

IOWA PUBLIC INFORMATION BOARD – Rules Committee

MEMBERS

Joan Corbin, Pella (Government Representative, 2024-2028)
E. J. Giovannetti, Urbandale (Public Representative, 2022-2026)
Joel McCrea, Pleasant Hill (Media Representative, 2022-2026)

STAFF

Erika Eckley, Executive Director
Kimberly Murphy, Deputy Director
Alexander Lee, Agency Counsel

Use the following link to watch the IPIB meeting live:

<https://youtube.com/@IowaPublicInformationBoard>

Note: If you wish to make public comment to the Board, please send an email to PIB@iowa.gov prior to the meeting.

Agenda

December 19, 2024, noon – 1 p.m.

Location: Iowa Public Information Board

Wallace Building, 3rd Floor

502 East 9th Street, Des Moines

- I. Call to Order
- II. Approval of agenda*
- III. Approve Minutes from October 17, 2024, Rules Committee Meeting*
- IV. Public Comment (5-minute limit per speaker)
- V. Discussion of Pilot Project Status
- VI. Review Rules Drafts*
- VII. Discussion of Next Committee Meeting
- VIII. Adjourn

*** Attachment**

IOWA PUBLIC INFORMATION BOARD – RULES COMMITTEE

October 17, 2024
Unapproved Minutes

The Iowa Public Information Board Rules Committee met on October 17, at noon at the offices of the Department of Agriculture and Land Stewardship located at 502 East 9th Street, Des Moines. The following Rules Committee members participated: Joan Corbin, Pella; E.J. Giovannetti, Urbandale. Also present were IPIB Executive Director, Erika Eckley; IPIB Deputy Director, Kimberly Murphy; IPIB Agency Counsel, Alexander Lee. A quorum was declared present.

- I. **Call to Order.** Corbin started the meeting.
- II. **Approval of Agenda.** On a **motion** by Giovannetti, **second** by Corbin, to adopt the agenda. Unanimously adopted, 2-0.
- III. **Approval of Minutes.** On a **motion** by Giovannetti, **second** by Corbin, to approve the minutes. Unanimously adopted, 2-0.
- IV. **Public Comment.** There was no public comment.
- V. **Review IPIB Complaint Process Overview.** Murphy gave an overview of the complaint process and presented the materials (attachment). There was Committee discussion. On a motion by Giovannetti, second by Corbin, to recommend a pilot project to the Iowa Public Information Board that will operate from October 18, 2024, to January 16, 2025. Unanimously adopted, 2-0.
- VI. **Discussion of Next Committee Meeting.** Board discussed the next meeting. IPIB staff will keep the Committee advised of the pilot project progress. The next meeting of the Committee will be held at noon on December 19, 2024.
- VII. **Adjourn.** On a **motion** by Corbin, **second** by Giovannetti, to adjourn the meeting. Meeting adjourned.

Subject	Contact Name	Status	IPIB Open Date	IPIB Close Date	Outcome	Board Review Document	First eligible board meeting	Days Opened	Reviewed within two board meetings	Notes
24FC:0056	Steven Asche	Board Acceptance of IR	6/25/2024			Final Report	7/18/2024	179	yes	<div style="border: 1px solid black; padding: 2px;"> % reviewed within 2 Board meetings 69% </div>
24FC:0064	Mark Milligan	IR Agreed to by Parties	7/31/2024			Informal Resolution	8/15/2024	139	yes	
24FC:0068	Drake Riddle	Board Acceptance of IR	8/13/2024				8/15/2024	130	yes	
24FC:0070	Brian Thomas	Informal Resolution Process	8/16/2024			Informal Resolution	8/15/2024	125	yes	
24FC:0077	Kyle Ocker	Informal Resolution Process	9/9/2024				9/19/2024	98	yes	
24FC:0089	Curtis Wagler	Information Gathering	10/9/2024				10/17/2024	69	no	
24FC:0090	Sarah Weber	Draft Order	10/11/2024			Acceptance	10/17/2024	68	no	
24FC:0057	Jody Phillips	Closed	7/8/2024	11/21/2024	Board Acceptance - Closed		7/18/2024	145	yes	
24FC:0059	Jan Norris	Closed	7/25/2024	11/21/2024	Board Acceptance - Closed		8/15/2024	125	yes	
<div style="border: 1px solid black; padding: 5px; display: inline-block;"> avg. days to dismiss/withdrawn 93 </div> <i>*delay in resolution due to scheduling</i>										
24FC:0072	Lucian Diaconu	Information Gathering	8/22/2024			Dismissal	9/19/2024	124	no	
24FC:0079	Tiffany South	Draft Order	9/18/2024			Dismissal	10/17/2024	89	no	
24FC:0081	Joe Monahan	Information Gathering	9/25/2024			Dismissal	10/17/2024	87	no	
24FC:0082	Robin Delaney	Final Report	9/26/2024			Withdrawn*	10/17/2024	82	no	
24FC:0083	Tim Ferguson	Draft Order	9/26/2024			Dismissal	10/17/2024	82	no	
24FC:0085	Gregory Mangold	Final Report	10/1/2024			Withdrawn*	10/17/2024	80	no	
24FC:0088	Randy Evans	Final Report	10/8/2024			Withdrawn*	10/17/2024	72	no	
24FC:0058	Chad Miller	Closed	7/5/2024	10/17/2024	Dismiss		7/18/2024	105	yes	
24FC:0065	Mandi Hutchins	Closed	8/6/2024	9/19/2024	Dismiss		8/15/2024	49	yes	
24FC:0066	Kenneth Brown	Closed	8/6/2024	9/19/2024	Resolved		8/15/2024	60	yes	
24FC:0067	Janet Pierson	Closed	8/9/2024	10/17/2024	Dismiss		8/15/2024	73	yes	
24FC:0069	William Vandenberg	Closed	8/10/2024	10/17/2024	Dismiss		8/15/2024	75	yes	
24FC:0071	Kevin Wymore	Closed	8/19/2024	10/17/2024	Dismiss		9/19/2024	66	yes	
24FC:0073	Gail Bonath	Closed	8/27/2024	10/17/2024	Dismiss		9/19/2024	54	yes	
24FC:0074	Diane Holst	Closed	8/27/2024	10/17/2024	Resolved		9/19/2024	53	yes	
24FC:0075 (1 of 2)	Karen Davis	Closed	9/3/2024	10/17/2024	Dismiss		9/19/2024	45	yes	
24FC:0075 (2 of 2)	Karen Davis	Closed	9/3/2024	10/17/2024	Dismiss		9/19/2024	45	yes	
24FC:0076	Montgomery McKernan	Closed	9/9/2024	9/19/2024	Dismiss		9/19/2024	15	yes	
24FC:0078	Megan Pegorick	Closed	9/10/2024	11/21/2024	Resolved		9/19/2024	76	no	
24FC:0080	Tiffany South	Closed	9/23/2024	10/17/2024	Dismiss		10/17/2024	27	yes	
24FC:0084	Paul A. Reed, Sr.	Closed	9/26/2024	11/21/2024	Dismiss		10/17/2024	61	yes	
24FC:0086	Ben Ward	Closed	10/1/2024	10/17/2024	Dismiss		10/17/2024	19	yes	
24FC:0087	Nicholas Bargren	Closed	10/7/2024	11/21/2024	Dismiss		10/17/2024	51	yes	
it Project Implemented										
24FC:0092	Aubrey Burress	Information Gathering	10/24/2024			Informal Resolution	11/21/2024	56	yes	<div style="border: 1px solid black; padding: 2px;"> % reviewed within 2 Board meetings 100% </div>
24FC:0093	Timothy Hansen	Information Gathering	10/24/2024				11/21/2024	53	yes	
24FC:0094	Ben Lynch	Draft Order	10/25/2024			Probable Cause	11/21/2024	53	yes	
24FC:0096 (1 of 2)	Rachel Dolley	Information Gathering	10/29/2024				11/21/2024	49	yes	
24FC:0096 (2 of 2)	Rachel Dolley	Information Gathering	11/26/2024				12/19/2024	25	yes	
24FC:0097	Tyler Patterson	Information Gathering	10/29/2024			Probable Cause	11/21/2024	50	yes	
24FC:0101	Erin Sommers	Information Gathering	10/28/2024				11/21/2024	48	yes	
24FC:0104	Matthew Rollinger	Information Gathering	11/1/2024				11/21/2024	46	yes	
24FC:0106	Sheryl Pilkington	Draft Order	11/1/2024			Probable Cause	11/21/2024	48	yes	
24FC:0109	Joe Goche	Information Gathering	11/13/2024				11/21/2024	41	yes	
24FC:0110	Keegan Jarvis	Information Gathering	11/6/2024				11/21/2024	40	yes	
24FC:0111	Michael McPeck	Draft Order	11/7/2024				11/21/2024	39	yes	
24FC:0112	Keegan Jarvis	Information Gathering	11/12/2024				11/21/2024	38	yes	
24FC:0113	Geralyn Jones	Information Gathering	11/13/2024				11/21/2024	34	yes	
24FC:0115	Justin Scott	Draft Order	11/22/2024				12/19/2024	25	yes	

24FC:0116	Timothy, miller	Information Gathering	11/27/2024			11/21/2024	61	yes
24FC:0117	Michael Merritt	Information Gathering	11/27/2024			11/21/2024	25	yes
24FC:0118	Kevin Cahalan	information Gathering	11/22/2024			12/19/2024	25	yes
24FC:0119 (1 of 2)	Tony Reed	Draft Order	11/26/2024			12/19/2024	21	yes
24FC:0119 (2 of 2)	Tony Reed	Draft Order	11/26/2024			12/19/2024	21	yes
24FC:0120	Paul Dorr	Information Gathering	12/2/2024			12/19/2024	19	yes
24FC:0122	Justin Scott	Complaint Open	12/5/2024			12/19/2024	11	-
24FC:0123	Rachel Wherley	Information Gathering	12/6/2024			12/19/2024	10	yes
24FC:0124 (1 of 2)	Kenneth Brown	Information Gathering	12/12/2024			12/19/2024	6	yes
24FC:0124 (2 of 2)	Kenneth Brown	Information Gathering	12/12/2024			12/19/2024	6	yes

24FC:0091	Ellen Becker	Closed	10/21/2024	11/21/2024	Dismiss		11/21/2024	35	yes
24FC:0095	Justin Scott	Closed	10/25/2024	11/21/2024	Dismiss		11/21/2024	31	yes
24FC:0098	Charles Kerker	Closed	10/29/2024	11/21/2024	Dismiss		11/21/2024	27	yes
24FC:0099	Tyson Trunkhill	Closed	10/30/2024	11/21/2024	Dismiss		11/21/2024	26	yes
24FC:0100	Tyson Trunkhill	Closed	10/30/2024	11/21/2024	Dismiss		11/21/2024	26	yes
24FC:0102	John Johnson	Closed	10/31/2024	11/21/2024	Resolved	Withdrawn	11/21/2024	30	yes
24FC:0103	Sue Miles	Closed	11/1/2024	11/21/2024	Dismiss		11/21/2024	25	yes
24FC:0114	Chad Brewbaker	Closed	11/14/2024	11/21/2024	Dismiss		11/21/2024	11	yes
Brewbaker (1 of 2)	Chad Brewbaker	Closed	11/1/2024	11/21/2024	Dismiss		11/21/2024	25	yes
Brewbaker (2 of 2)	Chad Brewbaker	Closed	11/4/2024	11/21/2024	Dismiss		11/21/2024	24	yes
24FC:0121	Presten Smith	Final Report	12/2/2024			Withdrawn	12/19/2024	16	yes

avg. days to dismiss/withdraw 25
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IOWA PUBLIC INFORMATION BOARD [497]

Purpose and Summary

The Iowa Administrative Procedure Act has long required agencies to adopt rules describing its internal organization and mission, its rulemaking process (to include receiving and evaluating rulemaking petitions), and how it will receive and process declaratory orders. To satisfy these obligations, the board promulgated Chapters 1 and 3 and also adopted by reference, with appropriate edits, the applicable chapters contained in the Uniform Rules on Agency Procedure (Chapters 4, 5, 6, 7, 9).

However, 2024 Iowa Acts, Senate File 2370, rescinds some applicable law (section 4) and creates a new related statute (section 12). The new statute states that the administrative rules coordinator, in partnership with the Iowa Attorney General's Office, may adopt a new set of uniform model rules that will automatically apply to agencies in the absence of self-promulgated rules (more information can be found in Iowa Code section 17A.24 as enacted by 2024 Iowa Acts, Senate File 2370).

Accordingly, the board is proposing to rescind these chapters consistent with the principles of Executive Order 10 as being either unauthorized or unnecessary. It will instead operate under the new model rules and other applicable laws. Specific information regarding advisory opinions from Chapter 1 has been incorporated in Chapter 11.

Text of Proposed Rulemaking

- ITEM 1. Rescind and reserve 497—Chapter 1.
- ITEM 2. Rescind and reserve 497—Chapter 3.
- ITEM 3. Rescind and reserve 497—Chapter 4.
- ITEM 4. Rescind and reserve 497—Chapter 5.
- ITEM 5. Rescind and reserve 497—Chapter 6.
- ITEM 6. Rescind and reserve 497—Chapter 7.
- ITEM 7. Rescind and reserve 497—Chapter 9.

IOWA PUBLIC INFORMATION BOARD [497]

Purpose and Summary

This proposed rulemaking includes revisions to administrative rules based on the requirements of Executive Order Number Ten. Chapter 2 provides information to the public about the Iowa Public Information Board's complaint process.

Text of Proposed Rulemaking

ITEM 1. Rescind 497—Chapter 2 and adopt the following new chapter in lieu thereof:

CHAPTER 2 COMPLAINT INVESTIGATION AND RESOLUTION PROCEDURES

497—2.1(23) Scope and applicability. This chapter applies to complaints filed with the Iowa Public Information Board.

497—2.2(23) Definitions. Except where otherwise specifically defined by law:

“Board” means the Iowa Public Information Board created and defined by Iowa Code section 23.3.

“Complaint” is as defined by Iowa Code chapter 23.

“Complainant” means a person who files a complaint with the board as defined by Iowa Code chapter 23.

“Meeting” is as defined by Iowa Code chapter 21.

“Probable cause” means evidence has been provided to demonstrate a reasonable belief that a violation of chapter 21 or 22 exists. Probable cause is more than a suspicion and is the presentation of facts that would establish a belief in a reasonable person that a violation occurred.

“Public Records” is as defined by Iowa Code chapter 22.

“Reasonable Diligence” means the degree of diligence expected from a person of ordinary prudence under the circumstances.

“Respondent” means any agency or other unit of state or local government, custodian, government official, or government employee who is the subject of a Complaint, as defined in Iowa Code Chapter 23. “Respondent” does not include the judicial or legislative branches of state government or any entity, officer, or employee of those branches, or the governor or the office of the governor as the Board does not have jurisdiction over these bodies pursuant to Iowa Code section 23.12.

497—2.3(23) Filing of complaint. Any complainant may file a complaint with the board alleging a violation of Iowa Code chapter 21 or 22.

497—2.4(23) Timing of complaint. The complainant shall file a complaint within sixty calendar days from the time the alleged violation occurred or from the time the complainant could have become aware of the violation with reasonable diligence. Any dispute regarding timing, the complainant's awareness of the violation, and whether the complaint meets statutory timing requirements shall be resolved by the board based on the circumstances of the complaint.

497—2.5(23) Form of complaint. A complaint shall be submitted in writing and on a form designated by the board. A complaint may also be accepted without using a designated form if the complaint contains the elements of information required by the form.

497—2.6(23) Content of complaint. The complaint shall include in the body of the complaint or the attachments thereto any information, issues, and arguments that support the complainant's position. The complaint may also include any attachments, affidavits, certifications, or other documentation deemed relevant or supportive of the allegations set forth in the complaint.

2.6(1) Amendments to complaint. Any amendments to the complaint received after filing will be reviewed by the board. The board, at its discretion, may allow an amendment after filing based on the facts and circumstances of the complaint.

2.6(2) Merging of complaints. The board, at its discretion, may merge complaints based on the facts and circumstances of each complaint.

497—2.7(23) Complaint process. Upon receipt of a complaint, the board will review the complaint and determine whether the complaint is accepted or dismissed.

2.7(1) Delegation of duties. In order to expedite proceedings, the executive director may delegate to designated employees of the board, at his or her discretion, the task of developing and presenting acceptance and dismissal orders.

2.7(2) Not a contested case. The board's review of a complaint for legal sufficiency is not a contested case proceeding and shall be made solely on the facts alleged in the complaint and the results of the initial review conducted by employees of the board.

497—2.8(23) Complaint process – dismissal. The board shall issue a dismissal order if the board determines that the complaint, on its face, is outside the board's jurisdiction, is legally insufficient, is frivolous, is without merit, involves harmless error, or relates to a specific incident that has previously been finally disposed on its merits by the board or a court. A copy of the dismissal order shall be provided to the complainant. The dismissal order shall explain the reasons for the dismissal.

497—2.9(23) Complaint process – acceptance. If the board determines that the complaint, on its face, is within the board's jurisdiction, appears legally sufficient, and could have merit, the board will accept the complaint. Upon acceptance, the board shall take the following actions:

- a. Provide notification of acceptance in writing to the complainant and respondent.
- b. Provide all available information to the respondent, including the complaint and any supporting documentation provided by the complainant as part of the complaint.
- c. Request a response to the complaint from the respondent.

497—2.10(23) Respondent's response to complaint. The respondent, upon request to respond to the complaint pursuant to rule 497—2.9(c) shall submit a written response to the complaint within fourteen calendar days. The executive director, at his or her discretion, may grant an extension to the respondent for the respondent's response based on a justifiable reason and the facts and circumstances of the complaint. The respondent's response shall include the details of the respondent's position for each element of the complaint and any information, defenses, and arguments that support the respondent's position.

497—2.11(23) Complainant’s response to respondent. The complainant shall be granted the opportunity to respond to the respondent’s response.

497—2.12(23) Informal resolution process. Following acceptance of the complaint, the board, acting through the employees of the board, shall work with the complainant and respondent to develop a resolution in response to the complaint.

2.7(1) Resolution. If the informal resolution process resolves the complaint, the complaint shall be dismissed as resolved by the board. The complaint may also be withdrawn by the complainant.

2.7(2) Failure to resolve. If the complainant or respondent decline the informal resolution process or if the informal resolution process fails to resolve the complaint, the board shall initiate a formal investigation.

497—2.13(23) Formal investigation. If the complainant or respondent decline the informal resolution process or if the information resolution process fails to resolve the complaint, the board shall initiate a formal investigation to determine whether there is probable cause to believe a violation of Iowa Code chapter 21 or 22 has occurred.

2.13(1) Request for information. During the formal investigation process, the complainant and respondent may be asked to provide additional information. Failure to respond to requests for information may result in a finding of probable cause or dismissal of the Complaint.

2.13(2) Actions taken. Formal investigation actions that may be taken by the board include, but are not limited to, the following actions:

- a. Review applicable laws, rules, regulations, and policies.
- b. Request statements from the complainant and respondent.
- c. Submit verbal or written requests for information to other persons and governmental bodies.
- d. Examine and copy relevant records.
- e. Issue investigative subpoenas requiring the production of books, papers, records, electronic records and other evidence, as well as requiring the attendance and testimony of witnesses.
- f. Holding hearings.
- g. Any other methods determined appropriate by the board.

2.13(3) Report to board. Following the formal investigation, the employees of the board shall make a report to the board and shall provide a recommendation related to probable cause.

497—2.14(23) Burden of proof – Chapter 21 investigations. For Iowa Code chapter 21 violations, the complainant must demonstrate the following elements to advance the complaint:

- a. The respondent is subject to the requirements of Iowa Code chapter 21; and
- b. The respondent held a meeting.

If the complainant demonstrates these elements, the burden of proof shall shift to the respondent to demonstrate compliance with the requirements of Iowa Code chapter 21.

497—2.15(23) Burden of proof – Chapter 22 investigations. For Iowa Code chapter 22 violations, the complainant must demonstrate the following elements to advance the complaint:

- a. The respondent is subject to the requirements of Iowa Code chapter 22;
- b. The records in question are public records; and

c. The respondent refused to make the public records available for examination and copying.

If the complainant demonstrates these elements, the burden of proof shall shift to the respondent to demonstrate compliance with the requirements of Iowa Code chapter 22.

497—2.16(23) Settlement of complaint. The parties to the complaint may reach an agreement during the formal investigation process that results in a settlement between the parties. Any settlement reached by the parties is solely between the parties and does not impact the formal investigation conducted by the board. If a settlement is reached, the board may dismiss the complaint as an exercise of administrative discretion pursuant to rule 497—2.17 and terminate the formal investigation.

497—2.17(23) Probable Cause Finding. Upon receipt and review of the formal investigative report and any recommendations, the board may take any of the following actions:

- a. Redirect the complaint for further investigation.
- b. Dismiss the complaint for lack of jurisdiction or lack of probable cause to believe there has been a violation of Iowa Code chapter 21 or 22.
- c. Determine that probable cause exists to believe a violation has occurred but dismiss the matter as an exercise of administrative discretion. The dismissal order may contain actions the respondent must take to effectuate the dismissal.
- d. Determine the complaint is within the board's jurisdiction and there is probable cause to believe a violation of Iowa Code chapter 21 or 22 has occurred and direct civil penalties or other appropriate remedies as provided in subrule 497—2.18. The respondent may decline the penalties or remedies and request a contested case proceeding be initiated.
- e. Determine that the Complaint is within the Board's jurisdiction and there is probable cause to believe a violation of Iowa Code chapter 21 or 22 has occurred and initiate a contested case proceeding. The probable cause order shall initiate a contested case proceeding pursuant to Iowa Code Chapter 17A. The board shall designate a prosecutor and direct the issuance of a statement of charges to initiate the contested case proceeding pursuant to Iowa Code chapter 23.10.

For any actions taken by the board pursuant to this subrule, the board shall issue a written order and a copy of the order shall be provided to the complainant and the respondent. The order shall explain the reasons for the dismissal or the finding of probable cause.

497—2.18(23) Civil penalties and other appropriate remedies. If it is determined after appropriate board proceedings that a violation of statute or rule under the board's jurisdiction has occurred, the board may impose any of the remedies set out in Iowa Code section 23.6(8) or 23.10(3)(b).

497—2.19(23) Appeal. Any person or party who is aggrieved or adversely affected by agency action may utilize the remedies provided by Iowa Code Chapter 17A.

IOWA PUBLIC INFORMATION BOARD [497]

Purpose and Summary

Executive Order Number Ten orders that all chapters of the Iowa Administrative Code shall be reviewed by each board and that redundant and unnecessary administrative rules shall be repealed.

Iowa Code chapter 21 specifically outlines open meetings requirements for boards within the executive branch. Chapter 8 repeats the requirements outlined in Iowa Code chapter 21.

Accordingly, the board is proposing to rescind Chapter 8 consistent with the principles of Executive Order 10 as being redundant and unnecessary. The board will continue to operate consistent with the requirements of Iowa Code chapter 21.

Text of Proposed Rulemaking

ITEM 1. Rescind and reserve 497—Chapter 8.

IOWA PUBLIC INFORMATION BOARD [497]

Purpose and Summary

This proposed rulemaking re-promulgates administrative rules based on the requirements of Executive Order 10. Chapter 10 provides information to the public about the Iowa Public Information Board's injunction request procedure.

Text of Proposed Rulemaking

ITEM 1. Rescind 497—Chapter 10 and adopt the following new chapter in lieu thereof:

CHAPTER 10 INJUNCTION REQUEST PROCEDURE

497—10.1(23) Complaint. As provided in Iowa Code section 23.5(3), when a request for an injunction to enjoin the inspection of a public record has been filed in district court under Iowa Code section 22.8, the respondent or the person requesting access to the record may remove the proceeding from district court to the board by filing a complaint within 30 days of the commencement of the judicial proceeding. The complaint shall detail the parties involved, the records sought, and the district court in which the matter was originally filed. A copy of the original court filing seeking an injunction shall be filed with the complaint. A complaint filed under this chapter is not a “complaint” triggering the procedures under 497—Chapter 2.

497—10.2(23) Notice to court. Upon receipt of a complaint under this chapter, the board's staff shall file notice with the appropriate district court that the complaint has been filed with the board.

497—10.3(23) Staff review. If the court issues an order removing jurisdiction of the matter to the board, the board's staff shall conduct an initial review of the complaint and may request that the parties provide further information or documents.

497—10.4(23) Hearing. A hearing on the request for the injunction shall be heard before the board. The board may require briefs or the filing of other documents. The board shall work with the parties in establishing guidelines for the time of the hearing, the length of arguments, and any other procedural matters. A hearing under this rule is not a contested case under 497—Chapter 4.

497—10.5(23) Board determinations. The board shall make the following determinations after hearing:

1. Whether the requested records are public records or confidential public records.
2. If the records are public records, whether an injunction should be issued enjoining the inspection of the records under the criteria set out in Iowa Code sections 22.8(1) and 22.8(3).

497—10.6(23) Judicial review. The board's determinations under rule 497—10.5(23) are deemed final agency action for purposes of seeking judicial review under Iowa Code chapter 17A.

IOWA PUBLIC INFORMATION BOARD [497]

Purpose and Summary

This proposed rulemaking includes revisions to administrative rules based on the requirements of Executive Order Number Ten. Chapter 11 provides information to the public about the Iowa Public Information Board's advisory opinion process. This information exists within Chapter 1, which addresses agency organization and will be rescinded. This new Chapter 11 is dedicated to advisory opinions for consumer ease and clarity.

Text of Proposed Rulemaking

ITEM 1. Adopt the following new chapter:

CHAPTER 11 ADVISORY OPINION PROCEDURES

497–11.1(23) Scope and applicability. This chapter applies to Public Information Board advisory opinions.

497–11.2(23) Requirements for requesting advisory opinions.

11.2(1) Jurisdiction. The board shall accept requests for advisory opinions only pertaining to Iowa Code chapters 21 and 22, or rules adopted thereunder. The board shall not have jurisdiction over the judicial or legislative branches of state government or any entity, officer, or employee of those branches, or over the governor or the office of the governor.

11.2(2) Who may request an advisory opinion. Any person may request an advisory opinion construing or applying Iowa Code chapters 21 and 22. The board shall not issue an opinion to an unauthorized third party. The board may on its own motion issue opinions without receiving a formal request.

11.2(3) Form of request. The request for an advisory opinion shall pose specific legal questions and shall describe any specific facts relating to the questions posed. A request for an advisory opinion shall be submitted in writing and on a form designated by the board. A request for an advisory opinion may also be accepted without using the designated form if the request for an advisory opinion contains the elements of information required by the designated form.

497–11.3(23) Processing of advisory opinions. After receiving an advisory opinion request, the board's executive director shall cause to be prepared a draft advisory opinion for board review. If the same or similar issue has been addressed in an opinion of a court, or in an attorney general's opinion, or in another prior advisory opinion, the executive director may respond to the requester by sending a copy of the prior opinion.

497–11.4(23) Timing of advisory opinions. The board aspires to issue advisory opinions within 30 days after a formal request is made.

497—11.5(23) Approval of advisory opinions. Upon an affirmative vote of a majority of the board, the executive director shall issue an advisory opinion on behalf of the board. Advice contained in a board opinion rendered to a government official or a lawful custodian of a public record, if followed, constitutes a defense for the government official or lawful custodian before the board to a subsequent complaint that is based on the same facts and circumstances.

11.5(1) *Advice on routine matters.* Board staff may provide written advice on routine matters. However, such advice is not an advisory opinion.

11.5(2) *Modification or reconsideration requested.* A person who receives an advisory opinion may, within 30 days after the issuance of the advisory opinion, request modification or reconsideration of the advisory 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.

11.5(3) *Modification or reconsideration by board.* The board may modify or reconsider an advisory opinion on its own motion within 30 days after the issuance of an advisory opinion.

497—11.6(23) Declaratory Orders. Nothing in this rule precludes a person who has received an advisory opinion or advice from petitioning for a declaratory order pursuant to Iowa Code section 17A. The board may refuse to issue a declaratory order to a person who has previously received an advisory opinion on the same question, unless the requester demonstrates a significant change in circumstances from those in the advisory opinion.