

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

January 16, 2025, noon – 1 p.m.

Location: Iowa Department of Agriculture and Land Stewardship
Conference Room 2N Large
Wallace Building
502 East 9th Street, Des Moines

- I. Call to Order
- II. Approval of agenda*
- III. Approve Minutes from December 19, 2024, Rules Committee Meeting*
- IV. Public Comment (5-minute limit per speaker)
- V. Review Rules Drafts*
- VI. Discuss Presentation of Rules Drafts to the IPIB
- VII. Adjourn

*** Attachment**

IOWA PUBLIC INFORMATION BOARD – RULES COMMITTEE

December 19, 2024
Unapproved Minutes

The Iowa Public Information Board Rules Committee met on December 19, at noon at the offices of the Iowa Public Information Board located at 502 East 9th Street, Des Moines. The following Rules Committee members participated: Joan Corbin; E.J. Giovannetti; Joel McCrea. 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 McCrea, **second** by Giovannetti, to adopt the agenda. Unanimously adopted, 3-0.
- III. **Approval of Minutes.** On a **motion** by Giovannetti, **second** McCrea, to approve the minutes from October 17, 2024. Unanimously adopted, 3-0.
- IV. **Public Comment.** There was no public comment.
- V. **Discussion of Pilot Project Status.** Eckley provided an overview of statistics generated from the pilot project. Committee discussion occurred.
- VI. **Review Rules Drafts.** Murphy provided an overview of all rules drafts. Committee discussion occurred. Committee directed IPIB staff to forward redline to full Board to allow for review prior to January meeting.
- VII. **Discussion of Next Committee Meeting.** Next meeting will be held at noon on January 16, 2025.
- VIII. **Adjourn.** On a **motion** by McCrea, **second** by Giovannetti, to adjourn. Unanimously adopted, 3-0.

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” is 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” is 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” is 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” is means the degree of diligence expected from a person of ordinary prudence under the circumstances.

“Respondent” is 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 ~~at its discretion, 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 ~~shall 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 ~~shall 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 ~~shall 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. Failure to respond shall result in a probable cause finding pursuant to rule 497—2.17.

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~~ PIB staff shall make a report to the board and shall provide a recommendation related to probable cause.

2.13(4) Delegation of investigation. The board, at its discretion, may delegate a formal investigation to an independent investigator. An independent investigator may be an alternative state agency, attorney practicing outside of state government, or any other investigator that the board determines is qualified.

497—2.14(23) Burden of proof – Chapter 21 investigations. Once a complainant demonstrates to the board that the government body in question is subject to the requirements of Iowa Code Chapter 21 and has held a meeting, the burden going forward shall be on the government body to

~~demonstrate compliance with the requirements of Iowa Code Chapter 21. 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.~~

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497—2.15(23) Burden of proof – Chapter 22 investigations. ~~Once a complainant demonstrates to the board that the respondent in question is subject to the requirements of Iowa Code Chapter 22, that the records in question are government records, and that the respondent has refused to make those records available for examination and copying by the complainant, the burden of going forward shall be on the defendant to demonstrate compliance with the requirements of Chapter 22. 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.~~

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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 completed by IPIB staff and any recommendations from IPIB staff, 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.

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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.

11.3(1) Same or similar issue. 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, however an existing opinion shall not prohibit the board from issuing an advisory opinion.

11.3(2) Delegation of duties. The executive director may delegate to designated employees of the board, at his or her discretion, the task of developing and presenting advisory opinions.

497–11.4(23) Timing of advisory opinions. The board shall make every reasonable attempt to issue an advisory opinion s within 30 days after a formal request is made.

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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.