

# **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)**  
**Catherine Lucas (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**

## **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 [IPIB@iowa.gov](mailto:IPIB@iowa.gov) prior to the meeting.**

## **Agenda**

**January 16, 2025, 1:00 p.m.**  
**Conference Room 2N Large**  
**Wallace Building**  
**502 East 9<sup>th</sup> Street, Des Moines**

### **1:00 PM – IPIB Meeting**

- I. Approval of agenda\***
- II. Approval of the December 19, 2024 minutes \***
- III. Public Forum (5-minute limit per speaker)**
- IV. Comments from the board chair. (McHugh)**
- V. Consent Agenda \***
  - A. Dismissals**
    1. 24FC:0126 (Keegan Jarvis - Chapter 21- Swan City council and their retained attorney) 12/9/2024
    2. 24FC:0132 (Charlene Hoover - Chapter 21- Decatur County Board of Supervisors) 12/31/2024
  - B. Acceptance**
    1. Accept 24FC:0131 (Jordan Johnson - Chapter 22- City of Ankeny) 12/31/2024 - Accept/Dismiss

**VI. Advisory Opinion – Deliberation/Action.**

1. 24AO:0014 (Dustin Zeschke) 12/11/2024 - Is a government body required to produce bodycam footage and witness statements in response to a public records request pursuant to Chapter 22?

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

1. 24FC:0013 (Bonnie Castillo - Both- Union County Emergency Management Agency) 2/2/2024 - Informal Resolution Contested Case
2. 24FC:0068 (Drake Riddle - Chapter 21- Page County Board of Supervisors) 8/8/2024 -Final Report
3. 24FC:0083 (Tim Ferguson - Chapter 22- Scott County) 9/25/2024 -Dismissal
4. 24FC:0089 (Curtis Wagler - Chapter 22- Henry County Sheriff's Office) 10/8/2024 -Acceptance
5. 24FC:0101 (Erin Sommers - Chapter 21- City of Pocahontas) 10/29/2024 -Informal Resolution Report
6. 24FC:0104 (Matthew Rollinger - Chapter 22- Linn Mar Community School District) 10/31/2024 - Probable Cause Report
7. 24FC:0109 (Joe Goche - Chapter 21- Kossuth county Supervisors and Auditor) 11/5/2024 -Probable Cause Report
8. 24FC:0111 (Michael McPeek - Chapter 22- Iowa Department of Corrections) 11/7/2024 -Probable Cause Report
9. 24FC:0112 (Keegan Jarvis - Chapter 21- City of swan iowa) 11/8/2024 -Probable Cause Report
10. 24FC:0116 (Timothy; miller - Both- CITY OF WATERLOO-MUNICIPAL POLICE) 10/16/2024 - Probable Cause Report
11. 24FC:0118 (Kevin Cahalan - Both- City of Eagle Grove) 11/21/2024 -Probable Cause Report
12. 24FC:0124 (Kenneth Brown - Chapter 22- City of Sidney) 12/10/2024 -Probable Cause Report

**VIII. Matters Withdrawn, No Action Necessary. (Eckley)**

1. 24FC:0122 (Justin Scott - Chapter 21- ) 12/5/2024
2. 24FC:0127 (JOHN GRUCA - Chapter 22- Cedar Rapids Veterans Memorial Commission) 12/17/2024
3. 24FC:0128 (David Sherwood - Chapter 22- Tama County board of supervisors) 12/18/2024

**IX. Pending (Informational Only no Deliberation or Action) (Eckley)**

1. 22FC:0011 (Jack Swarm - Chapter 21- ) 3/1/2022 - Complaint Opened/Acknowledged
2. 24FC:0052 (Erik Johnson - Chapter 22- Delaware Township) 6/6/2024 - Information Gathering/IR Process
3. 24FC:0064 (Mark Milligan - Chapter 22- Monroe County Sheriff's Department) 7/30/2024 - Board Acceptance of IR
4. 24FC:0070 (Brian Thomas - Both- Jefferson County BOS) 8/13/2024 - Board Acceptance of IR
5. 24FC:0077 (Kyle Ocker - Chapter 22- Mahaska County Sheriff's Office) 9/9/2024 - Information Gathering/IR Process
6. 24FC:0090 (Sarah Weber - Chapter 21- Orange City Council) 10/9/2024 - Information Gathering/IR Process
7. 24FC:0092 (Aubrey Burrese - Both- Pleasant Grove township) 10/21/2024 - Board Acceptance of IR
8. 24FC:0093 (Timothy Hansen - Chapter 22- Franklin County Sheriff's Office) 10/24/2024 - Information Gathering/IR Process
9. 24FC:0096 (Rachel Dolley - Chapter 21- Commission of Wapello County Veterans Affairs) 10/28/2024 - Information Gathering/IR Process
10. 24FC:0110 (Keegan Jarvis - Chapter 21- City of Swan IA) 11/6/2024 - Information Gathering/IR Process

11. 24FC:0113 (Geraldyn Jones - Chapter 21- Linn-Mar Board of Directors) 11/12/2024 - Information Gathering/IR Process
12. 24FC:0117 (Michael Merritt - Chapter 22- Jasper County) 11/21/2024 - Information Gathering/IR Process
13. 24FC:0120 (Paul Dorr - Both- Osceola County, Iowa) 11/27/2024 - Board Approval of A/D
14. 24FC:0123 (Rachel Wherley - Chapter 22- Estherville Lincoln Central CSD) 12/6/2024 - Informal Resolution Process
15. 24FC:0125 (Anthony Wynkoop - Chapter 22- Clinton Iowa PD) 12/12/2024 - Information Gathering/IR Process
16. 24FC:0129 (Joe Monahan - Chapter 22- Ames Public Library) 12/24/2024 - Complaint Opened/Acknowledged
17. 24FC:0130 (Joe Monahan - Chapter 22- Iowa City Public Library) 12/24/2024 - Complaint Opened/Acknowledged
18. 25FC:0001 (Steven Asche - Chapter 22- City of Eagle Grove) 1/10/2025 - New / Complaint Information Reviewed
19. 24AO:0013 (IPIB) 12/12/2024 - How should interviews for public employees be conducted after the Teig v. Loeffler decision?
20. 24AO:0015 (Chuck Isenhart) 12/31/2024 - When are RFP documents no longer confidential under Iowa Code?
21. 24AO:0016 (Jack Hatanpa) 12/31/2024 - Is a contracted city attorney the appropriate custodian of a records request

**X. Committee Reports**

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

**XI. Office status report.**

1. Office Update \* (Eckley)
  - a. IPIB Office Move week of January 27
  - b. 2024 Annual Report (*action needed*)\*
2. Financial/Budget Update (FY25) \* (Eckley)
3. Presentations/Trainings (Eckley)
  - a. State Library Board
  - b. Pocahontas
4. District Court Update (Eckley)

**XII. Next IPIB Board Meeting will be held on February 20, 2025, at 1:00 p.m. at Jesse Parker Building.**

**XIII. Adjourn**

**\* Attachments**

# **IOWA PUBLIC INFORMATION BOARD**

**DRAFT**

**December 19, 2024**

**Unapproved Minutes**

The Iowa Public Information Board (IPIB) met on December 19, 2024, for its monthly meeting at 1 p.m. at the offices of the Iowa Public Information Board located at 502 East 9<sup>th</sup> Street, Des Moines. The following members participated: Joan Corbin, E.J. Giovannetti (remote), Barry Lindahl (remote), Catherine Lucas, Luke Martz, Joel McCrea, Monica McHugh, Jackie Schmillen (remote). Also present were IPIB Executive Director, Erika Eckley; IPIB Deputy Director, Kimberly Murphy; IPIB Agency Counsel, Alexander Lee. Also present was John Lundquist, Assistant Attorney General and counsel for the Iowa Public Information Board. A quorum was declared present.

On a motion by McCrea and second by Martz, to approve the agenda. Adopted, 8-0.

On a motion by Lucas and second by Martz, to approve the November 21, 2024, minutes. Adopted, 8-0.

## **Public Forum –**

There were no public comments.

## **Comments from the Board Chair –**

McHugh did not have any comments.

\*At this time, it was noted that the recording was on mute. The Board indicated it would repeat the first four agenda items following closed session.

## **Discussion and Potential Action regarding District Court Judicial Review rulings -**

- a. *John F. Swarm v. City of Mt. Pleasant/IPIB*, Henry County No. CVEQ006708
- b. *Hendrik van Pelt v. IPIB*, Clayton County No. CVCV011232

John Lundquist discussed the status of the cases with the Board. Lucas motioned to enter Closed Session under Iowa Code § 21.5(c): To discuss strategy with counsel in matters that are presently in litigation or where litigation is imminent where its disclosure would be likely to prejudice or disadvantage the position of the governmental body in that litigation. Martz seconded. A roll call vote was held:

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

Unanimous vote to enter closed session.

Open session resumed. McHugh stated that direction was provided to IPIB's legal counsel regarding the district court cases.

**Repeat of prior agenda items –**

On a motion by McCrea and second by Martz, to approve the agenda. Adopted, 8-0.

On a motion by Lucas and second by Martz, to approve the November 21, 2024, minutes. Adopted, 8-0.

**Public Forum –**

There were no public comments.

**Comments from the Board Chair –**

McHugh did not have any comments.

**Consent Agenda –**

1. **Dismissals.** Eckley discussed the dismissals within the consent agenda. Board discussion occurred. On a motion by Martz and second by Lindahl, to approve the dismissals within the consent agenda. Approved, 8-0.
2. **Acceptances.** Eckley discussed the acceptances within the consent agenda. Board discussion occurred. On a motion by Lucas and second by Corbin, to approve the following acceptances: 24FC:0116 (Miller), 24FC:0109 (Goche), 24FC:0111 (McPeek), 24FC:0118 (Cahalan), 24FC:0120 (Dorr); 24FC:0123 (Wherley), 24FC:0124 (Brown), 24FC:0125 (Wynkoop), 24FC:0127 (Gruca). Approved, 8-0.

Lucas recused and abstained from 24FC:0117 (Merritt). On a motion by McCrea and second by Giovannetti, to approve acceptance of 24FC:0117. Approved, 7-0; one abstention.

**Advisory Opinion – Informational Only.**

1. 24AO:0014 (Dustin Zeschke ) 12/11/2024 - Is a government body required to produce bodycam footage and witness statements in response to a public records request pursuant to Chapter 22?
2. 24AO:0013 (IPIB) 12/12/2024 - How should interviews for public employees be conducted after the Teig v. Loeffler decision?

**IPIB Cases –** The Board was briefed on each case and acted as indicated below:

1. **24FC:0013 (Bonnie Castillo - Both- Union County Emergency Management Agency) 2/2/2024 - Probable Cause.** Board discussion occurred. On a motion by Martz and second by Giovannetti, to accept the Probable Cause report and proceed to a contested case. Approved, 8-0.
2. **24FC:0056 (Steven Asche - Chapter 22- City of Eagle Grove) 6/20/2024 -Final Report.** Steven Asche addressed the Board. On a motion by Martz and second by Lindahl, to approve the Final Report. Approved, 8-0.

3. **24FC:0064 (Mark Milligan - Chapter 22- Monroe County Sheriff's Department; represented by Monroe County Attorney) 7/30/2024 -Informal Resolution.** On a motion by Corbin and second by Martz, to approve the Informal Resolution Report. Approved, 8-0.
4. **24FC:0070 (Brian Thomas - Both- Jefferson County BOS) 8/13/2024 - Informal Resolution.** Chauncey Moulding addressed the Board on behalf of Jefferson County. On a motion by McCrea and second by Martz, to approve the Informal Resolution Report. Approved, 8-0.
5. **24FC:0072 (Lucian Diaconu - Chapter 22- Gilbert Community School District) 8/14/2024 - Revised Dismissal.** Diaconu addressed the Board. Dr. Christine Trujillo addressed the Board on behalf of the Gilbert Community School District. Board discussion occurred. On a motion by Lucas and second by McCrea, to approve the Revised Dismissal. Approved, 8-0.
6. **24FC:0079 (Tiffany South - Chapter 22- CAM Community School District) 9/18/2024 - Dismissal.** Board discussion occurred. On a motion by Martz and second by Giovannetti, to approve the Dismissal. Approved, 8-0.
7. **24FC:0081 (Joe Monahan - Chapter 22- Ames Public Library, Ames City Attorney) 9/20/2024 – Dismissal.** Joe Monahan addressed the Board. Mark Lambert addressed the Board on behalf of the Ames Public Library. Board discussion occurred. On a motion by Lindahl and second by McCrea, to approve the Dismissal. Approved, 8-0.
8. **24FC:0083 (Tim Ferguson - Chapter 22- Scotty County government) 9/25/2024 -Dismissal.** IPIB staff requested that the Dismissal be tabled to review recent information. On a motion Lucas and second by Martz, to table the Dismissal. Approved, 8-0.
9. **24FC:0090 (Sarah Weber - Chapter 21- Orange City Council) 10/9/2024 -Acceptance.** Weber addressed the Board. Kley DeJong addressed the Board representing the Orange City Council. Board discussion occurred. On a motion by Corbin and second by Giovannetti, to approve the Acceptance. Approved, 8-0.
10. **24FC:0092 (Aubrey Burress - Both- Pleasant Grove township) 10/21/2024 -Informal Resolution.** Aubrey Burress addressed the Board. Board discussion occurred. On a motion by Lucas and second by Martz, to approve the Informal Resolution Report. Approved, 8-0.
11. **24FC:0094 (Ben Lynch - Both- Des Moines City Council) 10/24/2024 -Probable Cause.** Board discussion occurred. On a motion by Martz and second by Corbin, to approve the Probable Cause Report and dismiss. Approved, 8-0.
12. **24FC:0097 (Tyler Patterson - Both- Clarke County Hospital, Unity Point Affiliate) 10/27/2024 - Probable Cause.** Tyler Patterson addressed the Board. Brian Evans addressed the Board on behalf of the Clarke County Hospital. Board discussion occurred. On a motion by X and second by X, to approve the Probable Cause Report and dismiss. Approved, 8-0.
13. **24FC:0106 (Sheryl Pilkington - Chapter 22- City of Fairfield, ia) 10/29/2024 -Probable Cause.** Board discussion occurred. On a motion by Lucas and second by Corbin, to approve the Probable Cause Report and dismiss. Approved, 8-0.

**Matters Withdrawn, No Action Necessary** – Eckley updated the Board on the following cases that were withdrawn by the Complainant:

1. 24FC:0082 (Robin Delaney - Chapter 21- Des Moines County Board of Supervisors) 9/25/2024 - Withdrawn
2. 24FC:0085 (Gregory Mangold - Chapter 21- Des Moines County Board of Supervisors) 9/27/2024 - Withdrawn
3. 24FC:0088 (Randy Evans - Chapter 21- Des Moines County Board of Supervisors) 10/5/2024 - Withdrawn
4. 24FC:0121 (Presten Smith - Chapter 22- Freedom Of Information Act - Request: 24-3345) 11/30/2024 -Withdrawn

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

1. 24FC:0052 (Erik Johnson - Chapter 22- Delaware Township) 6/6/2024 - Informal Resolution Process
2. 24FC:0068 (Drake Riddle - Chapter 21- Page County Board of Supervisors and their Clerk) 8/8/2024 - Board Acceptance of IR
3. 24FC:0077 (Kyle Ocker - Chapter 22- Mahaska County Sheriff's Office) 9/9/2024 - Informal Resolution Process
4. 24FC:0089 (Curtis Wagler - Chapter 22- Henry County Sheriff's Office) 10/8/2024 - Information Gathering
5. 24FC:0093 (Timothy Hansen - Chapter 22- Franklin County Sheriff's Office) 10/24/2024 - Information Gathering
6. 24FC:0096 (Rachel Dolley - Chapter 21- Commission of Wapello County Veterans Affairs) 10/28/2024 - Information Gathering
7. 24FC:0101 (Erin Sommers - Chapter 21- City of Pocahontas) 10/29/2024 - Information Gathering
8. 24FC:0104 (Matthew Rollinger - Chapter 22- Linn Mar Community School District) 10/31/2024 - Information Gathering
9. 24FC:0110 (Keegan Jarvis - Chapter 21- City of Swan IA) 11/6/2024 - Information Gathering
10. 24FC:0112 (Keegan Jarvis - Chapter 21- City of swan iowa) 11/8/2024 - Acknowledgement of Complaint
11. 24FC:0113 (Geraldyn Jones - Chapter 21- Linn-Mar Board of Directors) 11/12/2024 - Information Gathering
12. 24FC:0122 (Justin Scott - Chapter 21- ) 12/5/2024 - Complaint Open
13. 24FC:0126 (Keegan Jarvis - Open Meetings Law- Swan City council) 12/9/2024 - New / Complaint Information Reviewed

### **Committee Reports -**

1. **Training** – Lee addressed the Board and indicated there are no new updates regarding training.
2. **Legislative** – Eckley addressed the Board and indicated three bills have been submitted to LSA for drafting. Two bills have been returned to IPIB.
3. **Rules** – Murphy addressed the Board and stated a draft of the rules would be submitted to Board members for review. A final draft will be reviewed by the Board at the January meeting.

## **Office status report –**

- 1. Office Update** – Eckley provided an update. Eckley reviewed data regarding pilot project for review of IPIB complaints.
  - a. Deliberation and potential action on Facebook pages review/advice.** Eckley provided an overview of recent issues related to Facebook. Board discussion occurred. The Board directed IPIB staff to outreach to other government agencies and associations and to work towards development of an advisory opinion.
- 2. Financial/Budget Update (FY25)** – Eckley provided an update regarding financials for FY 2025.
- 3. Presentations/Trainings** – Eckley provided an overview of upcoming trainings.
  - a.** Tama County
  - b.** ISAC New County Officers
  - c.** State Library Webinar
- 4. District Court Update** - Eckley provided an updated regarding cases being heard in district court, appellate court, and the Supreme Court.

The next meeting of the IPIB will be held on January 16, 2025, at 1:00 p.m.

On a motion by McCrea and second by Martz, the meeting was adjourned.



## The Iowa Public Information Board

In re the Matter of:	Case Number: 24FC:0126
Keegan Jarvis, Complainant	Dismissal Order
And Concerning:	
Swan City, Respondent	

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

On December 9, 2024, Keegan Jarvis filed formal complaint 24FC:0126, alleging the Swan City Council (City) violated Iowa Code Chapter 21.

### Facts

Swan is a small city in Marion County, Iowa, which is represented by a three-person city council.

In November 2024, the complainant, Keegan Jarvis, filed two formal complaints against the City, alleging violations of Chapter 21. These complaints, 24FC:0110 and 24FC:0112, were accepted after facial review for further consideration by the Iowa Public Information Board.

On December 9, 2024, the City held its monthly council meeting. During this meeting, the council voted to go into closed session to discuss imminent litigation, including both a pending civil case between Jarvis and the City and the two aforementioned IPIB complaints. Jarvis alleges that the City also specifically discussed the amount of fees they had been billed and “what [Jarvis] was doing outside the window,” possibly using derogatory language.

The complaint acknowledges that the City used proper procedure to move into closed session, but Jarvis asserts the City went beyond its proper purpose for closed session by discussing the matters before IPIB, questioning whether formal complaints could be treated as “imminent litigation” within the scope of Iowa Code § 21.5(c). The City’s retained attorney, who is apparently representing the City in all three matters, was present during the closed session.

## Applicable Law

“1. 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:

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

Iowa Code § 23.6(4) grants IPIB the authority to “[r]eceive complaints alleging violations of chapter 21 or 22, seek resolution of such complaints through informal assistance, formally investigate such complaints, decide after such an investigation whether there is probable cause to believe a violation of chapter 21 or 22 has occurred, and if probable cause has been found prosecute the respondent before the board in a contested case proceeded conducted according to the provisions of chapter 17A.”

## Analysis

Because counsel was present and the complaint does not allege improper procedure to move into closed session, the only potential issue presented by this complaint is whether a formal complaint filed with the Iowa Public Information Board, as an administrative agency, qualifies as “pending litigation” for the purposes of Iowa Code § 21.5(1)(c).

In the past, IPIB has interpreted “litigation” as the word is used in Chapters 21 and 22 to include matters formally presented to administrative agencies, rather than just the courts. *See e.g.* 22FC:0006, Tad McDowell/Mills County Assessor (finding the Iowa Code § 22.7(4) exception for attorney work product “related to litigation or claim[s] made by or against a public body” would include materials prepared for an appeal before the Property Assessment Appeal Board). The second half of Iowa Code § 21.5(1)(c) provides the standard for closing a session to discuss litigation strategy, specifying that it is only permitted where “disclosure would be likely to prejudice or disadvantage the position of the governmental body in that litigation.” To adopt a restrictive interpretation of “litigation” which excludes matters pending before administrative agencies would be inconsistent with the legislative intent of protecting attorney-client discussions for government bodies facing a threat of legal action. Discussion of legal fees would also be included within this purpose.

Because a government body which is party to an active IPIB complaint is in “litigation” for the purposes of Iowa Code § 21.5(1)(c), and because the City otherwise followed proper procedures for entering a closed session, the facts alleged in this formal complaint do not present a potential violation of Chapter 21.

**Conclusion**

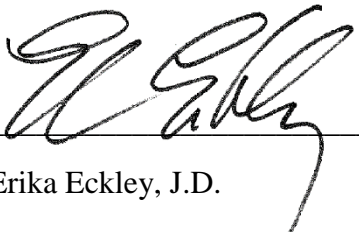
Iowa Code § 23.8 requires that a complaint be within the IPIB’s jurisdiction, appear legally sufficient, and have merit before the IPIB accepts a complaint. Following a review of the allegations on their face, it is found that this complaint does not meet those requirements.

The City had a proper purpose for closed session, meaning there was no facial violation from the facts alleged in the complaint.

IT IS SO ORDERED: Formal complaint 24FC:0126 is dismissed as it is legally insufficient pursuant to Iowa Code § 23.8(2) and Iowa Administrative Rule 497-2.1(2)(b).

Pursuant to Iowa Administrative Rule 497-2.1(3), the IPIB may “delegate acceptance or dismissal of a complaint to the executive director, subject to review by the board.” The IPIB will review this Order on January 16, 2025. 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 January 9, 2025, to:

Keegan Jarvis, Complainant

Swan City, Respondent

# The Iowa Public Information Board

In re the Matter of:  Charlene Hoover, Complainant  And Concerning:  Decatur County Board of Supervisors, Respondent	Case Number: 24FC:0132  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 December 31, 2024, Charlene Hoover filed formal complaint 24FC:0132, alleging the Decatur County Board of Supervisors (Board) violated Iowa Code Chapter 21.

## Facts

Decatur County is represented by a three-member Board of Supervisors, which holds in-person meetings every Monday, beginning at 8:00am. The Board has recently been experimenting with Zoom as a platform to livestream their meetings online.

On December 30, 2024, the Board sent out a Zoom link to their members and county department heads. The link was not sent to the general public, as it was apparently intended to be a test run. The agenda provided the meeting would be held at the “Decatur County Courthouse Board Room,” though the header also contained the phrase “All meetings livestreamed.” This phrase did not appear in other December meeting agendas, nor has it appeared in the two subsequent agendas posted between the filing of the complaint and the drafting of this order. No link was included for the livestream in the agenda. The complainant, Charlene Hoover, was a former member of the Decatur County government who attended the meeting using the Zoom link.

According to the complaint, the Board did not set up a camera for the Zoom livestream, meaning it was audio-only. At 8:20am, twenty minutes into the meeting, the audio cut out. The audio problem was never addressed, but the Board continued its meeting until adjournment at 9:15am.

On December 31, 2024, Hoover filed formal complaint 24FC:0132, alleging the Board violated Chapter 21 by failing to reinstate the connection for online attendees.

### **Applicable Law**

“‘*Open session*’ means a meeting to which all members of the public have access.” Iowa Code § 21.2(3). “Except as provided in section 21.5, all actions and discussions at meetings of governmental bodies, whether formal or informal, shall be conducted and executed in open session.” Iowa Code § 21.3(1).

“A governmental body shall provide for hybrid meetings, teleconference participation, virtual meetings, remote participation, and other hybrid options for the members of the governmental body to participate in official meetings. A governmental body conducting a meeting pursuant to this subsection shall comply with all of the following:

a. The governmental body provides public access to the conversation of the meeting to the extent reasonably possible.” Iowa Code § 21.8(1)(a).

### **Analysis**

Iowa Code § 21.3(1) requires governmental bodies to hold their meetings in open session, except where any of a limited number of justifications for closed session listed in Iowa Code § 21.5 apply. Open session means “all members of the public” must be given access to the meeting, but Chapter 21 does not provide any specific requirements on how this access may be provided. Iowa Code § 21.2(3); 24AO:0006, *Chapter 21 – Recent Law Changes*. When a governmental body conducts a virtual or hybrid meeting, the Code provides the body must “provide[] public access to the conversation of the meeting to the extent reasonably possible.” Iowa Code § 21.8(1)(a).

In the context of an entirely virtual meeting, IPIB interprets that the public “should be given notice of the electronic or telephonic location in which the public can watch and/or participate in the meeting.” 24AO:0006, *Chapter 21 – Recent Law Changes*. However, “public access” does not require a virtual option, and access to an in-person meeting location will suffice even where an electronic or telephonic alternative is available to members of the governmental body.

In this case, the basis for the alleged violation is that the Board of Supervisors failed to restore the audio feed for a “test run” livestream of an otherwise in-person meeting. As far as the complaint alleges, the Zoom link was never presented to the public as an alternative means of accessing the meeting, even if the Board was considering using Zoom for this purpose in the future. The complaint does not suggest that the public was restricted from accessing the Courthouse Board Room, which was the location provided to the public. Under these circumstances, there is no facial violation, as the Board properly provided for public access to their open session.

## Conclusion

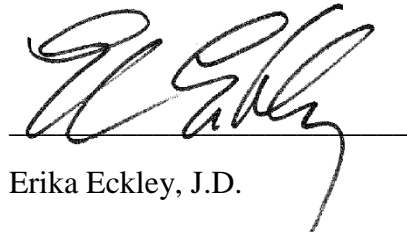
Iowa Code § 23.8 requires a complaint be within the IPIB’s jurisdiction, appear legally sufficient, and have merit before the IPIB accepts a complaint. Following a review of the allegations on their face, it is found that this complaint does not meet those requirements.

Because the Board meeting was readily accessible to the public at the in-person location named in the agenda, the loss of audio in the “test run” livestream shared with county department heads did not constitute a violation of Chapter 21.

IT IS SO ORDERED: Formal complaint 24FC:0132 is dismissed as legally insufficient pursuant to Iowa Code § 23.8(2) and Iowa Administrative Rule 497-2.1(2)(b).

Pursuant to Iowa Administrative Rule 497-2.1(3), the IPIB may “delegate acceptance or dismissal of a complaint to the executive director, subject to review by the board.” The IPIB will review this Order on January 16, 2025. 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 January 9, 2025, to:

Charlene Hoover, Complainant

Decatur County Board of Supervisors, Respondent

IPIB Case Number	Contact Name	Name of Entity Involved	Complaint Type	Description	Board Meeting Consent
24FC:0131	Jordan Johnson	City of Ankeny	Chapter 22	See attached email. Summary: Complainant made a public records request with the City of Ankeny for a police report filed against his family. The City provided the report, but certain personal information about the reporter was redacted. Complainant seeks the reporter's email and address details, which were originally withheld.	Accept



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Executive Director  
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**Advisory Opinion 24AO:0014**

**DATE: January 14, 2025**

**SUBJECT: Is a government body required to produce bodycam video and lifeguard statements in response to a public record request pursuant to Chapter 22?**

Dustin T. Zeschke  
Swisher & Cohrt, P.L.C.  
528 W. 4th Street  
PO Box 1200  
Waterloo, IA 50704-1200

Mr. Zeschke,

This Advisory Opinion is written in response to your request dated December 11, 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 confidentiality of bodycam videos and lifeguard statements contained within a peace officer investigative report. Advisory opinions may be adopted by IPIB 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.” 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 an advisory opinion, if followed, constitutes a defense to a subsequent complaint based on the same facts and circumstances.

**QUESTION POSED:**

Is a government body required to produce bodycam video and lifeguard statements in response to a public record request pursuant to Chapter 22?

**OPINION:**

This question arises from a public records request to a City for portions of a peace officer investigative report (“Report”). The Report involves an investigation into a tragic incident at a public swimming pool and the resulting death of a minor child. The Report has been closed and no charges were pursued. The Report includes bodycam video (“Video”) and witness statements (“Statements”) from lifeguards.

The specific questions raised are as follows:

**Board Members**

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



- Is the City required to release the Video as public record?
- If the Video is released, can it be redacted and can the costs associated with redaction, including blurring software, be included as part of the overall costs for production?
- Is the City required to release Statements as public record, and if so, can the Statements be redacted?

**Is the City required to release the Video as public record?**

- 1. Iowa Code § 22.7 expresses clear intent to establish confidentiality for specific types of public records, including peace officer investigative reports and medical records.***

Iowa Code § 22.7 creates confidentiality for certain types of public records: “[T]he following public records shall be kept confidential unless otherwise ordered by a court, by the lawful custodian of the records, or by another person duly authorized to release such information:” It is clear the intent of Iowa Code § 22.7 is to allow specific types of public records to remain confidential due to the unique circumstances and sensitive information contained within.

Peace officer investigative reports (Iowa Code § 22.7(5)) and medical records (Iowa Code § 22.7(2)) are among the exceptions explicitly identified. Both provisions are applicable to the Video that is the subject of this Advisory Opinion. Each provision is applied individually below.

***A. Peace Officers’ Investigative Reports - Iowa Code § 22.7(5)***

***A.1. Definition of Peace Officer Investigative Reports***

The analysis begins with the definition of a peace officer investigative report. The Iowa Public Information Board interprets peace officer investigative reports to include all of the information gathered by officers as part of an investigation into a crime or incident. (23AO:0003, *Confidentiality of Police Investigative Files*) This position has been further confirmed by Iowa courts. For example, in *Klein v. Iowa Public Information Board*, the Iowa Public Information Board determined the 911 call, body camera video, and dash camera video were part of the peace officers’ investigative reports and thus were confidential records under § 22.7(5). This position was upheld by the court. 968 N.W.2d 220, 222 (Iowa 2021). Additional cases confirming the confidentiality of supplemental information becoming part of the peace officer investigative report include lab reports taken in connection with a criminal investigation (*AFSCME v. Iowa Dep’t of Pub. Safety*) and video recording, use of force reports, and pursuit reports related to an officer's encounter with an individual in relation to an arrest (*Neer v. State*). 434 N.W.2d 401, 403 (Iowa 1988); 798 N.W.2d 349, 349 (Iowa Ct. App. 2011)

Under the facts of this case, the Video is part of the Report and is subject to the same protections afforded to the Report pursuant to Iowa Code § 22.7(5). This is not the end of the analysis.

The fact that a peace officer investigative report exists does not make it confidential. Rather, a balancing test must be applied to determine whether the Videos, as part of the Report, should remain confidential. The next question is whether the facts, as outlined in this Advisory Opinion, allow for the qualified privilege of confidentiality to extend to the Videos as part of the Report.

## ***A.2. Qualified Privilege of Confidentiality – Balancing Test***

The confidentiality afforded to peace officer investigative reports under 22.7(5) is a qualified, rather than categorical, privilege. *Mitchell v. City of Cedar Rapids*, 926 N.W.2d 222, 232–234 (Iowa 2019). This means a public record claimed to be confidential on the basis that it is part of a peace officer investigative report is not singularly sufficient to maintain confidentiality. *Id.*

In addition to demonstrating the public record is part of a peace officer investigative report, “[a]n official claiming the privilege must satisfy a three-part test: (1) a public officer is being examined, (2) the communication [to the officer] was made in official confidence, and (3) the public interest would suffer by disclosure.” *Mitchell v. City of Cedar Rapids*, 926 N.W.2d 222, 232 (Iowa 2019) (citing *Hawk Eye v. Jackson*, 521 N.W.2d 750, 752 (Iowa 1994)).

The analysis outlined by *Mitchell*, as applied to the facts of this Advisory Opinion, will focus on balancing public interests as it relates to disclosure. Before applying the balancing test, it should be noted that the first and second elements of *Mitchell* are satisfied. Without knowing the full details of the Report, for the opinion, it will be presumed the facts meet the first two elements of the *Mitchell* test.

Part three of the *Mitchell* test requires the weighing of the public interest in disclosure against the potential harm such disclosure may cause. Factors weighing in favor of confidentiality include the use of confidential informants; the presence of named, but innocent suspects; and the presence of “hearsay, rumor, or libelous comment” in the investigation materials. *Id.* at 234. Additionally, the ongoing nature of an investigation weighs in favor of confidentiality to ensure the overall investigation is not jeopardized before its conclusion. *Id.* When the investigation involves matters of public interest and debate, such as when a police shooting or cover-up of improper police behavior are involved, such factors weigh in favor of disclosure.

The facts presented in this case indicate the Video shows the minor child receiving medical care and CPR. While providing medical care, the minor child’s partially unclothed body can be viewed. In addition, the Video follows the minor child into the ambulance and hospital. Under the facts presented, none of the factors weighing in favor of disclosure are present. There is an absence of matters of public interest such as police cover-up or officer involved shootings that would weigh in favor of disclosure. More importantly, there is potential harm attached to the release of the Video due to significant privacy interests involving the minor child and the minor child’s family. There is also potential harm to the general public in releasing graphic and sensitive images.

There is no public interest that could benefit from disclosure of the Video as part of the Report. The balancing test weighs in favor of confidentiality based on the facts of this Advisory Opinion.

## ***B. Medical Records - Iowa Code § 22.7(2)***

Iowa Code § 22.7(2) provides confidentiality for records of various types of medical treatment. The law reads the following shall be maintained as confidential:

*Hospital records, medical records, and professional counselor records of the condition, diagnosis, care, or treatment of a patient or former patient or a counselee or former counselee, including outpatient.* Iowa Code § 22.7(2).

The medical care and treatment of a patient may also trigger the protections of the federal Health Insurance Portability and Accountability Act (HIPAA). 45 C.F.R. §§ 160, 162, and 164.

Based on the information presented for this Advisory Opinion, the Video includes footage of medical treatment provided to the minor child. The Video recorded transport in the ambulance while the minor child received treatment from emergency responders. The Video also recorded the minor child receiving medical treatment at the hospital. The Video clearly depicts the medical care and treatment of a patient and should remain confidential under Iowa Code § 22.7(2) when requested as public record. This is consistent with prior cases determined by the IPIB. See, e.g. *21FC:0104; Cherie Pichone v. University of Iowa Police Department*.

**If the Video is released, can it be redacted and can the costs associated with redaction, including blurring software, be included as part of the overall costs for production?**

The second portion of the City's question involves the ability to redact portions of the Video and to charge costs of any redaction. As indicated in the analysis above, the City can withhold the Video as part of the Report. As lawful custodian, the City may decide to release portions or all of the Video with redactions. See Iowa Code § 22.7: *The following public records shall be kept confidential, unless otherwise ordered by a court, **by the lawful custodian of the records**, or by another person duly authorized to release such information.* (Emphasis added.)

If the City determines the Videos should be released with redaction, the law allows the City to charge redaction costs.

Iowa Code § 22.3(2) states as follows:

*The lawful custodian may charge a reasonable fee for the services of the lawful custodian or the custodian's authorized designee in supervising the examination and copying of the records....Actual costs shall not include charges for ordinary expenses or costs such as employment benefits, depreciation, maintenance, electricity, or insurance associated with the administration of the office of the lawful custodian.*

The provision goes on to state:

*Costs for legal services should only be utilized for the redaction or review of legally protected confidential information.*

Another relevant portion of Chapter 22 involves data processing software. Iowa Code § 22.3A(2)(d):

*An electronic public record shall be made available in the format in which it is readily accessible to the government body if that format is useable with commonly available data processing or database management software. The government body may make a public record available in a*

*specific format requested by a person that is different from that in which the public record is readily accessible to the government body and may charge the reasonable costs of any required processing, programming, or other work required to produce the public record in the specific format in addition to any other costs allowed under this chapter.*

These provisions, in whole, demonstrate that Iowa Code Chapter 22 allows government bodies to redact public records as necessary for disclosure and to assess the costs for redaction.

This position was further affirmed in the recent Supreme Court case, *Teig v. Chavez*, 8 N.W.3d 484 (Iowa 2024). The Court found that the legislative intent of Iowa Code Chapter 22 was to allow for recovery of expenses for production of public records beyond just copying costs. The Court states, “Thus, for requests taking more time to fulfill, the amendments to section 22.3(1) clarify that in addition to copying costs, custodians can charge for other expenses incurred in producing the records, as long as they are “reasonable and communicated to the requester upon receipt of the request.” *Id.* at 496-97. The Court goes on to state, “The general assembly’s continued use of the same word “expenses” in relation to recovery of costs incurred in fulfilling a request for public records reveals that it considered such expenses to not be limited to copying costs, as *Teig* argues.” *Id.*

Iowa law supports the ability of the City to charge for redactions and blurring of public records, whether it be the purchase and use of blurring software or blurring services provided by a vendor.

**Is the City required to release Statements as public record, and if so, can the Statements be redacted?**

The final question raised by the City relates to Statements obtained during the peace officer investigation. The Statements are written on a report required pursuant to Iowa Administrative Code:

“Reports. Swimming pool and spa operators shall report to the local inspection agency, within one business day of occurrence, all deaths; near drowning incidents; head, neck, and spinal cord injuries; and any injury which renders a person unconscious or requires immediate medical attention.” 641 IAC 15.4(7).

The report is required by another government entity. The question is whether the City is the lawful custodian of the Statements or whether the government entity requiring and receiving the Statements is the lawful custodian.

***A. Is the City the lawful custodian of the Statements?***

The determination of which government body is the lawful custodian of the public record hinges on the specific facts of the case. If the record is required by, created for, and filed with a specific government entity, the circumstances indicate the specific government body requiring the Statements is the lawful custodian. This means any requests for Statements as public record should be directed to the lawful custodian.

The sole use of a designated government body’s form being used to capture these Statements does not by itself make the Statements the custody of another government body. If the form was used solely for the

purposes of capturing the Statements for the peace officer investigative report and nothing was ever filed with another government body, then the City would be the lawful custodian of the Statements and an analysis must be applied to determine whether the City should release the Statements.

Applying the same analysis applied to the Video, the City should to review the full content of the Statements and determine: 1. Whether the balancing test favors disclosure or retention of the public record under the *Mitchell* test; and 2. Whether the Statements contain any medical information that could be deemed confidential pursuant to Iowa Code § 22.7(2).

If the City determines the Statements must or may be released, the City may redact any portions containing confidential information. The City may assess reasonable costs for redaction.

**Reminder regarding disclosure.**

The City is reminded that Iowa Code § 22.7(5) does mandate that portions of the peace officer investigative report should be released, even if the report is deemed confidential:

*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. Specific portions of electronic mail and telephone billing records may only be kept confidential under this subsection if the length of time prescribed for commencement of prosecution or the finding of an indictment or information under the statute of limitations applicable to the crime that is under investigation has not expired. Iowa Code § 22.7(5).*

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

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

**SUBMITTED BY:**



Kimberly Murphy, J.D.  
Deputy Director  
Iowa Public Information Board

**ISSUED ON:**

January 16, 2025

*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:  Iowa Public Information Board, Petitioner  And Concerning:  Union County Emergency Management Agency, Respondent	Case Number: 24FC:0013  <b>Informal Settlement Report – Iowa Code § 17A.10</b>
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On February 2, 2024, Bonnie Castillo filed formal complaint 24FC:0013, alleging that the Union County Emergency Management Agency (UCEMA) violated Iowa Code Chapters 21 and 22. The Iowa Public Information Board (IPIB) accepted this Complaint, which was later presented to the IPIB as a Probable Cause Order. On December 19, 2024, the IPIB voted to accept the Probable Cause Order and proceed to a contested case.

## Applicable Law

Iowa law encourages the settlement of contested cases. “Unless precluded by statute, informal settlements of controversies that may culminate in contested case proceedings according to the provisions of this chapter are encouraged.” Iowa Code § 17A.10(1). This Informal Settlement is agreed to by the UCEMA in lieu of a contested case proceeding. IPIB will move to a contested case proceeding if the terms of this Informal Settlement are not met by February 7, 2025, and reserves the right to advance to a contested case.

## Informal Settlement

Pursuant to Iowa Code § 17A.10(1), the IPIB presented the following Informal Settlement terms as resolution of this matter and in lieu of a contested case:

The UCEMA will complete the following terms by February 7, 2025. If all terms are not met to the satisfaction of IPIB by February 7, 2025, IPIB will proceed to a contested case proceeding.

1. The UCEMA will agree to the full terms of this Informal Settlement at a public meeting of the UCEMA to be held on January 15, 2025. The full Informal Settlement will be read into the record at the public meeting and will be formally approved by the UCEMA. The following statement will be read at the public meeting of the UCEMA and will be included in the minutes: “The UCEMA agrees to the terms of the Informal Settlement and further agrees to fulfill all terms of the Informal Settlement by February 7, 2025. Failure to complete all terms of the Informal Settlement by February 7, 2025, will result in a contested case proceeding before the Iowa Public Information Board.” The minutes will be

published, at a minimum, on the UCEMA website. The minutes will also be provided to IPIB. If the minutes cannot be formally approved by the February 7, 2025 deadline, the draft minutes will be utilized.

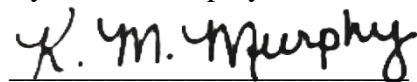
2. The UCEMA will formally acknowledge that a violation of Iowa Code Chapter 21 occurred at a meeting of the UCEMA on January 24, 2024, when a de facto closed session was held. This formal acknowledgement will occur in a public meeting of the UCEMA to be held on January 15, 2025. The full formal acknowledgement will be included in the minutes, which will be published, at a minimum, on the UCEMA website. The minutes will also be provided to IPIB. If the minutes cannot be formally approved by the February 7, 2025 deadline, the draft minutes will be utilized.
3. The UCEMA will develop policies and procedures to ensure compliance with Iowa Code chapters 21 and 22. Policies and procedures will address the following elements: Notice of meetings, setting agendas, minutes, response to public records requests, closed sessions, and maintenance of existing policies. All policies and procedures reviewed and developed for this Informal Settlement will be provided to IPIB and will be formally reviewed and approved in a public meeting of the UCEMA. All policies and procedures will be included in the minutes, which will be published, at a minimum, on the UCEMA website. The minutes will also be provided to IPIB. If the minutes cannot be formally approved by the February 7, 2025 deadline, the draft minutes will be utilized.
4. The UCEMA understands that this Informal Settlement is a recommendation to the IPIB by IPIB staff. The IPIB may reject this Informal Settlement and advance to a contested case proceeding. The IPIB will review the Informal Settlement on January 16, 2025.

This Informal Settlement has been reviewed and informally agreed to by the UCEMA. If the UCEMA rejects this Informal Settlement at the UCEMA meeting on January 15, 2025, this complaint will move to a contested case proceeding.

This document was executed by the Union County Attorney on January 10, 2025. The UCEMA indicates intent to formally approve the Informal Settlement at their meeting on January 15, 2025.

Based on Iowa Code § 17A.10(1), IPIB staff recommend that IPIB approve the Informal Settlement Report and adopt the terms of the Informal Settlement.

By the IPIB Deputy Director,



Kimberly M. Murphy, J.D.

#### CERTIFICATE OF MAILING

This document was sent on January 10, 2025, to:

Union County Emergency Management Agency  
Union County Attorney's Office



# The Iowa Public Information Board

In re the Matter of:  Drake Riddle, Complainant  And Concerning:  Page County Board of Supervisors, Respondent	Case Number: 24FC:0068  <b>Final Report</b>
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Complaint 24FC:0068 was filed on August 8, 2024, and accepted by the IPIB on October 17, 2024.

The Page County Board of Supervisors (BOS) held a meeting on July 11, 2024. During the meeting, the BOS approved a commercial liquor license. Two of the supervisors voted yes to approve the liquor license. One of the supervisors abstained from the vote. The minutes inaccurately recorded the supervisor as voting no instead of abstaining and reflected the BOS unanimously moved the vote.

The County Auditor’s Office, as clerk to the BOS, corrected the minutes and posted the corrected minutes on the County website. Although the minutes were corrected and reposted, the amended minutes were not reviewed or approved by the BOS, which is not appropriate procedure for amending the approved minutes.

Upon review of this case, IPIB staff identified an additional issue of concern: The BOS produces two sets of minutes for each meeting. It is unclear which set of minutes are the official minutes representing the actions of the BOS. Based on these identified issues, IPIB accepted the complaint.

### **Applicable Law**

Iowa Code § 21.3(2) requires governmental bodies keep minutes of meetings that show the results of each vote taken and information sufficient to indicate the vote of each member.

### **Procedure**

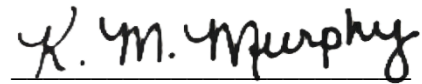
On October 17, 2024, the IPIB accepted the complaint. Upon acceptance, the parties worked toward an informal resolution agreement.

Riddle approved the Informal Resolution on November 13, 2024. The BOS approved the Informal Resolution on November 14, 2024. In response to the Informal Resolution, the following actions were taken:

- IPIB staff traveled to Page County and conducted training during an open session regarding Iowa Code Chapters 21 and 22.
- The BOS created and adopted a procedure to govern the process for developing and approving minutes.
- The BOS designated a single and official set of minutes approved by the BOS and updated minutes filings accordingly.

All terms of the Informal Resolution have been met. IPIB staff recommends this Final Report be adopted and the complaint be dismissed as resolved.

By the IPIB Deputy Director,



Kimberly M. Murphy, J.D.

#### CERTIFICATE OF MAILING

This document was sent on January 9, 2024, to:

Drake Riddle, Complainant  
Judy Clark, Page County Board of Supervisors

## The Iowa Public Information Board

In re the Matter of:	Case Number: 24FC:0083
Tim Ferguson, Complainant	Dismissal Order
And Concerning:	
Scott County, Respondent	

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

On September 26, 2024, Tim Ferguson filed formal complaint 24FC:0083, alleging Scott County (County) violated Iowa Code Chapter 22.

### Facts

This complaint arises in the context of an ongoing dispute between Ferguson and the County. On August 16, 2024, Ferguson filed the first of a series of records requests with the County. The initial request included several public employees and a private law firm which provided its services to the county, a specified date range, and a list of responsive topics. In subsequent emails, Ferguson expanded the request to include additional persons, records of payments made to the private law firm, records relating to the hiring of particular government employees, a list of persons involved in reviewing his records request, a list of donations made to the County, and other similar requests.

The County released records in response to some of these requests and asserted confidentiality or a lack of responsive records for others. On September 26, 2024, Ferguson filed formal complaint 24FC:0083, alleging the County failed to properly respond to the records request.

The HR Director for the County responded to the complaint with an enumerated list of records requests made and the County's responses to each, including attachments with records disclosed. The County sought clarification on which requests were in dispute due to the numerous requests. IPIB staff worked with Ferguson to prepare a concise list of outstanding records requests which Ferguson believed the County had failed to properly address.

On October 23, 2024, Ferguson provided a list of two outstanding requests: 1) Emails exchanged between a specified assistant county attorney and an attorney with a private law firm that provides

legal services to the County and 2) Phone call logs between several County individuals and others involved in Ferguson's dispute, including the two attorneys named in the first request.

On November 18, 2024, after additional communication between IPIB and the parties, the County stated there were no additional emails responsive to the first request. A 41-page call analytics report was released in this same response, which included phone calls tracked by the county for the listed numbers between April 18, 2024 and June 3, 2024, with responsive lines highlighted.

At this point, a dispute arose between the parties as to whether there might be additional responsive records stored on or involving the assistant county attorney's private cell phone, which he had previously used for work related business, as he did not have a government-issued phone. In response, the County provided an affidavit signed by the attorney and attesting the only phone calls regarding Ferguson were placed from the attorney's work phone. The complaint appeared to be moving toward resolution.

On December 16, 2024, the County alerted IPIB and Ferguson that an additional email string was located. The string was located by the County following an IT search. (Previously, the County had relied on the assistant county attorney to review his records and provide any relevant materials.) The email was provided to IPIB and Ferguson. The County indicated that all email requests in the future would be handled by the IT department to avoid this issue. The discovery and disclosure by the County resulted in Ferguson believing that the County had not properly responded.

### **Applicable Law**

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

### **Analysis**

Despite the broad range of requests made in this case prior to the filing of formal complaint 24FC:0083, the parties agreed the scope of the case before IPIB was limited to the resolution of two specific requests. Following this agreement, the County affirmed there were no further responsive emails beyond what had already been provided. The County also released the requested phone call log. This meant the only remaining dispute between the parties was whether there were additional records present on the attorney's personal cell phone. In response to this final issue, the County provided a signed affidavit swearing, under penalty of perjury, that no such records existed. Absent evidence to the contrary, IPIB accepts the statements made in this affidavit are true.

Unfortunately, the County identified a missing email string only after all issues appeared resolved. This caused Ferguson to question the validity and truth of the County's prior responses. While this is a reasonable reaction, the facts show the County used due diligence to review available records one final time with a new method. This method resulted in identification of another email string

that was not previously disclosed. Upon discovery, the County immediately turned over the string to IPIB staff and Ferguson. The timing of the discovery of this email is unfortunate, but it does not erase the fact that the County has ultimately released all responsive records in its possession. Furthermore, the County has indicated that it will utilize IT searches in the future to identify emails requested via public records request.

IPIB staff finds the County could be more efficient in the review and production of public records, but also ultimately find the County did not violate Chapter 22.

### **Conclusion**

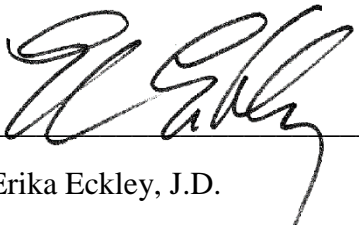
Iowa Code § 23.8 requires that a complaint be within the IPIB's jurisdiction, appear legally sufficient, and have merit before the IPIB accepts a complaint. Following a review of the allegations on their face, it is found that this complaint does not meet those requirements.

Ferguson argues that a violation has occurred due to the discovery of additional emails after the County indicated that all responsive documents were provided. While this is an unfortunate occurrence, IPIB staff finds that the County worked to address numerous and voluminous records requests from Ferguson, provided requested documents, and provided the missing emails upon discovery by IT.

IT IS SO ORDERED: Formal complaint 24FC:0083 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 December 19, 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 January 9, 2024, to:

Tim Ferguson, Complainant  
Scott County, Respondent

# The Iowa Public Information Board

In re the Matter of:	Case Number: 24FC:0089
Curtis Wagler et al., Complainants	Acceptance Order
And Concerning:	
Henry County Sheriff's Office, Respondent	

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

On October 9, 2024, Danny Cornell filed formal complaint 24FC:0089, alleging that the Henry County Sheriff's Office violated Iowa Code Chapter 22.

## Facts

On May 7, 2024, Cornell, legal counsel for the Waglers, submitted a records request for documents and communications relating to a particular deputy's placement on the county's Brady-Giglio list, along with a broad request for records relating to the county attorney's decision not to prosecute the Waglers in a dismissed criminal case. This request was filed with the Henry County Sheriff's Office on May 9, 2024, and the county attorney was separately notified. Both government bodies acknowledged the request.

The Sheriff acknowledged the request for the first time on May 20 after he returned to the office. On June 3, the Sheriff provided 1,000 pages of documents to the county attorney to review for confidentiality. On July 4, the sheriff hired a private law firm, seeking their assistance in responding to the records request, and the sheriff instructed the county attorney to cease his review, citing a possible conflict of interest.<sup>1</sup> According to the Sheriff's Office, a package containing the requested records was mailed on August 5, but it was never received by the Waglers. On August 12, the Sheriff's Office emailed the records it had physically mailed, which consisted of seven pages of records, with confidentiality asserted to withhold the remainder. This was 95 days after the request was made.

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<sup>1</sup> See 24AO:0010, *Clarification on the Definition of "Reasonable Delay" as It Pertains to the Period of Time for a Record's Custodian to Determine the Confidentiality of Records Addressed the Matter in Regards to a Separate Requestor*.

The five records disclosed included 1) a single-page letter from the deputy to the county attorney requesting records related to the Brady-Giglio list, 2) a single-sentence email to the county attorney directing him to the aforementioned letter as an attachment, 3) a single-page letter from the deputy to the sheriff, requesting an investigation to avoid placement on the Brady-Giglio list, 4) a two-page signed statement by the deputy concerning his decision to make the arrests, and 5) an email from the sheriff to the county attorney which consisted of a “law enforcement checklist” reporting on the deputy’s performance.

In the cover letter for the response, the sheriff asserted that all records responsive to the request were confidential, either because they were part of a police investigative file under Iowa Code § 22.7(5) or because they were correspondence between the Sheriff’s Office and the County Attorney’s Office, entitled to attorney-client privilege. The five documents listed above were included because the sheriff “partially waive[d]” confidentiality.

On October 9, 2024, Cornell filed formal complaint 24FC:0089 against the Henry County Sheriff’s Office, alleging undue delay and the failure to release certain public records which were improperly withheld as confidential.<sup>2</sup> After opening the complaint, an additional 107-page PDF was released, consisting of public records previously released to a local newspaper in response to a similar Chapter 22 request.

The Sheriff’s Office argues the delays were the product of an ongoing dispute with the county attorney regarding the same subject matter for which this request sought documents. It was because of this conflict the sheriff requested the county attorney not be involved in responding to the request, instead opting to retain private counsel.<sup>3</sup>

### **Applicable Law**

“The following public records shall be kept confidential, unless otherwise ordered by a court, by the lawful custodian of the records, or by another person duly authorized to release such information:

5. 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.” Iowa Code § 22.7(5).

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<sup>2</sup> The complaint also named the Henry County Board of Supervisors as a respondent, but IPIB dismissed the Board as a party on November 21, 2024, on the basis that the Sheriff’s Office had excluded the County Attorney from responding to the request and the Sheriff’s Office was therefore solely responsible for any violations alleged in the complaint.

<sup>3</sup> The ongoing internal, political dispute within the County regarding this matter is beyond the scope of IPIB’s jurisdiction.

“Good faith, reasonable delay by a lawful custodian in permitting the examination and copying of a government record is not a violation of this chapter if the purpose of the delay is any of the following:

c. To determine whether the government record in question is a public record, or confidential record.

d. To determine whether a confidential record should be available for inspection and copying to the person requesting the right to do so. A reasonable delay for this purpose shall not exceed twenty calendar days and ordinarily should not exceed ten business days.” Iowa Code § 22.8(4)(c), (d).

### **Analysis**

#### *I. The Sheriff’s Office’s Response to the Waglers’ Chapter 22 Request*

A minimum of 88 days elapsed between the time the complainants submitted their Chapter 22 request and the eventual release of five records, and it was 95 days before the complainants received the records. The parties dispute whether this constituted unreasonable delay.

In advisory opinion 24AO:0010, the IPIB addressed a closely related fact pattern, involving a parallel request made by a local newspaper with the Henry County Sheriff’s Office, which sought similar records during an overlapping period of time. 24AO:0010, *Clarification on the Definition of “Reasonable Delay.”* The delay in that case was approximately 60 days. *Id.* In the advisory opinion, IPIB discussed six factors identified by the Iowa Supreme Court in *Belin v. Reynolds* for determining whether a government body has impliedly refused to disclose records during reasonable delay, including 1) how promptly the respondent acknowledged the requests and follow-up inquiries, 2) whether the respondent assured the requester of their intent to provide the requested records, 3) whether the respondent explained why requested records weren’t immediately available, 4) whether the respondent produced records as they became available (“rolling production”), 5) whether the respondent updated the requester on efforts to obtain and produce records, and 6) whether the respondent provided information about when records could be expected. *Id.* (citing *Belin v. Reynolds*, 989 N.W.2d 166, 174 (Iowa 2023)). IPIB also wrote that the need to obtain outside representation due to an inter-governmental dispute could constitute a reasonable, good faith delay, but “informing the requester of the need to retain outside representation and that this is causing a delay is important in helping [to] determine whether the delay is reasonable.” *Id.*

In this case, the Sheriff acknowledged the request eleven days after the request was submitted. Before being removed from the review process, the county attorney provided two updates to the complainants on the status of the request. However, there were apparently no further assurances from the Sheriff’s Office between the initial correspondence on May 20 and the notice of mailing on August 6. The Sheriff’s Office never explained the reason for the delay, though the county



attorney indicated in early June that more time would be needed given the scope of the request. There was no rolling production of records and, no updates were given during the review process. The Sheriff's Office provided an estimate of two weeks on May 21, and the county attorney requested an additional week on their behalf on June 3, but no other estimates were given after this time. With regards to the sheriff's decision to obtain outside representation, 24AO:0010 indicated that this could justify a reasonable, good-faith delay, but the complainants were not informed of this until June 25, when the county attorney informed them.

In this case, there were a number of delays in responding to the request with each continuing to compound the delay. Few updates were provided as these delays arose. Ultimately, five documents were released in August, three months after the initial request. Although IPIB acknowledges extenuating circumstances in this instance contributed to a delayed response, this delay to produce a small number of documents could be found to be unreasonable.

## *II. Records Withheld by the Sheriff's Office as Confidential*

Turning to the substantive disclosure in this case, the Sheriff's Office asserted two grounds to claim confidentiality for all records requested. For the complainants' broad request for records relating to the decision to decline prosecution of the Waglers, the Sheriff's Office stated: "Section 22.7(5) provides an exception to FOIA production for the investigative files of law enforcement agencies. I do not waive that exception. Therefore, I have nothing to produce."

It is not clear the Sheriff's Office applied the correct standards for confidentiality. Iowa Code § 22.7(5) protects three categories of information from disclosure, including 1) police officers' investigative reports, 2) "privileged records or information specified in section 80G.2," and 3) "specific portions of law enforcement agencies' electronic mail and telephone billing records that are part of an ongoing investigation." See 23AO:0003, *Confidentiality of Police Investigative Files*. The portion of the exception covering investigative reports provides only a qualified, rather than categorical, privilege for police investigative report. *Mitchell v. City of Cedar Rapids*, 926 N.W.2d 222, 232–34 (Iowa 2019). In addition to showing a record is part of an investigative report, a governmental body asserting confidentiality under this exception must satisfy the *Hawk Eye* balancing test, which has three elements: "(1) a public officer is being examined, (2) the communication [to the officer] was made in official confidence, and (3) the public interest would suffer by disclosure."

The complainants' fourth request was broad, seeking "Any other documents associated with the subject matter outlined in the attached letter . . . regarding the declination of prosecution of Curtis Wagler, Lori, Wagler, and Owen Wagler and the actions taken by [the deputy] surrounding or otherwise related thereto." Reviewing the attached letter, it is unknown whether all records of the Sheriff's Office responsive to this request would count as part of the police investigative report. Even if they are, however, the *Hawk Eye* analysis should have been applied.

Similarly, the 107-page disclosure made to the local journal on a separate Chapter 22 request includes seemingly responsive records on the *Brady/Giglio* issue which were not created for this purpose but which the Sheriff's Office did not initially disclose to the complainants. This raises questions about whether the privilege exceptions were properly applied and whether all responsive documents have been provided. Upon review, IPIB may find that all required disclosures have now been made, but these facts warrant acceptance to ensure the proper standards of review are applied to the complainants' Chapter 22 request and the records requested to which they are entitled have been received.

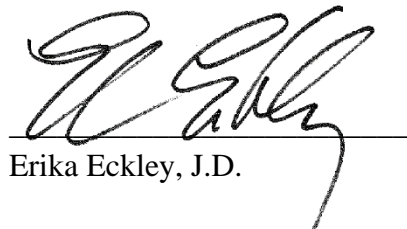
### Conclusion

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.

IT IS SO ORDERED: Formal complaint 24FC:0089 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 January 16, 2025. 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 January 10, 2025, to:

Curtis Wagler et al. & Danny Cornell, Complainants  
Henry County Sheriff's Office, Respondent

**The Iowa Public Information Board**

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In re the Matter of:  Erin Sommers, Complainant  And Concerning:  City of Pocahontas, Respondent	Case Number: 24FC:0101  Informal Resolution Report
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On October 28, 2024, Erin Sommers filed formal complaint 24FC:0101, alleging the City of Pocahontas (“City”) violated Iowa Code chapter 21.

The IPIB accepted this complaint at its meeting on November 21, 2024.

**Facts**

The City Council went into closed session at the end of its meeting on October 21, 2024. This closed session was not listed on the posted agenda, but came as a result of a staff report that was listed on the agenda. The purpose of the closed session was stated to be to address concerns with the clerk and City policies. Despite being informed a closed session was not permitted under the scenario, four members of the Council voted to enter closed session under Iowa Code § 21.5(1)(i). The clerk did not request the Council go into closed session.

**Applicable Law**

Iowa Code § 21.4 requires notice to the public of all tentative agenda items to be before the government body at the posted meeting. This would include providing notice of a potential closed session and the authority for the session prior to the meeting. “closed session topics must be disclosed on the agenda in advance to give the public an opportunity to assess the reason for a closed session, hold accountable the members who vote to close a session, and decide whether to await a vote as final action.” Iowa Attorney General, Sunshine Advisory, July 1, 2004, Closed-Session Agendas: Is an agenda required for a closed session?<sup>1</sup>

“When a governmental body includes a closed session item on the tentative agenda, the notice shall include a brief statement of the purpose of the closed session. It shall not be deemed

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<sup>1</sup> <https://www.iowaattorneygeneral.gov/about-us/sunshine-advisories/closed-session-agendas>

sufficient notice for the governmental body to only reference the statute by number and subparagraph without more information.” IAC 497-8.1(3).

A government body may hold a closed session “[t]o evaluate the professional competency of an individual whose appointment, hiring, performance, or discharge is being considered when necessary to prevent needless and irreparable injury to that individual’s reputation *and that individual requests a closed session.*” Iowa Code § 21.5(1)(i) (emphasis added).

### **Analysis**

There is no dispute the closed session on October 21, 2024, was not noticed on the agenda and was improperly held. The City has expressed a desire to remedy the error and take steps to prevent violations of Iowa Code chapters 21 and 22.

Pursuant to Iowa Code § 23.9, IPIB presents the following terms for an informal resolution of this matter:

1. This Informal Resolution will be formally approved at a City Council meeting of the City of Pocahontas. The City will provide a copy of this Informal Resolution with its meeting minutes and will provide IPIB staff with a copy of the minutes demonstrating approval.
2. The City will acknowledge in open meeting, the closed session on October 21, 2024, did not comply with the requirements for a closed session under Iowa Code chapter 21.
3. All Council members will complete training related to public meetings and records. City staff are highly encouraged to attend. This training will be arranged by the Council and conducted by IPIB or the Iowa League of Cities.
4. The City will develop a checklist and/or policy or procedure to address all procedural requirements for going into a closed session under Iowa Code § 21.5. This will be provided to IPIB staff.

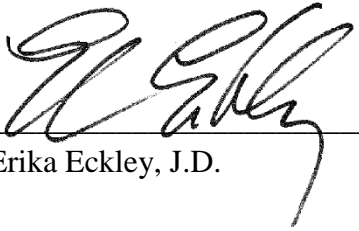
The terms of the Informal Resolution will be completed within 60 days of the date of approval of this Informal Resolution by all parties. Upon showing of proof of compliance, the IPIB will dismiss this complaint as successfully resolved.

Erin Summer approved the Informal Resolution on December 16, 2024.

The City approved the Informal Resolution on December 16, 2024.

The IPIB staff recommend the IPIB approve the Informal Resolution Report.

By the IPIB Executive Director



Erika Eckley, J.D.

CERTIFICATE OF MAILING

This document was sent on January 9, 2025, to:

Erin Summers  
Adam Humes, City of Pocahontas

# The Iowa Public Information Board

In re the Matter of:

Matthew Rollinger, Complainant

And Concerning:

Linn Mar Community School District,  
Respondent

Case Number: 24FC:0104

## Probable Cause Order

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

On October 31, 2024, IPIB received formal complaint 24FC:0104 from Matthew Rollinger, alleging the Linn Mar Community School District (District) violated Iowa Code chapter 22. The complaint was accepted via consent by IPIB on November 21, 2024.

### Facts

Rollinger alleges the District violated Iowa Code Chapter 22 by not providing requested records pursuant to a request on October 4, 2024. As the complaint progressed, Rollinger also indicated the District failed to retain public records and did not provide duplicate copies of records from others employees of the District.

On September 24, 2024, Rollinger requested public records from the District related to emails from two staff members on specific times in September. The District acknowledged Rollinger's request on September 25 and provided the records on October 3.

On October 4, Rollinger expanded his request and asked the District to provide emails and texts from identified staff and District Board members on specific dates related to Special Olympics transportation. On October 4, the District acknowledged the request. On October 10, the District provided an estimate of fees to Rollinger in the amount of \$160.62. This was paid by Rollinger on October 11.

Rollinger followed up with the District on October 18, 28, and 31. Each time, the District responded to Rollinger and indicated they were working to address his request. Rollinger filed a formal complaint with IPIB on October 31, 2024.

The District provided the requested public records on November 4. On the same date, Rollinger indicated records were missing. On November 5, the District indicated all records had been provided, with the exception of records withheld due to confidentiality requirements. The District indicated they would complete another review and follow up at the end of the week.

On November 8, the District followed up and provided two additional emails the District believed could be redacted, as opposed to withheld. The redacted emails were supplied to Rollinger.

Rollinger has obtained texts and emails from sources other than the District. These texts and emails include communications within the scope of his public records request. Rollinger believes the texts and emails obtained from other sources are evidence the District failed to provide all public records requested. The District maintains these additional communications were withheld due to confidentiality exemptions or part of a duplicative communication.

The District also states at least one employee deletes texts within a specific range of 24 hours to one week. Rollinger's position is this practice violates retention requirements mandated by Iowa Code Chapter 22.

### **Applicable Law**

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

### **Analysis**

IPIB staff reviewed two potential violations in regards to this complaint: failure to provide requested public records and failure to retain public records.

#### ***Failure to provide requested public records***

The information provided to IPIB demonstrates the District provided three releases of public records to Rollinger:

- On October 3, the District provided records in response to a request submitted on September 24.
- On November 4, the District provided records in response to a broader request submitted on October 4.

- The District offered to do a second review of the records released on November 4 to ensure all records were appropriately released. On November 8, the District released two emails because it was determined the emails could be redacted instead of withheld.
- The District explained to Rollinger that emails were withheld pursuant to Iowa Code section 22.7(1), Iowa Code section 22.7(8), and the Family Education Rights and Privacy Act (FERPA).

Rollinger asserts these records were not provided and demonstrate the District failed to provide all requested public records. In support of his position, Rollinger presents two pieces of evidence: 1. a series of texts between employees of the District; and 2. emails from a parent to the school.

1. The series of texts are included in the information provided by the District. The texts come from another employee's text messages, but are the same content. Rollinger argues all text messages should be included, even if duplicative. Iowa Code Chapter 22 does not mandate all duplicative versions of records must be provided. Rollinger obtained the content of the communication and a duplicate version would not provide any information not already received.
2. The emails provided by Rollinger are from a parent to the District. Because these records are from a parent, and therefore can disclose information regarding a student, these records remain confidential pursuant to Iowa Code Chapter 22 and FERPA.

The records presented by Rollinger do not provide evidence the District has failed to provide all relevant records or committed a violation of Iowa Code Chapter 22.

***Failure to retain public records.***

In response to text messages requested from a specific employee, the District states the following:

*[Employee 1] regularly deletes work texts that are sent to her personal phone. She typically deletes texts from building level staff within 1-2 days, and leadership-team level staff within a week. The text messages disclosed by Complainant were sent between [Employee 2] and [Employee 1] on September 20 and 23, 2024. [Employee 1] deleted them on the evening of September 23 or the morning of September 24, as part of her regular practice, and prior to receipt of Complainant's open records request that applied to [Employee 1] texts on October 4, 2024. [Employee 1] affirms that she does not have any other texts within the scope of Complainant's October 4, 2024 request that existed on October 4, 2024 that have not been produced.*

Iowa Code Chapter 22 does not provide specific retention requirements for public records. For this reason, a violation of Iowa Code Chapter 22 is not found.



The IPIB has historically noted retention policies should be utilized by government bodies. IPIB strongly recommends the District create a retention policy for public records stored on personal devices to work to avoid issues in the future.

### **IPIB Action**

The Board may take the following actions upon receipt of a probable cause report:

- a. Redirect the matter for further investigation;
- b. Dismiss the matter for lack of probable cause to believe a violation has occurred;
- c. Make a determination that probable cause exists to believe a violation has occurred, but, as an exercise of administrative discretion, dismiss the matter; or
- d. Make a determination that probable cause exists to believe a violation has occurred, designate a prosecutor and direct the issuance of a statement of charges to initiate a contested case proceeding.

Iowa Admin. Code r. 497-2.2(4).

### **Recommendation**

It is recommended the Board dismiss the matter for lack of probable cause to believe a violation has occurred. The District has provided public records in response to the request or has provided a justification for withholding public records. The District is strongly encouraged to develop a retention policy for public records maintained on personal devices.

By the IPIB Executive Director



CERTIFICATE OF MAILING

This document was sent on January 9, 2025, to:

Matthew Rollinger  
Miriam Van Heukelem, Attorney for the District

# The Iowa Public Information Board

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In re the Matter of:	Case Number: 24FC:0109
Joe Goche, Complainant	Probable Cause Report
And Concerning:	
Kossuth County Board of Supervisors, Respondent	

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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 13, 2024, Joe Goche filed formal complaint 24FC:0109, alleging Kossuth County Board of Supervisors (Board) violated Iowa Code chapter 21.

The IPIB accepted this Complaint on November 21, 2024

## Facts

Goche alleges the Board violated Iowa Code Chapter 21 when it voted to send informational letters and add to Kossuth County Drainage District Policy the requirement to send an informational letter to landowners of any district at the start of any litigation and a yearly update between when assessments are approved and mailed out. Goche alleges the item was not on the September 17, 2024 Board Agenda, because it only stated: "Drainage District 80 Assessment."

At the September 10, 2024, Board meeting, the Board addressed a question raised by a landowner in Drainage District 80 (DD80) about an assessment they received because the cost was not related to any work done in the district. Most of the cost was related to litigation concerning DD80 that was appealed to the Iowa Supreme Court.<sup>1</sup> The Board agreed to consider how to respond to the question raised on the DD80 assessment at the following meeting on September 17, 2024. The Board said it would address the DD80 assessment first and consider following the process for other districts.

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<sup>1</sup> *William and Mary Goche, LLC v. Kossuth Cnty. Bd. of Supervisors*, 5 N.W.3d 650 (Iowa 2024).

At the September 17 meeting during agenda item “Drainage District 80 Assessment,” the Board deliberated on how best to inform District landowners about litigation costs assessed to the District. They voted to work on a policy to be brought to the Board that would include sending a letter to landowners in the District at the start of litigation and then again before the District assessments are sent out so landowners are informed of the litigation costs before receiving the assessments. In responding to the complaint, the Board argues the decision of the landowner notice issue was inextricably linked with the discussion of DD80 assessment.

Goche stated he attended the September 17 meeting because of the agenda item “Drainage District 80 Assessment.”

### **Applicable Law**

“[A] governmental body shall give notice of the time, date, and place of each meeting including a reconvened meeting of the governmental body, and the tentative agenda of the meeting, in a manner reasonably calculated to apprise the public of that information.” Iowa Code § 21.4(1)(a).

### **Analysis**

“[T] the issue to be resolved is not whether the notice given by the governmental body could have been improved, but whether the notice sufficiently apprised the public and gave full opportunity for public knowledge and participation. In determining whether the public was sufficiently apprised, we may consider the public’s knowledge of an issue and actual participation in events in light of the history and background of that issue. *Cf. Keeler v. Iowa State Bd. of Pub. Instruction*, 331 N.W.2d 110, 111 (Iowa 1983). We agree with the trial court’s conclusion that the sufficiency of the detail on the tentative agenda must be viewed in the context of surrounding events. Evidence in the record indicates that the issue ... had been on a previous agenda and previously discussed.” *KCOB/KLVN, Inc. v. Jasper County Bd. of Sup’rs*, 473 N.W.2d 171, 173 (Iowa 1991).

During the agenda items related to drainage districts at the September 10 meeting, the Board brought up an issue regarding landowners’ lack of awareness of attorney fees impacting their assessment in DD80.<sup>2</sup> The Board gathered some information, but agreed to wait until the September 17 meeting to discuss how to address the matter when it could be listed as an item on the agenda. They agreed to discuss the “Drainage District 80 Assessment.” Similar to the facts of the *KCOB/KLVN* case, the matter had been discussed at the previous Board meeting. Further, the DD80 landowners had received their assessments and had asked questions about the costs.

Goche stated he attended the Board meeting on September 17 because the DD80 assessment was listed on the agenda. Goche stated he believed the Board was going to take an “impounded and

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<sup>2</sup> All Board meetings are video-recorded and available online.

impeded watershed” off the assessment schedule and charge repair costs to the United States Fish and Wildlife Service as he and a neighbor, also in attendance, had requested the Board to do.<sup>3</sup>

Viewed in the context of the surrounding events in the community, the agenda item was sufficient to notify the community regarding the discussion concerning notice of the costs causing the drainage district assessment. The community had received the assessments. The community had raised questions about what caused the assessment. The Board discussed the fact questions had been raised about the assessments at the September 10 meeting. The Board agreed at the September 10 meeting to put how to inform the landowners about the litigation costs causing the DD80 assessment on the September 17 agenda. The Board even agreed what the agenda item for September 17 would say at the September 10 meeting. Viewed in this context of community knowledge, the agenda was sufficient to notify the community regarding the topic.

### **Was any Action by the Board Necessary?**

Even if there is a question as to the sufficiency of the notice, any error that exists would be harmless error. Chapter 21 does not specifically mandate what actions require discussion and deliberation by a government body. In a previous case, IPIB found no violation when a City Manager sent a letter of support for a housing project without formal approval by the Council. The letter was not in the form of a resolution or committed the City to formal action but rather explained potential city plans.<sup>4</sup> In this matter, the Board responded to a landowner’s questions regarding why his assessment was so high and voted to send information to drainage district landowners and create a policy to notify landowners about litigation and costs that would be brought before the Board for review and final action.

There likely was no need to take formal action to direct staff to send informational letters to DD80 landowners or to draft a policy to be brought to the Board for formal approval. Even if action were necessary for the letters to be sent or to draft a policy, the public will have knowledge of the proposed policy when it is brought before the Board for approval. The draft policy has not yet been presented to the Board for review, deliberation or action. When it is, the matter will be placed on the agenda, the policy documents will be public records, and the public will have the opportunity to provide input if they prefer a different policy regarding drainage district landowners receipt of information regarding litigation costs impacting drainage district assessments.

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<sup>3</sup>Goche does not explain how the agenda item he contests provided more information about this USFWS issue than a discussion about notification to all landowners about costs the assessment was based on. Nonetheless, by Goche’s own admission, he, and at least one other DD80 landowner, had notice the Board would discuss matters related to the DD80 assessment.

<sup>4</sup>24FC:0061: Kelly Caldwell/Carroll City Council - Dismissal Order

### **IPIB Action**

The Board may take the following actions upon receipt of a probable cause report:

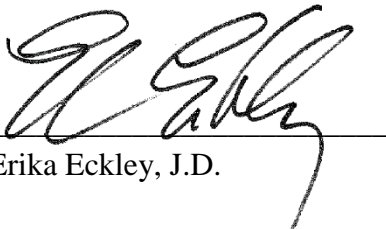
- a. Redirect the matter for further investigation;
- b. Dismiss the matter for lack of probable cause to believe a violation has occurred;
- c. Make a determination that probable cause exists to believe a violation has occurred, but, as an exercise of administrative discretion, dismiss the matter; or
- d. Make a determination that probable cause exists to believe a violation has occurred, designate a prosecutor and direct the issuance of a statement of charges to initiate a contested case proceeding.

Iowa Admin. Code r. 497-2.2(4).

### **Recommendation**

The Board brought up a question raised by a landowner regarding the costs driving the DD80 assessment. The Board set the matter for consideration of how to address the question raised at the following Board so the item could be added to that meeting's agenda. The Board's action was to send informational letters and prepare a policy for review by the Board at a later date. At least two DD80 landowners were in attendance because DD80 assessment was listed on the agenda.

By the IPIB Executive Director



Erika Eckley, J.D.

### **CERTIFICATE OF MAILING**

This document was sent on January 9, 2025, to:

Joe Goche  
Todd Holmes, attorney for Kossuth County Board of Supervisors

The Kossuth County Supervisors 09/17/2024 agenda is no longer tentative once filed at the Auditors office as an approved official record and the minutes should closely mirror the recorded official agenda after approval and official recording with the Kossuth County Auditor.

This is not a **tentative** agenda as MR. Holmes would like you to believe. In this case the general public would be led to believe that no discussion or decision was on the DD80 assessments in the official recorded minutes nor is there a change made in the official Agenda record to indicate there would be policy set on notification of lawsuits to land owners in multiple drainage districts as the official minutes indicate.

The general public would not be able to determine how or why a notification policy would be approved as no item even close to that description can be found on the approved and recorded final agenda for 09/17/2024 Kossuth County supervisors meeting.

The majority of these supervisors have viewed the open meeting law rule video put out by your board. That did not seem to help them much in this case.

If you would examine the board packet, put out by the Auditor before the meeting 09/17/2024 the **supervisors** approved the agenda item DD80 assessment discussion decision. When did the Supervisors get together to decide this. Its not on a prior official agenda nor in any official minutes of record as the majority approved the Agenda Item for DD80 for 09/17/2024. Could this be another open meeting law violation? No discussion decision on policy to inform the public about Drainage District Lawsuits were mentioned in the board packet either.

DD80 is not currently under litigation as Todd Holmes would suggest in his answer. My Company was the defendant in action that Kyle Stecker as Supervisor Trustee brought, hired 2 engineering firms one to draw a

watershed line to determine district boundaries when legal descriptions on assessment schedules determine where the water can go and the other to reclassify and change boundary lines to make their case (Mediation quote from watershed drawer engineer Kent Rode) for the Supervisor trustees expending \$113,000 of property owner assets. Kyle Stecker as Supervisor Trustee approved my company's drainage project in DD80 before we started did not come out to view the project when requested.

Then Kyle Stecker convinced the Kossuth County Supervisor Trustees to hire a lawyer to defend the watershed map drawn by an engineer Kent Rode from Bolton and Menk and use it for drainage district boundary to take the case clear to mediation and the supervisor Trustees have not filed a case since 2020 for DD80. Watershed maps do not determine district boundaries; Assessment schedule's legal descriptions do and our project is clearly in DD80 Boundaries according to the legal descriptions for DD80 Assessment. To my knowledge there is no pending litigation on DD80 as my company was a defendant in this case as Todd Holmes might suggest.

The Supervisor Trustees had to come up with a good excuse for spending \$113,000.00 on Jacobson and Westergard engineering to reclassify DD80 so they start out telling the public it is for DD80 LAT 50 and LAT70. Then the Kossuth County Supervisor Trustees tried to justify the reclassification expense common outlet (IA Code 468.131 468.132) which did not qualify for a reclassification and the Kossuth County Supervisor Trustees end up bring an impeded impound watershed into the district that was taken out of the district in the 1930's when the USFWS bought the ground dammed the outlets and controlled the flow of water to either the Blue Earth or Des Moines Rivers. None of this was legal. IA Code 468.40.3

Now property owners have been assessed for an outlet to DD80 the supervisor trustees shall fix. IA Code 468.126

I was at the 09/17/2024 meeting because my neighbor and I have a submerged outlet on DD99 to DD80's impounded and impeded watershed of the USFWS so we requested the outlet to be repaired by and costs to USFWS as we have a legal right in which the trustees shall keep and repair outlets to their original design. (IA Code 468.126 468.148 468.149) The Trustees did not even bother to look.

My neighbor and I thought that a light might have gone off in the brains of the Kossuth County Supervisor Trustees may have decided to take the USFWS impeded and impounded watershed off the DD80 Assessment schedule (IA Code 468.40). We were quite taken back by the discussion as it did not even come close to the Agenda Item of DD80 discussion decision on the assessments or taking the impeded impounded USFWS watershed off the assessment schedule of DD80.

If a well-informed public cannot make out what was talked about or find the policy voted on the recorded approved agenda tell me how the general public could make out the agenda item with what was voted on for policy at 09/17/2024 meeting and entered into the official record.

Show the public where you can find the policy making decision that are located in the approved recorded minutes for 09/17/2024 voted on by all 5 Kossuth County supervisors on the Kossuth County Supervisor's approved recorded agenda for 09/17/2024.

I realize by visiting with Brad Hicks a founder and supporter of your board that this is a medium for resolutions conditional with-drawls and by all means avoiding expensive litigation.



In the case of habitual offenders of open meeting laws if training does not suffice how do discipline a board such as the Kossuth County Supervisors to act in a legal professional matter.

Thank You

# The Iowa Public Information Board

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<p>In re the Matter of:</p> <p>Michael McPeek, Complainant</p> <p>And Concerning:</p> <p>Iowa Department of Corrections, Respondent</p>	<p>Case Number: 24FC:0111</p> <p>Probable Cause Report</p>
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COMES NOW, Erika Eckley, Executive Director for the Iowa Public Information Board (IPIB), and enters this Probable Cause Order:

On November 7, 2024, IPIB received formal complaint 24FC:0111 from Michael McPeek, alleging the Iowa Department of Corrections (Department) violated Iowa Code chapter 22. The complaint was accepted via consent by IPIB on December 19, 2024.

## Facts

McPeek is an incarcerated individual and is currently in custody of the Iowa Department of Corrections. McPeek requested and was denied access to a copy of the drug testing instructions used by the Department to test incarcerated individuals for illegal substances. McPeek alleges the drug testing instructions are a public record and the Department violated Iowa Code Chapter 22 by refusing to provide the instructions.

The Department responded and requested the IPIB dismiss the complaint. The Department argues the drug testing instructions are not a public record pursuant to Iowa Code Chapter 22. The Department further argues the drug testing instructions are part of an internal investigation used to detect illegal substances and are confidential pursuant to Iowa Code §§ 904.602(2)(k)(10).

## Applicable Law

A public record is defined as “all records, documents, tape, or other information stored or preserved in any medium, of or belonging to this state...”

“Every person shall have the right to examine and copy a public record and to publish or otherwise disseminate a public record or the information contained in a public record. Unless otherwise provided for by law, the right to examine a public record shall include the right to examine a public

record without charge while the public record is in the physical possession of the custodian of the public record.” Iowa Code § 22.2(1).

### **Analysis**

McPeek alleges a violation of Iowa Code Chapter 22 occurred based on the denial of access to drug testing instructions used by the Department. The Department maintains the drug testing instructions in question are not a public record and are exempt from disclosure as an internal investigation pursuant to Iowa Code §§ 904.602(2)(k)(10).

The Department is granted broad authority to govern its internal administration. Iowa Code § 904.602(2)(k)(10) states as follows:

“Regulations, procedures, and policies that govern the internal administration of the department and the district departments, which if released may jeopardize the secure operation of a correctional institution operation or program, are confidential unless otherwise ordered by a court. These records include procedures on *inmate movement and control*; staffing patterns and regulations; emergency plans; *internal investigations*; equipment use and security; building plans, operation, and security; security procedures for inmates, staff, and visitors; daily operation records; and *contraband and medicine control*. *These records are exempt from the public inspection requirements in section 17A.3 and section 22.2.*” (Emphasis added.)

Based on Iowa Code § 904.602(2)(k)(10), the Department has the ability to exempt as confidential any regulations, procedures, and policies related to internal administration, including internal investigations, inmate control, and contraband control. The drug testing instructions used to detect the use of illegal substances by incarcerated individuals are a procedure governing the internal administration of the Department related to inmate control, internal investigations, and contraband control.

Based on this analysis, IPIB finds the drug testing instructions fall within the definition of Iowa Code § 904.602(2)(k)(10), and are exempt from the public inspection requirements of Iowa Code Chapter 22.

### **IPIB Action**

The Board may take the following actions upon receipt of a probable cause report:

- a. Redirect the matter for further investigation;
- b. Dismiss the matter for lack of probable cause to believe a violation has occurred;

- c. Make a determination that probable cause exists to believe a violation has occurred, but, as an exercise of administrative discretion, dismiss the matter; or
- d. Make a determination that probable cause exists to believe a violation has occurred, designate a prosecutor and direct the issuance of a statement of charges to initiate a contested case proceeding.

Iowa Admin. Code r. 497-2.2(4).

### **Recommendation**

It is recommended the Board dismiss the matter for lack of probable cause to believe a violation has occurred. The Department has the authority to exempt the drug testing instructions from disclosure based on the authority granted by Iowa Code § 904.602(2)(k)(10).

By the IPIB Executive Director



### **CERTIFICATE OF MAILING**

This document was sent on January 9, 2025, to:

Michael McPeck (via mail and correspondence to legal counsel)  
Michael Savala, Iowa Department of Corrections

# The Iowa Public Information Board

In re the Matter of:  Keegan Jarvis, Complainant  And Concerning:  Swan City, Respondent	Case Number: 24FC:0112  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 8, 2024, Keegan Jarvis filed formal complaint 24FC:0112, alleging the Swan City Council (City) violated Iowa Code Chapter 21.

The IPIB accepted this Complaint on November 25, 2024.

## Facts

Swan is a small city in Marion County, Iowa, which is represented by a three-person city council. The City is involved in ongoing civil litigation with the complainant, Keegan Jarvis, for reasons outside the scope of IPIB's jurisdiction.

On November 4, 2024, the City held its monthly council meeting. Immediately after adjournment, the Mayor distributed copies of interrogatories to be completed by each council member as part of civil discovery in Jarvis' pending case, along with the City's proposed responses. According to the City, this paperwork was distributed with the intent that individual council members would provide any corrections that needed to be made over email at a later time. The City's legal counsel was not present for this meeting.

Jarvis contends this after-meeting session constituted either an improper closed session or a meeting without proper notice beforehand. According to Jarvis, it is irrelevant whether or not there was deliberation, and the City should have included the dissemination of documents on its agenda, rather than handling the matter after the meeting.

The City argues that there was no improper meeting, as there was no discussion amongst council members at any time, either immediately after adjournment or in emails thereafter.

## **Applicable Law**

“*Meeting*’ means a gathering in person or by electronic means, formal or informal, of a majority of the members of a governmental body where there is deliberation or action upon any matter within the scope of the governmental body’s policy-making duties. Meetings shall not include a gathering of members of a governmental body for purely ministerial or social purposes when there is no discussion of policy or not intent to avoid the purposes of this chapter.” Iowa Code § 21.2(2).

## **Analysis**

Iowa Code § 21.2(2) defines a meeting as having four key attributes: 1) there must be a majority of members; 2) of a governmental body subject to Chapter 21; in which 3) members engage in deliberation; 4) on a matter within the scope of their policy-making duties. Unless all four requirements are met, there is no meeting, and Chapter 21 does not apply.

In this case, it is undisputed between the parties that no substantive discussion occurred. Instead, council members briefly received information, with instructions to review the documents on their own time. Legal strategy was not discussed amongst council members until the December meeting, where the City held a closed session to discuss litigation with their legal counsel. The members ever shared “thoughts, concerns, opinions, or potential action on the matters” at any time, which is the threshold required to meet the “deliberation” element of Iowa Code § 21.2(2). 24AO:0004, *Attendance at Social and Ministerial Events*.

The complainant claims the City was nevertheless obligated to distribute the documents during open session and include a corresponding item in their agenda to provide adequate notice to the public. However, because these requirements are only applicable to Chapter 21 “meetings,” which require deliberation, they would not apply where council members merely received information. As such, no evidence has been presented in this complaint to suggest the City violated Chapter 21.

## **IPIB Action**

The Board may take the following actions upon receipt of a probable cause report:

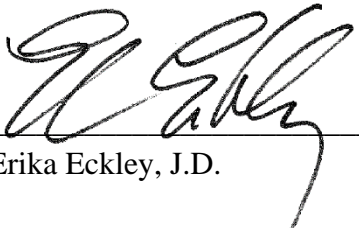
- a. Redirect the matter for further investigation;
- b. Dismiss the matter for lack of probable cause to believe a violation has occurred;
- c. Make a determination that probable cause exists to believe a violation has occurred, but, as an exercise of administrative discretion, dismiss the matter; or
- d. Make a determination that probable cause exists to believe a violation has occurred, designate a prosecutor and direct the issuance of a statement of charges to initiate a contested case proceeding.

Iowa Admin. Code r. 497-2.2(4).

## Recommendation

It is recommended the Board dismiss the matter for lack of probable cause to believe a violation has occurred. Because the council members passively received information and documents and the complainant does not allege a majority of members ever shared “thoughts, concerns, opinions, or potential action” on any matter amongst themselves, nothing that happened after adjournment would qualify as a “meeting” according to the definition found in Iowa Code § 21.2(2).

By the IPIB Executive Director



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Erika Eckley, J.D.

## CERTIFICATE OF MAILING

This document was sent on January 9, 2025, to:

Keegan Jarvis, Complainant  
Swan City, Respondent

# The Iowa Public Information Board

In re the Matter of:  Timothy-John; Miller, Complainant  And Concerning:  City of Waterloo Police Department, Respondent	Case Number: 24FC:0116  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 27, 2024, Timothy-John; Miller filed formal complaint 24FC:0116, alleging the City of Waterloo Police Department (Department) violated Iowa Code chapter 22. The IPIB accepted this Complaint on November 27, 2024.

## Facts

Miller alleges the Department “failed to comply with records, data and videos requests per a legal and lawful request; willfully denying public information to commit tortious constitutional fraud in an attempt to force some fictio juris unconscionable contract.”

The records custodian for the Department responded to the complaint and provided a copy of the tickets issued and the business cards for the officers. The Department stated they were not the custodian of the dispatch center records or the original autographed copies of the citations and provided the name of the appropriate agency and the clerk of court.

Upon receipt of the records, Miller alleges the documents provided did not include his addition of “ALL RIGHTS RESERVED” above his autograph, so the documents are “photoshopped manipulated documents,” which is “a felony.”<sup>1</sup>

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<sup>1</sup> The remainder of Miller’s claims in response regarding his constitutional right to travel, refusal to contract as a private citizen not engaged in any commercial driving, false arrest and kidnapping, civil rights violations, and Uniform Commercial Code interpretations are beyond the jurisdiction of IPIB. Further, while reviewing the Complaint, IPIB received by certified letter an “Affidavit Notice of Tortious Fraud By: Forced to Contract-By Attempting to Make a Forced Association as a False Claim Under Duress” and warned to “Proceed at Your Own Peril.” Despite which, IPIB provides this report of its investigation and analysis.



## Applicable Law

“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. Although fulfillment of a request for a copy of a public record may be contingent upon receipt of payment of reasonable expenses, the lawful custodian shall make every reasonable effort to provide the public record requested at no cost other than copying costs for a record which takes less than thirty minutes to produce.” Iowa Code § 22.3

## Analysis

Miller sent by certified mail on August 27, 2024, a confusing document that included a records request to the officers involved in the issuance of two traffic tickets to Miller. The request included:

1. As per legal and lawful requirements of the FOIA, PRIVACY ACT and IOWA OPEN RECORDS LAW REQUEST-stare decisis; I, expect and anticipate your full cooperation without exception or delay; and
2. An original autographed copy of the citations [NUMBERED CITATIONS]
3. A copy of the WATERLOO POLICE DEPARTMENTS bond; and
4. A copy of your business card; and
5. A copy of the dispatch communications with [officer] in re; the aforementioned;
6. A copy of any all other communications in any form you have had with anyone in re the above-mentioned citations.

Miller mailed a “Notice of Default-Cure or Quit within 72 hours” on September 18, 2024.

Upon filing a complaint with IPIB and providing information regarding the records requests, IPIB submitted the requests to the Department’s records custodian. The public documents within the custody of the Department were provided to IPIB and Miller within 12 days, which also included the Thanksgiving holiday. Miller was also directed to the custodians of the requested records not within the custody of the Department.

While there was delay between the original records requests made directly to the police officers and the IPIB communications to the publicly-designated records custodian identified by the Department for receiving such requests, the delay between submission of the original requests and when the requests were submitted to the appropriate individual is not unreasonable.<sup>2</sup>

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<sup>2</sup> See 23FC:0132 Michael Merritt/Poweshiek County - Dismissal Order (finding no error when a records request was not sent to the custodian, the request was not clearly communicated and appeared to be hidden within a lengthy email of unrelated text and information, and the custodian promptly responded when contacted); see also Sunshine

Miller's complaint regarding the fraudulent nature of the documents as "photoshopped manipulated documents," because the copies do not include his statement "ALL RIGHTS RESERVED" that he wrote in above his electronic signature is beyond the jurisdiction of IPIB.

### **IPIB Action**

The Board may take the following actions upon receipt of a probable cause report:

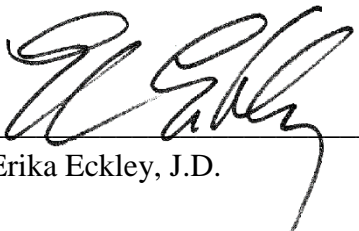
- a. Redirect the matter for further investigation;
- b. Dismiss the matter for lack of probable cause to believe a violation has occurred;
- c. Make a determination that probable cause exists to believe a violation has occurred, but, as an exercise of administrative discretion, dismiss the matter; or
- d. Make a determination that probable cause exists to believe a violation has occurred, designate a prosecutor and direct the issuance of a statement of charges to initiate a contested case proceeding.

Iowa Admin. Code r. 497-2.2(4).

### **Recommendation**

The original records requests were submitted directly to officers employed by the Department. Upon receipt of the requests from IPIB, the Department's custodian promptly provided the records within the custody of the Department. It is recommended the IPIB dismiss the matter for lack of probable cause to believe a violation has occurred.

By the IPIB Executive Director



Erika Eckley, J.D.

### **CERTIFICATE OF MAILING**

This document was sent on January 9, 2025, to:

Timothy-John; Miller, Complainant  
Capt. Jason Feaker, for Waterloo Police Department

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Advisory: Public Records Contact Persons: Helping Iowans with access to public records, January 1, 2002 ("All government bodies in Iowa are required to (1) delegate to particular officials or employees the responsibility for implementing Iowa's Public Record laws, and (2) publicly announce to whom requests for public records should be directed. Let's face it. It is not possible for every employee to be familiar with every public record maintained by a public office, especially in today's complex world of large, multi-divisional government offices, electronic records, and confidential record requirements that can be confusing.")

# The Iowa Public Information Board

In re the Matter of:	Case Number: 24FC:0118
Kevin and Rachel Cahalan, Complainants	<b>Probable Cause Report</b>
And Concerning:	
City of Eagle Grove, Respondent	

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

On November 21, 2024, IPIB received formal complaint 24FC:0118 from Kevin and Rachel Cahalan (Cahalans),<sup>1</sup> alleging the City of Eagle Grove (City) violated Iowa Code chapter 22. The complaint was accepted via consent by IPIB on December 19, 2024.

## Facts

On June 2, 2022, Rachel Cahalan submitted a public records request to the City seeking a signed lease agreement between the City of Eagle Grove and Eagle Grove Recreation. The Cahalans received a response from the City, which included Resolution 2022-54, a Recorder's Cover Sheet for Ground Lease, and an executed ground lease.

The Cahalans contacted IPIB via phone and by email regarding another complaint initiated in 2024 and provided the Rachel Cahalan June 2, 2022 records request. The November 19, 2024, email from the Cahalans included a copy of the June 2, 2022, public records request and the response received from the City. The City's response contained Resolution 2022-54, a Recorder's Cover Sheet for Ground Lease, and an executed ground lease. The email from the Cahalans stated as follows, "Spoke with Erika and she suggested sending you this."

The Cahalans also appeared at the IPIB November 21, 2022, meeting and asked to speak during the other IPIB complaint regarding the City of Eagle Grove.<sup>2</sup> Following receipt of the email on

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<sup>1</sup> The records request on June 2, 2022 was filed by Rachel Cahalan. The complaint was filed by Kevin Cahalan. All communications to IPIB have been by Kevin and Rachel Cahalan. IPIB later discovered it is uncertain whether Kevin incorrectly filed regarding Rachel's request and/or whether Kevin was filing on behalf of four Cahalans. Cahalan's have made this a point of dispute with IPIB. For clarity in this Report, IPIB will utilize Cahalans to refer to Kevin and Rachel as they sign their communications unless otherwise indicated.

<sup>2</sup> It is a reasonable inference the Cahalan's complaint was raised in regards to the Asche case because the Cahalan's used the IPIB meeting's virtual sign-on information to actively participate in the meeting, which IPIB supplies only

November 19, IPIB worked with Cahalan's and the City to determine why the records Rachel Cahalan had received were inaccurate. Cahalan's gave the impression to IPIB they had only recently discovered the documents received originally were problematic. On November 21, the Cahalans also filed formal complaint 24FC:0118, which alleged the following: "Fulfillment of Public Request incomplete, parts omitted on information delivered, contradicting information provided to general public and ambiguous documents not released. After reasonable due diligence, violation was found on 11/12/2024."

IPIB staff compared the documents to the resolution and ground lease in the existing complaint and immediately identified a discrepancy. IPIB staff outreached to the attorney for the City seeking additional information regarding the discrepancy. Based on what IPIB believed to be a recent discovery of the inaccurate receipt of Resolution 2022-54, which had not been passed by the City, IPIB accepted the complaint despite the records request having been submitted and responded to in June 2022.

IPIB staff opened the complaint on November 22, sent notification to the Cahalans, and asked the Cahalans to confirm the date of the original records request and the specific violation. The Cahalans responded and confirmed the records were requested on June 2, 2022, and were aware of the omissions of the correct information (2022-57 resolution and documents) on or about November 10, 2024.<sup>3</sup>

On November 26, 2024, counsel for the City provided findings in regards to the records request from June 2, 2022. Counsel found the City's deputy clerk responded to the Cahalans on June 14, 2022, and provided an erroneous ground lease copy. Counsel stated as follows:

*Responses to FOIA requests are not ordinarily completed by [deputy clerk] and she believes that this may have been the first response she prepared. Her recollection is that she did her best to get these documents to Rachel in a timely fashion and she located a lease document in city hall records which had not been not signed by the Rec Center. [Deputy clerk] reached out to Alyssa Dooley (Rec Center Board President) and had her come to city hall on Jun 14, 2022 to sign the lease so that she could provide a copy to Rachel Cahalan in response to the FOIA request on that same date.*

*The ground lease attached to Resolution 2022-57 is the correct version of the lease. The only substantive difference is in Section 15 regarding effect of Tenant's holding over. The amount of holdover rent at the end of the initial 30-year term (and any subsequent 5-year terms if that option is exercised by tenant) will be \$500 per month. The city originally*

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to participating parties, but had not contacted IPIB directly for the participation information; they asked to speak during the Ashe case; and their purported records issue concerned the same subject as the Ashe case: the Eagle Grove Recreation Center and the city and a nonprofit's collaboration in developing the recreation center.

<sup>3</sup> Cahalans have provided two different dates for when they discovered the issue.

*requested \$5,000 holdover rent but the Rec Board would not agree to more than \$500 per month so this was the term agreed to by both parties on May 16, 2022.*

Counsel for the City attached Resolution 2022-57 (with the corresponding ground lease) and the City Council minutes approving Resolution 2022-57. Counsel for the City stated this was the correct version of the ground lease. This information was forwarded by IPIB staff to the Cahalans for review. The Cahalans began asking a series of questions regarding the information provided by counsel.

On December 4, 2024, all parties were notified of acceptance of the complaint.<sup>4</sup>

On December 10, due to a large volume of questions raised by the Cahalans, IPIB staff requested that questions cease until an Informal Resolution could be developed.

On January 2, IPIB presented the parties with an Informal Resolution to work towards resolution of the case. The email presenting the Informal Resolution stated as follows, “In the event the Informal Resolution is not executed by both parties, the Complaint will move to probable cause proceedings, at which time the IPIB has the discretion to hear the Complaint as a contested case or to dismiss the Complaint.”

On January 3, the Cahalans asked if anything additional was needed. IPIB staff responded and indicated the Informal Resolution needed to be signed by both parties, including the Cahalans. The Cahalans responded and indicated they had not received a copy of the Informal Resolution. IPIB staff forwarded the email to all parties again and requested confirmation of receipt from all parties. The Cahalans responded and indicated the email was not directed to them and they were “just part of the conversation.” The Cahalans also stated that they had multiple objections to the Informal Resolution.

IPIB offered to meet with the Cahalans, and the Cahalans provided a date and time. During the phone call, the Cahalans disputed the factual findings of IPIB provided in the Informal Resolution. Of significant concern to IPIB was the Cahalans’ dispute regarding the following statement: “Pursuant to another ongoing IPIB complaint, the Cahalans recently discovered that information provided by the City in 2022 was not correct. Upon learning that incorrect information was provided, the Cahalans filed this complaint.” Cahalans argued IPIB had no proof the discovery was part of another IPIB complaint or the Cahalans recently discovered the information provided by the City was not correct.

IPIB staff informed the Cahalans that the complaint would be advanced to probable cause based on rejection of the Informal Resolution

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<sup>4</sup> IPIB officially accepted the complaint on December 19, 2024.

### Applicable Law

“The complaint must be filed within sixty days from the time the alleged violation occurred or the complainant could have become aware of the violation with reasonable diligence. All complaints filed with the board shall be public records.” Iowa Code § 23.7(1).

### Analysis

IPIB accepted this complaint based on the claim now disputed by the Cahalans that the Cahalans recently discovered they had received an incorrect version of a lease pursuant to Rachel Cahalan’s June 2, 2022 records request. Based on this claim, IPIB had worked with the City to determine how the incorrect version of the lease agreement (pursuant to 2022-54) was sent to the Cahalans and provided that information to Cahalans.

If the IPIB’s factual determination the Cahalans had only recently discovered the receipt of the incorrect version of the lease based on the current IPIB case addressing similar documents and projects is inaccurate, there can be no jurisdiction for IPIB to address this matter. The City Council took action to approve the correct lease on May 16, 2022, and any discrepancy in the documents held by Cahalans since June 2022 should have been discovered with any reasonable diligence in fewer than two years and six months. IPIB’s jurisdiction to review complaints does not exceed violations outside of those occurring within sixty days from when the issue could be discovered with reasonable diligence. Iowa Code § 23.7(1).

Because IPIB has no subject matter jurisdiction, 24FC:0118 must be dismissed for lack of jurisdiction. “Subject matter jurisdiction is conferred by constitutional or statutory power. The parties themselves cannot confer subject matter jurisdiction on a court by an act or procedure. Unlike personal jurisdiction, a party cannot waive or vest by consent subject matter jurisdiction. Lack of subject matter can be raised ‘at any time.’” *Klinge v. Bentien*, 725 N.W.2d 13, 15–16 (Iowa 2006) (citations omitted).

By the IPIB Executive Director



CERTIFICATE OF MAILING

This document was sent on January 9, 2025, to:

Kevin and Rachel Cahalan  
City of Eagle Grove

# The Iowa Public Information Board

In re the Matter of:  Ken Brown, Complainant  And Concerning:  City of Sidney, Respondent	Case Number: 24FC:0124  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 December 10, 2024, Ken Brown filed formal complaint 24FC:0124, alleging City of Sidney (City) violated Iowa Code chapter 22.

The IPIB accepted this Complaint on December 16, 2024.

## Facts

Ken Brown filed the following records requests with the City of Sidney.

- October 23- request for clerk's financial report from September 24
- October 23- request for recording on council meeting on October 14
- November 13- request for recording of council meeting on November 12
- November 22- request for recording of special council meeting on November 15
- November 26 – request for recoding of November 25 council meeting
- December 10 – request for December 2 city council meeting recording

He alleges the City failed to appropriately respond to his requests and he alleges the public information requests are being ignored and going unanswered. Brown did follow up on his October 23 records request on November 1; November 6; on November 8 when he clarified he was seeking the clerk's financial records in the request; and again on November 13.

The City responded to this Complaint through Counsel. The City disputed Brown's characterization and stated the City was going through a period of transition and retraining after the clerk and deputy clerk both resigned with two weeks' notice, effective September 30. The City was left without any clerks until the new deputy clerk began on October 7. The new city clerk

started about a month later on November 4. This turnover caused a backlog of reports for the City and some delays and confusion in responding to Brown's six requests during this period.

Specifically, the City responded to Brown's October 23 request for a recording of the Council's October 14 meeting on October 31 and stated no recording existed.

The City stated Brown's request for the clerk's financial report from September 24 was also filed on October 23. Due to the turnover, the report had not yet been prepared and was not completed until after Brown filed his complaint. The City admits it did not immediately respond to the request because this request was filed the same day as the other request from Brown, and the fact it was a separate request was initially missed. The deputy clerk realized this and reached out on November 15 apologizing for the delayed response and told Brown the record had not been approved by the Council and the request would be processed as soon as possible. The mayor followed up with Brown on November 22 after Brown questioned the deputy clerk's statement the Council would need to approve the request. The mayor told Brown the City was working through a backlog of reports and would get him the report as soon as it was completed. In other words, the document did not exist at the time the request was made, but would be provided as soon as it was completed in December when the City addressed the backlog of reports caused by the turnover in the clerk and deputy clerk positions.

The City stated it had responded to all of Brown's other requests (November 13; November 22; November 26; and December 10) on or before December 27 when the City responded to this complaint.

### **Applicable Law**

"Every person shall have the right to examine and copy a public record and to publish or otherwise disseminate a public record or the information contained in a public record." Iowa Code § 22.2(1).

"In [*Belin v. Reynolds*, 989 N.W.2d 166 (Iowa 2023)], the Iowa Supreme Court applied the three-part test laid out in Chapter 22.10(2).

- (1) Is the defendant "subject to the requirements of" chapter 22, i.e. is it a government body?
- (2) Did the plaintiff ask for "government records"?
- (3) Has "the defendant refused to make those government records available" for the plaintiff?

In situations in which the first two questions are clearly met, such as in this instance, the question to consider is whether the government body has refused to make the records available. A "defendant may 'refuse' either by (1) stating that it won't produce records [(explicit refusal)], or (2) showing that it won't produce records [(implied refusal)]." *Belin*, 989 N.W.2d at 174. Implied refusal "can be shown through an unreasonable delay in producing records." *Id.* The reasonability of a delay under Chapter 22.10(2)(3) may be determined by the following factors:



- (1) how promptly the defendant acknowledged the plaintiff's requests and follow-up inquiries
  - (2) whether the defendant assured the plaintiff of the defendant's intent to provide the requested records
  - (3) whether the defendant explained why requested records weren't immediately available (e.g., what searches needed to be performed or what other obstacles needed to be overcome)
  - (4) whether the defendant produced records as they became available (sometimes called "rolling production")
  - (5) whether the defendant updated the plaintiff on efforts to obtain and produce records
  - (6) whether the defendant provided information about when records could be expected.
- Belin*, 989 N.W.2d at 175.

24FC:0010 Clarification on the definition of "reasonable delay" as it pertains to the period of time for a record's custodian to determine the confidentiality of records

### **Analysis**

The primary issue is the delay in responding to Brown's requests, primarily the October 23 request for the clerk's financial reports. On October 23, the City had a new deputy clerk who had been employed for about two-and-a-half weeks, there had been no one employed in the clerk's office the week prior to their employment, city business was backlogged, and the city clerk position was still vacant at the time the October 23 requests were received.

Brown had filed two requests on October 23, and the first one was responded to within eight days. The second request was not acknowledged by the City until November 15 (23 days later). At the time of the request was made, the document did not exist because of turnover in the clerk's office from where the report was typically generated.

While it would have been better had the City caught there was a second request filed on October 23 and acknowledged it sooner, the delay and confusion is not unreasonable considering the upheaval occurring at this time. Once the error was identified, the City did respond and explain to Brown why the document was not immediately available. And, to their benefit, the City worked to provide the requested document to Brown even though, at the time he requested it, the document did not exist. Once the document was completed, it was provided. Any error in the delay was harmless error. The City was not intentionally withholding the record, the document did not exist to be provided any earlier.

At this time, the City has provided all records to Brown pursuant to his six requests without charge. The City has also stated it would welcome some training by IPIB for the new clerks to assist them in their new roles to ensure there is no repetition of the issue.<sup>1</sup>

### **IPIB Action**

The Board may take the following actions upon receipt of a probable cause report:

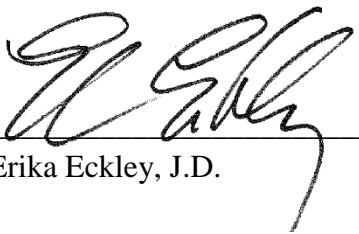
- a. Redirect the matter for further investigation;
- b. Dismiss the matter for lack of probable cause to believe a violation has occurred;
- c. Make a determination that probable cause exists to believe a violation has occurred, but, as an exercise of administrative discretion, dismiss the matter; or
- d. Make a determination that probable cause exists to believe a violation has occurred, designate a prosecutor and direct the issuance of a statement of charges to initiate a contested case proceeding.

Iowa Admin. Code r. 497-2.2(4).

### **Recommendation**

Because of the unusual circumstances of complete turnover in the clerk's office causing a delay in responding to Brown's records request not likely to be repeated, it is recommended the IPIB dismiss the matter for lack of probable cause to believe a violation has occurred.

By the IPIB Executive Director



Erika Eckley, J.D.

### **CERTIFICATE OF MAILING**

This document was sent on January 9, 2025, to:

Ken Brown  
Bri O'Hearn, attorney for City of Sidney

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<sup>1</sup> The City has invited Brown to also attend the training as he was unable to attend while he was mayor during the previous resolution of an IPIB complaint he was involved in. *See* 23FC:0072: Don Benedict/City of Sidney-Acceptance Order

## RESPONSE TO THE LETTER SENT BY CITY OF SIDNEY ATTORNEY

### DATES:

- September 12, 2024: City Clerk and Deputy Clerk resigned giving the city only two weeks' notice.
- September 30, 2024: City Clerk and Deputy Clerk's last day – This **Statement is incorrect according to the payroll record the Deputy Clerk (Brenda Benedict) was still employed by the city until 12/14/2024 in which she has been producing previous public information request for clerks reports**
- October 7, 2024: New Deputy Clerk's (Andrea) first day
- October 23, 2024: Ken requested September 2024 Clerk's report and recording of the October 14 council meeting in two separate correspondences.
- October 31, 2024: Andrea emailed Ken informing him that the October 14th meeting was not recorded
- November 4, 2024: New Clerk's (Lyn) first day
- **November 13, 2024: Ken submitted another records request -request for the city council meeting recording**
- November 15, 2024: Andrea emailed Ken apologizing for the delay and advising that the request would be processed as soon as possible.

**This was the email that was sent**

**Mr. Brown,**

**I apologize for the delay on your request, but this has not been approved by the council yet. We will process this for you as soon as possible.**

**Thank you for your patience.**

Andrea Clark

**and I responded with.**

My understanding of the Iowa code and the city ordinances is this information does not need to have the approval of the council before completing the public information request. Now the City of Sidney is in violation of the Iowa code. Please provide this by the end of the day or a complaint will be filed with the state.

Iowa Code 22.8.4.d

A reasonable delay for this purpose shall not exceed twenty calendar days and ordinarily should not exceed ten business day

- November 22, 2024: Mayor Shirley emailed Ken advising that his requests had been received and the city was working through a backlog of reports. As soon as the reports were completed, they would be shared with Ken. - **According to the records I have this email was never received by me or the mayor did not reach out to me to advise there was a delay.**

- November 22, 2024: Ken submitted another record request - request for the city council meeting recording
- November 26, 2024: Ken submitted another record request - request for the city council meeting recording
- December 10, 2024: Ken submitted another record request - request for the city council meeting recording
- December 10, 2024: Ken filed the complaints with IPIB EXPLANATION OF EVENTS:

The former Clerk and Deputy Clerk resigned from their positions giving the city very little notice and time to find replacements for the positions. The first week of October had no staff at city hall. **The Clerk and Deputy clerk were at the office during the first week of October according to payroll reports.**

Ken submitted two separate records requests on October 23. one request was request for the city council meeting recording and the request for the financial records because the previous clerk were combining request and charging for the combined request yet, according to Iowa code there should had been no charge to exam the public records.

### **22.2 Right to examine public records — exceptions.**

1. Every person shall have the right to examine and copy a public record and to publish or otherwise disseminate a public record or the information contained in a public record. Unless otherwise provided for by law, the right to examine a public record shall include the right to examine a public record without charge while the public record is in the physical possession of the custodian of the public record. The right to copy a public record shall include the right to make photographs or photographic copies while the public record is in the possession of the custodian of the public record. All rights under this section are in addition to the right to obtain a certified copy of a public record under section 622.46.

2. A government body shall not prevent the examination or copying of a public record by contracting with a nongovernment body to perform any of its duties or functions.

**3. If feasible, the custodian of a public record may provide for the electronic examination and copying of a public record in lieu of requiring in-person examination and copying of a public record.**

Ken's requests came just a couple of weeks after Andrea's first day as Deputy Clerk. As you might imagine, there was quite a lot to catch up for the city. **According to the records I have, this email was never received by me, or the mayor did not reach out to me to advise there was a delay.**

Andrea responded to Ken via email on October 31. I believe there was just a miscommunication on documents requested, since Ken submitted two separate request forms on the same day.

Ken followed up with several emails to the city. **Correct there were emails sent to the city asking for a response to the initial request and it was almost a month before a response was received**

- k b

Attached is a public information request Kenneth W. Brown 806 290-1857 Cell  
Isaiah 40:31

Wed, Oct 23, 2024 at 9:27 AM

- k b

Have not receive a response to this email Kenneth W. Brown 806 290-1857 Cell  
Isaiah 40:31

Mon, Oct 28, 2024 at 10:27 AM

k b

It has now been over a week and still no response from the city to the request.  
Kenneth W. Brown 806 290-1857 Cell Isaiah 40:31

Fri, Nov 1, 2024 at 6:48 AM

k b

It has now been over two weeks and still no response from city hall to this  
request. Is there a time line I can expect this Public information request  
completed. According to the code 21 it should only take 10 business day to  
complete a normal request. Kenneth W. Brown 806 290-1857 Cell Isaiah 40:31

Wed, Nov 6, 2024 at 4:01 PM

k b

This a public information request for the clerk's financial reports Yahoo Mail:  
Search, Organize, Conquer

Fri, Nov 8, 2024 at 10:17 PM

k b

It now has been 15 business days and still no reply from the city for this public  
information request for the clerks financial reports. Is there a time line I can  
expect this Public information request completed. According to the code 21 it  
should only take 10 business day to complete a normal request. this is a normal  
request that is requested every month. Kenneth W. Brown 806 290-1857 Cell  
Isaiah 40:31

Wed, Nov 13, 2024 at 10:34 AM

Lyn's first day as Clerk was November 4. As she has been learning the position and training, she discovered the financial reports requested by Ken had not yet been created. Andrea responded to Ken on November 15,

This was the email that was sent to me

Mr. Brown,

I apologize for the delay on your request, but this has not been approved by the council yet. We will process this for you as soon as possible.

Thank you for your patience.

Andrea Clark

and I responded with.

My understanding of the Iowa code and the city ordinances is this information does not need to have the approval of the council before completing the public information request. Now the City of Sidney is in violation of the Iowa code. Please provide this by the end of the day or a complaint will be filed with the state.

Iowa Code 22.8.4.d

A reasonable delay for this purpose shall not exceed twenty calendar days and ordinarily should not exceed ten business days

Mayor Shirley then responded to Ken via email on November 22. Mayor Shirley advised Ken of the new staff at city hall and the backlog of reports necessary for completion. According to the records I have, this email was never received by me or the mayor did not reach out to me to advise there was a delay.

The financial reports and delivered them to Ken via email on December 23. Receiving the records after 2 months and not receiving any email for almost a month when according to the payroll record the Deputy Clerk (Brenda Benedict) was still employed by the city until 12/14/2024 in which she has been producing previous public information request for clerk's reports would be unacceptable in any business organization. Section 22.8(4)(d) as if that deadline applies in this set of circumstances. That timeframe applies only to determining whether confidential records should be available for inspection and copying by the requestor. There were no confidential records at issue here and the city has not asserted that as an exemption. The city experienced substantial staffing turnover with very little notice shortly before the initial request was submitted. The statement is incorrect according to the payroll record the Deputy Clerk (Brenda Benedict) was still employed by the city until 12/14/2024 in which she has been producing previous public information request for clerks reports. The financial records Ken requested did not exist when he made the request. These records, according to the city ordinances, should be produced every month and the complete report package should be presented to the city council for approval not just the summary report. The city did not prevent Ken from examining public records. By not producing these records monthly as per the city ordinances it is preventing any member

of the public access to examining the public records. According to Iowa Code 22.2  
**Right to examine public records — exceptions.**

1. Every person shall have the right to examine and copy a public record and to publish or otherwise disseminate a public record or the information contained in a public record. Unless otherwise provided for by law, the right to examine a public record shall include the right to examine a public record without charge while the public record is in the physical possession of the custodian of the public record. The right to copy a public record shall include the right to make photographs or photographic copies while the public record is in the possession of the custodian of the public record. All rights under this section are in addition to the right to obtain a certified copy of a public record under section 622.46.

2. A government body shall not prevent the examination or copying of a public record by contracting with a nongovernment body to perform any of its duties or functions.

3. If feasible, the custodian of a public record may provide for the electronic examination and copying of a public record in lieu of requiring in-person examination and copying of a public record.

The city worked to complete the reports. **These records, according to the city ordinances, should be produced every month and the complete report package should be presented to the city council for approval not just the summary report.** City code **7.08 FINANCIAL REPORTS.** The finance officer shall prepare and file the following financial reports:

1. Monthly Reports. There shall be submitted to the Council each month a report showing the activity and status of each fund, program, sub-program, and activity for the preceding month.

2. Annual Report. Not later than December 1 of each year there shall be published an annual report containing a summary for the preceding fiscal year of all collections and receipts, all accounts due the City, and all expenditures, the current public debt of the City, and the legal debt limit of the City for the current fiscal year. A copy of the annual report must be filed with the Auditor of State not later than December 1 of each year.

The new staff has made a good faith effort to communicate with Ken and to provide the records requested. **Receiving the records after 2 months and not receiving any email for almost a month when according to the payroll record the Deputy Clerk (Brenda Benedict) was still employed by the city until 12/14/2024 in which she has been producing previous public information request for clerk's reports would be unacceptable in any business. Also, no communication from the mayor during this time is also unacceptable in any business atmosphere** The new Clerk worked diligently to learn the system and complete the report accurately and precisely. She shared those records with Ken as soon as they were complete. **Receiving the records after 2 months and not receiving any email for almost a month when according to the payroll record the Deputy Clerk (Brenda Benedict) was still employed by the city until 12/14/2024 in which she has been producing previous public information request for clerk's reports would be unacceptable in any business organization. The records Ken requested were eventually provided after having to file a complaint with the state.** I am confident that the staff will become even more efficient as they catch up and become more seasoned in these positions.



Lee, Alexander &lt;alexander.lee@iowa.gov&gt;

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## Receipt of New IPIB Complaint (24FC:0122)

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Lee, Alexander <alexander.lee@iowa.gov>  
To: Justin Scott <jscottimages@gmail.com>

Fri, Dec 20, 2024 at 3:09 PM

Good afternoon,

Just wanted to follow up with you to say that I appreciated our conversation today - I hope I didn't keep you too long, but I think it was a good discussion. My understanding after the phone call is that you are withdrawing case 24FC:0122, meaning we will not conduct further review of the allegations made in this particular formal complaint. As I mentioned, if you look back later and determine that there is still a potential violation which requires our attention, you are not bound by this withdrawal until we submit it to the Board as a final report to close the case.

Here are a few resources based on what we discussed during our meeting:

- [Open Meetings & Records](#). This is an overview of basic meetings/records requirements that government bodies are subject to. It's written for an audience of newly elected officials and doesn't cover everything, but it also provides a brief explanation of the major areas of Chapter 21 and 22 that IPIB oversees.
- [Sample Records Request Letter](#). While there is no required template for requesting public records, IPIB created this template to help members of the public to make more "formal" requests and cover their bases. Thought you might be interested if you haven't seen this already.
- Iowa Code § 21.4(1). One legal topic we discussed was the requirement that a tentative agenda for a meeting must be given "in a manner reasonably calculated to apprise the public." This requirement is not stringent, and the Iowa Supreme Court has previously explained that the standard is "not whether the notice given by the government body could have been improved, but whether the notice sufficiently apprised the public and gave full opportunity for public knowledge and participation" based on considerations such as "the public's knowledge of an issue and actual participation in events in light of the history and background of that issue." Two past cases where IPIB has found a violation based on insufficient agendas are [20FC:0128](#) (the COVID-19 case) and [18FC:0061](#) (in which the meeting agenda included single word items like "Parks" and "Streets"). These cases are fact dependent, and the bar isn't all that high (e.g. "Approval of Safety Grant" could very well be sufficient under the Supreme Court's standard, depending on surrounding facts), but I thought this might provide a little more texture for what we spoke about in terms of agenda notice requirements.

Let me know if you have any questions or want to follow-up on anything in particular I might be forgetting. Otherwise, it was a pleasure to talk with you today, and I hope you have a good weekend!

Best,



**Alexander Lee, JD**

Agency Counsel  
Iowa Public Information Board (IPIB)  
502 East 9th Street  
Wallace Building, 3rd Floor  
Des Moines, Iowa 50319  
(515) 401-4461  
[alexander.lee@iowa.gov](mailto:alexander.lee@iowa.gov)  
[www.ipib.iowa.gov](http://www.ipib.iowa.gov)

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Lee, Alexander &lt;alexander.lee@iowa.gov&gt;

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**Registered: RE: Notice of New IPIB Complaint (24FC:0127)**

2 messages

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**John Gruca** <John@stamyins.com>

Sat, Dec 28, 2024 at 9:56 AM

Reply-To: John@stamyins.com

To: alexander.lee@iowa.gov



This is an encrypted email from **John Gruca**. To reply to this email encrypted, you may **Click here** .

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Mr. Alexander,

This (the email you responded to) is sufficient.

I did take some time to go back through internet archives and I don't believe the minutes for older meeting were in fact posted on the City of Cedar Rapids web-site for "some time", although "some time" is subjective.

As it is, the issue is resolved. I appreciate your efforts, and apologize that you needed to spend your time on such a simple matter.

Respectfully,

John M Gruca

john@stamyins.com

This communication (including attachments and all accompanying materials) may contain information that is privileged, confidential, or otherwise exempt from disclosure under the law. It is intended only for the use of the individual, or entity to which it is addressed. If you are not the addressee, any review, dissemination, distribution or copying is strictly prohibited. If you received this communication in error, please notify the sender and delete all copies.

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**Dave Sherwood** <landfill@tamacounty.org>  
To: Alexander Lee <alexander.lee@iowa.gov>

Tue, Dec 24, 2024 at 3:33 PM

Yes, I did  
Sent from my iPhone

On Dec 24, 2024, at 1:23 PM, Lee, Alexander <alexander.lee@iowa.gov> wrote:

[Quoted text hidden]

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**Dave Sherwood** <landfill@tamacounty.org>  
To: Alexander Lee <alexander.lee@iowa.gov>

Tue, Dec 24, 2024 at 3:34 PM

As soon as I explained to them that I filed a complaint with the IPIB they gave me everything I wanted.  
Sent from my iPhone

On Dec 24, 2024, at 1:23 PM, Lee, Alexander <alexander.lee@iowa.gov> wrote:

[Quoted text hidden]

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**Lee, Alexander** <alexander.lee@iowa.gov>  
To: Dave Sherwood <landfill@tamacounty.org>

Fri, Dec 27, 2024 at 8:53 AM

Dear Mr. Sherwood,

I'm glad to hear it! If you have anything else you would like to discuss concerning this case, I am available as needed. If there is nothing further on this matter and all documents have been produced, would it be correct to assume the complaint can be withdrawn as resolved?

Best,



**Alexander Lee, JD**  
Agency Counsel  
Iowa Public Information Board (IPIB)  
502 East 9th Street  
Wallace Building, 3rd Floor  
Des Moines, Iowa 50319  
(515) 401-4461  
[alexander.lee@iowa.gov](mailto:alexander.lee@iowa.gov)  
[www.ipib.iowa.gov](http://www.ipib.iowa.gov)

[Quoted text hidden]

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**Dave Sherwood** <landfill@tamacounty.org>  
To: Alexander Lee <alexander.lee@iowa.gov>

Fri, Dec 27, 2024 at 12:38 PM

1/6/25, 3:32 PM

State of Iowa Mail - Receipt of New IPIB Complaint (24FC:0128)

Yes, please withdraw the complaint.

Sent from my iPhone

[Quoted text hidden]

## 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.

DRAFT

## 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.

Active Cases Report

40

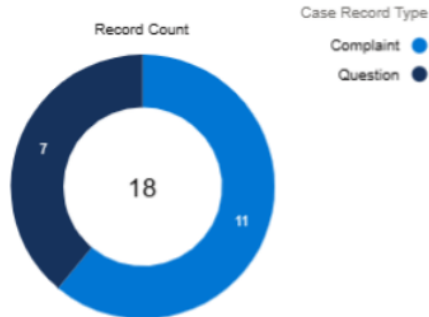
[View Report \(Active Cases Report\)](#)

Active Questions Report

4

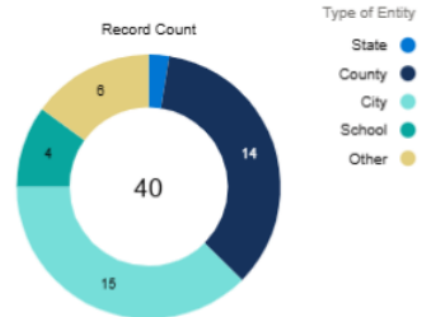
[View Report \(Active Questions Report\)](#)

New complaints &/or question last 30 day



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

Cases by Entity



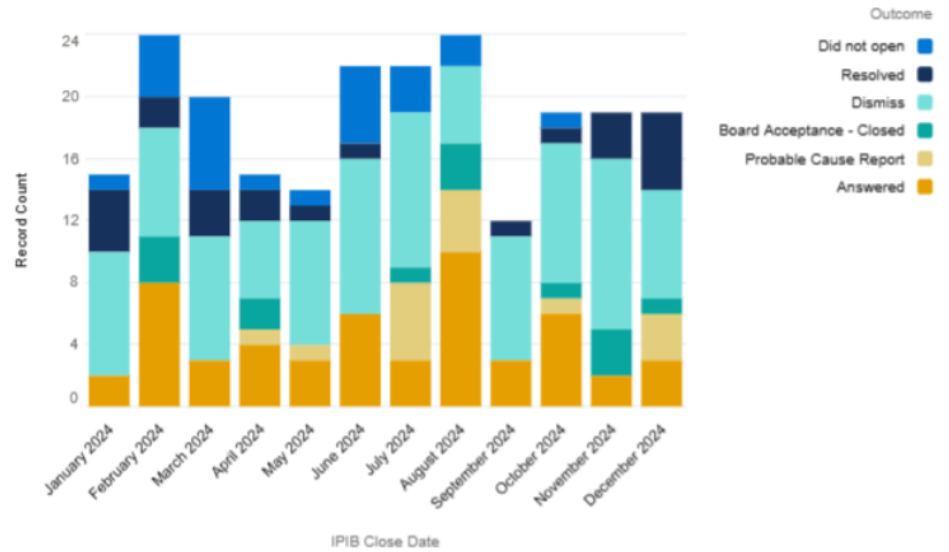
[View Report \(Cases by Entity\)](#)

Broad Type (Filed in Current)



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

Closed cases (past 12 months)

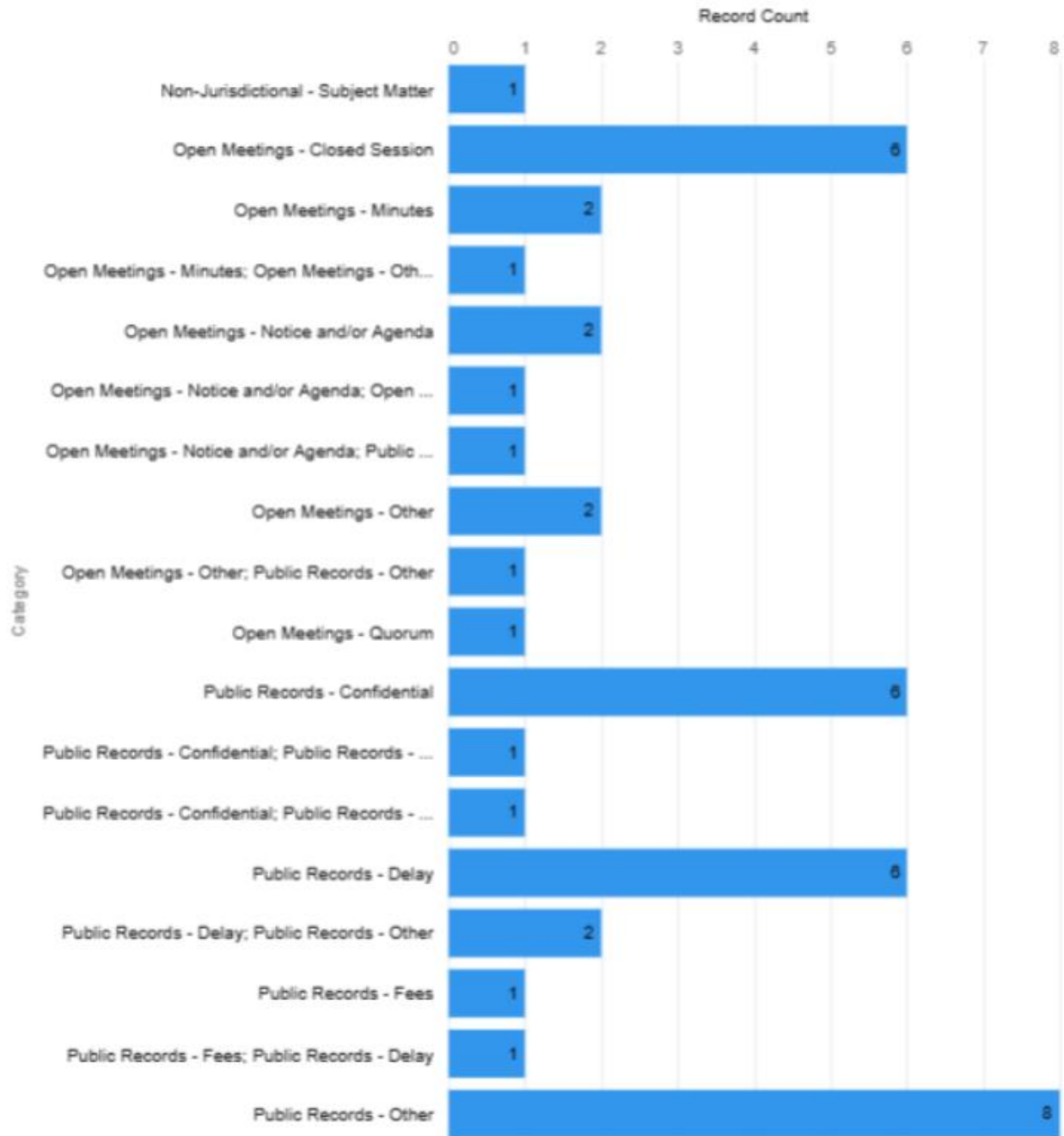


[View Report \(Closed cases \(past 12 months\)\)](#)

# Cases by Type

As of Jan 10, 2025 1:11 PM-Viewing as Erika Eckley

## Cases by Type (Active)



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



Iowa Public Information Board

**Providing a free, efficient way for Iowans to receive information and resolve complaints related to chapters 21 and 22, Iowa's open meetings and public records laws.**

## Annual Report

### From the Executive Director –

There continue to be changes at IPIB to increase efficiencies in operations, be more responsive to the public and to improve timeliness in complaint review and resolution. With the retirement of a long-time employee, IPIB reclassified the position to an attorney, so now all three employees are licensed Iowa attorneys. This change will allow any staff member to provide information to the public, conduct trainings, review complaints, draft advisory opinions, and conduct contested case proceedings. In addition, all three attorneys have completed a 40-hour mediation training to better enable IPIB to work with parties to resolve matters as required under Iowa Code section 23.9.

Last year, IPIB upgraded to a fully electronic case management system. Since then, IPIB has been tracking the types of complaints and the amount of time internally it takes to open and review complaints once received. IPIB has set goals to have every complaint reviewed and opened within seven calendar days. Since tracking started, IPIB has achieved between 80 and 90 percent in meeting this goal.

IPIB began livestreaming all of its board and committee meetings January 2024. These meetings are archived on IPIB's YouTube channel and available for the public to view at any time.

In 2025, we expect Formal Complaints, questions, and training requests will continue to increase. We will continue to work to provide advisory opinions, FAQs, and eventually some training videos on our website focused on open meetings and public records requirements. IPIB is a small agency, but will continue to focus on greater outreach and transparency to meet the mission of IPIB established since its inception: to be the trusted resource in ensuring transparency by Iowa's governmental bodies.

Erika Eckley, J.D., M.P.A.  
Executive Director

### 2024 at a Glance:

134

**Formal  
Complaints**

12

**Advisory  
Opinions**

18

**Training  
Sessions**

12

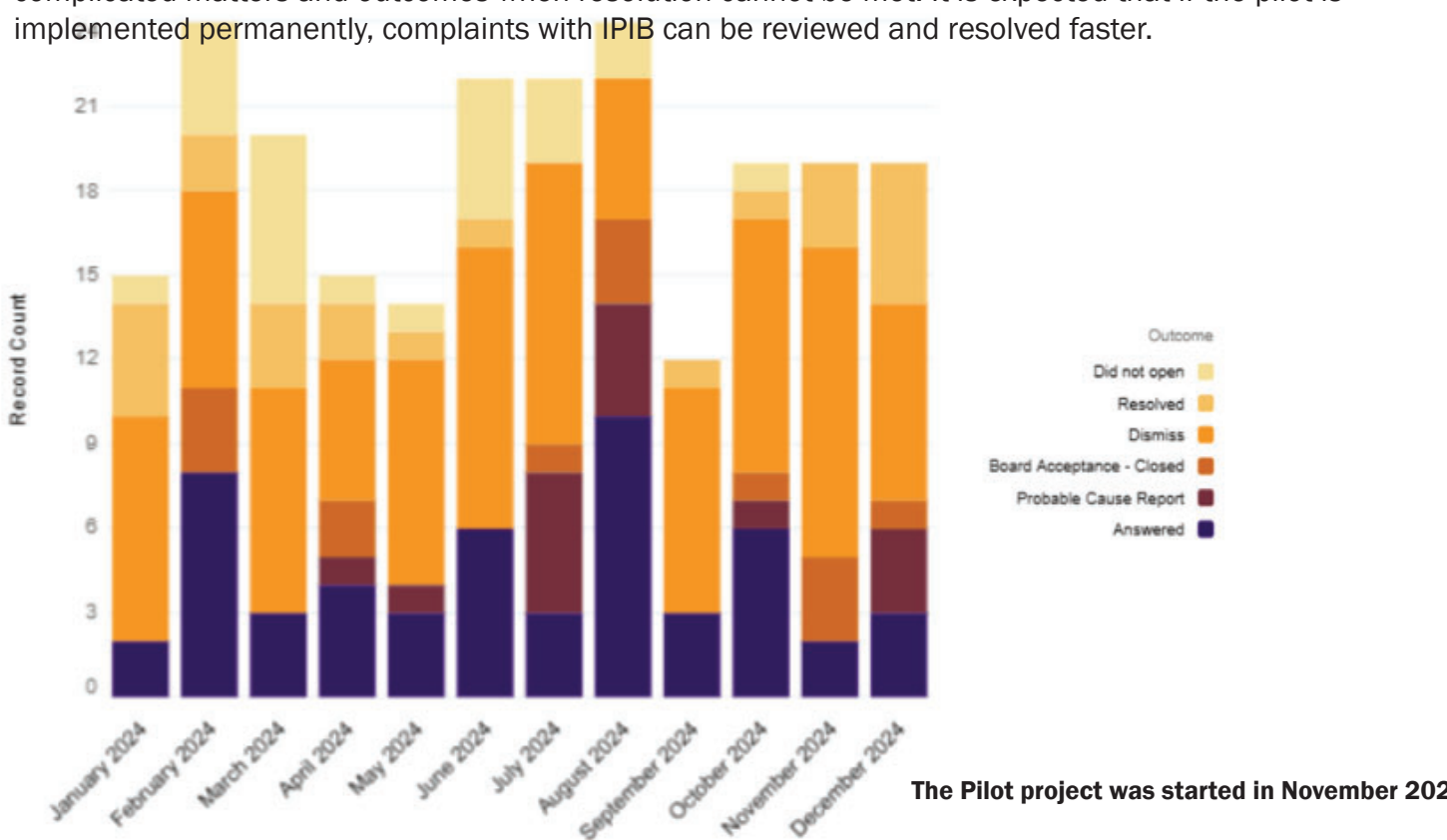
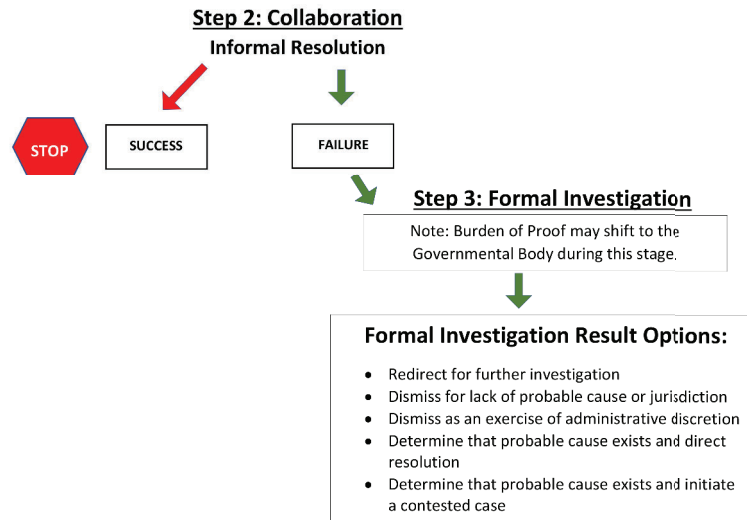
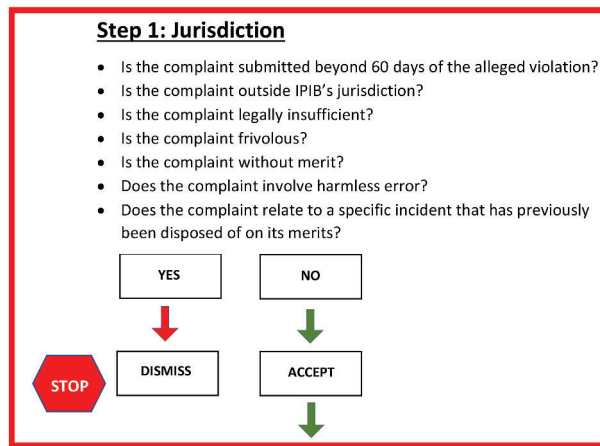
**Board  
Meetings**



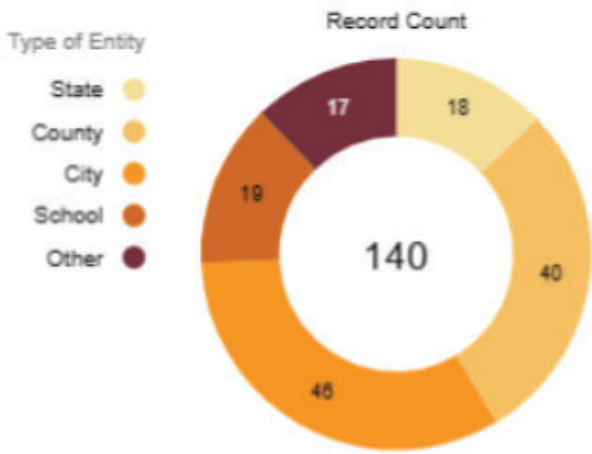
# Complaints and Other Activities

IPIB received 134 Formal Complaints in 2024. This was similar to the number filed in 2023, which was 137 Formal Complaints. The Complaints involved governmental bodies of all kinds and covered slightly more public records issues than open meetings. Of the Formal Complaints filed in 2024, there were 35 Formal Complaints still open which IPIB is continuing to investigate and work through our informal resolution process. In 2024, a complaint would take an average of 91 days to complete. For cases that required completion of an informal resolution or a probable cause review by the IPIB, cases averaged 215-220 days for resolution.

In November 2024, as part of the Executive Order 10 administrative rulemaking review and drafting process, the IPIB adopted a pilot project regarding the processing of Formal Complaints. This new process is outlined in the chart on this page. This new process better aligns with the requirements outlined in Iowa Code chapter 23. During the pilot process, IPIB staff have been able to make an acceptance or dismissal decision within two board meetings (~60 days) 100% of the time. The pilot process has also focused more time on resolving disputes and when needed, focusing the IPIB's time on more complicated matters and outcomes when resolution cannot be met. It is expected that if the pilot is implemented permanently, complaints with IPIB can be reviewed and resolved faster.



The Pilot project was started in November 2024.

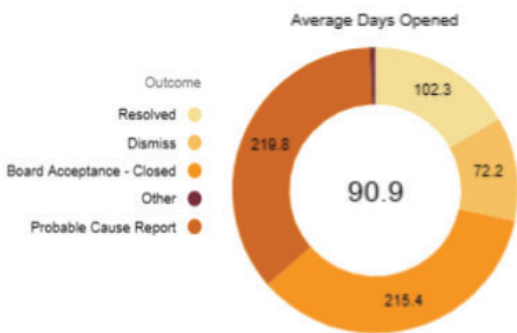


Includes 140 as some Complaints were consolidated.

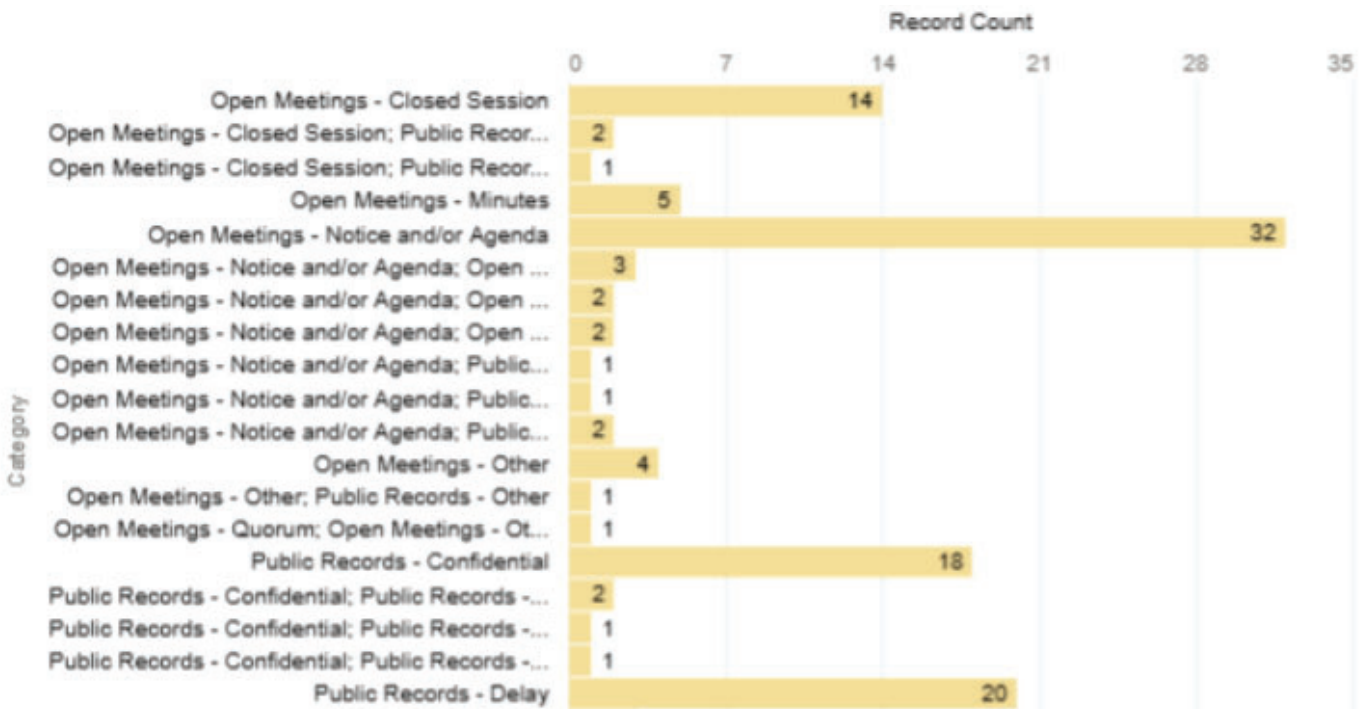
2024. There were four additional requests pending at the end of 2024. The opinions covered issues including when government members can meet for social or ministerial purposes; confidentiality of crisis intervention reports completed prior to disclosure of the required form under Iowa Code section 22.7; and government-sponsored social media records requests.

At year's end, there was one contested case potentially pending. The district court did remand a case to IPIB for acceptance of the complaint. It involved a closed session under Iowa Code section 21.5(1)(c) to discuss strategy with counsel in matters that are presently in litigation or where litigation is imminent where its disclosure would be likely to prejudice or disadvantage the position of the governmental body in that litigation. Another case is on appeal from a district court decision regarding a public record and a contract for a service.

IPIB also issued 12 Advisory Opinions in



With the new case management system fully operational, IPIB has been able to track formal questions and complaints that have been submitted. The most common area for Formal Complaints and Questions were for public notice and agendas and closed sessions under Iowa Code chapter 21 and for delays and confidential documents under chapter 22. IPIB's legislative committee considered these matters and has legislation proposed to address some of the notice issues that have been presented.



Formal Complaints were distributed across all governmental bodies. Thirty-two percent were filed against cities, 29% were against counties, 14% against school boards, 13% against state agencies, and 12% against other types of entities, such as library boards or townships. This is consistent with last year's breakdown of complaints.

IPIB continues to provide training and information whenever requested or when believed necessary to resolve a complaint and avoid future potential violations. IPIB no longer formally tracks the numbers of calls or emails, IPIB continues to provide informal guidance and assistance to citizens in obtaining records or accessing meetings and governmental bodies in the interpretation of Chapters 21 and 22. These informal requests require review and research, including occasional mediation assistance from IPIB. They do not require Board review or action.

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**All Formal Complaint Orders, Advisory Opinions, and Board Agendas and Minutes are available on IPIB's website.**

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

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## Board Staff



**Erika Eckley, JD, MPA**, was named the Executive Director on March 3, 2023. Previous to this appointment, she worked for Iowa-based Intoxalock and the Iowa Hospital Association. She received a bachelor's degree in Creative and Performing Arts from Grand View University, a Master's of Public Administration from Iowa State University and a law degree from Drake Law School. Her prior legal experience includes staff attorney with the Center for Agricultural Law and Taxation, and in private practice.



**Kimberly Murphy, JD**, serves as Deputy Director for the Board. She began working for the IPIB in June 2024. Prior to serving in this role, Kimberly was an Assistant General Counsel at Wellmark and Vice President of Government Relations and Assistant General Counsel at the Iowa Hospital Association. She has prior experience in both the public and private sectors. Murphy received her Juris Doctorate from the University of Iowa College of Law. She received her bachelor's degree in English Literary Studies and Political Science from Iowa State University.



**Alexander Lee, JD**, serves as Agency Counsel for the Board. He received his juris doctor from Drake University Law School and his bachelor of science from the University of Mary Washington. Prior to joining IPIB, he worked as a resource coordinator for a refugee/resettlement non-profit in Northern Virginia. In law school, Alexander served as a prosecutor intern at the Dubuque County Attorney's Office and provided volunteer immigration legal services through the Drake Refugee Clinic. Alexander joined the IPIB staff in September 2024.

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on our  
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**Iowa Public Information Board**

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# The Board

Iowa Code chapter 23 states no more than three members of the nine-member board shall represent the media and not more than three shall represent cities, counties, or other local governments. The members serve staggered four-year terms. The Board must be balanced by political party and gender. The Board appoints a chair and vice chair from among its members. The Board is an independent agency.

In 2024, the Board met for twelve monthly meetings. In 2024, two new members of the Board were appointed. There is one vacancy on the Board.

- **Joan Corbin, Pella – (Government Representative) (Democrat) (2024-2028)** – Joan is a community volunteer and serves on the Pella Community School District Board. She currently serves as the President of the school board and is in her fifth term with the district. She served on the Iowa Association of School Boards for 12 years, including two years as President, just completing her last year in December of 2022.
- **E.J. Giovannetti, JD, Urbandale – (Public Representative) (Republican) (2022-2026)** – E.J. is currently active as an attorney for Hopkins & Huebner, P.C. and has been a public servant for the past 40 years, including being Mayor of the City of Urbandale (20 years) and member of the Board of Supervisors (10 years).
- **Barry A. Lindahl, JD, Dubuque – (Vice Chair) (Government Representative) (Democrat) (2024-2028)** - Barry served in the City of Dubuque City Attorney's Office from 1975 to the present. He was City Attorney from 1983 to 2016. He is now Senior Counsel. Barry was a University of Iowa College of Law Adjunct Faculty Member from 1978-2018. Barry is the author of West Publications Iowa Practice: vol.9-10 Civil Practice Forms and vol.11-12 Civil and Appellate Procedure.
- **Catherine Lucas, JD, Johnston – (Government Representative) (Independent) (2020-2024)** – Catherine is General Counsel for the Iowa Department of Public Safety. She previously worked in private practice representing municipalities.
- **Luke Martz, Des Moines – (Public Representative) (Republican) (2024-2028)** – Luke joined the Board in April 2024.
- **Joel McCrea, Pleasant Hill – (Media Representative) (Republican) (2022-2026)** – Joel McCrea is the former General Manager of WHO Radio in Des Moines from 2000 to 2024. He also worked at radio stations in Oelwein, Waterloo and Newton over his 44 year career in broadcasting. He currently works for a West Des Moines Advertising Agency.
- **Monica McHugh, CPA, Zwingle – (Chair) (Public Representative) (Republican) (2022-2026)** – Monica is Shared Services Manager - Accounting at A.Y. McDonald in Maquoketa, IA and owns JM Farm Accounting, a small tax and accounting practice. She also serves as chair of the Jackson County Zoning Board of which she has been a member of since 2010.
- **Jackie Schmillen, Urbandale – (Media Representative) (Democrat) (2022-2026)** - Jackie has been a broadcast journalist for nearly 20 years throughout the state of Iowa. She has worked in promotions, producing, writing, editing, reporting and anchoring with local TV newscasts. Jackie now works as the Director of Public Affairs for the Iowa National Guard.

**Reviewed and approved on January 16, 2025**

**Monica McHugh, Chair**

Class	Obj/Rev Class Name	JULY	AUG	SEPT	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUNE	HO13	HO14	HO15	YTD	End of Year Forecast	Annual Budget	Percent of Budget	Percent of Budget	
		Actual	Actual	Actual	Actual	Actual	Actual	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Actual	(C=A+B)	(D)	To Date	Forecasted EOY
	Appropriation	363,227																		363,227		
	Deappropriation																					
	BBF (T&T)																					
<b>Expenditures</b>																						
101	Personal Services	19,563	19,067	19,474	35,990	23,251	24,217	24,338	24,338	24,338	35,990	24,338	24,338	7,492	-	-	141,562	306,735	323,270	44%	95%	
202	In State Travel	333	38	625	-	122	224	-	-	-	-	-	-	-	-	-	1,341	1,341	3,487	38%	38%	
301	Office Supplies	-	129	304	255	148	120	1,080	255	255	255	255	255	255	-	-	956	3,565	3,000	32%	119%	
309	Printing & Binding	-	-	-	-	61	-	-	-	-	-	-	-	-	-	-	61	61	500	12%	12%	
313	Postage	-	6	8	3	6	4	4	4	4	4	4	4	4	-	-	27	57	150	18%	38%	
401	Communications	-	174	160	221	139	139	250	250	250	250	250	250	250	-	-	835	2,585	3,000	28%	86%	
406	Outside Services	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1,000	0%	0%	
414	Reimbursements To Other Agency	-	1,600	1,608	1,603	1,915	1,678	1,603	1,603	1,603	1,603	1,603	1,603	1,603	-	-	8,404	19,623	12,000	70%	164%	
416	ITD Reimbursements	-	299	11,271	(6,376)	309	276	314	314	314	314	314	314	314	-	-	5,779	7,975	15,820	37%	50%	
418	IT Outside Services	-	146	146	146	146	146	146	146	146	146	146	146	146	-	-	732	1,756	1,000	73%	176%	
<b>Total Expenditures:</b>		<b>19,896</b>	<b>21,459</b>	<b>33,596</b>	<b>31,842</b>	<b>26,097</b>	<b>26,803</b>	<b>27,735</b>	<b>26,910</b>	<b>26,910</b>	<b>38,562</b>	<b>26,910</b>	<b>26,910</b>	<b>10,064</b>	<b>-</b>	<b>-</b>	<b>159,694</b>	<b>343,697</b>	<b>363,227</b>	<b>44%</b>	<b>95%</b>	
<b>Current Month Operations</b>		<b>343,331</b>	<b>(21,459)</b>	<b>(33,596)</b>	<b>(31,842)</b>	<b>(26,097)</b>	<b>(26,803)</b>	<b>(27,735)</b>	<b>(26,910)</b>	<b>(26,910)</b>	<b>(38,562)</b>	<b>(26,910)</b>	<b>(26,910)</b>	<b>(10,064)</b>	<b>-</b>	<b>-</b>						
<b>Cash Balance</b>		<b>343,331</b>	<b>321,872</b>	<b>288,276</b>	<b>256,434</b>	<b>230,337</b>	<b>203,533</b>	<b>175,798</b>	<b>148,888</b>	<b>121,978</b>	<b>83,415</b>	<b>56,505</b>	<b>29,595</b>	<b>19,530</b>	<b>19,530</b>	<b>19,530</b>						

**Footnotes:**

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

**Expenditures**

- 101 - Slip was budgeted for retirement, but is not being utilized in FY25. Months of October and April have 3 payroll warrants written. July actual included retirement vacation payout.
- 309 - November actual was B&W General Copy - October 17 packet from Kim Murphy Per Board.
- 401 - January forecast includes licensing fees for 3 attorneys at \$275 per license.
- 414 - Space could be affected after move. Will update as forecasts are available. DAS finance time is included and could vary depending on month's needs.
- 416 - October includes move of Salesforce renewal to P22T.

Fund: 0001 General Fund  
 Unit: P22T  
 Sub Unit: Blank  
 Approp: P22  
 Obj/Rev Class: Iowa Public Information Board

EDas Customer Number: 1882  
 Percent of Year Complete: 50.00%

Class	Obj/Rev Class Name	JULY	AUG	SEPT	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUNE	HO13	HO14	HO15	YTD	End of Year Forecast	Annual Budget	Percent of Budget To Date	Percent of Budget forecasted EOY
		Actual	Actual	Actual	Actual	Actual	Actual	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Actual	(C=A+B)	(D)	To Date	EOY
	Appropriation																		-		
	Deappropriation																				
	BBF (T&T)	19,416																			
<b>Expenditures</b>																					
401	Communications	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	0%	0%
406	Outside Services	-	-	-	3,900	-	-	-	-	-	-	-	-	-	-	-	3,900	3,900	-	0%	0%
416	ITD Reimbursements	-	-	-	6,688	-	-	927	-	-	-	-	-	-	-	-	6,688	7,616	-	0%	0%
503	Equipment-Non Inventory	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	0%	0%
<b>Total Expenditures:</b>		-	-	-	<b>10,588</b>	-	-	<b>927</b>	-	-	-	-	-	-	-	-	<b>10,588</b>	<b>11,516</b>	-	<b>#DIV/0!</b>	<b>#DIV/0!</b>
<b>Current Month Operations</b>		<b>19,416</b>	-	-	<b>(10,588)</b>	-	-	<b>(927)</b>	-	-	-	-	-	-	-	-					
<b>Cash Balance</b>		<b>19,416</b>	<b>19,416</b>	<b>19,416</b>	<b>8,827</b>	<b>8,827</b>	<b>8,827</b>	<b>7,900</b>	<b>7,900</b>	<b>7,900</b>	<b>7,900</b>	<b>7,900</b>	<b>7,900</b>	<b>7,900</b>	<b>7,900</b>	<b>7,900</b>					

Footnotes:  
 Unit should be managed to \$0 at year end.