

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 prior to the meeting.

Agenda

August 15, 2024, 1:00 p.m.
IDALS 2N Large Conference Room
Wallace Building
502 East 9th Street, Des Moines

1:00 PM – IPIB Meeting

I. Approval of agenda*

II. Approval of the July 18, 2024 minutes *

III. Public Forum (5-minute limit per speaker)

IV. Comments from the board chair. (McHugh)

VI. Advisory Opinion – Deliberation/Action.

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 (Ray Lough) 7/3/2024 - Is a video on a personal cell phone from a work incident a public record?
3. 24AO:0009 (Anonymous) 7/16/2024 - Definition of a Governmental Body

VII. Cases involving Board Deliberation/Action.* (Eckley)

1. 23FC:0114, 23FC:0115, 23FC:0122, 23FC:0123 (John Bandstra, Bert Bandstra, Jack Rempe, Drew Mcgee – Chapter 21 - South Central Regional Airport Agency) 11/6/2023 - Probable Cause Report
2. 23FC:0130 (Keegan Jarvis - Chapter 21- City Council of Swan) 11/27/2023 - Final Report
3. 24FC:0009 (Brett Christensen - Chapter 21- City of Silver City) 1/23/2024 - Final Report
4. 24FC:0018 (Zach Vulich - Chapter 22- City of Leland) 2/16/2024 - Final Report
5. 24FC:0035 (Shaylea Caris - Chapter 21- Shelby City Council) 4/18/2024 – Dismissal

6. 24FC:0043 (Blake Jones - Both- City of Eldora Council and Mayor) 5/19/2024 – Dismissal
7. 24FC:0049 (Lindsie Gallardo - Chapter 22- Cedar Rapids Police Department) 6/10/2024 - Dismissal
8. 24FC:0050 (Beckett - Chapter 22- Iowa Department of Corrections) 5/31/2024 – Dismissal
9. 24FC:0053 (Blake Jones - Chapter 22- City of Eldora) 6/18/2024 – Acceptance
10. 24FC:0054 (Samuel Kleiss - Chapter 21- The City of Hudson, Iowa) 6/17/2024 – Dismissal
11. 24FC:0055 (Chandler Trautwein - Chapter 22- Marshalltown Police Department) 6/17/2024 – 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:0010 What constitutes a reasonable delay?
2. 23FC:0053 (Debra Schiel-Larson - Both- Indianola Community School District) 5/4/2023 - Board Acceptance of IR
3. 23FC:0126 (Traci Stillwell - Chapter 22- Hampton Public Library Hampton, IA) 11/19/2023 - Board Acceptance of IR
4. 24FC:0013 (Bonnie Castillo - Both- Union County Emergency Management Agency) 2/2/2024 - Informal Resolution Process
5. 24FC:0017 (Latrice Lacey - Chapter 22- City of Davenport) 2/12/2024 - Informal Resolution Process
6. 24FC:0045 (Arthur Anderson - Chapter 22- City of Davenport Iowa) 5/31/2024 - Information Gathering
7. 24FC:0048 (Ethan Vorhes - Both- Floyd County) 6/9/2024 – Dismissal
8. 24FC:0052 (Erik Johnson - Chapter 22- Delaware Township) 6/6/2024 - Information Gathering
9. 24FC:0056 (Steven Asche - Chapter 22- City of Eagle Grove) 6/20/2024 - Information Gathering
10. 24FC:0057 (Jody Phillips - Chapter 22- Pekin Community School District - Board) 7/3/2024 - Information Gathering
11. 24FC:0058 (Chad Miller - Both- Scott County Board of Review) 7/8/2024 - Information Gathering
12. 24FC:0059 (Jan Norris - Both- Montgomery County Board of Supervisors) 7/23/2024 - Information Gathering
13. 24FC:0060 (Jeanette Shoop - Chapter 21- Jones County Planning and Zoning Commission) 7/25/2024 - Information Gathering
14. 24FC:0062 (Ben Ward - Chapter 22- Iowa Civil Rights Commission) 7/15/2024 - Information Gathering
15. 24FC:0066 (Kenneth Brown - Chapter 22- City of Sidney) 7/25/2024 - Information Gathering
16. 24FC:0063 (Joe Monahan - Chapter 22- Ames Library) 7/29/2024 - Information Gathering
17. 24FC:0064 (Mark Milligan - Chapter 22- Monroe County Sheriff's Department) 7/30/2024 - Information Gathering
18. 24FC:0065 (Mandi Hutchins - Chapter 21- City of Linden - City Council and Mayor -) 8/5/2024 - Information Gathering

X. Committee Reports

1. Training – (Eckley)
2. **Legislative – (Eckley) (potential deliberation and action on the following)**
 - a. Bill to increase the timeframe for filing complaints with the IPIB from 60 to 90 days

- b. Bill to adds requirement that upon receipt of a records request that the request be promptly acknowledged, inform the requestor of an estimate of the reasonable costs and when the records may be available, and to notify the requestor of any delays.
 - c. Bill to address posting of notices- accessibility and online; amended agendas, and cancelation.
3. Rules – (Murphy)

XI. Office status report.

1. Office Update * (Eckley)
2. Financial/Budget Update (FY25) * (Eckley)
3. Presentations/Trainings (Eckley)
 - a. Union County Emergency Management Agency
 - b. City of Lowden
 - c. AEIABA
4. District Court Update (Eckley)

XII. Next IPIB Board Meeting will be held on September 19, 2024, at 1:00 p.m.

XIII. Adjourn

*** Attachments**

IOWA PUBLIC INFORMATION BOARD

July 18, 2024
Unapproved Minutes

The Board met on July 18, 2024, for its monthly meeting at 1 p.m. at the offices of the Department of Agriculture and Land Stewardship located at 502 East 9th Street, Des Moines. The following members participated: Joan Corbin, Pella; E.J. Giovannetti, Urbandale; Barry Lindahl, Dubuque; Luke Martz, Ames; Joel McCrea, Pleasant Hill; Monica McHugh, Zwingle (remote); Jackie Schmillen, Urbandale (remote - arrived at 1:11 p.m.). Also present were IPIB Executive Director, Erika Eckley; IPIB Deputy Director, Kimberly Murphy; IPIB Intern, Erik Johnson. A quorum was declared present.

Others identified present or by phone: Xavier Leonard, Brett Toresdahl (remote); Mark Lambert (remote); Charles Nocera (remote); Chad Miller (remote); Joe Monahan (remote); and Laurie Kramer (remote).

On a **motion** by Giovannetti and **second** by Martz, to approve the agenda. Unanimously adopted, 6-0.

On a **motion** by Martz and **second** by Corbin, to approve the June 27, 2024, minutes. Unanimously adopted, 6-0.

Public Forum –

Brett Toresdahl spoke.

Charles Nocera spoke.

Board Chair Comments –

- Discussion and action on 6% raise for IPIB Executive Director as continuation of evaluation process.
- On a **motion** by Martz and **second** by Giovannetti, to approve the 6% raise for Director Erika Eckley. Unanimously adopted, 6-0.

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

1. 24AO:0007 Are private email communications sent from a government email address public records - A **motion** by Martz and **second** by Giovannetti, to approve the Advisory Opinion. Unanimously approved, 7-0.

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 – Chad Miller spoke (remote). Board discussion occurred. A **motion** by Giovannetti and **second** by Corbin, to accept the report. Unanimously approved, 7-0.
2. 23FC:0107, 23FC:0109, 23FC:0112, 23FC:0113, 23FC:0121 - Dana Sanders, Valerie Close, Lu Karr, Molly Rach, Alex Carros – Chapters 21 and 22 - Benton County Board of Supervisors - 11/20/2023 – Giovannetti abstained. Dana Sanders spoke (remote). Akosua Wiafe spoke on behalf of Benton County (remote). Board discussion occurred. A **motion** by McCrea and **second** by Martz,

to approve the probable cause report and dismiss the complaint. Approved 6-0; abstention by Giovannetti.

3. 24FC:0010 - Tirzah Wedewer - Chapter 21- Manchester City Council - 1/29/2024 – Tirzah Wedewer spoke (remote). Board discussion occurred. Board recommended training. A **motion** by Giovannetti and **second** by Martz, to approve the dismissal order and provide training to Manchester City Council. Unanimously approved, 7-0.
4. 24FC:0018 - Zach Vulich - Chapter 22- City of Leland - 2/16/2024 – Board discussion occurred. A **motion** by Martz and **second** by Corbin, to accept the informal resolution. Unanimously approved, 7-0.
5. 24FC:0034 - Keegan Jarvis - Chapter 21- Swan City Council - 4/10/2024 – Nicholas Bailey spoke for the City of Swan (remote). Board discussion occurred. A **motion** by Martz and **second** by McCrea, to approve the dismissal order. Unanimously approved, 7-0.
6. 24FC:0038 - Joe Monahan - Chapter 22- Ames Public Library - 4/17/2024 – Joe Monahan spoke (remote). Mark Lambert spoke on behalf of the City of Ames (remote). Board discussion occurred. A **motion** by Martz and **second** by McCrea, to approve the dismissal order. Unanimously approved, 7-0.
7. 24FC:0041 - Laurie Kramer, Nancy Preussner, Emily Preussner - Chapter 21- City of Delhi - 4/30/2024 – A **motion** by Martz and **second** by Corbin, to approve consolidation and the dismissal order. Unanimously approved, 7-0.
8. 24FC:0042 - Kenneth Brown - Chapter 21- City of Sidney - 5/3/2024 – Board discussion occurred. A **motion** by Martz and **second** by Giovannetti, to approve the dismissal order. Unanimously approved, 7-0.
9. 24FC:0044 - Kaila Benson - Chapter 22 - Fort Dodge Police Department - 5/23/2024 - A **motion** by Martz and **second** by Corbin, to approve the dismissal order. Unanimously approved, 7-0.
10. 24FC:0046 - Hannah Koppenhaver - Chapter 21- Gilmore City-Bradgate Community School District - 5/31/2024 – Board discussion occurred. A **motion** by Martz and **second** by Giovannetti, to approve the dismissal order. Unanimously approved, 7-0.
11. 24FC:0051 - Laurie Kramer – Chapters 21 and 22 - City of Delhi - 5/30/2024 – A **motion** by Corbin and **second** by McCrea, to approve the dismissal order. Unanimously approved, 7-0.

Matters Withdrawn - No action necessary. There were no matters to withdraw.

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

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
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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
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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

Committee Reports

1. Training (Eckley) – Eckley provided an update.
2. Legislative (Eckley) – Eckley provided an overview of next steps for the Legislative Committee.
3. Rules (Murphy) – Murphy provided an overview of the meeting of the Rules Committee and discussed the schedule for future meetings.

Office Status Report

1. Eckley provided an office update and current statistics.
 - a. Posting position for Attorney 2 following staff retirement.
 - b. IPIB Office has new phone numbers and are posted on the website.
 - c. Forty-two active cases.
2. Eckley shared an overview of the IPIB budget and current financials.
3. Upcoming presentations:
 - a. Redfield Library
 - b. City of Lowden
 - c. UCEMA
4. Eckley gave a district court update.

The next IPIB Board Meeting will be held at the offices of the Department of Agriculture and Land Stewardship located at 502 East 9th Street, Des Moines, Iowa, on August 15, 2024, at 1:00 p.m.

The meeting adjourned at 2:35 p.m. on **motion** by Giovannetti and **second** by Martz. Motion unanimously approved.



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Erika Eckley, JD
Executive Director
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Advisory Opinion 24FC:0003

DATE: August 15, 2024

SUBJECT: Data and Public Records Requests

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

QUESTION POSED:

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?

OPINION:

Does Iowa law require a government body to provide a record that must be pulled from a database or other electronic version of public records?

“Public records’ includes all records, documents, tape, or other information, stored or preserved in any medium, of or belonging to” the government body. Iowa Code § 21.2(3)(a) (emphasis added). The key issue is that the information must be “stored” or “preserved.”

Iowa Code § 22.3A(1)(d) defines “data” as “a representation of information, knowledge, facts, concepts, or instructions that has been prepared or is being prepared in a formalized manner and has been processed, or is intended to be processed, in a computer.”

Iowa Code § 22.3A(2)(a) allows a government body to “provide, restrict, or prohibit access to data processing software” but the government body must “establish policies and procedures to provide access to public records which are combined with its data processing software.” A public record cannot be withheld merely because it is in the data processing software. *Id.* A government body cannot acquire an “electronic data processing system for the storage, manipulation, or retrieval of public records that would impair the government body’s ability to permit the examination of a public record and the copying of a public record in either written or electronic form.” Iowa Code § 22.3A(2)(b).

Board Members

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Joel McCrea ● Monica McHugh ● Jackie Schmillen ● vacant ● vacant

“A database management system (DMS) is the visual interface that organizes the data, translates the data from zeros and ones, and allows users to access and view the data in a manner they can understand. . . . a database management system is roughly the same as a library card catalog. Each card is a piece of data, all the cards together are the database, and the cabinet that keeps everything organized, cross-referenced, and accessible to library patrons is the DMS. Without the cabinet, you’d be faced with a pile of cards and no way to find what you are looking for. . . . Each of those cards in the card catalogue is a writing that contains information, and it happens to be in paper form. For databases, each piece of data in the DMS is a writing that contains information, and it happens to be in digital form.” Sarah Doar “Data as Records: PRA Disclosure of Database Information” Nov. 13, 2022 access at <https://mrsc.org/stay-informed/mrsc-insight/november-2022/data-as-records-pra-disclosure-of-database-inform> (explaining Washington public records law).

Iowa Code clearly requires that a public record stored as “data” within a data processing software must be provided. In *Ripperger v. Iowa Public Information Board*, the Iowa Supreme Court agreed that a list of property owners who had asked to have their names removed from the public name search function on county tax assessor's website was a “public record” subject to Open Records Act because the list was stored electronically and could be extrapolated from the county tax assessor database. 967 N.W.2d 540, 550 (Iowa 2021).¹

A fundamental difference between hard copy records and computerized records . . . is that the former may reside within computer systems until they are demanded, sometimes requiring the application of codes or additional programming to be retrieved from host systems in systematic and comprehensible form.

. . .

[E]lectronic information always needs some type of transformation to be understood. While written information can be read instantaneously, no one can look at electronic bits of data and understand their meaning. *These bits of data often require specialized software for reorganization into readable form.*

Grodsky, supra, 31 Jurimetrics at 27-28, 30 n. 59.

No. 96-2-1, 1996 WL 169619, at *2 (Iowa A.G. Feb. 2, 1996) (emphasis added).

For instance, the list in the *Ripperger* case was able to be extrapolated from data that already existed in the system to provide the public name search function block to occur. “The disabled name list is itself a compilation of communications to the Assessor from or on behalf of property owners requesting removal from the public website’s search-by-name function.” The information was a public record because it was a datapoint that existed in the system. The list could be created from the existing public dataset. The county did not have to program the system to create a new set of data. 967 N.W.2d at 550.

Merely because the record is stored electronically or within a database or other software program does not eliminate the requirement to provide the public record upon request in compliance with Iowa Code chapter 22.

Does Iowa law require a government body to perform a customized search and manipulation of data when it chooses to utilize a database or other electronic version of public records? For instance, one dataset requested is confidential, so a request has been made for the government body to do a calculation internally utilizing the confidential information and another dataset to provide a new datapoint not currently stored in the government’s system or used or stored by the government body.

This is an evolving issue in public records law across the country as more public records are stored in electronic format that would allow for customized searches and potentially expand the scope of and requirement to provide information from public records for virtually any data information stored by a government body. More information continues to be stored electronically in databases and software used by governmental bodies. The

¹ In *Ripperger*, the list was held to be a confidential record because the underlying information the list was based on was confidential under Iowa Code § 22.7(18).

use of email and the ability to generate spreadsheets and complex documents are available to every government employee with access to a cell phone or computer. The question raised is whether Iowa Code chapter 22 mandates a government entity to manipulate and search its electronic data to answer every customized request for a data point that could be generated through computer programming and manipulation regardless of the government entity's use of or need for the information.

In *Ripperger*, the records request was for an electronically created list from existing information in the county's database. Similar to a search for keywords in stored emails or pulling existing data from a database, the extrapolated data is pulled from records already in the government body's database or software system being gathered in response to the request for the electronic record. It does not require creating information not previously stored or preserved by the government body.

Iowa's public records requirements have always held that a government body is not required to create a record that does not exist. The question posed here is whether a government body is required to provide a record that only exists through information generated from calculations based on data in a database or software system owned by the government body. In other words, does it matter if the request is not seeking existing public records related to the decision-making activities of the body, but is instead, requiring the government body create a record to respond to the public records request?

There is a fundamental difference from requesting a public record of existing data from the government body, even if some type of manipulation is required to make the data readable, and seeking to require the governmental body to utilize its electronic system to do calculations or create new datasets that are not part of the system used or preserved by the government body. The mere collection of data by the government entity does not compel it to utilize the data for any and all requests beyond simply producing a list of the government's existing data. The existing data is the public record.

States differ on approach to addressing this issue.² A few states have, specifically through statute or court interpretation, required the information to be provided, but any costs for providing the information are paid by the requester. Most states that have considered this question have allowed government entities to use discretion in determining whether to create a customized search of records. This discretion typically stems from the underlying interpretation that a government body does not have to create a public record that does not exist. Iowa's statute and precedent lend themselves to the majority's interpretation of not requiring government bodies to create a customized search or manipulate and calculate public data.

The purpose of Chapter 22 is to provide public scrutiny of a government's decision-making activities through a requirement to provide public records to the public upon request.³ Requiring a government entity to perform custom searches and programming to manipulate existing data on behalf of any requester greatly expands this intention and would require government entities to do calculations and research of public records for all requesters merely because some public data existed within a database. This would expand the requirement beyond the provision of providing access to public records used in the decision-making process.

Requiring the government body to retrieve data and manipulate or calculate the data to provide new datapoints not previously "stored" or "preserved" is essentially asking the government entity to answer a question or create a new record rather than to provide an existing public record. The government body could choose to create this

² See <https://www.rcfp.org/open-government-sections/b-can-the-requester-obtain-a-customized-search-of-computer-databases-to-fit-particular-needs/> (outlining how states handle searches on computer databases as records requests).

³ "The purpose of [Chapter 22] is 'to open the doors of government to public scrutiny [and] to prevent government from secreting its decision-making activities from the public, on whose behalf it is its duty to act.'" *City of Riverdale v. Diercks*, 806 N.W.2d 643, 652 (Iowa 2011) (citing *Rathmann v. Bd. of Dirs.*, 580 N.W.2d 773, 777 (Iowa 1998)); see also *Iowa Civil Rights Comm'n v. City of Des Moines*, 313 N.W.2d 491, 495 (Iowa 1981).

record and could charge for the cost of the programming. But, nothing in Iowa Code chapter 22 mandates that the government body perform this service.

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:

August 15, 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 requester demonstrates a significant change in circumstances from those in the board opinion.



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Erika Eckley, JD
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Advisory Opinion 24AO:0008

DATE: August 15, 2024

SUBJECT: Lawful custodian of public record on personal device

Ray Lough
Benton County Attorney
Benton County Attorney's Office
111 E. 4th Street – Courthouse 3rd Floor
Vinton, Iowa 52349

Mr. Lough,

We are writing in response to your request dated July 3, 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 a government employee's use of a personal cell phone to record government business, the development of a transcript of the recording, and the lawful custodian of the recording. 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 a recording of government activity made by a government employee on their personal device and the corresponding transcript of the recording constitutes a public record, whether production of a transcript will suffice in lieu of the recording, and who is considered the lawful custodian of the public record.

You report that a meeting between county officials occurred in April. At this meeting, an employee of the Benton County Auditor's Office recorded the meeting. Subsequently, the Human Resources Director for Benton County requested the recording as a public record. The employee of the Benton County Auditor's Office who recorded the meeting refused to provide the recording and instead provided a typed transcript of the recording. Additional requests for the recording as a public record have been made and denied. The employee of the

Board Members

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Joel McCrea • Monica McHugh • Jackie Schmillen • vacant • vacant

Benton County Auditor's Office claims that the recording contains confidential information. The questions related to this recording are as follows:

- Does the transcript of the recording satisfy the public records request or is the government employee required to produce the actual recording?
- Should the Director of Human Resources make the public records request directly to the employee who has custody of the recording?
- What steps must the County Attorney's Office take to secure the recording if it is a public record?

OPINION:

Definition of Public Records

A "Public Record" is defined as including all records, documents, tape, or other information stored or preserved in any medium, of or belonging to this state or any county. (Iowa Code § 22.1(3)(a)).

The recording made by the employee of the County Auditor's Office is a recording of an interaction between and amongst government officials related to government business. Clear precedent exists to establish that "any medium," as used to define a public record, includes personal recording devices.¹ The use of a personal cell phone to record and maintain a public record does not alleviate responsibility to provide a public record upon request. The recording is a public record that belongs to the county. It is a violation of Iowa Code Chapter 22 to refuse to disclose a public record unless it falls within an exception.

In the request for this Advisory Opinion, it was noted that the recording was transcribed and the written transcription was provided as a public record. It should be noted that the IPIB Board has previously determined that underlying notes used to create minutes are an independent public record. "Despite potential changes, such as converting the notes from handwritten to typed, the content of the record is substantially the same which points to it not existing in a prior form." *See* IPIB Advisory Opinion 20AO:0006. This situation mirrors the facts addressed in 20AO:0006. An underlying recording was used to create a transcription. The underlying recording is a public record.

The request for this Advisory Opinion also noted that the County Auditor's Office cited to confidentiality in refusing to provide the recording. There is no additional information provided to support the recording as confidential. As outlined above, precedent exists to establish that the recording used to create the transcription is also a public record. Even if the recording contains confidential information that was not included in the transcription, this factor does not support confidentiality. The recording could be provided as a public record with redaction of any confidential portions.

This recording should be released as a public record, with or without redaction, unless a reason exists to classify the recording as confidential pursuant to Iowa Code § 22.7.

Legal Custodian of Public Records

Having established the recording is a public record that should be released, the next question is who should release the public record. The "Lawful Custodian" of a public record is defined as the government body currently in physical possession of the public record. Iowa Code § 22.1(2). Any entity that meets the definition of government body pursuant to Iowa Code § 22.1(1) must comply with Iowa Code Chapter 22.

¹ *Linder v. Eckard*, 152 N.W. 2d 833, 835 (Iowa 1967); *Kirkwood Institute v. Sand*, 6 N.W. 3d 1, 9 (Iowa 2024); 18AO:0019 When are documents possessed by public officials "public record" as defined by Iowa Code § 22.1 (3)(a-b)?; 21AO:0009 Public records maintained on privately-owned electronic devices.

Iowa Code Chapter 22 goes on to state, “Each government body shall delegate to particular officials or employees of that government body the responsibility for implementing the requirements of this chapter and shall publicly announce the particular officials or employees to whom responsibility for implementing the requirements of this chapter has been delegated.” Iowa Code § 22.1(2). This means that the lawful custodian of such records is the government body or a publicly designated responsible official or employee of the government body.

The lawful custodian or the publicly designated responsible official or employee of the government body must determine whether to release requested documentation as a public record. It should be noted that failure to cooperate with the release of public records pursuant to Iowa Code chapter 22 could result for civil enforcement proceedings under Iowa Code § 22.10 and liability for failure to comply. This could include the imposition of civil damages, payment of costs, and attorney fees. Best practice is to consult with legal counsel, including county attorneys, for guidance on whether a document should be released as a public record. It is the responsibility of the government body to ensure that the requirements of public records laws are followed.

The specific question presented is whether the Director of Human Resources should make the public records request directly to the employee who has custody of the recording. The answer is no. The public records request should be made to the government body, and more specifically, the publicly-designated, responsible official or employee of the government body.

Steps Required to Secure Public Records

The next question relates to the steps that should be taken to secure the public record. It is the responsibility of the government body or lawful custodian of public records to review all records on a device to determine whether they fall within the scope of a public records request and whether there is justification for denial of release. While Iowa Code Chapter 22 does not provide specific guidance concerning how a lawful custodian retrieves, reviews, and releases public records, it is clear that the legal custodian must make this determination. 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.

Best practices dictate that a government body should develop a policy governing the use of private devices for government business. This policy could require that the government body or lawful custodian have access to private devices and could establish the specifics of access.

As indicated above, best practices also include discussion of the public records request with legal counsel if there is a question regarding disclosure. This will ensure that governmental bodies comply with Iowa law and avoid civil damages, payment of costs, and attorney fees.

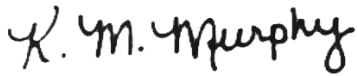
Finally, it should be noted that prior Advisory Opinions established by this Board have warned of the consequences of and responsibilities related to the commingling of public communications and reports with private communications on a privately-owned electronic device. For additional guidance, see the following Advisory Opinions: *18AO:0019* When are documents possessed by public officials “public record” as defined by Iowa Code § 22.1 (3)(a-b); *21AO:0009* Public records maintained on privately-owned electronic devices; *24AO:0007* Are private email communications sent from a government email address public records.

BY DIRECTION AND VOTE OF THE BOARD:

Joan Corbin
E.J. Giovannetti
Barry Lindahl
Luke Martz

Joel McCrea
Monica McHugh
Jackie Schmillen

SUBMITTED BY:



Kim Murphy
Deputy Director
Iowa Public Information Board

ISSUED ON:

August 15, 2024

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

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



502 East 9th Street
Des Moines, Iowa 50319
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Erika Eckley, JD
Executive Director
(515) 725-1783
erika.eckley@iowa.gov

Advisory Opinion 24AO:0009

DATE: August 15, 2024

SUBJECT: Clarification on the definition of a government body and whether a nongovernment body may serve as the lawful custodian of public records for purposes of open records requests

We are writing in response to your anonymous request dated July 14, 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 definition of a government body. 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:

1. Is a charitable foundation that is associated with a public institution of higher education in Iowa a government body and subject to Iowa Code chapter 22?
2. If the charitable foundation is determined to be a government body, would the foundation or the university serve as the lawful custodian?
3. If the university is determined to be the lawful custodian, would the university then have physical possession of the public records?
4. What, if any, limitations exist on the foundation records outside of Iowa Code chapter 22.7?

OPINION:

I. Is a charitable foundation that is associated with a public institution of higher education in Iowa a government body and subject to Iowa Code chapter 22?

Under Iowa Code section 22.1(1), unless its "facilities or indebtedness are supported in whole or in part with property tax revenue and [it] is licensed to conduct pari-mutuel wagering pursuant to chapter 99D," a charitable foundation is not a government body. As it does not fall under section 22.1(1)'s definition of a government body, a charitable foundation associated with a public institution of higher education in Iowa is not a government body.

Board Members

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

Gannon v. Board of Regents did not reach the issue of whether the Iowa State University Foundation was a government body, but rather held that the Foundation was “performing a government function” for Iowa State University. 692 N.W.2d 31, 38–39 (Iowa 2005). It further held that it “assume[d] in this appeal [that the ISU Foundation was] a nongovernment body.” *Gannon*, 692 N.W.2d at 44. Physical possession of public records by a nonprofit does not transform that nonprofit into a government body under Chapter 22. Only the entities defined in Iowa Code § 22.1 are government bodies subject to public records.

Gannon did not hold that all private entities that contract with government organizations perform government functions. Rather, the particular contractual relationship between ISU and the ISU Foundation created a “highly interwoven and symbiotic relationship” between the government body and private organization, and only because of this was the foundation performing a government function and the records requested subject to Chapter 22. As with government entities, not all records created by nongovernment entities performing government functions are public records under Chapter 22. The test developed in *KMEG Television, Inc. v. Iowa State Board of Regents*, 440 N.W. 382, 386 (Iowa 1989) (abrogated on other grounds by *Gannon*) was whether the records would “advance [the university’s] statutory objects. However, the service performed on behalf of the university “need not be listed in the statute books to be a function of a university” *Gannon*, 692 N.W.2d at 40.

II. *If the charitable foundation is determined to be a government body, would the foundation or the university serve as the lawful custodian?*

Regardless of how “highly interwoven and symbiotic” the relationship is between a government entity and a private entity, a private entity may never be the lawful custodian of public records, regardless of whether it generated those records. Chapter 22 is intended to apply to government entities, not to private entities. If a private entity was the lawful custodian of public records, those records would not be subject to Chapter 22, and the rationale of *Gannon* and subsequent cases is that a government entity may not use a private entity to shield public records from Chapter 22.

More support for this rationale comes from the test for determining whether records held by private entities are public records, which “does not turn on the physical location of the documents in question, rather, the appropriate inquiry is whether the documents are held by [public] officials in their official capacity.” *City of Dubuque v. Dubuque Racing Ass’n, Ltd.*, 420 N.W.2d 450, 453 (Iowa 1988). This holding indicates that a physical custodian and a lawful custodian would be separate entities if the physical custodian was a private entity and the records in question were generated on behalf of a public entity.

III. *If the university is determined to be the lawful custodian, would the university then have physical possession of the public records?*

As previously stated, requests for the production of public records under Chapter 22 must be made to the public institution, not to the nonprofit acting on its behalf. The public institution must ensure appropriate procedures are in place to facilitate the timely retrieval and delivery of public records should such records be requested under Chapter 22.

IV. *What, if any, limitations exist on the foundation records outside of Iowa Code chapter 22.7?*

Public records generated by a nonprofit on behalf of a public institution are to be treated like public records generated by a government entity. Iowa Code § 22.7 lists the types of public records that may be withheld as confidential. Public records generated by a nonprofit organization performing a government function would be treated as any other public records under Iowa Code chapter 22.

BY DIRECTION AND VOTE OF THE BOARD:

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

SUBMITTED BY:

Erik Johnson
Legal Intern
Iowa Public Information Board

ISSUED ON:

August 15, 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: John Bandstra, Bert Bandstra, Jack Rempe, Drew Mcgee, Complainants And Concerning: South Central Regional Airport Agency, Respondent	Case Numbers: 23FC:0114, 23FC:0115, 23FC:0122, 23FC:0123 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.

On November 6, 2023, John Bandstra filed formal complaint 23FC:0114, alleging that the South Central Regional Airport Agency (“SCRAA”) violated Iowa Code chapter 21. On November 10, 2023, Bert Bandstra filed formal complaint 23FC:0115 alleging the same. On November 17, 2023, Jack Rempe and Drew Mcgee filed formal complaints 23FC:0122 and 23FC:0123, respectively, alleging the same. Because these four complaints relate to the same events and contain substantially similar allegations, they should be consolidated.

Background

The SCRAA was established in 2012 pursuant to a joint powers agreement authorized by Iowa Code chapter 28E. Chapter 28E allows state agencies (including local units of government) “to provide joint services and facilities with other agencies and to cooperate in other ways of mutual advantage.” Iowa Code § 28E.1. The stated purpose of the 28E agreement is to provide for the “joint acquisition, construction, equipping, use and operation” of a new regional airport.

The original parties to the 28E agreement were the cities of Oskaloosa and Pella, along with Mahaska County. In 2022, the Iowa Supreme Court held that Article XI of the agreement, which prohibited Mahaska County from amending or terminating the agreement without the unanimous consent of the cities, was unconstitutional. *Landowners v. South Central Regional Airport Agency*, 977 N.W.2d 486, 501 (Iowa 2022). The Court therefore severed Article XI from the remaining

agreement, and Mahaska County subsequently withdrew. The current parties to the agreement are Oskaloosa and Pella.

The SCRAA is governed by a five-member board of directors. Three members are appointed by Pella, and two members are appointed by Oskaloosa. The board members at the time of the complaint were Pamela Blomgren, Kevin Gaul, Doug Klahsen, David Corbin, and Jim Hansen.

Article V, section 1 of the 28E agreement created an Executive Committee “for the purpose of general oversight and administration of the Airport Facility within the policy perimeters [sic] established by the Board.” The 28E agreement states that the executive committee consists of the Board Chair and Vice Chair. The current Executive Committee consists of Jim Hansen (Board Chair) and Kevin Gaul (Vice Chair).

The SCRAA owns four parcels of land, which it has been leasing to private individuals for farming. On September 13 and November 21, 2023, the SCRAA Executive Committee again held private meetings concerning, among other things, the farm leases.

The Complainants allege that the SCRAA violated chapter 21 by conducting its business in private. In support of this allegation, the Complainants point to the Executive Committee’s handling of the farm leases.

Analysis

Based on the allegations and the response, as well as the SCRAA Board agendas and meeting minutes posted on the SCRAA website, there is no indication that the *Board* violated chapter 21. Therefore, the analysis below is focused solely on whether the Executive Committee violated Chapter 21.

Is the executive committee a governmental body?

Chapter 21 applies to meetings of governmental bodies. “An advisory board, advisory commission, advisory committee, task force, or other body created by an entity organized under chapter 28E, or by the administrator or joint board specified in a chapter 28E agreement, to develop and make recommendations on public policy issues” is a governmental body subject to chapter 21. Iowa Code § 21.2(1)(j). The first issue to address is whether the Executive Committee is a governmental body under this definition.

In its additional response, SCRAA argued that the Executive Committee is not a governmental body under section 21.2(1)(j) because the Committee does not “develop and make recommendations on public policy issues” to the Board. However, the SCRAA Executive Committee makes recommendations regarding the leases and leaseholders to be approved by the Board.

The SCRAA also argues that the Executive Committee’s recommendations do not concern “public policy issues.” This argument fails for a number of reasons. First, if it were true that the Committee’s recommendations do not concern issues of public policy, there would be no reason for the Committee to submit these recommendations to the Board for deliberation and action in open session. Second, the Committee’s recommendations clearly do concern issues of public policy—they concern, for example, the leasing of publicly owned land to private individuals.

The Committee was created by the SCRAA, a 28E entity, and the Committee develops and makes recommendations on public policy issues to the SCRAA Board. Therefore, it is a governmental body under Iowa Code section 21.2(1)(j).

Did a meeting of the SCRAA Executive Committee occur?

Chapter 21 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) (emphasis added). As the italicized portion of the statute highlights, in order for a chapter 21 meeting to occur, the governmental body in question must deliberate or act upon a matter within its policy making duties. However, the legislature has, over the years, added certain purely advisory groups to the statutory definition of “governmental body.” *See, e.g.,* Iowa Code §§ 21.2(1)(e), (h), (j). “These groups by definition ‘make *recommendations* on public policy issues’ as opposed to *making policy.*” *Mason v. Vision Iowa Bd.*, 700 N.W.2d 349, 355 (Iowa 2005). Thus, the definition of a meeting under chapter 21 seemingly excludes meetings of such advisory groups, as they do not possess “policy-making duties” upon which to deliberate or act.

In *Mason v. Vision Iowa Board*, the Iowa Supreme Court dealt with this conflict between the legislature's definition of “meeting” and its subsequent inclusion of certain advisory groups in the definition of “governmental body.” The Court stated:

Notwithstanding the tension in the statute, we think it is clear the legislature intended to make the delineated advisory groups subject to the open meetings requirement. Otherwise, the legislature's act of including these entities in the definition of “governmental body” would be a nullity because none of the restrictions and requirements imposed on “meetings” of a governmental body would apply. Thus, the specified advisory groups would be subject to the open-meetings requirement when they deliberate or act within the scope of their duty to develop and make recommendations on public policy issues.

Mason v. Vision Iowa Bd., 700 N.W.2d 349, 355 (Iowa 2005) (citations omitted). Thus, under the Court’s holding in *Mason*, if an advisory group is specifically included in the definition of a governmental body under section 21.2(1), then it is subject to the open meetings requirements when it a majority of its members gather to deliberate or act within the scope of its duty to develop and make recommendations on public policy issues.¹

Here, the SCRAA Executive Committee is a governmental body under Iowa Code § 21.2(1)(j). Thus, it is subject to the chapter 21 requirements when a majority of its members gather to deliberate or act within the scope of its duty to develop and make recommendations on public policy issues.

The Executive Committee consisted of two members: Jim Hansen and Kevin Gaul. The SCRAA admits that both members of the Committee met on September 13 and November 21, 2023. The agendas of these meetings indicate that the Committee “deliberated or acted within the scope of its duty to develop and make recommendations on public policy issues.”²

On February 15, 2024, IPIB accepted the complaint regarding the Executive Committee’s meetings being subject to Iowa Code chapter 21.

Attempts to Resolve the Complaints and Board Actions

Following the Board’s Acceptance of the complaints, IPIB provided terms for an informal resolution, no agreement between the parties was reached.

The SCRAA accepted the terms and approved the Informal Resolution at its meeting on July 3, 2024. The terms of the Informal Resolution required the following:

1. SCRAA acknowledges that the executive committee as stated in the 28E agreement in operation on January 18, 2024, is a governmental body under 21.2(1)(j).
2. SCRAA acknowledges that, as a governmental body, any time a majority of the members of the executive committee met to deliberate or act within the scope of its duty to develop and make recommendations on public policy issues, that meeting is subject to the requirements of chapter 21.
3. SCRAA acknowledges that the executive committee meetings of September 13 and November 21, 2023, were subject to the requirements of chapter 21.

¹ On the other hand, any advisory group that is not specifically defined as a governmental body is not subject to the chapter 21 requirements when it meets.

² For example, the September meeting agenda included Item 3, “Discussion and approval of farm leases.” The November meeting again included a discussion of the leases. The SCRAA Board then approved the Executive Committee’s recommendations regarding the leases at its meeting on November 29, 2023.

4. SCRAA will ensure that any committees or governing bodies created within the 28E agreement or any revised 28E agreement will comply with chapter 21 requirements going forward.
5. SCRAA will contact the Iowa League of Cities and schedule a training session that covers Iowa Code chapters 21 and 22 on July 3, 2024.
6. The current SCRAA Board members, attorney, and others involved in SCRAA's compliance with chapters 21 or 22 shall attend and complete the entire training session.
7. SCRAA will provide the minutes from the training session to confirm attendance of the relevant individuals.
8. SCRAA will approve this agreement at an open meeting and provide a copy of this Informal Resolution in full with its meeting minutes.

IPIB was provided confirmation regarding the training session on July 3, 2024 as well as a copy of the minutes.

Recommendation

Based on the investigation of the complaints, I recommend that the Board determine probable cause exists to believe the Executive Committee of SCRAA violated Iowa Code chapter 21 when it held meetings on September 13 and November 21 that were not in compliance with chapter 21, but the complaints be dismissed as a matter of administrative discretion. Since the acceptance of the complaints, the SCRAA has acknowledged the error and worked to ensure no further violations will occur. The SCRAA 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 August 8, 2024, to:

John Bandstra, Bert Bandstra, Jack Rempe, Drew Mcgee
Amy Beattie, attorney for SCRAA

The Iowa Public Information Board

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

Facts

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

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

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

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

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

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

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

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

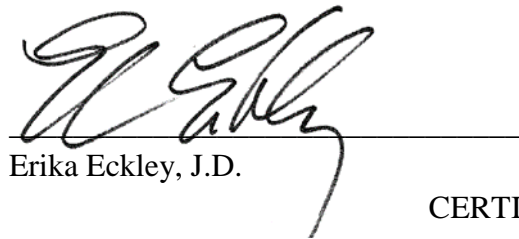
The parties approved the informal resolution. IPIB approved the informal resolution report on May 16, 2024.

IPIB staff provided training on May 16, 2024.

Proof of compliance with the terms of the Informal Resolution were provided on August 8, 2024.

Based on this, all terms of this Informal Resolution have been completed and the IPIB should dismiss this complaint as successfully resolved.

By the IPIB Executive Director



Erika Eckley, J.D.

CERTIFICATE OF MAILING

This document was sent by electronic mail on the August 8, 2024, to:

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

The Iowa Public Information Board

In re the Matter of: Brett Christensen, Complainant And Concerning: City of Silver City, Respondent	Case Number: 24FC:0009 Final Report
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COMES NOW, Erika Eckley, Executive Director for the Iowa Public Information Board (IPIB), and enters this Acceptance Order.

Facts

Brett Christensen filed formal complaint 24FC:0009 on January 23, 2024, alleging the City of Silver City (“City”) violated Iowa Code chapter 21 on January 9, 2024.

Mr. Christensen alleges at the Silver City council meeting on January 9, 2024, the City Council voted to make a change to the posted agenda at the beginning of the meeting. At the start of the council meeting, the mayor added a nominee for library board to the agenda, and changed the starting dates of the other two nominees. This was not reflected in the posted agenda.

The City Clerk responded by providing a copy of the agenda and minutes from the January 9, 2024 meeting. She stated, the “[a]genda was amended by the Mayor at the meeting, as you can see in the minutes requested. I went over the original agenda to be posted with the mayor on the Wednesday/Thursday prior to the meeting, so myself and Council were unaware of these changes when presented at the meeting.”

The following is an excerpt from the Silver City City Council minutes of January 9, 2024: “Motion to approve 1/9/24 meeting agenda by Boehm, 2nd Thomas. Mayor McNutt added to agenda at the meeting & amended #6 a-c; see below*. Motion by Schoening, 2nd Damewood. All ayes, motion carried.” And here is the action taken during the meeting: “Dept Reports: Library – motion to approve appointment of Amanda Vanderpool to Library Board for term ending 6/30/26* by Ramsey, 2nd Thomas. All ayes motion carried. Motion to approve reappointment of Phyllis Boyer to Library board for term ending 6/30/25* by Schoening, 2nd Damewood. All ayes, motion carried. Motion to approve appointment of Terri Elwood to Library Board for term ending 6/30/24* by Schoening, 2nd Thomas. All ayes, motion carried.”

Procedure

The IPIB accepted this complaint on March 21, 2024. The parties worked toward an informal resolution agreement.

Mr. Christensen approved the informal resolution on April 15, 2024. The City Council approved the informal resolution on May 14, 2024.

IPIB provided training to the Council on July 9, 2024. All terms of the informal resolution have been met, so the complaint should be dismissed as resolved.

CERTIFICATE OF MAILING

This document was sent by electronic mail on the August 8, 2024, to:

Brett Christensen, Complainant

Cassandra Wilson, Clerk, City of Silver City

The Iowa Public Information Board

In re the Matter of:	Case Number: 24FC:0018
Zachary Vulich, Complainant	Final 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: There were two recordings.
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.¹

¹ 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.

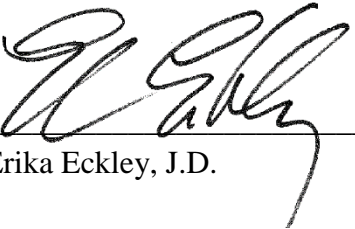
The City approved the Informal Resolution on June 26, 2024, and provided documentation of the adoption and signature to IPIB on June 27, 2024.

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

Mr. Vulich provided pre-payment of the cost of the records and a USB drive to the City. The City retrieved the requested documents and provided them to Mr. Vulich and refunded the overpayment. Mr. Vulich received all requested documents and recordings except for one meeting that was not recorded. Because no recording existed, there was none to be provided.

Based on this, all terms of this Informal Resolution have been completed and the IPIB should dismiss this complaint as successfully resolved.

By the IPIB Executive Director



Erika Eckley, J.D.

CERTIFICATE OF MAILING

This document was sent on August 8, 2024, to:

Zachary Vulich
Dawn Arispe, City of Leland

The Iowa Public Information Board

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

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

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

Facts

On March 23, 2024, Ms. Caris filed a complaint alleging the City violated Iowa Code Chapter 21 by holding a closed session that failed to comply with legal requirements. Ms. Caris states as follows:

“I am filing a complaint against the Shelby Iowa City Council for a violation of the Open Meetings Law by holding a vote after the public portion of the meeting was adjourned and the public departed. When the council released their minutes of the March 5th 2024 meeting, the minutes stated after a closed session, the council held a vote to enter into a Memorandum of Understanding with an Investor who wants to buy city property that is for sale. This vote was not on the agenda, it was held after the closed session and was not known to the public. It was conducted in secret.”

This issue was originally heard by the IPIB Board on June 27, 2024. At this time, Ms. Caris indicated that her complaint was broader in scope than the review conducted by IPIB staff. The IPIB Board agreed and directed IPIB staff to specifically review the timing of closed session and its appropriate use. IPIB staff conducted further review, which resulted in this Revised Dismissal Order.

Applicable Law

Iowa Code § 21.5(1) establishes the requirements that governmental bodies must meet to conduct a closed session:

“A governmental body may hold a closed session only by affirmative public vote of either two-thirds of the members of the body or all of the members present at the meeting. A governmental body may hold a closed session only to the extent a closed session is necessary for any of the following reasons: ...To discuss the purchase or sale of particular real estate only where premature disclosure could be reasonably expected to increase the price the governmental body would have to pay for that property or reduce the price the governmental body would receive for that property. The minutes and the audio recording of a session closed under this paragraph shall be available for public examination when the transaction discussed is completed.” Iowa Code § 21.5(1)(j).

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

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

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

Analysis

The essence of the complaint raised by Ms. Caris is that the City led the public to believe that the open session portion of the meeting had ended and that the City reconvened open session after the public had departed.

IPIB staff reviewed the full meeting, including records of both open and closed session, to determine whether the City complied with the requirements of Iowa Code Chapter 21.

Iowa Code § 21.5(1) - This subsection requires that governmental bodies must meet the following requirements to conduct a closed session:

- Must have an affirmative public vote of either two-thirds of the members of the body or all of the members present at the meeting; and
- The closed session must be held pursuant to one of the clear reasons outlined in the subsection.

The City did not violate Iowa Code § 21.5(1) in conducting its closed session. The minutes from the Shelby City Council meeting held on March 5, 2024, state as follows:

On motion by Honeywell, 2nd by Schlueter, the council moved to go into closed session to discuss the sale or real estate according to Code of Iowa Section 21.5. A roll call vote was held and the motion carried with a vote of at least 2/3rds of the members.

In addition, the agenda for the Shelby City Council meeting on March 5, 2024, indicates under Other Business that a possible closed session will be held pursuant to Iowa Code 21.5 to discuss the sale of a particular real estate – industrial site. The City’s attorney responded to this Complaint on April 22, 2024, and indicated that the closed session was used to determine “how to proceed forward with negotiations related to a land sale for a development project.”

While the minutes of the meeting held on March 5 do not specifically reference Iowa Code § 21.5(1)(j), the minutes of the meeting do reference the closed session will be held to “discuss the sale of real estate according to Code of Iowa Section 21.5.” While it would be best practice to reference the specific Code provision being utilized for the closed session, the description provides enough information to inform the community of the purpose of the closed session.

The members of the City Council approved the closed session with a vote of two-thirds of the members of the body and outlined the justification for closed session. The City complied with the requirements of Iowa Code Iowa Code § 21.5(1).

It should be noted that a best practice for governmental bodies is to include within the minutes reference to the specific provision within Iowa Code § 21.5 that justifies the closed session. The City should consider a specific reference to the justification for future meetings. It is also a best practice when relying on Iowa Code § 21.5(1)(j) to indicate that premature disclosure could be reasonably expected to increase the price the governmental body would receive for that property. This will ensure a broader public understanding of the reason for the closed session.

Iowa Code § 21.5(2) – This subsection requires that governmental bodies must meet the following requirements to conduct a closed session:

- A 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 must be announced publicly at the open session and entered into the minutes; and
- 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.

As discussed in the section above related to Iowa Code § 21.5(1), the City held an appropriate vote related to closed session, provided a specific exemption for the closed session, announced the public session in open meeting, and appropriately entered recorded this information within the minutes.

IPIB staff reviewed the recording of the closed session and found the governmental body discussed issues directly related to the reason announced as justification for the closed session.

The City complied with the requirements of Iowa Code Iowa Code § 21.5(2).

Iowa Code § 21.5(3) – This subsection requires governmental bodies must meet the following requirements to conduct a closed session:

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.”

This is the cornerstone of the complaint raised by Ms. Caris. Her argument is that final action did not take place in open session because the public believed the open session portion of the meeting was adjourned and was not present for the vote.

IPIB reviewed the following information in further review of this portion of the Complaint:

- Agenda for the Shelby City Council meeting held on March 5, 2024;
- Recording of the Shelby City Council meeting (open session) held on March 5, 2024;
- Minutes of the Shelby City Council meeting held on March 5, 2024;
- Recording of Shelby City Council meeting (closed session) held on March 5, 2024 – confidential pursuant to Iowa Code 21.5(j) (note – this recording will become public when the transaction is complete – Iowa Code 21.5(j));
- Minutes of the Shelby City Council meeting (closed session) held on March 5, 2024 – confidential pursuant to Iowa Code 21.5(j) (note – this recording will become public when the transaction is complete – Iowa Code 21.5(j));
- Agenda and minutes for the Shelby City Council meeting held on March 19, 2024;
- Agenda and minutes for Shelby City Council meeting held on May 21, 2024; and
- Information presented by Ms. Caris, the City, and legal representation for the City.

The agenda for the meeting held on March 5, 2024, included agenda item seven (reports from various departments) to be heard by the City Council following the closed session. As Ms. Caris points out, the City Council changed the agenda items and moved item seven (the reports) to an earlier portion of the meeting to allow for open session business to conclude before the closed session was initiated. This change is discussed by the members of the City Council, which can be heard on the open session recording. The members of the City Council indicate this change will make it easier for the public, and the public will not be required to wait until the end of closed session to hear all agenda items. Following the agenda change, the last item addressed by the City Council was the closed session. The City Council voted to adjourn the open session and moved into closed session. The recording shows that the members of the City Council thanked attendees for coming to the meeting and the public can be seen leaving the venue. The recording ends and does not restart.

The written minutes from the meeting on March 5, 2024, reflect that session is reconvened following closed session and a vote is taken on an action item from the closed session. The minutes state:

Council closed regular session at 8:45 pm, had a short recess, and enter in closed session.

Closed Session ended at 9:32 pm.

Mayor reconvened the Council Meeting at 9:35 p.m.

On motion by Honeywell, 2nd by Frank, the council directed Attorney Fichter to draft a Memorandum of Understanding to Damien Shull for sale of real estate. Roll Call: Honeywell- Yes, Hursey- Yes, Frank-Yes, Schlueter-Yes, True- No; motion carried.

Council meeting adjourned at 9:40 pm.

This represents good intentions by a government body that resulted in public misunderstanding. In attempting to move agenda items to be respectful of the public's time, the City Council created the appearance that the open portion of the meeting was adjourned. There are mitigating factors:

- Although the public appears to not be in attendance, the City Council properly reconvened open session, held a vote in open session, and released minutes that correctly reflected the remainder of the meeting.
- Although the recording did not reconvene after closed session, there is nothing in Chapter 21 that requires a video recording of a meeting. Only written minutes are required by Chapter 21.
- The City Council posted an agenda for a meeting held March 19, 2024, that included discussion of the action item that occurred on March 5, 2024. The minutes from the meeting held on March 19, 2024, indicate the City Council voted again on the same issue in open session.

Based on the above circumstances, it is determined there is no violation of Chapter 21. While the City did inadvertently create the perception that the open session had ended, the City Council took steps to rectify this perception by ensuring the minutes were appropriately documented and by raising and voting on the same issue at the next meeting of the City Council.

Ms. Caris and the City should be commended for their efforts to ensure public transparency. Ms. Caris raises a concerning issue, even though it did not result in a finding of a violation. And the City took necessary steps to address concerns and ensure that transparency occurred.

Best practices dictate government bodies cite to the specific exemption being used for a closed session pursuant to Iowa Code § 21.5(1) and that the full language of that exemption be referenced during the open session of the meeting and included in the minutes. Best practices also dictate that the public be provided with the timing of open and closed sessions and circumstances surrounding when the government body may reconvene following a 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.


After review of the facts and circumstances, the City appropriately used a closed session pursuant to Iowa Code § 21.5 and took actions to remediate any public misunderstanding of actions taken by the City.

IT IS SO ORDERED: Formal complaint 24FC:0035 is dismissed pursuant to Iowa Code § 23.8(2) and Iowa Administrative Rule 497-2.1(2)(b).

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

this Order on August 15, 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 August 8, 2024, to:

Shaylea Caris, Complainant

Clint Fichter, Attorney for City

The Iowa Public Information Board

In re the Matter of: Blake Jones, Complainant And Concerning: City of Eldora, Respondent	Case Number: 24FC:0043 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

Blake Jones filed formal complaint 24FC:0043 on May 19, 2024, alleging the City of Eldora (“City”) violated Iowa Code chapters 21 and 22 on May 14, 2024.

Mr. Jones claims he requested information regarding a potential contract agreement with the City and Blue Line Solutions that was listed on the agenda for the May 14, 2024, Council meeting. He attempted to contact three council members to clarify the contents of the contract. The contract was listed in the consent agenda portion of the meeting. He alleges this was done to keep the public from commenting or asking questions. He alleges one of the council members told him the mayor instructed them to avoid discussing any city business with Mr. Jones. He alleges another council member ignored his questions and did not reply, and third council member confirmed the mayor’s instructions, but the council person told him she felt the public had a right to know the details of what the council would be doing so she would not follow the mayor’s directive.

Mr. Jones stated he made his records request for the contract via text message to three council members to inquire about the contract with Blue Line Solutions. He felt he did not have time to make a written records request for a copy of the contract. He also alleged the City failed to provide him with previous records when requested, but no additional information was provided.

Brent Hinders, attorney for the City, provided a response and a copy of the agenda and the minutes for the May 14, 2024, meeting. It included the following under the consent agenda: “Consider approval of the Blue Line Solutions Contract and authorizing the Mayor to sign contract.” The minutes reflect that the consent agenda was unanimously approved by the Council.

Mr. Hinders also responded to the claim regarding public participation in the council meeting. Citing Iowa Code § 21.7, he restates that government bodies such as the City of Eldora are not required to allow public comment.¹

Legal References

“The examination and copying of public records shall be done under the supervision of the lawful custodian of the records or the custodian’s authorized designee. The lawful custodian shall not require the physical presence of a person requesting or receiving a copy of a public record and shall fulfill requests for a copy of a public record received in writing, by telephone, or by electronic means...” Iowa Code § 22.3(1).

“The public may use cameras or recording devices at any open session. Nothing in this chapter shall prevent a governmental body from making and enforcing reasonable rules for the conduct of its meetings to assure those meetings are orderly, and free from interference or interruption by spectators.” Iowa Code § 21.7.

Analysis

It appears Mr. Jones did not make a public records request for a copy of the contract being signed with Blue Line Solutions. Rather, he texted with members of the council regarding an item appearing on the agenda of the May 14, 2024, meeting. He sought information and asked questions of the council members rather than requesting a record.

Mr. Jones feels placing an item on the consent agenda is a way for the council to conceal information from the public and he did not have an opportunity to speak on the matter. The approval of the contract with Blue Lines Solutions was, however, properly noticed on the agenda and action was taken by the Council at the open meeting. In fact, the contract was removed from the consent agenda and deliberated and approved on its own during the meeting. Regardless, Iowa Code chapter 21 does not require the City to allow the public to address them regarding every action item. At this meeting, the City provided a “Citizen Comments” option to speak which took place prior to the vote on the consent agenda. Mr. Jones could have provided his comments regarding the Blue Lines Solutions contract during this portion of the meeting designated by the City for such input. According to the minutes, he did not.

There is no violation of either Iowa Code chapter 21 or 22.

¹ Mr. Hinders also reference 19AO:0004, July 18, 2019, Iowa Code § 21.7, public comment restrictions at an open meeting for further support.

Conclusion

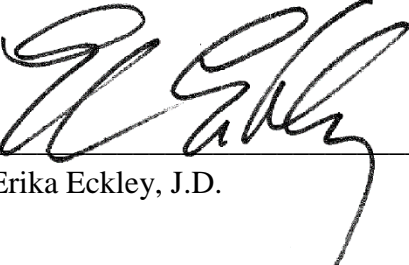
Iowa Code section 23.8 requires that a complaint be within the IPIB's jurisdiction, appear legally sufficient, and could have merit before the IPIB accepts a complaint. This complaint does not meet those requirements.

Mr. Jones contacted council members regarding an agenda item rather than making a records request. The contract at issue was properly noticed on the agenda and Mr. Jones could have spoken to the Council regarding this matter during the public comment portion of the agenda designated for such purposes.

IT IS SO ORDERED: Formal complaint 24FC:0043 is dismissed as legally insufficient pursuant to Iowa Code section 23.8(2) and Iowa Administrative Rule 497-2.1(2)(b). The City of Eldora did not violate part of the open meeting or public records code sections.

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 August 15, 2024. Pursuant to IPIB rule 497-2.1(4), the parties will be notified in writing of its decision.

By the IPIB Executive Director



Erika Eckley, J.D.

CERTIFICATE OF MAILING

This document was sent by electronic mail on August 8, 2024, to:

Blake Jones
Brent Hinders, Attorney, City of Eldora

The Iowa Public Information Board

In re the Matter of: Lindsie Gallardo, Complainant And Concerning: Cedar Rapids Police Department, Respondent	Case Number: 24FC:0049 Dismissal Order
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COMES NOW, Erika Eckley, Executive Director for the Iowa Public Information Board (IPIB), and enters this Dismissal Order:

On June 10, 2024, Ms. Gallardo filed formal complaint 24FC:0049, alleging the Cedar Rapids Police Department (City) violated Iowa Code Chapter 22.

Facts

Ms. Gallardo's complaint alleges the City violated Iowa Code Chapter 22 by refusing to provide body camera footage and additional information related to an incident. Ms. Gallardo states as follows:

“On May 29, 2024 I filed a FOIA request along with 30+ others for the release of body camera footage and all related information of the incident involving David Vanderhamm on April 6th, 2024. DCI concluded their investigation into this incident around May 14th, 2024, but Sherri Hawkins responded to our FOIA requests on May 31, 2024 stating the case was still being investigated by DCI. This is incorrect information and is also cause for speculation against the CRPD. Please advise.”

The City responded to this Complaint and maintained its position the records requested are exempt from disclosure due to an ongoing investigation.

IPIB staff followed up with Ms. Gallardo to obtain additional information regarding her complaint. Ms. Gallardo did not respond to additional inquiries.

Applicable Law

Iowa Code defines a public record to include all records, documents, tape, or other information, stored or preserved in any medium, of or belonging to the state. (Iowa Code § 22.1(3)(a)). Iowa

Code also identifies types of public records that are exempt from disclosure due to confidentiality. Listed among these exemptions are peace officers' investigative reports. (Iowa Code § 22.7(5)).

Analysis

Ms. Gallardo requested body camera footage and all related information regarding an incident involving David Vanderhamm that occurred on April 6, 2024. The request for public records was sent to the City on May 29. On May 31, 2024, the City responded indicating the case remained under investigation and was exempt from disclosure. Subsequently, Ms. Gallardo submitted this Complaint to the Iowa Public Information Board.

The City responded to this Complaint and indicated the case continues to move through a series of reviews pursuant to an ongoing investigation.

Iowa Code § 22.7(5) is applicable to peace officers' investigative reports that are deemed confidential by a government body, which states:

“Peace officers' investigative reports, privileged records or information specified in section 80G.2, and specific portions of electronic mail and telephone billing records of law enforcement agencies if that information is part of an ongoing investigation, except where disclosure is authorized elsewhere in this Code. However, the date, time, specific location, and immediate facts and circumstances surrounding a crime or incident shall not be kept confidential under this section, except in those unusual circumstances where disclosure would plainly and seriously jeopardize an investigation or pose a clear and present danger to the safety of an individual.”

In its response, the City indicated it had released, when requested, the date, time, specific location and immediate facts and circumstances surrounding the incident. This public record was not requested by Ms. Gallardo as her original request specifically asked for body camera footage and 911 calls related to the incident. The City has demonstrated that information required by Iowa Code § 22.7(5) is readily available when requested.

The remaining details regarding the case have been classified as confidential by the City pursuant to Iowa Code § 22.7(5). A balancing test must be applied to determine whether a report should remain confidential pursuant to Iowa Code § 22.7(5). *Mitchell v. City of Cedar Rapids*, 926 N.W.2d 222, 232 (Iowa 2019).

Case law has made it clear that that the ongoing nature of an investigation weighs in favor of confidentiality. *Hawk Eye v. Jackson*, 521 N.W.2d 750, 753 (Iowa 1994). Nondisclosure allows law enforcement to test out findings and theories about cases under investigation; it also works to ensure that the overall investigation is not jeopardized before its conclusion. *Id.*

In this Complaint, the City provided the basic facts and circumstances surrounding the case and has withheld additional aspects of the public record, including body cam footage and 911 calls, due to the ongoing investigation related to this case. For this reason, there is no violation of Chapter 22.

Conclusion

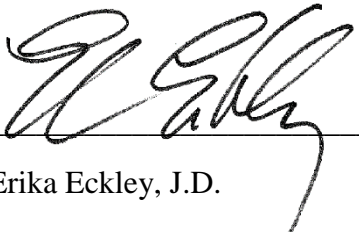
Iowa Code § 23.8 requires that a complaint be within the IPIB's jurisdiction, appear legally sufficient, and have merit before the IPIB accepts a complaint. Following a review of the allegations on their face, it is found that this complaint does not meet those requirements.

After review of the requested information and the City's response, it is determined there is not a violation of Chapter 22. The records requested are part of an ongoing investigation. Due to the nature of an ongoing investigation, the records are not improperly withheld as confidential.

IT IS SO ORDERED: Formal complaint 24FC:0049 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 August 15, 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 August 8, 2024, to:

Lindsie Gallardo, Complainant

Sherri Hawkins, Records Division Supervisor, Cedar Rapids Police Department

The Iowa Public Information Board

In re the Matter of: Beckett, Complainant And Concerning: Iowa Department of Corrections, Respondent	Case Number: 24FC:0050 Dismissal Order
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COMES NOW, Erika Eckley, Executive Director for the Iowa Public Information Board (IPIB), and enters this Dismissal Order:

On May 31, 2024, Beckett filed formal complaint 24FC:0050, alleging the Iowa Department of Corrections (“Department”) violated Iowa Code Chapter 22.

Facts

Beckett’s complaint alleges the Department violated Iowa Code Chapter 22 by refusing to provide the names, salaries, and titles of employees shown in a photograph. The photograph provided by Beckett is not a public record, but rather appears to be a photo taken by a member of the public. Beckett states as follows:

“I am writing to demand the immediate release of information requested under the Freedom of Information Act. On May 23, 2024, under request #24-1604, I sought the names, salaries, and titles of certain employees who work at the DOC located at 420 Mill St SW, Mitchellville, IA 50169. On May 28, 2024, my request was improperly closed, citing a need for the names of the public officials, which is not a requirement under the law.

On May 30, 2024, I submitted requests #24-1639 and #24-1640 to obtain the names of the individuals who closed my initial request and again the names of the individuals at DOC. These, too, were wrongly closed with the same invalid reasoning.

This conduct is an abuse of power and a violation of my legal rights. I demand the immediate release of the requested employee information and the names of those who closed my requests on May 28, 2024 & May 30, 2024.

Failure to comply will compel me to seek legal remedies to address these violations.”

The Department responded to this Complaint and maintained its position the information regarding employees identified within the photograph could not be provided. The Department provided the information regarding the employee that closed the initial request.

Applicable Law

Iowa Code defines a public record to include all records, documents, tape, or other information, stored or preserved in any medium, of or belonging to the state. Iowa Code § 22.1(3)(a).

Analysis

Beckett argues two violations of Iowa Code Chapter 22 occurred:

- The Department failed to provide the names, salaries, and titles of the employees shown in the photograph, as requested.
- The Department failed to provide the names, salaries, and titles of the employees who closed the original public records request.

In response to Beckett’s first request, the Department responded and acknowledged that names, salaries, and titles of employees are considered public records under Chapter 22. The Department further stated it cannot provide this information without the names or identification of the employees.

A public record is a record that belongs to and is maintained by a government body. Beckett is not requesting an existing public record, but rather is requesting the Department identify two individuals based on a photograph that does not belong to the government body. In other words, Beckett is seeking the answer to a question: Who are these employees? This is not a record that is stored, preserved, or belongs to the Department. The Department would be required to act to identify the individuals in the photograph. The Department would be required to provide answers to Beckett’s questioning or create a public record that does not exist to respond to the public record request. Chapter 22 does not require the Department do either.

Chapter 22 allows the public to seek documents regarding the salaries and titles of employees, but the request must be for existing public records. Requesting the salaries and titles of employees who currently work in a specific division or requesting the salary and title of an identified employee would constitute a public records request. Asking a government body to identify individuals in a photograph is not a public records request. For this reason, there is not violation of Chapter 22 in regards to Beckett’s first request.

In regards to Beckett’s second request, the Department did provide the names, salaries, and titles of employees who responded to the original public records request. This information was provided to Beckett following the filing of this Complaint. This issue has been resolved.

Conclusion

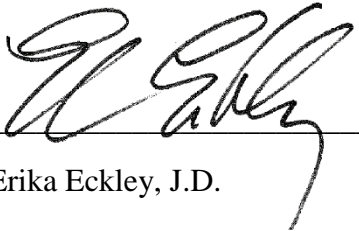
Iowa Code § 23.8 requires that a complaint be within the IPIB's jurisdiction, appear legally sufficient, and have merit before the IPIB accepts a complaint. Following a review of the allegations on their face, it is found that this complaint does not meet those requirements.

Requesting identification of employees from a photograph is not a records request. There is no violation of Chapter 22 in failing to provide an answer to the question presented to the Department.

IT IS SO ORDERED: Formal complaint 24FC:0050 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 August 15, 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 August 8, 2024, to:

Beckett, Complainant

Michael Savala, General Counsel for the Iowa Department of Corrections

The Iowa Public Information Board

In re the Matter of:	Case Number: 24FC:0053
Blake Jones, Complainant	Acceptance Order
And Concerning:	
City of Eldora, Respondent	

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

On June 18, 2024, Blake Jones filed formal complaint 24FC:0053, alleging the City of Eldora (“City”) violated Iowa Code chapter 22.

Facts

Mr. Jones alleges he made a public records request from the City of Eldora on June 13, 2024. Mr. Jones alleges he went to the City Hall and requested public records relating to an incident involving his employment. He states he spoke with City staff and was informed he would have to speak with the City’s designated attorney for any records request.

On the same date, Mr. Jones outreached to the City’s attorney. The attorney responded on June 18, 2024, and stated he was not an employee of the City or a lawful custodian of records. The City’s attorney directed Mr. Jones to file a records request at the City Hall.

On June 18, Mr. Jones responded to the City’s attorney indicating he had already attempted to obtain the records through the City. Mr. Jones then filed this Complaint.

Applicable Law

Every person shall have the right to examine and copy a public record. Iowa Code § 22.2.

“Each government body shall delegate to particular officials or employees of that government body the responsibility for implementing the requirements of this chapter and shall publicly announce the particular officials or employees to whom responsibility for implementing the requirements of this chapter has been delegated.” Iowa Code § 22.1(2).

Analysis

It is unrefuted Mr. Jones attempted to obtain public records at the City Hall and was directed to the City's attorney who then directed Mr. Jones back to the City. There appears to be some confusion regarding who is the lawful custodian of public records and who has the responsibility for implementing the requirements of Chapter 22. The City had responded to a prior request for public records from Mr. Jones in April.

The City may have a valid reason for responding to a request in April and directing the request in June to their attorney; however, the City has not provided a clear explanation as to why neither the City nor the attorney have properly responded to Mr. Jones' June 13 records request.

Based on the status of the request and that both the City and its attorney responding in a circular fashion to Mr. Jones' request, he has presented a potential violation of Chapter 22.

Conclusion

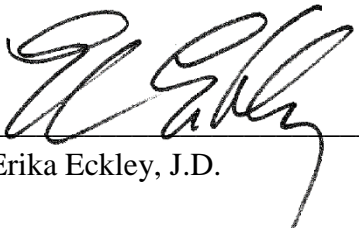
Iowa Code § 23.8 requires that a complaint be within the IPIB's jurisdiction, appear legally sufficient, and have merit before the IPIB accepts a complaint. This complaint meets the necessary requirements for acceptance.

The City has not clearly designated who has the responsibility for responding to public records as the lawful custodian pursuant to Iowa Code § 22.1(2) which has resulted in a failure to respond to a public records request.

IT IS SO ORDERED: Formal complaint 24FC:0053 is accepted pursuant to Iowa Code § 23.8(1) and Iowa Administrative Rule 497-2.1(2)(a).

Pursuant to Iowa Administrative Rule 497-2.1(3), the IPIB may "delegate acceptance or dismissal of a complaint to the executive director, subject to review by the board." The IPIB will review this Order on August 15, 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 August 8, 2024, to:

Blake Jones

Brent Hinders, attorney for the City of Eldora

The Iowa Public Information Board

In re the Matter of:	Case Number: 24FC:0054
Samuel Kleiss, Complainant	Dismissal Order
And Concerning:	
Hudson City Council, Respondent	

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

On June 17, 2024, Mr. Kleiss filed formal complaint 24FC:0054, alleging the Hudson City Council (“City”) violated Iowa Code Chapter 21.

Facts

Mr. Kleiss’ complaint alleges the City violated Iowa Code Chapter 21 by holding a closed session without proper justification. Mr. Kleiss states as follows:

“The meeting included closed conversation about an ongoing vicious dog issue. We have implored the council members to discuss. We were aware they planned to discuss it at the June 10th meeting. The last item on the agenda was “Closed Session” and we knew the vicious dogs were likely to be discussed at that time. They cited Chapter 21.5(C), alleging that there is current or imminent litigation regarding the matter. We attended and asked that they keep it open, citing the intent of Chapter 21 and reminding them that “when there is ambiguity in the application, it should be resolved in favor of openness.” They chose to close it without any discussion. We do not believe this to have been a proper use of Chapter 21 and have no reason to believe there is any current or imminent litigation. We have never threatened litigation. We are happy to provide all pertinent email communication. We have no reason to believe that there is any credible “imminent litigation” from the other involved parties.”

The Attorney for the City of Hudson responded to this Complaint and maintained the closed session was justified pursuant to Iowa Code Chapter 21.

Applicable Law

Iowa Code § 21.5 provides a closed session may be held by a government body to the extent a closed session is necessary pursuant to a list of exceptions. Iowa Code § 21.5 (1)(c) states legal discussion of strategy with counsel is a clear exception:

“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) goes on to state that a reason for holding a closed session must be provided with reference to a specific exemption under the section and that the exemption shall be announced publicly at the open session and entered into the minutes.

Analysis

Mr. Kleiss alleges the City failed to comply with Chapter 21 requirements by holding a closed session without a proper justification. Mr. Kleiss further alleges there was no reason to believe a possibility of current or imminent litigation existed when the City held the closed session.

The City’s attorney explained the City is currently researching a request by Mr. Kleiss to take further action regarding dogs within the community. This action would require the City to litigate a case under a different section of city code. The attorney stated he needed to meet with the Council to discuss the litigation research and provide a legal analysis of whether litigation would be successful under the different section of city code. He shared that having this discussion in open session would have allowed potential litigants to have an advantage regarding the litigation and potential litigants would have access to potential risks, evidentiary matters, and strategy. Holding a closed session between the Council and attorney for this purpose is an appropriate use of Iowa Code § 21.5(1)(c).

In addition the City included the appropriate reference to a closed session in the agenda and minutes. Both documents contained a clear justification for a closed session that was consistent with the use of the closed session.

There is no evidence of a violation of Chapter 21 related to use of the closed session.

Conclusion

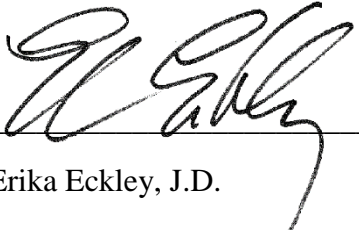
Iowa Code § 23.8 requires that a complaint be within the IPIB’s jurisdiction, appear legally sufficient, and have merit before the IPIB accepts a complaint. Following a review of the allegations on their face, it is found that this complaint does not meet those requirements.

The City appropriately used a closed session to discuss strategy with counsel regarding litigation utilizing a different section of the city code to address vicious dogs in the community. The City followed appropriate process and procedures. There is no violation of Iowa Code § 21.5.

IT IS SO ORDERED: Formal complaint 24FC:0054 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 August 15, 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 fluid and cursive.

Erika Eckley, J.D.

CERTIFICATE OF MAILING

This document was sent on August 8, 2024, to:

Samuel Kleiss, Complainant

Heather Prendergast, Attorney for the City of Hudson

The Iowa Public Information Board

In re the Matter of: Chandler Trautwein, Complainant And Concerning: Marshalltown Police Department, Respondent	Case Number: 24FC:0055 Dismissal Order
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COMES NOW, Erika Eckley, Executive Director for the Iowa Public Information Board (IPIB), and enters this Dismissal Order:

On June 17, 2024, Chandler Trautwein filed formal complaint 24FC:0055, alleging Marshalltown Police Department (“City”) violated Iowa Code Chapter 22.

Facts

Mr. Trautwein’s complaint alleges the City violated Iowa Code Chapter 22 by refusing to provide dash and body camera footage related to an incident involving Mr. Trautwein.

Mr. Trautwein requested dash and body camera footage related to an incident involving Mr. Trautwein that occurred on June 6, 2024. Mr. Trautwein’s original public records request was submitted to the City on June 12, 2024. The public records request shows that Mr. Trautwein requested access to several records including documents related to a citation, dash camera recordings, video recordings (including body camera recordings), speedometer calibration, radar logs, and training policies. The City responded through a series of releases of information and corresponding communications with Mr. Trautwein. The evidence submitted shows that the City provided available records in response to Mr. Trautwein’s request, but denied access to the dash and body camera recordings citing confidentiality pursuant to Iowa Code § 22.7(5).

The Chief of Police for the City, Chief Michael Tupper, responded to Mr. Trautwein’s follow-up request for the recordings and indicated that the recordings were considered investigative records pursuant to Iowa Code § 22.7(5). Chief Tupper went on to state that the prosecutor assigned to Mr. Trautwein’s case could be contacted to produce the recordings or that Mr. Trautwein could watch the recordings at the police department’s office. Chief Tupper provided a phone number and options for coming into the office to watch the recordings.

The City responded to this Complaint and provided a record of communication with Mr. Trautwein. The City’s position is that the dash and body camera footage are exempt from public record disclosure pursuant to Iowa Code Section 22.7(5). The City further stated that although the

records are exempt from disclosure as public records, they have offered to provide a viewing of the footage to Mr. Trautwein and to provide the footage pursuant to the district court discovery process.

Mr. Trautwein indicated he was unavailable to make an appointment to view the recordings and requested an electronic version of the recordings from the City. The City maintained its position and Mr. Trautwein filed this Complaint with the Iowa Public Information Board.

Applicable Law

Iowa Code defines a public record to include all records, documents, tape, or other information, stored or preserved in any medium, of or belonging to the government body. (Iowa Code § 22.1(3)(a)). Iowa Code also identifies types of public records that are exempt from disclosure due to confidentiality. Listed among these exemptions are peace officers' investigative reports. (Iowa Code § 22.7(5)).

Analysis

The City, through legal representation, filed a response. The response maintains the City's position the recordings are confidential as a peace officer investigative report pursuant to Iowa Code § 22.7(5). The City's response further indicates the investigation remains ongoing and required elements of the incident have been released in compliance with Iowa Code Chapter 22.

The City's response included an analysis that applies the existing balancing test used to determine whether a peace officer investigative report should remain confidential. Citing to *Hawk Eye v. Jackson*, the City argues the public interest would suffer from disclosure as a public record at this stage. The City also states there are no claims of use of officer force or officer misconduct that would "tilt the scales in favor of public disclosure."

We agree with the balancing analysis completed by the City and also agree that existing case law has demonstrated the ongoing nature of an investigation weighs in favor of confidentiality. *Hawk Eye v. Jackson*, 521 N.W.2d 750, 753 (Iowa 1994). The City has responded to Mr. Trautwein's public records request and has attempted to work with Mr. Trautwein to provide the confidential information to him through the trial court proceedings rather than providing the recordings as a public record. For this reason, there is no violation of Chapter 22.

Conclusion

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

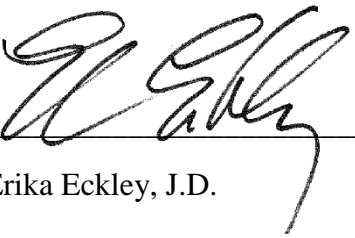
After review of the requested information and the City's response, there is no violation of Chapter 22. The records requested are part of an ongoing investigation and are appropriately deemed confidential pursuant to Iowa Code § 22.7(5). The City has provided public records that are

required to be disclosed and have performed an appropriate analysis to determine confidentiality of the remaining records.

IT IS SO ORDERED: Formal complaint 24FC:0055 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 August 15, 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 August 8, 2024, to:

Chandler Trautwein, Complainant

Holly Corkery, Attorney for the City of Marshalltown

Board Dashboard

Dashboard for Board Meetings

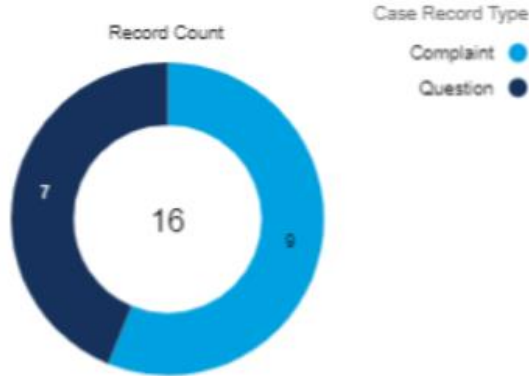
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Active Cases Report

33

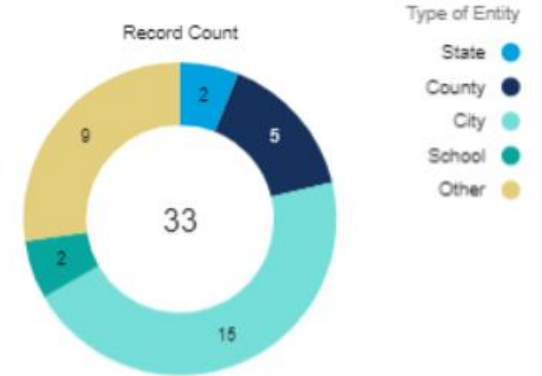
[View Report \(Active Cases Report\)](#)

New complaints &/or question last 30 day



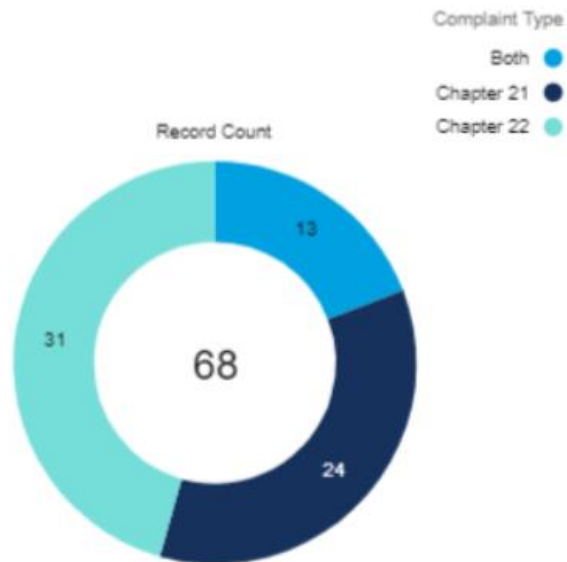
[View Report \(New complaints &/or question last 30 day\)](#)

Cases by Entity



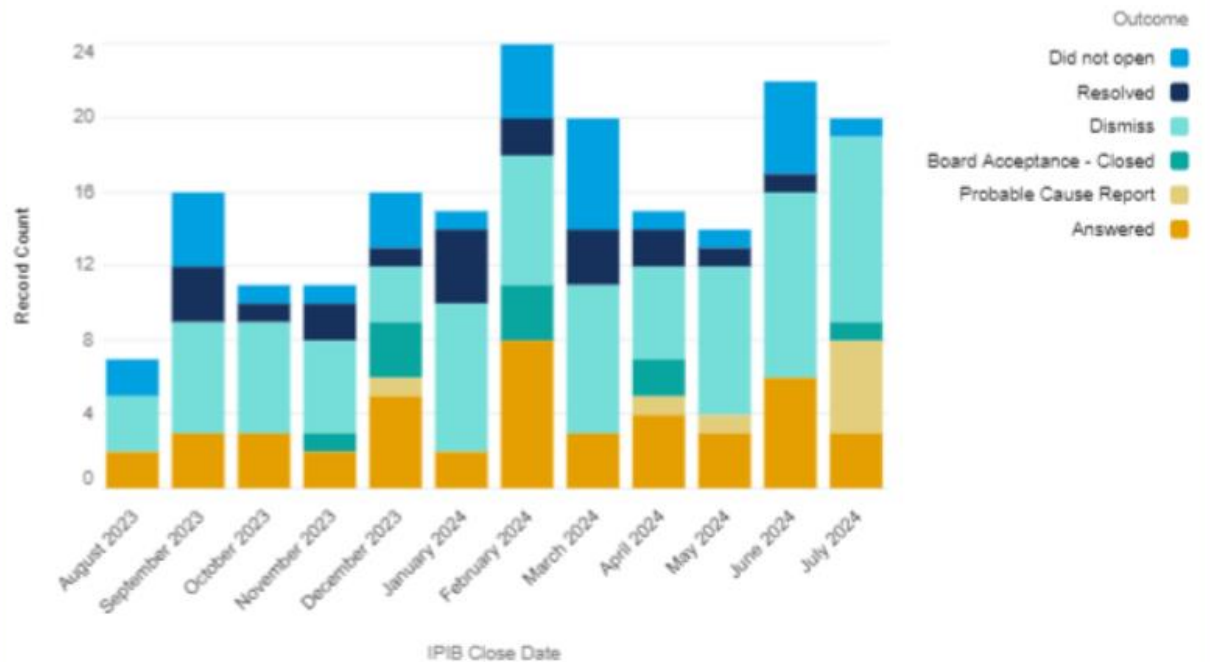
[View Report \(Cases by Entity\)](#)

Broad Type (Filed in Current



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

Closed cases (past 12 months)

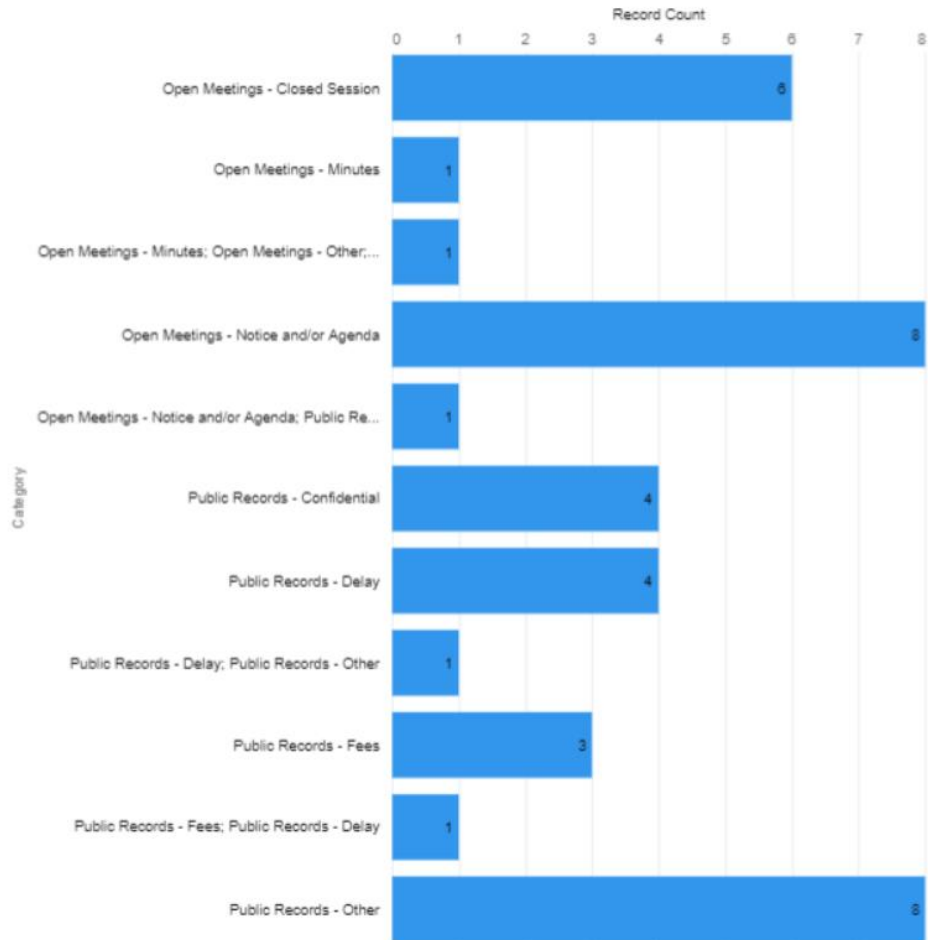


[View Report \(Closed cases \(past 12 months\)\)](#)

Cases by Type

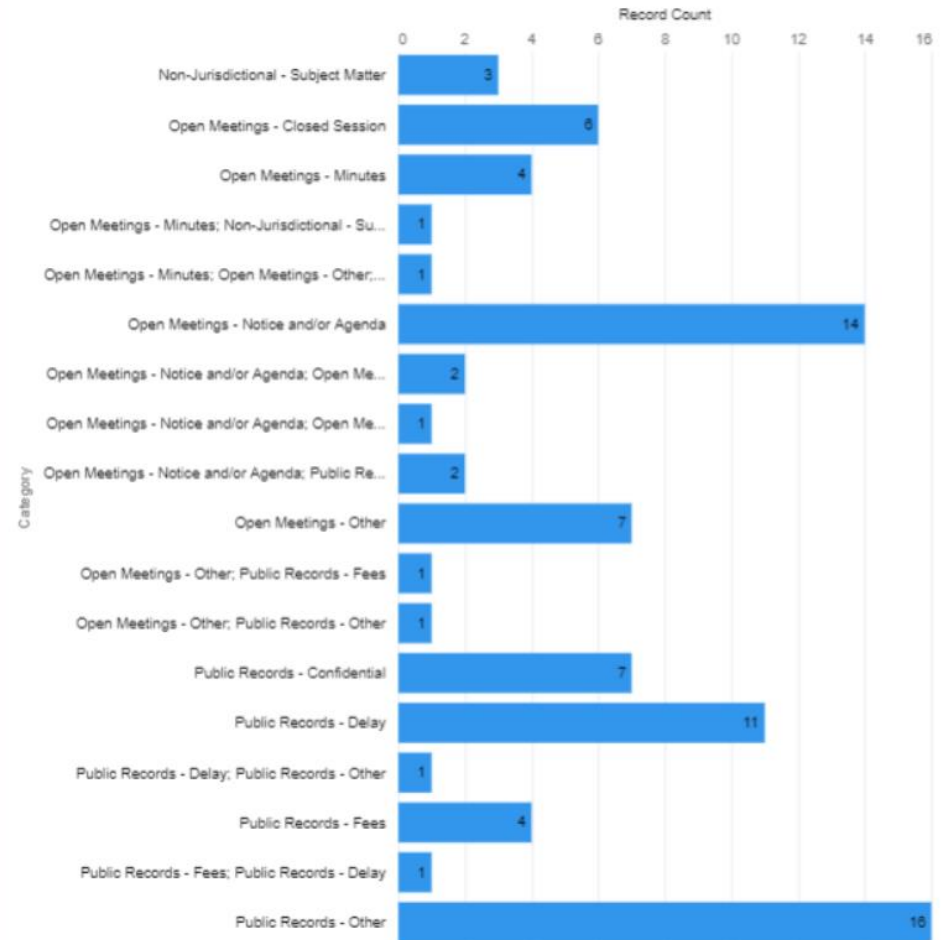
As of Aug 9, 2024 12:08 PM Viewing as Erika Eckley

Cases by Type (Active)



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

Cases by Type (Filed in Current Year)



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

Obj/Rev Class	Obj/Rev Class Name	JULY	AUG	SEPT	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUNE	HO13	HO14	HO15	YTD	Year Forecast	Annual Budget	Percent of Budget	Percent of Budget
		Actual	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Actual	(C=A+B)	(D)	To Date	EOY
	Appropriation	363,227																	363,227		
	Deappropriation																				
	BBF (T&T)																				
Expenditures																					
101	Personal Services	19,563	23,939	23,939	39,939	23,939	23,939	23,939	23,939	23,939	39,939	23,939	23,939	8,378	-	-	19,563	323,270	323,270	6%	100%
202	In State Travel	333															333	333	3,487	10%	10%
301	Office Supplies	-															-	-	3,000	0%	0%
309	Printing & Binding	-															-	-	500	0%	0%
313	Postage	-															-	-	150	0%	0%
401	Communications	-	250	250	250	250	250	250	250	250	250	250	250				-	3,000	3,000	0%	100%
406	Outside Services	-															-	-	1,000	0%	0%
414	Reimbursements To Other Agency	-	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000				-	12,000	12,000	0%	100%
416	ITD Reimbursements	-	1,318	1,318	1,318	1,318	1,318	1,318	1,318	1,318	1,318	1,318	1,318				-	15,820	15,820	0%	100%
418	IT Outside Services	-	80	80	80	80	80	80	80	80	80	80	80				-	960	1,000	0%	96%
Total Expenditures:		19,896	26,587	26,587	42,587	26,587	26,587	26,587	26,587	26,587	42,587	26,587	26,587	11,027	-	-	19,896	355,383	363,227	5%	98%
Current Month Operations		343,331	(26,587)	(26,587)	(42,587)	(26,587)	(26,587)	(26,587)	(26,587)	(26,587)	(42,587)	(26,587)	(26,587)	(26,587)	(11,027)	-	-				
Cash Balance		343,331	316,744	290,157	247,569	220,982	194,395	167,807	141,220	114,633	72,045	45,458	18,871	7,844	7,844	7,844					

FOOTNOTES

Cash Mgmt. Unit should be managed to \$0 at year end.

Expenditures

101 Months of October and April have 3 payroll warrants written.