIFICATE OF MAILING

This document was sent on July 11, 2024, to:

Laurie Kramer

DeAnna Hogan, City Clerk, City of Delhi

# Board Dashboard

Dashboard for Board Meetings

As of Jul 12, 2024 8:05 AM-Viewing as Erika Eckley

## Active Cases Report

42

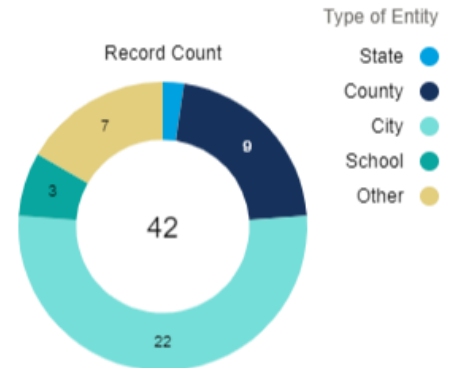
[View Report \(Active Cases Report\)](#)

## New complaints &/or question last 30



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

## Cases by Entity



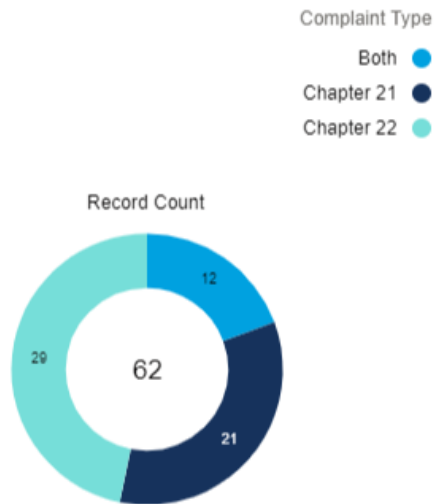
[View Report \(Cases by Entity\)](#)

## Active Questions Report

3

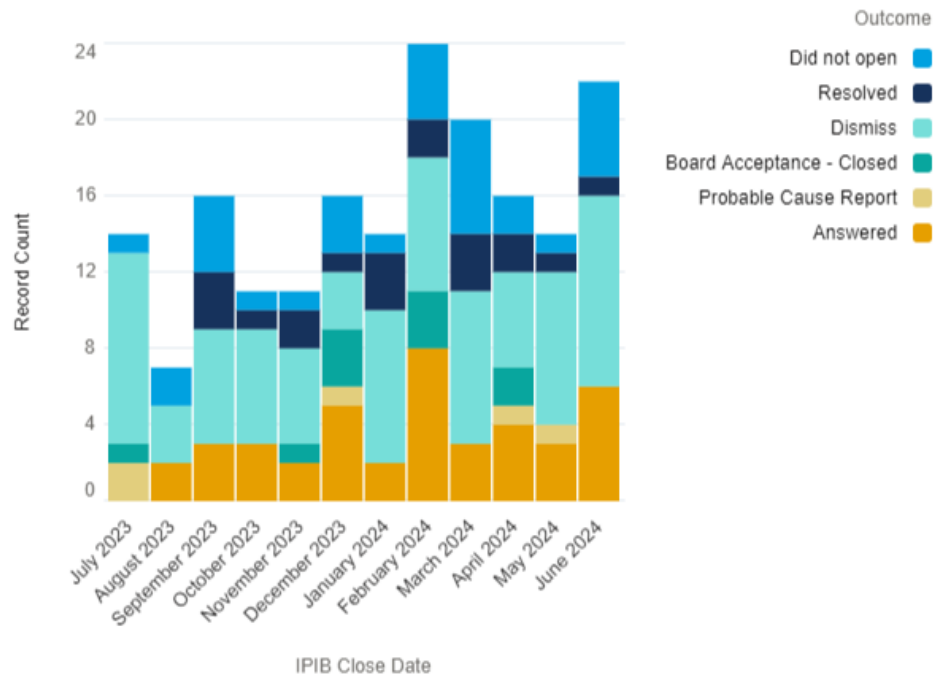
[View Report \(Active Questions Report\)](#)

## Broad Type (Filed in Current Year)



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

## Closed cases (past 12 months)

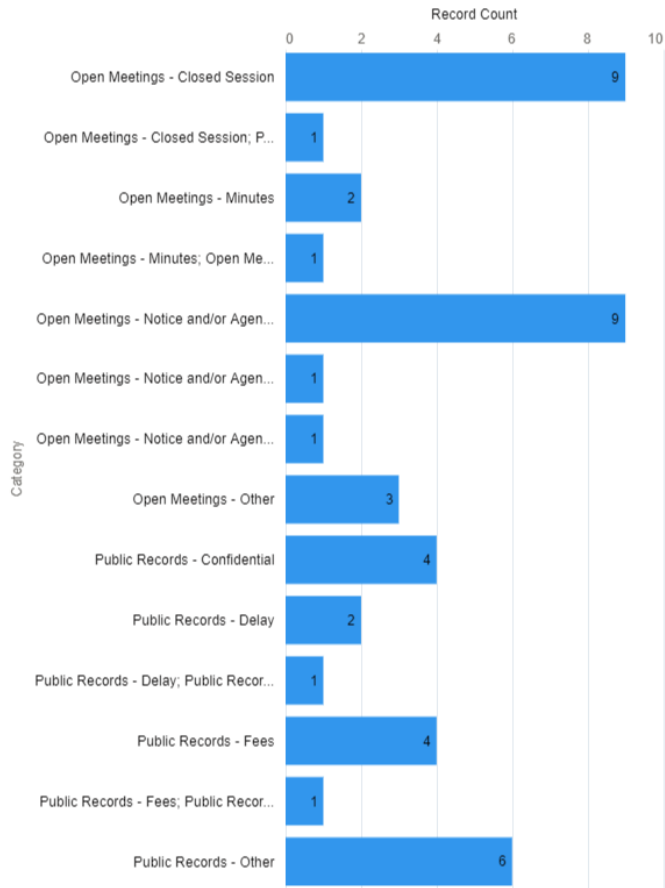


[View Report \(Closed cases \(past 12 months\)\)](#)

### Cases by Type

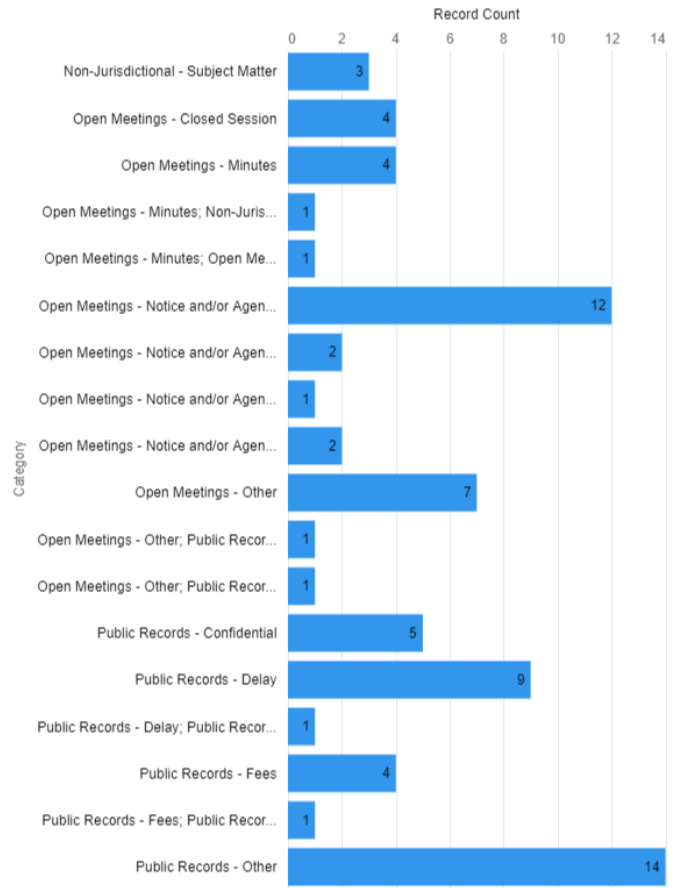
As of Jul 12, 2024 12:33 PM Viewing as Erika Eckley

#### Cases by Type (Active)



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

#### Cases by Type (Filed in Current Year)



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



Fund: 0001  
 Unit: 0P22  
 Sub Unit: Blank  
 Approp: p22

General Fund

FY2024

EDas Customer Number: 1882  
 Percent of Year Complete: 100.00%

Iowa Public Information Board

Obj/Rev Class	Obj/Rev Class Name	JULY		AUG		SEPT		OCT		NOV		DEC		JAN		FEB		MAR		APR		MAY		JUNE		HO13		HO14		HO15		YTD		End of Year		Percent of Budget			
		Actual		Actual		Actual		Actual		Actual		Actual		Actual		Actual		Actual		Actual		Actual		Actual		Actual		Actual		Actual		Actual		Actual		Actual		To Date	EOY
	Appropriation	357,407																																		357,407			
	Deappropriation																																						
	BBF (T&T)																																						
	<b>Expenditures</b>																																						
101	Personal Services		15,298		22,650		22,650		34,849		22,724		21,551		24,794		24,794		24,150		26,794		15,060		18,997		11,398		-		-	274,312	285,709	286,459	96%	100%			
202	In State Travel		-		188		-		184		71		315		197		1,645		-		1,645		130		208		-		-		2,937	2,937	5,298	55%	55%				
301	Office Supplies		-		49		-		360		228		120		120		1,576		-		-		186		83		120		120		2,842	3,082	3,000	95%	103%				
309	Printing & Binding		-		-		-		-		-		-		-		-		-		-		-		-		-		-		-	500	500	0%	0%				
313	Postage		-		10		1		0		6		1		2		-		1		-		3		4		-		37		-	150	37	150	24%	24%			
401	Communications		-		174		262		472		281		286		260		-		209		174		174		(2,578)		-		-		-	-	5,000	-	5,000	0%	0%		
406	Outside Services		-		975		-		-		-		-		-		-		-		-		-		(975)		-		-		-	-	-	-	-	0%	0%		
414	Reimbursements To Other Agency		-		1,177		991		907		1,270		1,007		1,083		988		1,003		909		1,180		1,177		1,003		-		11,693	12,696	17,000	69%	75%				
416	ITD Reimbursements		-		9,651		2,307		335		336		337		336		335		380		1,261		313		(1,668)		380		-		13,922	14,302	22,000	63%	66%				
418	IT Outside Services		-		-		-		140		-		562		-		278		-		281		140		-		-		-		1,402	1,402	-	-	-	0%	0%		
503	Equipment-Non Inventory		-		-		-		-		-		-		-		-		-		-		6,644		(6,644)		-		-		-	-	-	-	-	-	0%	0%	
	<b>Total Expenditures:</b>		15,298		34,874		26,211		37,246		24,916		24,179		26,793		28,265		25,743		31,185		23,831		8,604		12,901		120		307,144	320,165	339,407	90%	94%				
	<b>Current Month Operations</b>		342,109		(34,874)		(26,211)		(37,246)		(24,916)		(24,179)		(26,793)		(28,265)		(25,743)		(31,185)		(23,831)		(8,604)		(12,901)		(120)		-	-	-	-	-	-	-	-	
	<b>Cash Balance</b>		342,109		307,235		281,024		243,777		218,861		194,683		167,890		139,625		113,882		82,698		58,867		50,263		37,362		37,242		37,242		37,242		37,242		37,242		37,242

**FOOTNOTES**

**Cash Mgmt.** Unit should be managed to \$0 at year end.  
 June - T&T expenses have been moved to P22T for class 401, 406, 416 and 503.

**Expenditures**

- 101 Months of October and April have 3 payroll warrants written.
- 202 YTD travel is for Erika Eckley and Monica McHugh.
- 301 Monthly - West Publishing Corporation.
- 406 YTD expense is for ADR Masterclass.
- 414 Monthly expenses for: Space, HRE, SAE, Finance Services, and PDS courses.
- 416 Monthly expenses are related to OCIO services. Month of April includes Annual Microsoft and Core Licensing. Month of August is for Google Licenses and Salesforce Renewal. Month of Sept. is for Salesforce License.
- 418 Monthly expenses are related to Insight.
- 503 May actual is the cost of computers and equipment purchased.