

# **IOWA PUBLIC INFORMATION BOARD – Rules Committee**

## **MEMBERS**

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

## **STAFF**

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

**Use the following link to watch the IPIB meeting live:**

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

**Note: If you wish to make public comment to the Board, please send an email to [PIB@iowa.gov](mailto:PIB@iowa.gov) prior to the meeting.**

## **Agenda**

**February 20, 2025, noon-1 p.m.**

**Location: Iowa Public Information Board**

**Jessie Parker Building**

**510 East 12<sup>th</sup> Street, Des Moines, Iowa 50319**

- I. Call to Order
- II. Approval of agenda\*
- III. Approve Minutes from February 11, 2025 \*
- IV. Public Comment (5-minute limit per speaker)
- V. Review Rules Drafts\*
  - a. Deliberation/Action on Current Draft Rules to Proceed to IPIB
- VI. Discuss Presentation of Rules Drafts to the IPIB
- VII. Adjourn

**\* Attachment**

## **IOWA PUBLIC INFORMATION BOARD – Rules Committee**

**February 11, 2025  
Unapproved Minutes**

- I. **Call to Order.** Corbin called the meeting to order.
- II. **Approval of Agenda.** On a motion by Giovannetti, second by Corbin, to approve the agenda. Unanimously approved, 2-0.
- III. **Approval of Minutes.** On a motion by Giovannetti, second by Corbin, to approve the minutes from January 16, 2025. Unanimously approved, 2-0.
- IV. **Public Comment.** There was no public comment.
- V. **Review Rules Drafts.** Murphy provided an overview of rules drafts and Board feedback. Committee discussion occurred. Committee directed IPIB staff regarding changes.
- VI. **Discuss Presentation of Rules Drafts to the IPIB.** Committee discussion occurred. IPIB staff was directed to set an action item to approve the rules at the next meeting of the IPIB. Staff will present the rules and Committee members will add input.
- VII. **Review Rules Schedule.** Murphy provided an overview of the rules schedule and next steps. Board discussion occurred.
- VIII. **Adjourn.** On a motion by Giovannetti, second by Corbin, to adjourn. Unanimously approved, 2-0.

## Summary of Feedback Received from Members:

1. *Basic Corrections* – Changes made
2. *Burden of Proof* – For discussion
  - a. Preferred Language – “Burden of proof – Chapter 22 Investigations. The burden of proof before the Board is allocated according to Iowa Code section 22.10(2).”
  - b. This will work for Chapter 22, but creates confusion for Chapter 21. See Iowa Code provisions. (Attachments B and C, with highlights)
3. *Delegation of Investigation* – For discussion. For 2.13(4), does there need to be a process for a party to object to the person appointed as delegate? What if one of the parties believes the investigator has a bias?
4. *Overall EO10 Compliance*. Changes made. The following terms have been removed from all rules drafts:
  - Shall
  - May not
  - Must
  - Prohibit
  - Require
  - Restrict

# 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 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 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 evidence 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 the degree of diligence expected from a person of ordinary prudence under the circumstances.

“Respondent” is 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.** A complaint will be filed 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 will be resolved by the board at its discretion.

**497—2.5(23) Form of complaint.** A complaint will 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 contained within the form. The board may refuse to accept a complaint if it does not contain information consistent with this rule.

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

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

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

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

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

**2.7(2) Not a contested case.** The board's review of a complaint for legal sufficiency is not a contested case proceeding and will 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 will 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 will be provided to the complainant. The dismissal order will explain the reasons for the dismissal.

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

- 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) will 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 will 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 will result in a probable cause finding pursuant to rule 497—2.17.

**497—2.11(23) Complainant’s response to respondent.** The complainant will 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, will 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 will 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 will 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 will 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, IPIB staff will make a report to the board and will 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. Any alleged conflicts of interest regarding an independent investigator will be addressed at the discretion of the board.

**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 will be on the government body to demonstrate compliance with the requirements of Iowa Code Chapter 21.

**497—2.15(23) Burden of proof – Chapter 22 investigations.** The burden of proof applied will be the same burden of proof applied to judicial enforcement as outlined in Iowa Code section 22.10(2).”

**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 will 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 will initiate a contested case proceeding pursuant to Iowa Code Chapter 17A. The board will 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 will issue a written order and a copy of the order will be provided to the complainant and the respondent. The order will explain the reasons for the dismissal or the finding of probable cause.

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

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

# IOWA PUBLIC INFORMATION BOARD [497]

## *Purpose and Summary*

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 will 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 will 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 will 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 will 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 will be heard before the board. The board may request briefs or the filing of other documents. The board will 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 will 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 will accept requests for advisory opinions only pertaining to Iowa Code chapters 21 and 22, or rules adopted thereunder. The board does 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 will 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 will pose specific legal questions and describe any specific facts relating to the questions posed. A request for an advisory opinion will 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 consistent with the designated form.

**497—11.3(23) Processing of advisory opinions.** After receiving an advisory opinion request, the board's executive director will 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 the board may still issue 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 will make every reasonable attempt to issue an advisory opinion within 30 days after a formal request is made.

**497—11.5(23) Approval of advisory opinions.** Upon an affirmative vote of a majority of the board, the executive director will 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 will 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.

## 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.