

IOWA PUBLIC INFORMATION BOARD

MEMBERS

Daniel Breitbarth, Des Moines (Government Representative, 2022-2026)

Joan Corbin, Pella (Government Representative, 2020-2024)

E. J. Giovannetti, Urbandale (Public Representative, 2022-2026)

Barry Lindahl, Dubuque (Government Representative, 2020-2024)

Joel McCrea, Pleasant Hill (Media Representative, 2022-2026)

Monica McHugh, Zwingle (Public Representative, 2022-2026)

Julie Pottorff, Des Moines (Public Representative, 2020-2024)

Jackie Schmillen, Urbandale (Media Representative, 2022-2026)

vacant

STAFF

Erika Eckley, Executive Director

Brett Toresdahl, Deputy Director

Daniel Strawhun, Legal Counsel

Dial-in number: 877-304-9269 Conference Code: 664760#

Note: ALL phones MUST remain on mute unless you are addressing the Board

Agenda

August 17, 2023, 1:00 p.m.

3rd Floor E/W Conference Room

Wallace Building

502 East 9th Street, Des Moines

1:00 PM – IPIB Meeting

- I. Approval of agenda*
- II. Approval of the July 20, 2023 minutes *
- III. Public Forum (5-minute limit per speaker)
- IV. Comments from the board chair. (McHugh)
- VI. Advisory Opinion – Deliberation/Action.
 1. 23AO:0003 (Iowa Public Information Board - -) 7/21/2023 - How to determine whether a portion of a police investigative file can be withheld as confidential. *
 2. 23AO:0004 (Requested Anonymously) 7/26/2023 - Is a document which contains part of the internet browsing history of a public official, conducted on a private computer, which was collected during a personnel investigation, a confidential record under Iowa Code 22.7(11)(a). *
- VII. Cases involving Board Deliberation/Action. * (Eckley)
 1. 23FC:0063 (Laurie - Chapter 21- City of Delhi) 6/19/2023 & 23FC:0066 (Greg Preussner - Chapter 21- Delhi City Council) 6/19/2023 – * Consolidation & Acceptance

2. 23FC:0068 (Nolan McGowan - Chapter 21- Osceola County Board of Supervisors) 6/22/2023 * Acceptance
3. 23FC:0035 (Concerned Citizen - Chapter 21- O'Brien County Conservation Board) 3/11/2023 * Final Report
4. 23FC:0047 (Darran Sellers - Chapter 21- Vinton City Council) 4/18/2023 * Final Report
5. 23FC:0053 (Debra Schiel-Larson - Both- Indianola Community School District) 5/4/2023 * Acceptance
6. 23FC:0056 (Ruth Bolinger - Chapter 21- Creston City Council) 5/22/2023 * Dismissal
7. 23FC:0065 (Neetu Arnold - Chapter 22- University of Northern Iowa) 6/19/2023 * Acceptance
8. 23FC:0072 (Don Benedict - Chapter 22- City of Sidney) 7/18/2023 * Acceptance
9. 23FC:0080 (Kenneth Brown – Chapter 22 – City of Sidney) 8/3/23 * Dismissal
10. 23FC:0073 (Don Burgmaier - Chapter 22- Iowa Attorney General's Office) 7/18/2023 * Dismissal
11. 23FC:0077 (Clifford Davis - Chapter 21- City of Grand River) 7/21/2023 * Dismissal

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

1. 23FC:0061 (Michelle Havenstrite - Chapter 21- PCM Community School Board) 6/16/2023 * Withdrawn
2. 23FC:0078 (Jareb Gleckel - Chapter 22- Iowa Department of Agriculture and Land Stewardship) 8/4/2023 * withdrawn

IX. Pending Complaints. Informational Only (Eckley)

1. (Mellisa Mattingly - Both-) 8/3/2023 - New / Complaint Information Reviewed
2. (Elijah Mathern - Advisory Opinions-) 8/4/2023 - New / Complaint Information Reviewed
3. 22FC:0118 (Dakoda Sellers - Chapter 22- City of Vinton) 11/14/2022 Informal Resolution Process
4. 22FC:0069 (Mari Radtke - Chapter 22- City of Paulina) 7/25/2022 - Informal Resolution Process
5. 23FC:0044 (Cliff Sheakley - Chapter 22- Tama County Auditor) 3/31/2023 – Informal Resolution Process
6. 23FC:0059 (William Kreijanovsky - Chapter 22- Polk County) 6/16/2023 - Information Gathering
7. 23FC:0060 (Dina Raley - Chapter 22- Delaware County Sheriff) 6/16/2023 - Information Gathering
8. 23FC:0062 (Chuck Morris - Chapter 21- Page County Board of Supervisors) 6/16/2023 – Informal Resolution Process
9. 23FC:0064 (Julie Ann Madden - Both- Akron Care Center) 6/19/2023 - Information Gathering
10. 23FC:0069 (Roger Hurlbert - Chapter 22- Montgomery County Assessor) 6/26/2023 – Complaint Open
11. 23FC:0071 (Bradley Wendt - Chapter 21- City of Adair) 7/18/2023 - Information Gathering
12. 23FC:0074 (Chad Miller - Chapter 21- Scott County Board of Review) 7/18/2023 - Information Gathering
13. 23FC:0075 (Less Grossman - Chapter 21- Eastern Iowa Community College) 7/21/2023 – Information Gathering
14. 23FC:0076 (Stan Walk - Chapter 21- Mitchell County Economic Development Commission) 7/21/2023 - Information Gathering
15. 23FC:0079 (Steve St. Clair - Chapter 21- Winneshiek County Board of Supervisors) 8/4/2023 – Information Gathering

- X. Committee Reports
 - 1. Communications – (Toresdahl)
 - 2. Legislative – (Eckley)
 - 3. Rules – (Strawhun)

- XI. Office status report.
 - 1. Office Update * (Eckley)
Discussion/Action regarding cyber security and public record requests sent to multiple government bodies.
 - 2. Financial/Budget Update (FY24) * (Toresdahl)
 - 3. Presentations/Trainings (Eckley)
 - 4. District Court Update (Eckley)

- XII. Next IPIB Board Meeting will be held in the Wallace Building, 3rd Floor, E/W Conference Room, September 21, 2023 at 1:00 p.m.

- XIII. Adjourn

*** Attachments**

IPIB Legislative Committee meeting at 3:00p.m. or immediately following the Board meeting in the IPIB Office Conference Room.

IOWA PUBLIC INFORMATION BOARD

July 20, 2023

Unapproved Minutes

The Board met on July 20, 2023 for its monthly meeting at 1:01 in the 3rd floor E/W Conference Room in the Wallace Building with the following members participating: Daniel Breitbarth, Des Moines; Joan Corbin, Pella; E. J. Giovannetti, Urbandale; Barry Lindahl, Dubuque; Monica McHugh, Zwingle; Julie Pottorff, Des Moines; Absent: Joel McCrea, Pleasant Hill; Jackie Schmillen, Urbandale. Also present were IPIB Executive Director Erika Eckley; Brett Toresdahl, Deputy Director; and Daniel Strawhun, Legal Counsel. A quorum was declared present.

Others identified present or by phone: Rick Morain, Randy Evans, Brian Guillaume, Susan Patterson-Planke, Cliff Sheakley, Molly Kilker, Jacob Holmes, Heidi Hermanson.

On a **motion** by Giovannetti, **second** by Lindahl, the agenda was unanimously adopted 6-0.

On a **motion** by Breitbarth, **second** by Giovannetti, to approve the June 15, 2023 minutes. Unanimously adopted 6-0.

Public Forum – none

Board Chair Comments – Pottorff thanked the Board and staff as she not continuing to serve as Chair.

IPIB Board Elections -

Pottorff nominated Monica McHugh to serve as the Chair of the IPIB for the '23-'24 year.

Giovannetti seconded the nomination. McHugh was selected by a unanimous roll call vote of the Board 5-0.

Note: Corbin arrived at 1:05pm/

McHugh nominated Barry Lindahl to serve as the Vice-Chair of the IPIB for the '23-'24 year. Giovannetti seconded the nomination. Lindahl was selected by a unanimous vote of the Board 6-0.

Advisory Opinions –

1. None

The board was briefed on cases and took action as indicated:

1. Beck, Tim (22FC:0036 – Both Chapters – Pleasant Valley School District 5/5/22). Tim Beck and Mikki Schultz spoke. A motion by Giovannetti and second by Lindahl to accept the probable cause report and dismiss the complaint as a matter of administrative discretion. Unanimously approved, 6-0.
2. Citizen, Concerned (23FC:0035- Chapter 21 – O'Brien County Conservation Board 3/9/23). A motion by Lindahl and second by Giovannetti to approve the informal resolution report. Unanimously approved, 6-0.
3. Colwell, Robert (23FC:0029 – Chapter 22 – IA Dept. of Health & Human Services 3/2/23); & Colwell, Robert (23FC:0050 – Chapter 22 – IA Dept. of Health & Human Services 4/18/23). Sarah Reister spoke. A motion by Lindahl

- and second by Pottorff to approve the consolidation and dismissal order. Unanimously approved, 6-0.
4. Hackman, Jacob (23FC:0055 – Chapter 22 – Chickasaw County 5/7/23). A motion by Breitbarth and second by Giovannetti to approve the dismissal order. Unanimously approved, 6-0.
 5. Huffman, David (22FC:0047 – Both Chapters – Batavia City Council 5/25/22). A motion by Breitbarth and second by Corbin to accept the probable cause report and dismiss the complaint as a matter of administrative discretion. Unanimously approved, 6-0.
 6. Larson, Michael (23FC:0067 – Chapter 22 – City of Cedar Rapids 6/20//23). Callie Madsen spoke. A motion by Breitbarth and second by Giovannetti to approve the dismissal order. Unanimously approved, 6-0.
 7. Merritt, Michael (23FC:0023 – Chapter 22 – City of Newton 2/12/23); & Merritt, Michael (23FC:0057 – Chapter 22 – City of Newton 5/1/23). Michael Merritt and Matt Brick spoke. A motion by Pottorff and second by Breitbarth to approve the consolidation and dismissal order. Unanimously approved, 6-0.
 8. Merritt, Michael (22FC:0126 – Chapter 22 – Jasper County 12/14/22). A motion by Breitbarth and second by Giovannetti to approve the dismissal order. Unanimously approved, 6-0. Staff will forward email containing records to Mr. Merritt.
 9. Morris, Chuck (23FC:0062 – Chapter 21 – Page Co. Board of Supervisors 6/16/23). A motion by Breitbarth and second by Corbin to approve the acceptance order.
 10. Neumann, Helen (23FC:0054 – Chapter 22 – Iowa Dept. of Corrections 5/3/23). Michael Savala spoke. A motion by Breitbarth and second by Lindahl to approve the dismissal order.
 11. Schnormeier, Richard (23FC:0010 – Chapter 21 - City of Zearing 1/27/23). A motion by Giovannetti and second by Breitbrth to approve the informal resolution final report and dismissal order. Unanimously approved, 6-0.
 12. Sellers, Darran (23FC:0047 – Chapter 21 – Vinton City Council 4/12/23). A motion by Pottorff and second by Breitbrth to accept the informal resolution report and schedule for compliance review. Unanimously approved, 6-0.
 13. Sheakley, Cliff (23FC:0044 – Chapter 22 – Tama County Auditor 3/31/23). Cliff Sheakley and Laura Kopsa spoke. A motion by Breitbarth and second by Lindahl to accept the informal resolution report and schedule for compliance review. Unanimously approved, 6-0.
 14. Stratton, James (23FC:0041 – Chapter 22 – Iowa Dept. of Corrections 3/29/23). Michael Savala spoke. A motion by Breitbarth and second by Giovannetti to approve the dismissal order. Unanimously approved, 6-0.
 15. Stratton, James (23FC:0045 – Chapter 22 – Iowa Dept. of Corrections 4/4/23). Christine Louis spoke. A motion by Giovannetti and second by Pottorff to approve the revised dismissal order. Approved, 5-0 with Breitbarth abstaining.

Matters Withdrawn. No Action -

1. Menke, Steven (23FC:0008 – Chapter 22 – Kossuth County 1/26/23); Menke, Steven (23FC:0011 – Chapter 22 – Kossuth County Auditor 1/28/23) withdrawn

Pending complaints that required no board action. Informational

1. Arnold, Neetu (23FC:0065 – Chapter 22 – University of Northern Iowa 6/14/23) Intake
2. Benedict, Don (23FC:0072 – Chapter 22 – City of Sidney 7/11/23) Intake
3. Bolinger, Ruth (23FC:0056 – Chapter 21 – Creston City Council 5/19/23) Intake
4. Burgmaier, Don (23FC:0073 – Chapter 22 – Iowa Attorney General 7/13/23) Intake
5. Havenstrite, Michelle (23FC:0061 – Chapter 21 – PCM School Board 6/14/23) Intake
6. Henely, Eric (23FC:0070 – Both Chapters – Gilbert Comm. School Board 7/10/23) Intake
7. Hurlberg, Roger (23FC:0069 – Chapter 22 – Montgomery Co. Assessor 6/26/23) Intake
8. Kreijanovsky, William (23FC:0059 – Chapter 22 – Polk County 6/2/23) Intake
9. Laurie (23FC:0063 – Chapter 21 – City of Delhi 6/13/23) Intake
10. Madden, Julie Ann (23FC:0064 – Both Chapters – Akron Care Center 6/13/23) Intake
11. McGowan, Nolan (23FC:0068 – Chapter 21 – Osceola Co. Board of Supervisors 6/21/23) Intake
12. Miller, Chad (23FC:0074 – Chapter 21 – Scott County Board of Review 7/9/23) Intake
13. Preussner, Greg (23FC:0066 – Chapter 21 – Delhi City Council 6/19/23) Intake
14. Radtke, Mari (22FC:0069 – Chapter 22 – City of Paullina 7/21/22) * Pending
15. Raley, Dina (23FC:0060 – Chapter 22 – Delaware Co. Sheriff Office 6/5/23) Intake
16. Schiel-Larson, Debra (23FC:0053 – Indianola Community School District 5/1/23) Intake
17. Sellers, Dakota (22FC:0119 – Chapter 22 – City of Vinton 11/11/22) Pending
18. Wendt, Bradley/Sell, Terra/Karns, Shari (23FC:0071 - Chapter 21 – Adair City Council 7/11/23) Intake

Committee Reports

1. Communications – No report
2. Legislative – Eckley is working on information requested by committee.
3. Rules – No report

Updates for the board.

- a. Executive Director Report:
 - Updating case management system
 - Website change over is progressing
- b. Toresdahl shared the FY23 financials, carry over, and FY24 appropriations.
- c. Upcoming presentations –
- d. A district court case – No update.

The next IPIB meeting will be in the Wallace Building, **3rd Floor, E/W Conference Room**, August 17, 2023, at 1:00 p.m.

At 3:03 p.m. the meeting adjourned on a motion by Pottorff and a second by Breitbarth. Unanimously approved.

Respectfully submitted
Brett Toresdahl, Deputy Director

IPIB, Chair
Approved

More Iowa public records, open meetings cases going to court

Iowa Governor's Office, school boards told in recent cases to follow the law



Erin Jordan

Aug. 6, 2023 5:00 am



Mike Meloy, left, and Allen Diercks stand for a photo in front of Scott County Courthouse, Tuesday, Aug. 1, 2023, in Davenport. (Elizabeth Pruitt/Quad-City Times)

Iowa judges recently have sided with open government advocates trying to gain access to public records and attend public meetings — with the latest ruling requiring the state to pay \$135,000 in legal fees for three media organizations denied records by Gov. Kim Reynolds.

But advocates would like to see courts and the Iowa Public Information Board use penalties already in Iowa law to discourage repeat offenses.

When a District Court judge ruled in June the Central DeWitt superintendent and school board [violated Iowa law](#) by holding closed meetings under false pretenses, school board members were unapologetic, according to Rep. Norlin Mommsen, R-DeWitt, who was one of [75 residents who attended a July 13 school board meeting](#).



"The school board's response to this is was 'we did nothing wrong,'" Mommsen told The Gazette. "It's this defiance. And maybe it is because there's no penalty."

Recent court wins for open records advocates

Iowa Code [Chapter 22](#) requires government bodies — which include any state, county, city or school group supported with taxes — to allow people to view or copy public records in a reasonable amount of time for a reasonable cost, if not for free.

The sticking point often is whether specific records are considered confidential under one of more than 70 exceptions in the law.

But in a [lawsuit settled in June](#), the plaintiffs sued not because Reynolds and her staff claimed the sought records were confidential, but because the Governor's Office did not respond to records requests for more than 18 months.

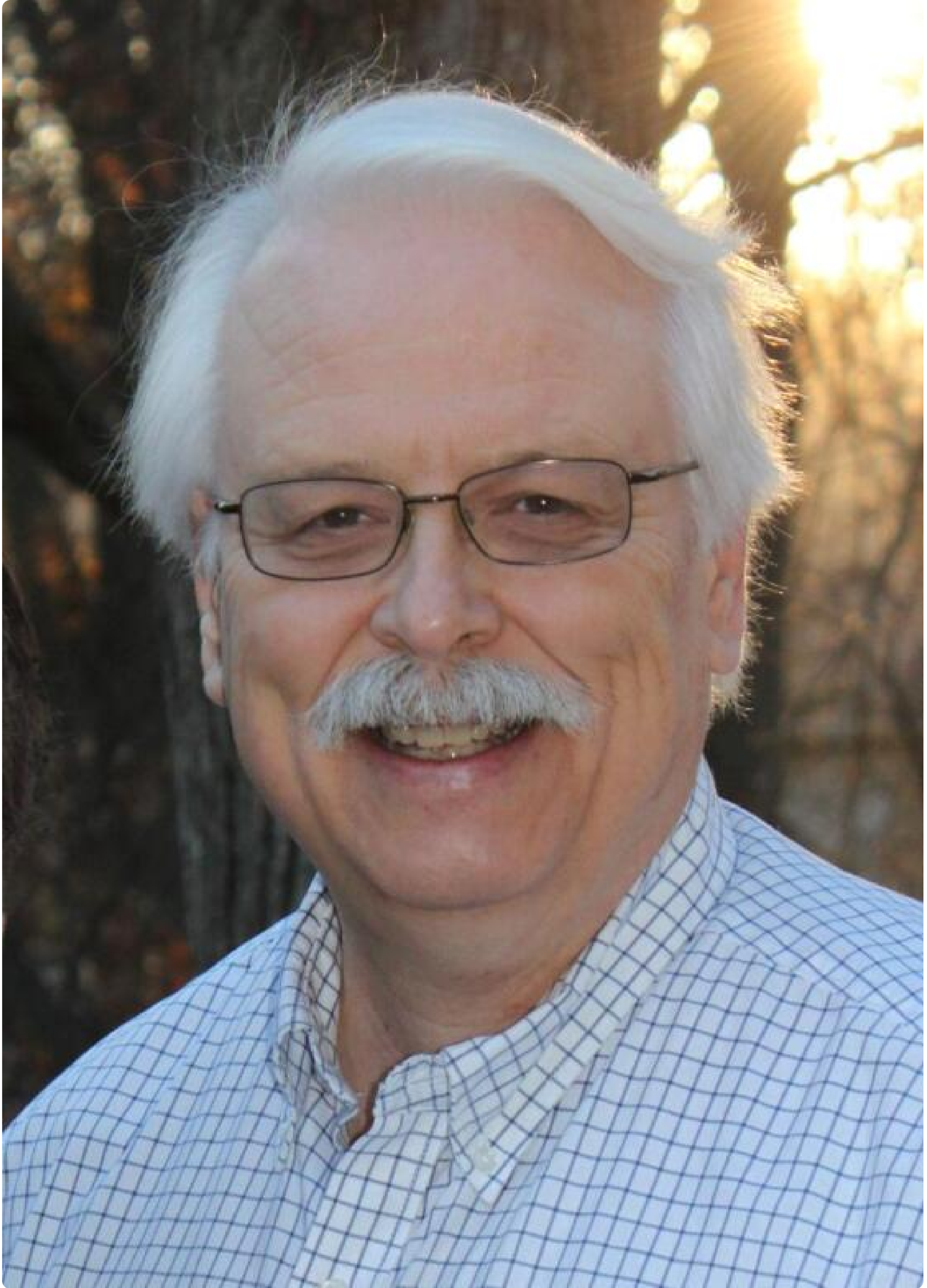
The Governor's Office fulfilled the requests in January 2022, a month after Clark Kauffman and the [Iowa Capital Dispatch](#), Randy Evans and the [Iowa Freedom of Information Council](#) and Laura Belin and [Bleeding Heartland](#) filed the lawsuit.

The Governor's Office asked to have the lawsuit dismissed, but the Iowa Supreme Court ruled in April the case could proceed. Reynolds' team settled June 3, agreeing to let a state District Court resolve any open records disputes with the plaintiffs that may arise over the next year.

The Governor's Office makes no admission of guilt in the settlement. Reynolds' staff said the delays were caused by the state being busy dealing with the COVID-19 pandemic.

"The COVID-19 response put unprecedented demands on the governor's team to meet the immediate needs of Iowans. As a result, responses to requests were unintentionally delayed, which is not acceptable," [Spokesman Kollin Crompton said in June](#). "Our office has assessed our internal processes and we continue to reevaluate the process to improve timeliness."

Evans said he hopes the ruling stops the "worrisome trend" of government bodies ghosting public records requests.



Randy Evans

"I was concerned if we didn't prevail it would embolden, not only the governor, but other state agencies and local governments as well, to drag their feet," Evans said. "To take the position they (government bodies) hadn't rejected open records request if they were too busy to get to it would cut the legs out from under open records statute."

School districts violate open meetings law

Other recent decisions show school boards trying to shield their discussions from the public.

Bettendorf Community School District in June settled a lawsuit filed by media outlets challenging the legality of a May 2022 board meeting.

One day after the Uvalde, Texas, school massacre, the Bettendorf superintendent and school board — minus one member — [met with about 300 parents](#) to discuss misbehavior and harassment by some middle school students. Journalists were blocked from the meeting and parents were told not to record the session.

Iowa's public meetings law, [outlined in Iowa Code Chapter 21](#), requires meetings with a board majority in which they are acting on their policymaking duties to be open to the public, including journalists.

As part of the settlement, the district acknowledged the meeting was illegal and promised future meetings would meet the law's requirements. The district agreed to reimburse plaintiffs \$6,500 for attorney fees, [reported WQAD, one of the plaintiffs](#).

In the Central DeWitt case, Superintendent Dan Peterson and the school board told the public they were closing their Feb. 7, 2022, meeting to the public to evaluate Peterson's performance.

Instead, they discussed controversial topics, including gender and sexuality issues, instructional materials, and an administrative realignment, Seventh Judicial District Court Judge Mark R. Lawson wrote in a June 26 ruling.

"First, the scope of the meeting was breathtaking in contrast to its stated purpose," Lawson wrote. "In other words, this was not a minor or technical violation. Second, as noted earlier, no one in the meeting spoke up to argue the meeting was straying well beyond its stated purpose."

Lawson [ordered](#) the school district to pay [Sycamore Media](#), which publishes the DeWitt Observer, more than \$18,500 for legal fees.

[Central DeWitt Ruling](#) by [Gazetteonline](#) on Scribd

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Peterson told The Gazette he disagreed with Mommsen's characterizing the district's response to the ruling as defiant.

"We have accepted the District Court judge's decision, will abide by the decision, and already have worked on improving our processes and procedures regarding scheduling and holding closed session meetings," he said in an email this week.

Iowa Supreme Court ruling in 2011 set precedent

When government bodies keep information secret, Iowans seeking access may choose to file a lawsuit. But hiring a lawyer can cost thousands of dollars, deterring many Iowans.

Not Allen Diercks. The 66-year-old Bettendorf chiropractor has been a government watchdog for decades, once filing more than 50 records requests in two years.

"The public deserves public records," Diercks said. "This isn't a political thing. It's really an American thing."

Diercks, represented by Bettendorf attorney Mike Meloy, won a 2011 Iowa Supreme Court case that set precedent for helping citizens recoup legal fees in public records cases.



Allen Diercks (left) and Mike Meloy, both of Bettendorf, confer in court in this 2015 photo. Diercks, a chiropractor and public records advocate, and Meloy, an attorney, have worked together on several public records cases. (Quad-City Times)

Riverdale, a city of about 400 near Bettendorf, sued Diercks, Marie Randol and Tammie Picton in 2008 over whether the defendants were entitled to view security camera video showing then-Mayor Jeffrey Grindle arguing with Diercks over a records request.

Diercks, Randol and Picton won the case at trial and the District Court awarded them \$64,732 in attorney fees. An appellate court reversed that award, but the [Iowa Supreme Court later ruled](#) the District Court was right.

“Statutory attorney-fee awards motivate lawyers to step up and fight city hall on behalf of residents whose elected officials refuse requests for disclosure,” Justice Thomas D. Waterman wrote in the Nov. 18, 2011, decision.

Lawsuit is last resort

[Sycamore Media](#), which also publishes the Bellevue Herald-Leader and the Maquoketa Sentinel-Press, has filed two lawsuits in five years pushing back on government bodies trying to keep secrets.



“We’ve had two cases where the violations were so clear we felt obligated to pursue them to ensure transparency for the public,” Sycamore Owner and CEO Trevis Mayfield said.

Sycamore and the Sentinel-Press in 2019 sued the Maquoketa Police Department after the agency refused to release body camera and dash camera footage of a traffic stop in which officers found then-Assistant Jackson County Attorney Amanda Lassance with bloodshot eyes, slurred speech and beer cans throughout the vehicle, court records show.

Jackson County deputies later [cited Lassance](#) for having an open container in a vehicle and gave her a ride back near her office.

Seventh Judicial District Judge John Telleen on June 22, 2020, ordered Maquoketa to release the videos.

“Their squad car and body camera footage will show a portion of the incident not found in the public records already provided by the Clinton and Jackson County sheriff’s departments. This information will give the public a fuller understanding of the incident in question,” the ruling stated.

Lawsuits are a last resort, Mayfield said.

“For the most part, we give people the benefit of the doubt, especially when you’re dealing with city councils and school boards because they are elected volunteers,” he said.

[Maquoketa Ruling](#) by [Gazetteonline](#) on Scribd

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Public Information Board: Education, not punishment

The Iowa Legislature in 2012 created the [Iowa Public Information Board](#) as a cheaper, faster way to resolve disputes over Iowa’s open records and meetings laws.

The nine-person board that includes government officials, media and members of the public has accepted about 1,000 formal complaints in 10 years, but has only had five contested cases. The most recent was resolved in 2019.



Erika Eckley, executive director of the Iowa Public Information Board (Erika Eckley)

"If you look at the statute, it does try to prioritize informal resolutions and finding ways to resolve disputes," said Erika Eckley, who [became the board's executive director in March](#). "We get farther if we try to resolve issues by training than by being a punitive body."

Alan Kemp, executive director of the Iowa League of Cities, said he appreciates the board's approach.

"Our smaller cities, they see a lot of turnover in city clerks, in elected officials," he said. "Too often the people who come in have not had any chance to get any training and don't know anything about any of the requirements."

Evans and Mayfield said the board seems reluctant — particularly in recent years — to investigate and prosecute knowing violations.

"I tell journalists that if you believe you have a strong case to win access to records or meetings, you're doing yourself a disservice by taking that case to the Public Information Board," Evans said.

Evans pointed to a complaint filed with the board in May 2022 over a vote in closed session to restrict access to a book in the Pleasant Valley School District. The board [decided last month](#) — 14 months after the complaint was filed — that while there was probable cause the book reconsideration committee violated open meetings law, because the school district held a training in June, the complaint would be dismissed.

While a case is pending before the board, no court case may move forward.

“The Pleasant Valley School District has been allowed by the Public Information Board to simply drag its feet for months and months,” Evans said.

Eckley said the board recently upgraded its case management system to keep better track of cases and make sure they aren’t lingering.

More accountability sought

Breaking Iowa’s open records or open meetings laws can result in a fine ranging from \$100 to \$500 or up to \$2,500 for a knowing violation. But fines are rare.

Former Washington County Attorney Larry Brock [agreed in 2014](#) to pay a \$1,000 fine after a judge decided he knowingly violated open records law by waiting more than three months to provide records to a former park ranger.

In two other cases — [one in Des Moines](#) and [one in Burlington](#) — public officials were ordered to pay \$100 and \$200, respectively, for failure to comply with open records laws. Evans isn’t aware of any other fines for Chapters 21 and 22 in recent decades.

Open government advocates want more accountability. Diercks suggested zero tolerance once public officials have signed off on taking an online course about open records and open meetings.

“They very first offense you do after you know, you get a \$1,000 fine,” he said. “The second offense you are out of office and you don’t serve. Until they start making them pay for this, it’s not going to change.”



Rep. Norlin Mommsen, R-DeWitt

Mommsen said he is considering proposing a bill that would make it easier for lowans to recall school board members.

Comments: (319) 339-3157; erin.jordan@thegazette.com



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Advisory Opinion 23AO:0003

DATE: August 17, 2023

SUBJECT: Confidentiality of Police Investigative Files

RULING:

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

QUESTION POSED:

Under Iowa Code § 22.7(5), what information in police investigative reports is protected from disclosure and to what extent?

OPINION:

Iowa Code § 22.7(5) provides confidentiality for certain information contained in police investigative reports, making that information exempt from disclosure when requested under chapter 22. Given the frequency of complaints to the Iowa Public Information involving information withheld under § 22.7(5), the Board has requested this advisory opinion explaining the scope of the protection provided by the statute.

The full text of § 22.7(5) is copied below:

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



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agencies if that information is part of an ongoing investigation, except where disclosure is authorized elsewhere in this Code.

However, the date, time, specific location, and immediate facts and circumstances surrounding a crime or incident shall not be kept confidential under this section, except in those unusual circumstances where disclosure would plainly and seriously jeopardize an investigation or pose a clear and present danger to the safety of an individual.

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.

This section specifies three general categories of information that are protected from disclosure: 1) peace 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. This advisory opinion deals only with the first category of protected information, "peace officers' investigative reports."

What information is considered to be part of an investigative report?

The Iowa Public Information Board interprets peace officers' investigative reports to include all of the information gathered by officers as part of an investigation into a crime or incident. For example, in *Klein v. Iowa Public Information Board*, a police officer responding to a 911 call about a domestic assault accidentally shot and killed one of the participants. *Klein v. Iowa Public Information Board*, 968 N.W.2d 220, 222. The family of the victim submitted a public records request to the Iowa Division of Criminal Investigation, the Burlington Police Department, and the Des Moines County Attorney, seeking the release of information related to the shooting. *Id.* Among the information sought to be obtained was the 911 call, body camera video, and dash camera video from the incident. *Id.* The custodians of these records refused to release them, prompting the family to file a complaint with IPIB. The complaint proceeded to a contested case,



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in which the Board ruled that 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).¹

Lab reports taken in connection with a criminal investigation constitute a part of a peace officers' investigative report. *AFSCME v. Iowa Dep't of Pub. Safety*, 434 N.W.2d 401, 403 (Iowa 1988). The Court of Appeals, in an unpublished case, *Neer v. State*, held that video recording, use of force reports, and pursuit reports related to an officer's encounter with an individual in relation to an arrest were part of the investigative report. *Neer v. State*, 798 N.W.2d 349, 349 (Iowa Ct. App. 2011) (Iowa App. Feb. 23, 2011). "To require an item-by-item assessment of everything within a criminal investigation file would, for all practical purposes, eliminate the investigative report exemption." *Id.*

Qualified Privilege of Confidentiality

The confidentiality afforded to police investigative reports under 22.7(5) is a qualified, rather than categorical, privilege. See *Mitchell v. City of Cedar Rapids*, 926 N.W.2d 222, 232–234 (Iowa 2019). This means that a record claimed to be confidential on the basis that it is part of a police investigative report cannot be determined to be confidential based on a mere showing of that fact alone. See *id.* Stated differently, demonstrating that a particular record is part of a police investigative report is a necessary, but not sufficient, condition to an ultimate determination that the record is in fact confidential under § 22.7(5).²

In addition to demonstrating that the record in question is part of an 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)).³

While the balancing test "remains the controlling precedent for disputes over access to police investigative reports" (*id.* at 234), the application of the test involves interpretive nuances that

¹ Although the Iowa Supreme Court did not review the Board's determination of this legal issue in its opinion, the case still serves as an example of the Board's stance.

² In contrast, a *categorical* privilege of confidentiality requires only that the party who wishes to avail itself of the protection against disclosure demonstrate that the record at issue fits within the category of information protected under the statute. *Mitchell v. City of Cedar Rapids*, 926 N.W.2d 222, 233–234 (Iowa 2019). Section 22.7(11), which protects "personal information in confidential personnel records," is an example of such a categorical privilege. *Id.* at 233.

³ This test originates from *State ex rel. Shanahan v. Iowa Dist. Court*, 365 N.W.2d 523, 528 (Iowa 1984).



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originate from the Court's treatment of § 22.7(5) and § 622.11 as "essentially the same" statutory provisions. *Hawk Eye v. Jackson*, 521 N.W.2d 750, 753 (Iowa 1994); *State ex rel. Shanahan v. Iowa Dist. Ct. for Iowa Cnty.*, 356 N.W.2d 523, 528 (Iowa 1984).

First, the reference to examination of a public officer in part one of the test does not limit its application to only testimonial contexts. *State ex rel. Shanahan*, 356 N.W.2d 523, 528 (Iowa 1984). Rather, "the privilege targets and protects the communication itself, including any written report of the communication, and not just oral examination of the public officer." *Id.* In practice, this means that the request for a record that is determined to be part of a police investigative report satisfies part one of the test, as "the privilege may be invoked at any stage of proceedings where confidential communications would otherwise be disclosed, not just when a witness is testifying." *Id.*

Part two of the test concerns whether the information sought to be obtained and made public was communicated to the officer "in official confidence." Both civilians and other peace officers may communicate information in official confidence; therefore, whether the information comes from a civilian or an officer is not itself a determinative factor. *See id.* The Court has held that reports to officers regarding a motor vehicle accident are not made in "official confidence" because motor vehicle accident reports under Iowa statutes are not confidential. *Shannon by Shannon v. Hansen*, 469 N.W. 2d 412, 415 (Iowa 1991); *see also Grocers Wholesale Coop, Inc. v. Nussberger Trucking Co.*, 192 NW2d 753, 753 (Iowa 1971); Iowa Code § 321.271.

In contrast, the Court has indicated that "reports or memorandum [shared between officers] . . . solely for purposes of a police internal review of the incident" are likely made in official confidence. *Mitchell*, 926 N.W.2d 222, 235 (Iowa 2019). However, the Court has also noted that although officer-to-officer communications "might initially be made in confidence, there is still an expectation that the communicating officer might be expected to testify in a public proceeding especially if it involves something the officer personally witnessed," and "[t]he same can be said of civilian witnesses."

Part three of the test requires the weighing of the public interest in disclosure against the potential harm that such disclosure may cause. *Hawk Eye v. Jackson*, 521 N.W.2d 750, 753 (Iowa 1994). Factors that weigh 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.* Additionally, the ongoing nature of an investigation weighs in favor of confidentiality. *Id.* Nondisclosure allows law enforcement to



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test out findings and theories about cases under investigation; it also works to ensure that the overall investigation is not jeopardized before its conclusion. *Id.*

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. For example, in *Hawk Eye*, concerns regarding leniency or a cover up in regards to disciplining police officers involved in potential misconduct were matters of great public concern that the Court cited in requiring disclosure. *Id.*

In *Mitchell*, the Court held that investigative reports involving allegations of a white police officer's excessive use of force against an African-american motorist were "issues of great public concern" that outweighed the potential harm that might result from such disclosure. *Mitchell v. City of Cedar Rapids*, 926 N.W.2d 222, 233 (Iowa 2019). See also *Williams v. City of Burlington*, 516 F.Supp.3d 851, 877 (S.D. Iowa 2021) (following *Mitchell* by releasing police investigation documents for similar reasons but excluding any reports prepared by the city for internal review or discipline).

Additionally, when factors weighing in favor of confidentiality are absent, the Court considers this absence to weigh in favor of disclosure. *Hawk Eye*, 521 N.W.2d at 753.

Information that is generally not protected, even if occurring within otherwise protected investigative reports

The statute also states that the following information is generally *not* protected, even if it occurs within one of the three categories of protected information: the date, time, specific location, and immediate facts and circumstances surrounding a crime or incident. However, if the disclosure of the date, time, location, and immediate facts and circumstances of a crime would seriously jeopardize an investigation or pose a clear and present danger to the safety of an individual, then the information may be kept confidential. *Mitchell v. City of Cedar Rapids*, 926 N.W.2d 222, 233 (Iowa 2019).

BY DIRECTION AND VOTE OF THE BOARD:

Daniel Breitbarth
Joan Corbin



Iowa Public Information Board

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Barry Lindahl
Joel McCrea
Monica McHugh
Julie Pottorff
Jackie Schmillen

SUBMITTED BY:

Daniel M. Strawhun
Legal Counsel
Iowa Public Information Board

ISSUED ON:

August 17, 2023

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.



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Advisory Opinion 23AO:0004

DATE: August 17, 2023

SUBJECT: Confidentiality of Documents in Personnel Investigation

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

QUESTION POSED:

Is a document collected during a personnel investigation of a public official containing the internet browsing history that was conducted on a private computer, a confidential record under Iowa Code 22.7(11)(a)?

OPINION:

The question in this matter is whether a document collected during a personal investigation of an employee is confidential under Iowa Code § 22.7(11). Section 22.7(11)(a) states that “[p]ersonal information in confidential personnel records of government bodies relating to identified or identifiable individuals who are officials, officers, or employees of the government bodies” is confidential, unless otherwise ordered by a court, by the lawful custodian of the records, or by another person duly authorized to release such information.

The confidentiality afforded under § 22.7(11) is categorical. *Mitchell v. City of Cedar Rapids*, 926 N.W.2d 222, 234 (Iowa 2019) (*stating* that § 22.7(11) offers categorical protection from disclosure, in contrast with the qualified protection afforded under § 22.7(5)). This means that if the information requested fits into the category of information protected by the statute, then that information is confidential, and no further inquiry is required. *ACLU v. Atlantic Community School District*, 818 N.W.2d 231, 235 (Iowa 2012). The category of information protected under § 22.7(11) is “personal information in confidential personnel records.” *Id.* at 233.

The court has previously defined what types of documents fit within the category of “personal information in confidential personnel records.” For example, in *Des Moines Independent Community School District v. Des Moines Register & Tribune*, the court held that investigative files related to concerns about a school principal contained in an employee’s personnel file were essentially performance evaluations, which are confidential under § 22.7(11). 487 N.W.2d 666, 670 (Iowa 1992). In *ACLU v. Atlantic Community School District*, the court stated that disciplinary records and information regarding discipline in employee files “are nothing more than

Board Members

Daniel Breitbarth ● Joan Corbin ● E. J. Giovannetti ● Barry Lindahl ● Joel McCrea
Monica McHugh ● Julie Pottorff ● Jackie Schmillen ● vacant

in-house job performance records or information.” 818 N.W.2d at 235. Records and information regarding disciplinary measures were, therefore, categorically exempt under Iowa Code § 22.7(11)(a) as they fit within the category of “personal information in confidential personnel records.” *Id.*

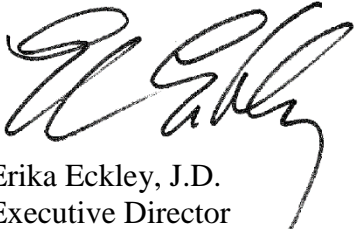
Here, the documents at issue were developed as part of an internal investigation of an employee’s work performance conducted by a government entity’s human resources and outside legal counsel. The investigation showed that the internet browsing history was inadvertently transferred to the work device when the device was connected to a private internet router. At no point was the employee found to have violated policy, nor were they disciplined.

The court has repeatedly held that records related to an employee’s job performance are considered “personal information in confidential personnel records” and are therefore protected under § 22.7(11). In analyzing confidentiality under § 22.7(11), the court has not held or otherwise indicated that this section protects only “negative” job performance information or information that ultimately leads to employee discipline. Under the court’s interpretation of “personal information in confidential personnel records,” any records in the personnel file of the employee related to job performance are protected from disclosure under § 22.7(11), which would include positive or exculpatory performance records.

BY DIRECTION AND VOTE OF THE BOARD:

Daniel Breitbarth
Joan Corbin
E.J. Giovannetti
Barry Lindahl
Joel McCrea
Monica McHugh
Julie Pottorff
Jackie Schmillen

SUBMITTED BY:



Erika Eckley, J.D.
Executive Director
Iowa Public Information Board

ISSUED ON:

August 17, 2023

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: Laurie Kramer, Complainant Greg Preussner, Complainant And Concerning: City of Delhi, Respondent	Case Number: 23FC:0063 & 23FC:0066 Consolidation & Acceptance Order
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COMES NOW, Erika Eckley, Executive Director for the Iowa Public Information Board (IPIB), and enters this Dismissal Order.

Facts

Laurie Kramer filed formal complaint 23FC:0063 on June 13, 2023, alleging that the City of Delhi (City) violated Iowa Code chapter 21 on June 12, 2023 at its city council meeting.

Gary Preussner filed formal complaint 23FC:0066 on June 19, 2023, alleging that the City of Delhi (City) violated Iowa Code chapter 21 on June 12, 2023.

Ms. Kramer and Mr. Preussner alleged that the City added two items to the Council's agenda after it had been posted. They believe the items were controversial and that they may have been left off the agenda intentionally so citizens were not aware the issues would be addressed.

City Clerk DeAnna Hogan provided to the IPIB a copy of the posted agenda and a copy of the agenda used in the meeting with two hand written additions noted on it. She also provided a copy of the minutes for the June 12, 2023, Council meeting. Those minutes show that two items were added to the agenda and unanimously approved by the Council. The minutes also show that action was taken by Council on the two additional items. Ms. Hogan acknowledges that the two items were added to the agenda at the meeting.

Edward Henry, attorney for the City provided a response to the complaints. He acknowledged the two items were added to the agenda at the start of the meeting and not included on the tentative agenda previously posted. He stated the omission from the agenda was simply an oversight on the part of the clerk and not a deliberate act. Mr. Henry emphasized the actions taken during the meeting on these two issues did not need Council approval as the municipal code allows the Mayor to act to address nuisances within the city.

Law

Iowa Code § 21.4 Public notice:

1. ... 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. Reasonable notice shall include advising the news media who have filed a request for notice with the

governmental body and posting the notice on a bulletin board or other prominent place which is easily accessible to the public and clearly designated for that purpose at the principal office of the body holding the meeting, or if no such office exists, at the building in which the meeting is to be held.

2. a. Notice conforming with all of the requirements of subsection 1 of this section shall be given at least twenty-four hours prior to the commencement of any meeting of a governmental body unless for good cause such notice is impossible or impractical, in which case as much notice as is reasonably possible shall be given.

Analysis

The City did not provide proper notice of the agenda of their meeting in a manner reasonably calculated to apprise the public of what would be addressed at the meeting. The City confirms two items that were not included in prior notice were added to the agenda. Action was taken on those items later in the meeting. The public was not provided knowledge about the potential for these items to be considered and so had no advance notice of the need to attend the meeting to observe these actions being considered.

IPIB staff also notes there is an additional notice violation. The posted notice did not list a time for the meeting, which is required in Iowa Code § 21.4(1). The City violated Iowa Code § 21.4 by failing to provide 24 hour notice of the agenda items to be considered.

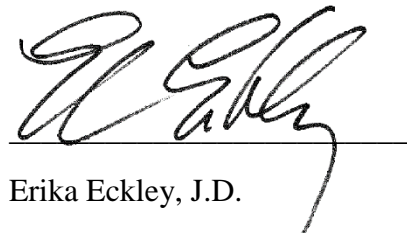
Conclusion

Because both complaints are related to the same meeting and the same issue, they should be consolidated. Iowa Code section 23.8 requires that a complaint be within the IPIB's jurisdiction, appear legally sufficient, and have merit before the IPIB accepts a complaint. These complaints meet those requirements.

IT IS SO ORDERED: Formal complaints 23FC:0063 and 23FC:0066 are consolidated and accepted as legally sufficient pursuant to Iowa Code section 23.8(2) and Iowa Administrative Rule 497-2.1(2)(b).

Pursuant to Iowa Administrative Rule 497-2.1(3), the IPIB may “delegate acceptance or dismissal of a complaint to the executive director, subject to review by the board.” The IPIB will review this Order on August 17, 2023. Pursuant to IPIB rule 497-2.1(4), the parties will be notified in writing of its decision.

By the IPIB Executive Director



A handwritten signature in black ink, appearing to read 'E. Eckley', is written over a horizontal line. The signature is stylized and cursive.

Erika Eckley, J.D.

CERTIFICATE OF MAILING

This document was sent by electronic mail on the August 9, 2023, to:

Laura Kramer

Greg Preussner

Edward Henry, Attorney for City of Delhi

The Iowa Public Information Board

In re the Matter of: Nolan McGowan, Complainant And Concerning: Osceola County Board of Supervisors, Respondent	Case Number: 23FC:0068 Acceptance Order
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COMES NOW, Erika Eckley, Executive Director for the Iowa Public Information Board (IPIB), and enters this Acceptance Order:

On June 21, 2023, Nolan McGowan filed formal complaint 23FC:0068, alleging that Osceola County Board of Supervisors (“County”) violated Iowa Code chapter 21.

Facts

Mr. McGowan alleges that following the adjournment of the regularly scheduled, recorded, and noticed meeting of the Osceola County Board of Supervisors, Supervisor Jones turned off the microphone on the camera that records the County meetings and began discussing his work as a committee/board member of the Siouxland Human Investment Partnership's Decategorization (DCAT) Initiative.

Supervisor Vandehoef informed Supervisor Jones that he believed this action was improper, walked over to the microphone, and switched it back on. Despite this, Supervisor Jones promptly walked back to the system and switched the microphone back off, while continuing to speak to everyone present. Auditor Vantilburg left the room immediately after the microphone was switched off for the second time, followed soon thereafter by Supervisor Vandehoef after he collected his belongings.

In responding to the Complaint, the Board stated that Supervisor Jones believed the information he provided to the Board was merely a committee update on a board he serves on. He wanted to inform the Board about a situation, but that it was not an actionable item for the Board to vote on, so it was not necessary to discuss the issue during the Board meeting.

Applicable Law

“Meetings of governmental bodies shall be preceded by public notice as provided in section 21.4 and shall be held in open session unless closed sessions are expressly permitted by law. 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. “‘Open session’ means a meeting to which all members of the public have access.” Iowa Code § 21.2(3).

“If a governmental body is using an online application for video and audio access to an open meeting, the governmental body must allow public access to the entire meeting.” IPIB 20FC:0059 (finding violation when city council did not allow public access to the entire online meeting).

Analysis

IPIB has reviewed the June 6, 2023, Board agenda and watched the video of the end of the Board meeting in which the stated actions occurred. The full Board was clearly present at the time the microphone was turned off and an update was provided to the Board. It is unknown what exactly was shared because there was no sound in the video. It is also clear that the microphone was turned off a second time after concerns were raised and the microphone had been switched back on by a board member.

In responding to the Complaint, the Board stated that there was no need to be in open session because there was no action the Board would take on the information being shared. A meeting under Chapter 21, however, can develop if “a majority of the members of a body engage in any discussion that focuses at all concretely of matters over which they may exercise judgment or discretion.” (Attorney General Opinion, Stork to O’Kane, 81-7-4.). “Even absent any intention to deliberate, such discussions could arise effortlessly.” *Dooley v. Johnson County Board of Supervisors*, No. 08-0195, Dec. 17, 2008. “A gathering for “purely ministerial” purposes may include a situation in which members of a governmental body gather simply to receive information upon a matter within the scope of the body’s policy-making duties. During the course of such a gathering, individual members may, by asking questions, elicit clarification about the information presented.” IPIB 18AO:0010 (May 17, 2018) (citing *Hettinga v. Dallas County Board of Adjustment*, 375 N.W.2d 293, 295 (Iowa 1985)). If the members present begin to discuss each member’s opinion and the reasons for such opinions, then *Dooley* would consider the meeting to have evolved into a Chapter 21 meeting. *Id.*

Because the audio was turned off, it is not known exactly what was discussed. It is clear, however, that the Board had been in an open meeting prior to the sound being turned off. It is also clear that there were concerns from Board members about turning the sound off for the discussion. Despite the concerns, Supervisor Jones continued to provide his update with the microphone turned off. Taking these factors into consideration, it is likely that the discussion involved a topic over which

the Board may exercise judgment or discretion. If it did not involve the Board, there would have been no reason for the discussion to have occurred with the Board present. It is likely these actions were a violation of open meeting requirements.

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.

There is sufficient evidence to suggest a violation of Chapter 21 existed when a member of the Board turned off the microphone during an open meeting to provide an update to the Board. The conversation was likely related to a topic over which the Board could exercise its judgment or discretion. By purposely turning off the sound during the meeting, the Board failed to provide access to the public during the entirety of a public meeting.

IT IS SO ORDERED: Formal complaint 23FC:0068 is accepted pursuant to Iowa Code § 23.8(1) and Iowa Administrative Rule 497-2.1(2)(a).

Pursuant to Iowa Administrative Rule 497-2.1(3), the IPIB may “delegate acceptance or dismissal of a complaint to the executive director, subject to review by the board.” The IPIB will review this Order on August 17, 2023. Pursuant to IPIB rule 497-2.1(4), the parties will be notified in writing of its decision.

By the IPIB Executive Director


Erika Eckley, J.D.

CERTIFICATE OF MAILING

This document was sent on August 9, 2023, to:

Nolan McGowan
Rachel Van Tilburg, on behalf of Osceola County Board of Supervisors

The Iowa Public Information Board

In re the Matter of:	Case Number: 23FC:0035
Concerned Citizen, Complainant	Final Report
And Concerning:	
O'Brien County Conservation Board, Respondent	

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

On March 9, 2023, Concerned Citizen filed formal complaint 23FC:0035, alleging that O'Brien County Conservation Board (Board) violated Iowa Code chapter 21 when an informal meeting was held by a quorum of the Board deliberating on issues within the purview of the Board following the official meeting of the Board.

IPIB accepted this formal complaint on May 18, 2023. IPIB approved the terms of the Informal Agreement on July 20, 2023. The Agreement had the following terms:

1. The O'Brien County Conservation Board will acknowledge that there are sufficient facts to show that on February 8, 2023, the Board held a meeting in violation of Iowa Code Chapter 21 at the Prairie Heritage Center. This meeting included a majority of the Board who held a discussion about issues within the scope of the policy-making role of the Board after an official board meeting ended.
2. The O'Brien County Conservation Board will acknowledge that Iowa Code Chapter 21 requires that all meetings of the Board require public notice and an agenda provided at least 24 hours in advance of a meeting and that all discussion of Board policy is to be done within the scope of Chapter 21.
3. All members of the O'Brien County Conservation Board will attend training on Iowa Code chapters 21 and 22 during an open and public meeting, to be scheduled and presented by the Iowa Public Information Board staff.
4. Members of the O'Brien County Conservation Board will acknowledge that under Iowa Code § 21.6(3) that continued violations of Iowa's Open Meetings Law can result in fines assessed to individual members of the Board in addition to removal from office.

5. The O'Brien County Conservation Board will approve this Informal Resolution at an open and public meeting and will include this Informal Resolution in the official minutes of said meeting.

The terms of the informal resolution, as adopted by the IPIB on July 20, 2023, have been successfully completed. IPIB Staff presented training to the Board on Chapter 21 and 22 and addressed these issues. The Board has posted the Informal Resolution with its minutes on its website. According to the terms of the informal resolution, this complaint may be dismissed.

Therefore, it is recommended that the IPIB dismiss this complaint as successfully resolved through an informal resolution.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Erika Eckley', written in a cursive style.

Erika Eckley, J.D.
Executive Director

CERTIFICATE OF MAILING

This document was sent on August 10, 2023, to:

Concerned Citizen
Katie Morgan, attorney for O'Brien Conservation Board

The Iowa Public Information Board

In re the Matter of:	Case Number: 23FC:0047
Darran Sellers, Complainant	Final Report
And Concerning:	
Vinton City Council, Respondent	

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

On April 12, 2023, Darran Sellers filed formal complaint 23FC:0047, alleging that City of Vinton (City) violated Iowa Code chapter 21.

IPIB accepted this formal complaint on May 18, 2023. Pursuant to Iowa Code section 23.9, the parties agreed to the following terms:

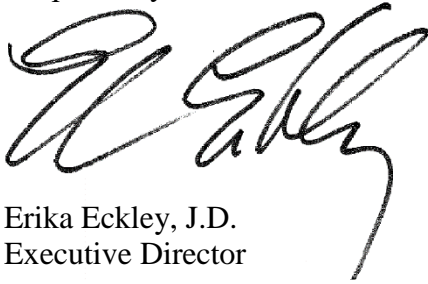
1. City of Vinton acknowledges the requirement under Iowa Code § 21.3 to ensure minutes are prepared of all Council Work Sessions or other similar meetings as defined by Iowa Code § 21.2.
2. City of Vinton agrees it will ensure appropriate policies are in place to prepare minutes for all public meetings, including work sessions, that include the required elements under Iowa Code § 21.3, which are the date, time and place, the members present, and the action taken at each meeting, results of each vote taken and information sufficient to indicate the vote of each member present. The minutes shall be public records open to public inspection.
3. City of Vinton agrees to continue its past practice of providing public notice of all public meetings, including work session, as required under Iowa Code § 21.4, which requires notice of the time, date and place of each meeting, including a reconvened meeting of a governmental body, and the tentative agenda of the meeting, in a manner reasonably calculated to apprise the public of that information. Reasonable notice shall include advising the news media, if applicable, and posting the notice on a bulletin board or other prominent place which is easily accessible to the public and clearly designated for that purpose.

4. The City of Vinton will document its implementation of the changes acknowledged by Ms. Schwan in her letter to IPIB on May 11, 2023, to ensure minutes are kept of all work sessions that comply with the requirements under Iowa Code § 21.3.
5. The City of Vinton agrees to go beyond the requirements of Iowa Code § 21.3 to post council meeting minutes, including work session, to the City's website in addition to other mandated publishing location requirements under Iowa law, so long as reasonably feasible and economically viable.

The terms of the informal resolution, as adopted by the IPIB on July 20, 2023, have been successfully completed. According to the terms of the informal resolution, this complaint may be dismissed.

Therefore, it is recommended that the IPIB dismiss this complaint as successfully resolved through an informal resolution.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'E. Eckley', written over a white background.

Erika Eckley, J.D.
Executive Director

CERTIFICATE OF MAILING

This document was sent on August 10, 2023, to:

Darran Sellers
Douglas Herman, attorney for City of Vinton

The Iowa Public Information Board

In re the Matter of: Debra Schiel-Larson, Complainant And Concerning: Indianola Community School District, Respondent	Case Number: 23FC:0053 Partial Dismissal/Partial Acceptance Order
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COMES NOW, Erika Eckley, Executive Director for the Iowa Public Information Board (IPIB), and enters this Dismissal Order:

On March 1, 2023, the Complainant, Debra Schiel-Larson, filed formal complaint 23FC:0053, alleging that the Indianola Community School District (District) violated Iowa Code chapters 21 and 22.

Background

The Branding Committee

At the beginning of the 2022-2023 school year, the District determined it should assess whether members of the school community were interested in making changes to the District's logo (and generally to the District's brand). The District's Superintendent, Ted Ihns, worked with a media relations company, The Donovan Group, to determine how to engage the school community to evaluate a possible change in the District's logo and brand. The Donovan Group recommended that the District create a committee and advised the following regarding composition of this committee:

In addition, here's a list of positions I would recommend consideration of for a logo/branding committee:

- Staff (1-2 from each building)
- Coaches
- Parents (Mix of those who've grown up in Indianola + those who've lived elsewhere)
- Board member

- Retiree(s)
- Business owners/leaders
- Students
- Recent grads

You may not be able to have all of those groups represented, but I would aim for each so that you have a committee of 12–20.

The Superintendent and other District administrators worked to find people who would serve on this committee consistent with this recommendation. The Indianola School Board did not take any steps to appoint or otherwise approve members of this committee. Once the committee was created, it occasionally met and reported back to the Superintendent regarding the committee's discussion. The committee did not report information or recommendations directly to the Board. Ultimately, the committee dissolved without recommending any changes be made to the District's logo or brand. The Board took no action for any changes to the District's logo or brand, and the District did not proceed with changing the District's logo or brand.

The Complainant alleges that the branding committee is a governmental entity subject to chapter 21 and that the District failed to adhere to the requirements of that code chapter in creating and utilizing the Branding Committee to explore rebranding.

The Request

As noted above, the District had been evaluating possible changes to the District's logo and overall branding throughout the 2022-2023 school year. The Board had received periodic updates on the status of the process, with most of the updates related to hiring a third-party entity to assist the District with the logo and branding evaluation process.

During the March 21, 2023, Regular Board Meeting, Superintendent Ihns provided an update on "the branding committee's progress." Superintendent Ihns stated that the committee had had a meeting in early March and had received "the first tentative schematic designs back." As part of the update from Superintendent Ihns, a Board member asked, "Can you send us what you have so we can see it?" to which Superintendent Ihns replied, "Yeah, I can share it out."

Despite Superintendent Ihns' statement that he would share the tentative designs with the School Board, the District maintains that there were no further updates to the Board on the rebranding effort after the March 21 meeting, and the Board never formally or informally considered options for the District's logo or brand update; never voted to approve any updated logos or branding materials; and did not proceed with any steps related to a change to the District's logo or brand after March 21, 2023. The District stated that it fully stopped any further assessment of whether a logo or brand change should be made in late March 2023.

However, included in the agenda for the July 25, 2023, Board meeting was an agenda item related to branding guidelines. The District maintains that this item related to guidelines developed by the same consulting firm that had been working with the branding committee, but was unrelated to the work that the branding committee had been doing. The District states that the branding guidelines referenced in the July 25 meeting agenda relate to uniformity of the District's branding, whereas the branding committee's work dealt with potential rebranding and updates to the logo. However, in a March 2 press release regarding the brand committee's efforts, which was provided to the Complainant, the District states that the branding committee was involved in maintaining uniformity in branding.

On April 5, 2023, the Complainant submitted a public records request to the District for the following records related to the branding committee:

A digital copy of all records related to the Indianola Community School District's Branding Effort. This includes but is not limited to original work on this topic prior to formation of the associated committee, all correspondence and documents, the school district's consultant and their efforts, Branding Committee meeting packets, agendas, meeting minutes and records, . . . [and] the information that Superintendent Ted Ihns referenced recently at the Indianola Community School District's Board meeting on March 21, 2023.

The stated timeframe for the request was from January 2, 2023, to the present.

On April 17, 2023, Superintendent Ihns emailed the Complainant the records the District had determined were responsive and subject to disclosure. In his response, Superintendent Ihns stated that "any records that are confidential under state or federal law . . . have been redacted or otherwise not released."

The Complainant sent a follow-up email to Superintendent Ihns stating that "[t]he information you provided to me in this file is substantially incomplete." In her email, the Complainant also asked follow-up questions about her request for records, including (i) asking for the attachment referenced in an email included in the responsive records provided by the District, (ii) asking for the "current information" she requested in her request for records, (iii) asking for the "Branding Committee meeting packets, agendas, meeting minutes and records, etc.," and (iv) asking for "the update" that had been requested by the Indianola School Board.

Following the email exchange, the Complainant requested a meeting with Superintendent Ihns. On April 26, 2023, Superintendent Ihns, the Complainant, and the Complainant's husband met to discuss the request for records. During that meeting, Complainant requested additional

clarification regarding the confidentiality of certain records, and Superintendent Ihns indicated that draft or tentative documents are not subject to disclosure.

The Complainant alleges that in responding to the request, the District violated Chapter 22 in two ways. First, the Complainant alleges that the records released did not include any of the attachments referenced in the emails the District released to her.¹ Second, the Complainant alleges that although she requested records from January 2, 2023, to the present, the District failed to provide any records dated after March 2, 2023.

The District's Response to the Complaint

The District responded to the complaint on June 12, 2023. Regarding the alleged violation of chapter 21, the District maintains that the branding committee was not subject to the requirements of that chapter because it was not created by a vote of the Indianola School Board; rather, it was created by Superintendent Ihns and reported directly to him, not the School Board.

Regarding the alleged violation of chapter 22, the District maintains that the additional materials that were withheld from the Complainant were confidential draft materials or trade secrets under section 22.7(65). Further, the District states that the dates of the documents that were provided to the Complainant only extend to March 2, 2023, because the rebranding effort was abandoned shortly after the March 21 Board meeting, and no public records were created between March 2 and the disbanding of the branding committee after the March 21 Board meeting.

Analysis

Chapter 21

Chapter 21 of the Iowa Code applies to “governmental bodies.” Section 21.2(1) provides the definition of a governmental body. If a multi-member body falls within the definition of a governmental body, it is subject to the requirements set forth in chapter 21. Thus, the determinative issue in this complaint is whether the branding committee is a governmental body under § 21.2(1).

Section 21.2(1) consists of several subsections, each consisting of a qualitative description of a type of multi-member body. If a multi-member body fits within one of these descriptions, it is considered a governmental body. There are two descriptions that the branding committee may conceivably fall within.

¹ When the Complainant brought this issue to the District's attention, the District provided one of the referenced attachments to the Complainant, the “Branding Article” attachment. The District stated that it had inadvertently omitted the “Branding Article” from the documents released to the Complainant and that this document was the only attachment not provided initially that was a public record subject to release.

Section 21.2(1)(c) states that a “multimembered body formally and directly created by one or more boards, councils, commissions, or other governing bodies subject to paragraphs ‘a’ and ‘b’ of this subsection” is a governmental body. Paragraph b states that a “board, council, commission, or other governing body of a political subdivision or tax-supported district in this state” is a governmental body. So, had the Indianola School Board “formally and directly created” the branding committee, the branding committee would be considered a governmental body under 21.2(1)(c). However, the branding committee was not “formally and directly created” by the School Board; rather, it was created by Superintendent Ihns. Thus, the branding committee is not a governmental body under § 21.2(1)(c).

Section 21.2(1)(h) states that an “advisory board, advisory commission, advisory committee, task force, or other body created by statute or executive order of this state or created by an executive order of a political subdivision of this state to develop and make recommendations on public policy issues” is a governmental body. The Office of the Attorney General issued an advisory opinion addressing whether a committee created by a superintendent of a school district falls within this definition of a governmental body. 1993 Iowa Op. Atty. Gen. 59 (Iowa A.G.), Opinion No. 93-11-5, 1993 WL 546195. In addressing that question, the Attorney General wrote:

The legislature apparently used “political subdivision” in subsection (h) as shorthand for “a board, council, commission, or other governing body of a political subdivision” as used in section 21.2(1)(b). Accordingly, a functional interpretation of “executive order” is an order or rule issued by the governing body of a political subdivision, that is the popularly elected body with final executive authority, comparable to the governor on a state level. Thus, elected school boards possess authority to issue such orders, while board-appointed superintendents do not.

Id. The Attorney General concluded that “[w]e do not believe that the legislature intended the term ‘political subdivisions’ to encompass individuals such as superintendents or other school administrators. Such individuals would be considered employees of a political subdivision.” Thus, a multimember body created by a superintendent does not fall within the scope of § 21.2(1)(h). The branding committee is such a committee: Superintendent Ihns created it and served as an intermediary between it and the Board. Thus, the branding committee is not a governmental body under § 21.2(1)(h).

Because the branding committee was not a governmental body as defined by § 21.2(1), it was not required to adhere to the public meeting requirements set forth in chapter 21, and the Complainant’s allegation of a violation of chapter 21 lacks merit.

Chapter 22

The District relies on § 22.7(65), the “draft documents” exception, to support withholding the documents referenced in the complaint. However, this exception cannot account for the total absence of responsive documents between March 2, 2023, and the end of March, when the District states that all rebranding efforts ceased. Further, it is not clear from the facts that the rebranding efforts did in fact cease at the end of March, as evidenced by the July 25 Board agenda item dealing with consistency of branding. It is recommended that this portion of the Complaint be accepted to work with the parties to further investigate the scope of records withheld and determine whether additional records exist that should have been or could be disclosed.

Conclusion

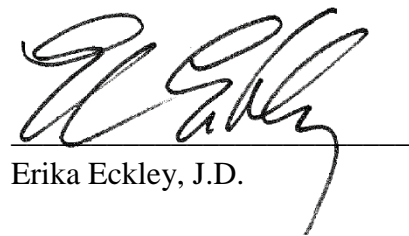
The alleged chapter 21 violation lacks merit, as the branding committee was not a governmental body as defined under chapter 21. However, based on the facts and justifications provided by the District, it appears that the alleged chapter 22 violation may have merit and should be reviewed. Therefore, the Board should accept the complaint for further investigation and resolution of the alleged chapter 22 violation.

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 meet those requirements with regards to the alleged violation of chapter 22.

IT IS SO ORDERED: Formal complaint 23FC:0053 is accepted pursuant to Iowa Code § 23.8(2) and Iowa Administrative Rule 497-2.1(2)(b).

Pursuant to Iowa Administrative Rule 497-2.1(3), the IPIB may “delegate acceptance or dismissal of a complaint to the executive director, subject to review by the board.” The IPIB will review this Order on August 17, 2023. Pursuant to IPIB rule 497-2.1(4), the parties will be notified in writing of its decision.

By the IPIB Executive Director



Erika Eckley, J.D.

CERTIFICATE OF MAILING

This document was sent on August 9, 2023, to:

Debra Schiel-Larson, Complainant.

Emily Ellingson, counsel for the Indianola School District

The Iowa Public Information Board

In re the Matter of: Ruth Bolinger, Complainant And Concerning: Creston City Council, Respondent	Case Number: 23FC:0056 Dismissal Order
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COMES NOW, Erika Eckley, Executive Director for the Iowa Public Information Board (IPIB), and enters this Dismissal Order:

On May 19, 2023, Ruth Bolinger filed formal complaint 23FC:0056, alleging that Creston City Council violated Iowa Code chapter 21.

Facts

Ms. Bolinger alleges that at a public meeting on April 12, 2023, regarding a proposed change to the city's ordinance on Rental Housing Regulatory and Inspection and subsequent procedural changes hosted by a city contractor, Iowa Inspections, LLC, she first learned that the Council had established a "Rental Housing Committee." The Committee's creation, make up and purpose were not previously disclosed to the public.

Ms. Bolinger alleges that citizens were unaware the Council formed the Rental Housing Committee until Jason Van Ausdall of Iowa Inspections, LLC stated that he was holding the public meeting "at the request of the City Council's Rental Housing Committee." No minutes of the Council prior to this meeting identify any notice or action to form a Rental Housing Committee or who was appointed to the Committee.

Beginning with the May 2, 2023, Council meeting, the Rental Housing Committee is identified as proposing the revised Rental Housing Regulatory & Inspection Program ordinance. The Council also identified that the Rental Housing Committee is made up of three Council members, including Jocelyn Blazek, Steve Wintermute and Kiki Scarberry. No additional participants have been identified. Council members explained to Ms. Bolinger that no quorum of the Council was present for the Committee meetings.

The Council failed to respond to this Complaint despite repeated requests, so all allegations will be taken as true and established.

Applicable Law

Under Iowa Code § 21.2(1)(h) a government body subject to the open records requirements can include, “[a]n advisory board, advisory commission, advisory committee, task force, or other body created by statute or executive order of this state or created by an executive order of a political subdivision of this state to develop and make recommendations on public policy issues.”

Iowa Code § 21.2(2) defines a “Meeting” as “a gathering in person or by electronic means, formal or informal, of a majority of the members of a governmental body where there is deliberation or action upon any matter within the scope of the governmental body’s policy-making duties.”

The questions are whether the Rental Housing Committee is a governmental body and/or whether its meetings were gatherings subject to the notice and open meeting requirements under Iowa Code chapter 21.

Analysis

In reviewing this complaint, the Iowa Public Information Board has reviewed minutes from the Council as well as any available information regarding the Rental Housing Committee. In January 2021, the Council adopted its comprehensive plan. The plan included a recommendation to establish a Housing Committee by the city. In reviewing the Council’s minutes since the adoption of the comprehensive plan, there does not appear to have been any Council action to establish a Housing Committee or a Rental Housing Committee.

Without any formal action by the Council to establish a Rental Housing Committee, the Committee does not meet the definition of a governmental body under Iowa Code § 21.2(1)(h).

In responding to the make-up of the Rental Housing Committee, the Council members stated that the Committee consisted of three of the seven Council members. A quorum would require attendance by at least four members. No other individuals have been identified as participants in the Committee.

Iowa Code § 21.2(2) defines a meeting as “a gathering ...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.” The Committee clearly considered measures within the scope of the Council’s policy-making duties. The Committee reviewed changes to a Rental

Housing Regulatory & Inspection Program ordinance, which was presented to the Council for consideration and adoption. The Committee, however, consisted of less than a majority of the Council. The Committee's gatherings, therefore, under Chapter 21 did not meet the definition of a meeting subject to its transparency requirements.

While there is no technical violation of Chapter 21 by the Council or its Rental Housing Committee, IPIB does recommend in the future that the Council consider best practices and establish more open and transparent measures for making changes to ordinances and policies that have such an impact on its citizens. Allowing the public to observe the deliberations will add to the "buy in" necessary to enact any decision or recommendation made by the group.

If the Council had provided notice to citizens impacted by the proposed Rental Housing Regulatory & Inspection Program ordinance and third-party process for conducting inspections of rental property, the aggrieved individuals would have had notice of the proposed changes and potentially could have felt they had some input in the final proposal. Instead, they felt they were being kept in the dark and filed this complaint.

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 Rental Housing Committee was not formally created by the Council and its membership consisted of less than a majority of the Council. The Committee did not meet the technical requirements requiring transparency measures of notice and open meetings. IPIB encourages the Council to consider implementing best practices for a more transparent process in the future.

IT IS SO ORDERED: Formal complaint 23FC:0056 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 August 17, 2023. Pursuant to IPIB rule 497-2.1(4), the parties will be notified in writing of its decision.

By the IPIB Executive Director

A handwritten signature in black ink, appearing to be "J. G. Kelly", written over a horizontal line.

Erika Eckley, J.D.

CERTIFICATE OF MAILING

This document was sent on August 9, 2023, to:

Ruth Bolinger
Mike Taylor, City Administrator
Mark Elcock, City Attorney

RE: Formal Complaint 23FC:0056 Ruth Bolinger/Creston City Council

I would respectfully request Case Number : 23FC:0056 NOT be approved for a Dismissal Order at the 8-17-23 Iowa Public Information Board meeting. I am requesting that the case be continued, with it's status to be determined by the Iowa Public Information Board.

It appears that there was a purposeful decision by the Creston City Council to not formally create a committee to shield itself from Iowa Code Chapter 21 and the authority of the Iowa Public Information Board while preventing the public from having full information on public policy impacting them.

The Creston City Council directly and with purpose, created a named committee that they presented to the public on the Creston City Council agenda, starting 5-2-23 as the Housing Committee. This committee became the voice of the Council in regard to the Rental Housing Regulatory and Inspection Program Ordinance.

Additionally, it has come to my attention that prior to the close of the June 6, 2023 Creston City Council meeting following the passage of the Rental Housing Regulatory and Inspection Program Ordinance, outside of the public forum, at the end of the meeting , with no notice to the public, the Council engaged in a conversation with members of the audience and agreed to create an ad hoc committee of landlords, with a Council member to participate. This discussion does not appear in minutes.

I plan to join the August 17, 2023 Iowa Public Information Board (IPIB) by phone . I want to address the Board and respond to any questions Board members may have when the initial processing of this complaint is considered. In the event this complaint proceeds to a contested case, I waive any objection that I might have concerning personal investigation of this complaint by a Board member.

Thank you for your time,

Ruth M Bolinger

Ruth M Bolinger
1129 150th Street
Creston, IA 50801
ruth@bolinger.org
641-202-2255

The Iowa Public Information Board

In re the Matter of: Neetu Arnold, Complainant And Concerning: University of Northern Iowa; University of Northern Iowa Foundation, Respondents.	Case Number: 23FC:0065 Acceptance Order
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COMES NOW, Erika Eckley, Executive Director for the Iowa Public Information Board (IPIB), and enters this Acceptance Order:

On June 19, 2023, Neetu Arnold filed formal complaint 23FC:0065, alleging that the University of Northern Iowa violated Iowa Code chapter 22.

Background

On May 25, 2023, the Complainant submitted a public records request to University of Northern Iowa (University) and University of Northern Iowa Foundation (Foundation) for records of all gifts, grants, and contracts of foreign origin that UNI has received from 2010 through 2022.

In response to the request, the University provided the Complainant with a fee estimate. The University estimated that it will take the Foundation 24 hours and the University 40 hours and to produce the records requested. The University therefore estimated that the fees for completing the requests would be \$720 (for the Foundation) and \$1,200 (for the University). These estimated fees are based on the University's fee schedule, which is attached to this order as Exhibit A. As shown in Exhibit A, the rate the University charges for public records requests is \$30 per hour.

Upon receiving the fee estimate, the Complainant filed this complaint, alleging that the estimated fees are unreasonable.

Analysis

Iowa Code § 22.3 governs the fees that a lawful custodian may charge for the production of public records. Under that section, “[t]he lawful custodian may charge a reasonable fee for . . . supervising the examination and copying of the records,” and “[a]ll reasonable expenses of the examination and copying shall be paid by the person desiring to examine or copy.” Iowa Code §

22.3(2). “‘Reasonable’ fees for retrieving a public record are meant only to offset the cost of retrieving, reviewing, and copying the record.” Reasonable Fees for Producing Records Requests, 22 Iowa Pub. Info. Bd. Op. 0003 (citing *Rathmann v. Bd. of Directors of Davenport Cmty. Sch. Dist.*, 580 N.W.2d 773, 778–79 (Iowa 1998)).

A records custodian may condition the completion of a records request on the payment of an estimated fee to offset the anticipated cost of retrieving the records, and a requester may contest the reasonableness of this fee estimate. Iowa Code § 22.3(1).

The fees charged for providing copies of public records “shall not exceed the actual cost of providing that service.” Iowa Code § 22.3(2). Actual costs are “only those reasonable expenses directly attributable to supervising the examination of and making and providing copies of public records.” *Id.* Actual costs do not include overhead costs, such as employment benefits, maintenance, electricity, or insurance. *Id.*

Here, the University charges a flat hourly rate—\$30 per hour—for the production of public records. Flat hourly rates are not reflective of the actual cost of making and providing copies of public records because they do not account for the following: 1) which employee or employees will actually produce the records; 2) the hourly compensation of such employees; and 3) the actual cost of the materials used to complete the request (if physical, rather than digital, copies are requested). Therefore, the fee estimates the University provided do not reflect the actual costs of providing copies of the records requested and are not reasonable.

Conclusion

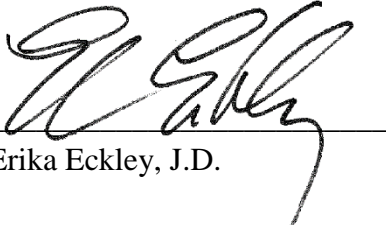
Chapter 22 requires that fees charged for public records requests be reasonable and based on the actual cost of providing the records requested. The fee estimates the University quoted are based on a flat hourly rate the University has chosen, not the anticipated actual costs of completing the request. Therefore, the fee estimates are not reasonable and not based on actual costs.

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 meets those requirements.

IT IS SO ORDERED: Formal complaint 23FC:0041 is accepted as 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 June 15, 2023. Pursuant to IPIB rule 497-2.1(4), the parties will be notified in writing of its decision.

By the IPIB Executive Director

A handwritten signature in black ink, appearing to read 'E. Eckley', is written over a horizontal line. The signature is fluid and cursive.

Erika Eckley, J.D.

CERTIFICATE OF MAILING

This document was sent on August 9, 2023, to:

Neetu Arnold
Tim McKenna, University of Northern Iowa

----- Original Message -----

From: Claeys, Aimee [aimee.claeys@iowaregents.edu]

Sent: 8/14/2023 10:50 AM

To: erika.eckley@iowa.gov

Cc: tim.mckenna@uni.edu; emily.pittenger@uni.edu

Subject: Fwd: 23FC:0065 - Neetu Arnold Draft Acceptance Order [thread::UC9H3rYrd7---ktjQP21qzA::]

Ms. Eckley: I represent the Board of Regents, State of Iowa, which is the governing body of the University of Northern Iowa. Tim McKenna is currently out of the office, so I am responding to your e-mail of August 9 on his behalf. The University respectfully requests that you append its original written response to this complaint to the proposed acceptance order, should it be submitted to the Iowa Public Information Board as proposed. For your convenience, I'm attaching a copy of Mr. McKenna's initial written responses to this e-mail for inclusion with Board materials.

The University of Northern Iowa would also appreciate you sharing with IPIB the following statement:

- The proposed acceptance order states that the lawful custodian of the record may charge a reasonable fee for retrieving public records which is "meant only to offset the cost of retrieving, reviewing, and copying the record." (citation omitted). "The fees charged for providing copies of public records 'shall not *exceed* the actual cost of providing that service.' Iowa Code [section] 22.3(2)." (emphasis added). At this stage of the open records process, the University is simply preparing an estimate. Actual costs may be reconciled against the estimate once the work is completed and prior to release of the records. Additionally, the actual hourly compensation for the individuals who are anticipated to retrieve, review, and prepare records in response to this request is *\$37 to \$58*, which is in excess of the rate used to prepare the estimate. The Iowa Open Records law provides that reasonable fees shall not exceed actual costs. The use of a flat hourly rate is not a violation of the law, provided the final fee does not exceed actual costs of providing the service.

Aimee Claeys
Board Counsel
Board of Regents, State of Iowa
515.281.6456



Search UNI

Start Searching

Public Records

REQUEST LOG

FEES

IOWA CODE CHAPTER 22

CONTACT US

REQUEST LOG

Fees for Obtaining Public Records

Chapter 22.3 of the Code of Iowa permits the University of Northern Iowa to charge reasonable fees for the expenses associated with retrieving, copying, and supervising the examination of public records based on its actual costs.

The University of Northern Iowa's fees are as follows:

- \$30 per hour for actual time spent locating, retrieving, reviewing for exempt content, redacting, and copying documents and/or for supervising the examination of public records. There is no charge if the time spent on those tasks is less than one hour.
- 25 cents per page for copies if more than 20 pages must be copied to complete a request. If the requester would like paper copies scanned into an electronic format, the cost of scanning will be charged at the same rate as the cost of photocopies.
- There is a minimum charge of \$75 for computer programming time when records must be extracted from computer databases. For requests that take more than one hour, the fee is \$75 per hour.
- \$20 for a standard or established list. If the list is not standard or established, then labor and computer programming charges will be charged as applicable.
- Mailing costs will be billed at the University's actual cost

As a general rule, the University of Northern Iowa provides cost estimates to requesters if charges to complete a request will exceed \$25.

If the charges will exceed \$25, or if the requester has failed to pay for previous open records requests, the University may require advance payment prior to locating, retrieving, reviewing for exempt content, redacting, and copying public documents based on the cost estimate provided to the requester.

Checks for open records requests are to be made payable to the University of Northern Iowa.



VISITING

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The Iowa Public Information Board

In re the Matter of:	Case Numbers: 23FC:0072
Don Benedict, Complainant,	Acceptance Order
And Concerning:	
City of Sydney, Respondent	

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

On July 11, 2023, Don Benedict filed formal complaint 23FC:0072, alleging that City of Sidney (City) violated Iowa Code chapter 22.

Facts

Mr. Benedict alleges that on June 15, 2023, he sent a public information request to the City requesting all City email communications concerning an incident on May 22nd. In response to the request, the City provided email logs on June 16, 2023. After reviewing the logs, Mr. Benedict sent a new public information request on June 16, 2023, for all City email communications between:

- Ken Brown and Riley Christie
- Ken Brown and RC tree service
- Ken Brown and Fichter law firm

On June 16th, Ken Brown indicating he would not comply with the public records request. Mr. Brown is the Mayor of the City. Due to Mr. Brown's unwillingness to turn over the public records, the City Council voted at the July 10, 2023, council meeting for the City to access the City's email archives and release the information to the city attorney for review in response to the records request. Mr. Benedict further alleges he was told by the city attorney that Mr. Brown is threatening litigation if the City proceeds with responding to the public records request without his cooperation. Mr. Benedict alleges that Mr. Brown has indicated he will not cooperate in complying with the request without an order from the Iowa Public Information Board.

In responding to this Complaint, the City provided emails and other documents between Mr. Brown, the city attorney, and the former city attorney, Clint Fichter, regarding the records request. The emails from Mr. Brown state that he refuses to provide his city emails because he is

conducting an “official investigation” of the city and forcing him to provide his city emails between him and the former city attorney would violate his privacy interests. He also argued that as Mayor, his emails are confidential and pulling his emails from the city server would be a violation of his fourth amendment rights.

The City’s response to the Complaint is essentially that the City wants to comply with the records request. The City provided its Computer, Cellphones, E-mail and Internet Usage policy for the City that states that all company-related work records and electronic information is the property of the City and the City reserves the right to examine, monitor, and regulate e-mail and other documents. The policy applies to the Mayor and all employees and Council members.

Applicable Law

The “‘Lawful custodian’ means the government body currently in physical possession of the public record. The custodian of a public record in the physical possession of persons outside a government body is the government body owning that record.” Iowa Code § 22.1(2).

“‘Public records’ includes all records, documents, tape, or other information, stored or preserved in any medium, of or belonging to this state or any county, city, township, school corporation, political subdivision.” Iowa Code § 22.1(3)(a).

Iowa Code § 22.2(1) requires that “[e]very 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.”

“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.” Iowa Code § 22.3.

Analysis

The request was clearly for public records. The request was for official City emails between the Mayor of the City and other individuals. The City is the lawful custodian of the records and has a duty to comply with a request for the records under Iowa Code § 22.2(1), according to the policy provided and Iowa Code § 22.1(2). The City, as custodian of the records, should pull the email records responsive to the request.

This Complaint seems to have been filed to address the conflict between the City’s stated desire to comply with its requirements as custodian of the public records of the City’s emails and the Mayor’s refusal to comply and his threat to take legal action against the City if it takes actions to comply with its obligation. The Mayor has stated that releasing the records would violate his privacy rights and/or his Fourth Amendment rights against unreasonable seizures. He has provided no other reasons for the wholesale exemption for the release of his official email records. Under Iowa Code § 22.7, some public records can remain confidential. There are seventy-five exceptions

to the required records' disclosure. However, there are no exceptions that exist merely for the Mayor of a City to withhold his City-related emails. The City has stated that the records will be reviewed by the City's attorney prior to release, so if there are documents that should retain their confidentiality under Iowa Code § 22.7, the Mayor and the attorney can work together to address those specific records.

The City has stated that it will comply with the records request upon guidance received from IPIB, but it is recommended that this Complaint be accepted to ensure that IPIB retains oversight to ensure the records request is completed.

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.

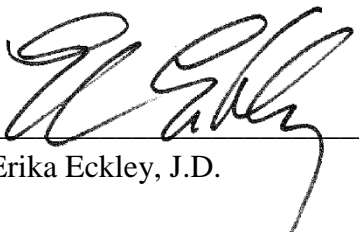
The City has stated that it will comply with its legal requirements to provide the records request. As custodian of the records, the City has the ability to comply. Any delay in providing the records was necessary to ensure the City had the appropriate authority to release the records and is ultimately harmless error, but it this Complaint should be accepted to ensure the request is completed and to provide any additional remedial measures as may be appropriate.

Iowa Code section 23.8 requires that a complaint be within the IPIB's jurisdiction, appear legally sufficient, and have merit before the IPIB accepts a complaint. These complaints meet those requirements.

IT IS SO ORDERED: Formal complaint 23FC:0072 is accepted as legally sufficient pursuant to Iowa Code section 23.8(2) and Iowa Administrative Rule 497-2.1(2)(b).

Pursuant to Iowa Administrative Rule 497-2.1(3), the IPIB may "delegate acceptance or dismissal of a complaint to the executive director, subject to review by the board." The IPIB will review this Order on August 17, 2023. Pursuant to IPIB rule 497-2.1(4), the parties will be notified in writing of its decision.

By the IPIB Executive Director



Erika Eckley, J.D.

CERTIFICATE OF MAILING

This document was sent on August 9, 2023, to:

Don Benedict

Bri Sorensen, attorney for City of Sibley

The Iowa Public Information Board

In re the Matter of: Ken Brown, Complainant, And Concerning: City of Sydney, Respondent	Case Numbers: 23FC:0080 Dismissal Order
--	--

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

On August 3, 2023, Ken Brown filed formal complaint 23FC:0080, alleging that City of Sydney (City) violated Iowa Code chapter 22.

Facts

Mr. Brown alleges that he made a public records request in his official capacity as Mayor for the following:

- All records of communications between Council member Don Benedict and members of the City staff and City Council regarding any subject related to City matters or the Mayor since Jan. 1, 2022. These requests include all emails, text messages, and other written communication.
- All records of communications between employees Brenda Benedict or Elease Cowles and members of the City staff and City Council regarding any subject related to City matters or the Mayor since Jan. 1, 2022. These requests include all emails, text messages, and other written communication.
- Copies of all employee records, confidential or not, including disciplinary records, possessed by the City related to Brenda Benedict, Michael Benedict, or Elease Cowles. All confidential records will be kept in the Mayor's office in City Hall
- Copies of all meeting minutes, meeting recordings, and other documentation at which any matter related to Mayor Ken Brown, Brenda Benedict, Michael Benedict, or Elease Cowles were discussed since January 1, 2019.

Mr. Brown alleges that his request to the City is in his capacity as Mayor to oversee the City as part of an investigation he is conducting and that the Clerk is to provide him with any document he needs in the discharge of his duty as Mayor.

In responding, the City states that there has been no official investigation shared with anyone on the City Council and that Mr. Brown's request is for public records. He made an "Official Public Information Request" on June 22, 2023, with a deadline to have the records by June 30, 2023, for all emails and recording from January 2019 to the current date for the following:

1. Clerks to the council;
2. Council to the Clerks;
3. Council to and from each other;
4. Clerks to the City Attorney;
5. Council to the City Attorney;
6. All recordings of the council meeting from January 2019 to the current date including all closed sessions.

The City provided Mr. Brown with a timeline for when the public records request could be gathered and provided him with an estimate for the cost of the records.

Mr. Brown made another "Official Information Request" on June 30, 2023, which is the request included in this Complaint. He stated the documents should be provided by July 21, 2023. The City asked for clarification whether it was an additional request. The City provided Mr. Brown with a timeline for when the public records request could be gathered and provided him with an estimate for the cost of the records.

In response, Mr. Brown cited city ordinance chapter 15 regarding the powers and duties of the mayor as the "Chief Executive Officer" and Ordinance 18.08 paragraph 4 that states the City clerk "is to furnish upon request to any municipal office a copy of any record, paper, or public document under the Clerk's control when it may be necessary to such officer in the discharge of the officer's duty."

On July 21, Mr. Brown sent an email to the clerk stating that a complaint has been filed with the state and the information he asked for is part of an investigation and that the clerk has violated city and state ordinances "that are write-up offenses."

The City argues that the records requested are extensive and that Mr. Brown is citing an independent "official investigation" as a way to obtain the public records without paying the costs related to compiling the records. Mr. Brown has not paid the quoted estimated cost of the compilation of records.

Applicable Law

Iowa Code § 22.2(1) requires that “[e]very 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.”

“All reasonable expenses of the examination and copying shall be paid by the person desiring to examine or copy. 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.” Iowa Code § 22.3(2).

Analysis

It is unclear whether Mr. Brown is seeking access to records required for him to perform his position as Mayor and Chief Executive Officer of the City or if he is seeking access to public records. Mr. Brown has filed this Complaint with the Iowa Public Information Board. IPIB’s jurisdiction is over issues involving Iowa Code Chapter 22, so it will be evaluated under the requirements of Chapter 22.

If Mr. Brown’s “Official Information Requests” on June 22 and June 30 were public records requests under chapter 22, the City did promptly respond to the requests, provided a timeline for when the records could be collected, and provided an estimate of the cost of compiling the records.

Under Iowa Code § 22.3(1) allows for the “fulfillment of a request for a copy of a public record [to be] be contingent upon receipt of payment of reasonable expenses.” Mr. Brown has not paid the estimated costs of his requests for years’ worth of records.

Whether Mr. Brown’s records request is related to an “official investigation” as “Chief Executive Officer” of the City and should be provided upon his request to the Clerk, is beyond the scope of the Iowa Public Information Board’s jurisdiction to determine. Nothing in Iowa Code Chapter 22 provides for defining “Official Information Requests” by a Mayor independently investigating the City.

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.

In regards to whether this Complaint falls within the jurisdiction of IPIB, if the Complaint is regarding a public records request, the City has responded in a prompt fashion, has provided a reasonable estimate as to when the records could be available, and has provided an estimate of the

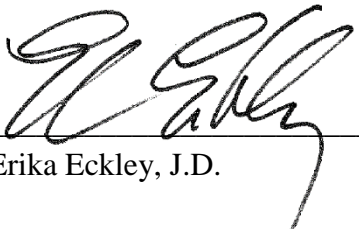
costs to provide the documents. Mr. Brown has not paid the requested fees, so as to whether there is a violation of Iowa Code Chapter 22, there is no evidence presented.

If the records request is not a request within Chapter 22 and should be provided to Mr. Brown as part of his independent “official investigation” against the City, that is outside the jurisdiction of IPIB. In either event, Complaint 23FC:0080 should be dismissed.

IT IS SO ORDERED: Formal complaint 23FC:0080, should be dismissed as legally insufficient and/or not within IPIB’s jurisdiction pursuant to Iowa Code § 23.8(2) and Iowa Administrative Rule 497-2.1(2)(b).

Pursuant to Iowa Administrative Rule 497-2.1(3), the IPIB may “delegate acceptance or dismissal of a complaint to the executive director, subject to review by the board.” The IPIB will review this Order on August 17, 2023. Pursuant to IPIB rule 497-2.1(4), the parties will be notified in writing of its decision.

By the IPIB Executive Director



Erika Eckley, J.D.

CERTIFICATE OF MAILING

This document was sent on August 9, 2023, to:

Ken Brown
Bri Sorensen, attorney for City of Sibley

The Iowa Public Information Board

In re the Matter of: Don Burgmaier, Complainant And Concerning: Iowa Attorney General, Respondent	Case Number: 23FC:0073 Dismissal Order
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COMES NOW, Erika Eckley, Executive Director for the Iowa Public Information Board (IPIB), and enters this Dismissal Order.

Facts

Don Burgmaier filed formal complaint 23FC:0073 on July 13, 2023, alleging that the Iowa Attorney General violated Iowa Code chapter 22 on June 29, 2023.

Mr. Burgmaier alleged that the Iowa Attorney General failed to respond to his record request by the date he filed this complaint which was 15 days. He provided a copy of his record request along with his complaint. Mr. Burgmaier's request was for the names of all assistant attorneys general that have resigned and were replaced since Brenna Bird took office including the assistant attorney general that represented the Iowa Department of Human Services.

Deputy Attorney General David Faith provided a response to the complaint. He stated that the office acknowledged Mr. Burgmaier's request on June 30, 2023, indicating that the request would be forwarded to the office's press secretary.

Mr. Faith explained that their office made the decision to provide the requested information despite the fact that the request exceeded the scope of Iowa Code chapter 22. The request required the Office compile information into a new record rather than provide a pre-existing record. He further explained that it took some time and effort to extract the requested information and compile it into a single accessible document.

The Office completed its review and created a record containing all the information requested by Mr. Burgmaier. This document was provided to him on July 18, 2023.

Law

Iowa Code Chapter 22 is silent as to the time for response to a records request. The time to locate a record can vary considerably depending on the specificity of the request, the number of potentially responsive documents, the age of the documents, the location of the documents, and whether documents are stored electronically. The large number of variable factors affecting response time makes it very difficult, and probably unwise, to establish any hard and fast objective standards.

Analysis

Despite not possessing a responsive record to Mr. Burgmaier's request, the Attorney General's office compiled a list and created a record to respond to the request. This record was provided to Mr. Burgmaier within nineteen days of his request. The Attorney General was responsive to the records request and created a document in order to fulfill the request. The fact that it took nineteen days from the date of the original request is not unreasonable and did not violate Iowa Code Chapter 22.

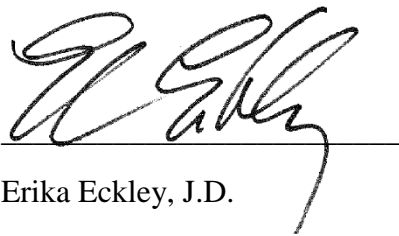
Conclusion

Iowa Code section 23.8 requires that a complaint be within the IPIB's jurisdiction, appear legally sufficient, and could have merit before the IPIB accepts a complaint. This complaint does not meet those requirements. Mr. Burgmaier received the requested record with the information requested nineteen days following his public records request.

IT IS SO ORDERED: Formal complaint 23FC:0073 is dismissed as legally insufficient pursuant to Iowa Code section 23.8(2) and Iowa Administrative Rule 497-2.1(2)(b).

Pursuant to Iowa Administrative Rule 497-2.1(3), the IPIB may "delegate acceptance or dismissal of a complaint to the executive director, subject to review by the board." The IPIB will review this Order on August 17, 2023. Pursuant to IPIB rule 497-2.1(4), the parties will be notified in writing of its decision.

By the IPIB Executive Director



A handwritten signature in black ink, appearing to read 'E. Eckley', is written over a horizontal line. The signature is fluid and cursive.

Erika Eckley, J.D.

CERTIFICATE OF MAILING

This document was sent by electronic mail on the August 9, 2023, to:

Don Burgmaier
David Faith, Deputy Attorney General

The Iowa Public Information Board

In re the Matter of:	Case Number: 23FC:0077
Clifford Davis, Complainant	
And Concerning:	Dismissal Order
Grand River City Council, Respondent	

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

On July 17, 2023, Clifford Davis filed formal complaint 23FC:0077, alleging that the Grand River City Council (City) violated Iowa Code chapter 21.

Background

The City posted notice of its regular council meeting, which was to be held on June 20, 2023. Mr. Davis alleges that instead of convening on the date specified in the notice, the Council held a “special meeting” on June 19, 2023, without notice.

In response to the complaint, the City confirmed that it amended the date of the meeting from June 20, 2023, to June 19, 2023. The City stated that the meeting date was changed because of scheduling conflicts for four of the five council members on the originally scheduled date. Further, the City explained that because of the presence of time-sensitive action items on the agenda, the meeting could not be rescheduled to occur later than the originally scheduled meeting date of June 20. The Council posted the amended notice of the new meeting date on June 16, 2023—three days before June 19, the date the meeting occurred. The amended notice was posted in the same publicly accessible locations as the original notice.

Analysis

The City is a governmental body subject to the open meeting laws set forth in chapter 21 of the Iowa Code. The issue raised in this complaint is whether the City complied with the public notice requirements under that Code chapter.

Governmental bodies must provide public 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). Notice generally must be given “at least 24 hours prior to the commencement of a meeting” Iowa Code § 21.4(2)(a). “If a governmental body is prevented from convening an otherwise properly noticed meeting under the requirements of subsection 1, the governmental body may convene the meeting if the governmental body posts an amended notice of the meeting conforming with all of the requirements of subsection 1.” Iowa Code § 21.4(2)(c).

Here, the City gave proper notice of the council meeting that was to be held on June 20. However, scheduling conflicts of a majority of the council members prevented the City from convening the meeting on that date. Therefore, in accordance with § 21.4(2)(c), the City posted an amended notice conforming with all of the requirements of § 21.4(1) and stating that the meeting would be held on June 19 instead of June 20. The City posted this amended notice on June 16, 2023—more than 24 hours in advance of the amended meeting date.

Conclusion


Chapter 21 allows a governmental body to provide an amended meeting notice of a properly noticed meeting. The City posted such an amended notice, and it did so more than 24 hours in advance of the commencement of the meeting. Therefore, the City did not violate Chapter 21, and this complaint lacks merit.

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.

IT IS SO ORDERED: Formal complaint 23FC:0077 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 August 17, 2023. Pursuant to IPIB rule 497-2.1(4), the parties will be notified in writing of its decision.

By the IPIB Executive Director



Erika Eckley, J.D.

CERTIFICATE OF MAILING

This document was sent on August 9, 2023, to:

Clifford Davis

Cheryl German, city clerk



Toresdahl, Brett <brett.toresdahl@iowa.gov>

Formal Complaint 23FC:0061 Dr. Michelle Havenstrite/PCM School Board

Eckley, Erika <erika.eckley@iowa.gov>

Fri, Aug 4, 2023 at 1:49 PM

To: Miriam Van Heukelem <MVanHeukelem@ahlerslaw.com>

Cc: Michelle Havenstrite <mhavenstrite@pcmschools.org>, Ryan VanDerKamp <dd6@pcmschools.org>, "Toresdahl, Brett" <brett.toresdahl@iowa.gov>

Thank you. Will indicate that this complaint has been withdrawn.

Erika Eckley, Executive Director
Iowa Public Information Board (IPIB)

On Fri, Aug 4, 2023 at 1:45 PM Miriam Van Heukelem <MVanHeukelem@ahlerslaw.com> wrote:

Hi Erika,

Thanks for getting back to us. This email confirms that the parties would like this handled as an informal settlement and withdrawal.

Best,
Miriam

Get [Outlook for iOS](#)

From: Eckley, Erika <erika.eckley@iowa.gov>**Sent:** Monday, July 31, 2023 10:47:43 AM**To:** Miriam Van Heukelem <MVanHeukelem@ahlerslaw.com>**Cc:** Michelle Havenstrite <mhavenstrite@pcmschools.org>; Ryan VanDerKamp <dd6@pcmschools.org>**Subject:** Re: Formal Complaint 23FC:0061 Dr. Michelle Havenstrite/PCM School Board

[External Email] Only click on trusted links.

Thank you for this information.

Please let me know whether the parties agree to uphold this settlement informally, which would allow for withdrawing the complaint with IPIB.

Or, we can go through our process of recommending the board review the facts and suggest a dismissal the complaint as resolved through informal means when the training is completed.

Erika Eckley, Executive Director
Iowa Public Information Board (IPIB)

On Mon, Jul 31, 2023 at 10:25 AM Miriam Van Heukelem <MVanHeukelem@ahlerslaw.com> wrote:

Hi Erika,

Superintendent Havenstrite and the Board have reached a resolution of the above-captioned complaint. Thank you for the additional time to get this finalized.

The parties agree that this is a compromise agreement to resolve this complaint without the need for further proceedings. The Board has not made an admission of any wrongdoing or violation of the law.

1. Prior to the start of the 2022-2023 school year, all Board members agree to participate in a training provided by Ahlers & Cooney, P.C., legal counsel for the District, relating to the requirements of the Iowa Open Meetings Act. This training will cover all aspects of Iowa Code chapter 21, including requirements for posting, requirements for closed and exempt sessions, and penalties for violations. All Board members will affirm in writing that they have attended the training and their understanding of and commitment to abide by the same.
2. The Board President and/or Superintendent will contact the District's legal counsel in advance of any closed or exempt session in order to obtain guidance on the appropriateness and limits of the closed or exempt session and the proper manner of posting the same. The District's legal counsel will be contacted at least 72 hours prior to any closed or exempt session to allow for timely posting of any necessary agenda item(s).

I have copied Dr. Havenstrite on this email and she is aware that I am forwarding this to you for IPIB's approval. If you have any questions, don't hesitate to ask.

Best wishes,

Miriam

Miriam Van Heukelem



Ahlers & Cooney, P.C.
100 Court Avenue, Suite 600
Des Moines, Iowa 50309-2231
Phone: (515) 246-0342 | **Fax:** (515) 243-2149

[VCard](#) | [Email](#) | [Bio](#) | [Firm Website](#) | [LinkedIn](#)

AHLERS & COONEY P.C. CONFIDENTIALITY NOTICE: This email, and any attachments hereto, contains information which may be CONFIDENTIAL and/or ATTORNEY CLIENT PRIVILEGED. The information is intended to be for the use of the individual or entity named above. If you are not the intended recipient, please note that any unauthorized disclosure, copying, distribution or use of the information is prohibited. If you have received this electronic transmission in error, please return the e-mail to the sender and delete it from your computer.

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Jareb Gleckel

Aug 10, 2023, 4:32 PM (16 hours ago)

to haylee.pontier@iowaagriculture.gov, me

Deputy Director Toresdahl,

We have received the records and are withdrawing our Complaint. Thank you again for your help.

On Thu, Aug 10, 2023 at 4:21 PM Toresdahl, Brett <brett.toresdahl@iowa.gov> wrote:

Mr. Gleckel

Thank you for the update. Should you choose to withdraw your complaint, please send an email indicating your intention.

--

Brett J. Toresdahl, CPM

Deputy Director

Iowa Public Information Board

502 E. 9th Street

Des Moines, Iowa 50319

515-725-1781

brett.toresdahl@iowa.gov

Pronouns: he/him/his

On Thu, Aug 10, 2023 at 2:38 PM Jareb Gleckel <jgleckel@animaloutlook.org> wrote:

Deputy Director Toresdahl,

Ms. Pontier and I were able to connect this morning regarding Animal Outlook's Complaint. Based on our conversation, Ms. Pontier proposed and Animal Outlook has agreed to the following:

"We are proposing that we will release the finalized reports with redactions only to the premise name, number and the building numbers, on the condition that the complaint is withdrawn from IPIB. The final reports would compile Exhibits D-H documents. The redactions included on Exhibit B will continue as it is the number of barns on the facility."

For clarification, as part of the final documents, the Department will be providing the numbers of animals that were previously redacted in Exhibits D-H.

Animal Outlook will formally withdraw its Complaint on receipt of the records.

Thank you for your time and your help with this matter.

Respectfully,

--

Jareb Gleckel

Staff Attorney, [Animal Outlook](#)

Board Dashboard

Dashboard for Board Meetings

⚠️ Last refreshed 3 days ago. Refresh this dashboard to see the latest data.

As of Aug 7, 2023 8:00 AM-Viewing as Erika Eckley

Active Cases Report

29

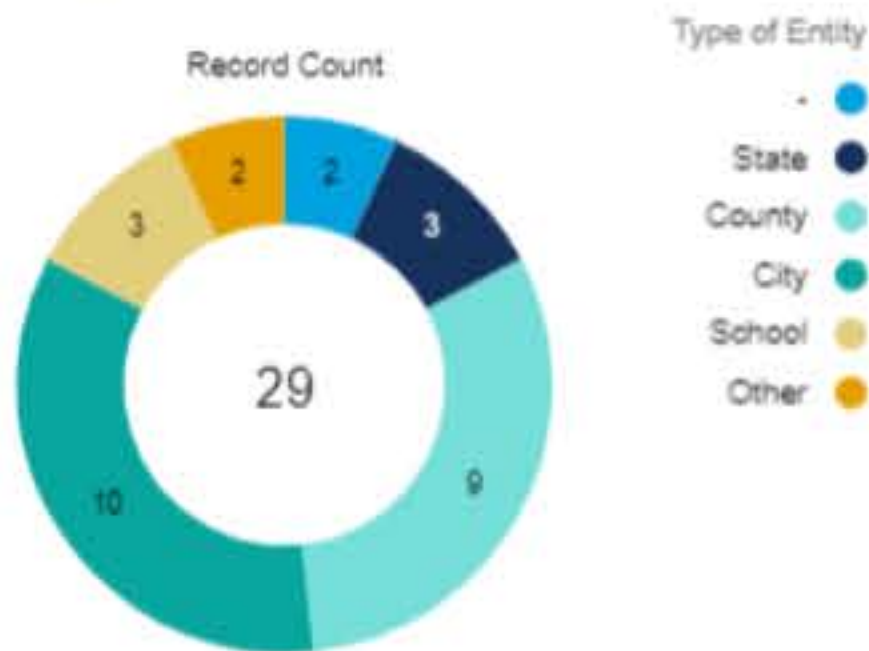
[View Report \(Active Cases Report\)](#)

New complaints &/or question last 30 day



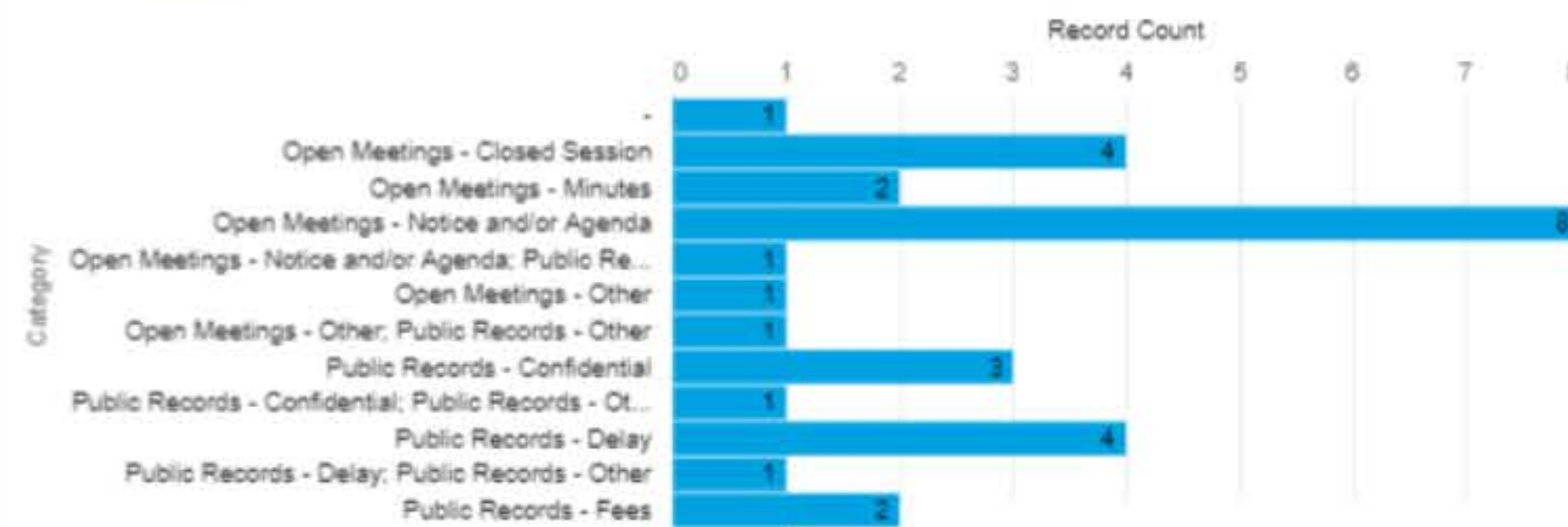
[View Report \(New complaints &/or question last 30 day\)](#)

Cases by Entity



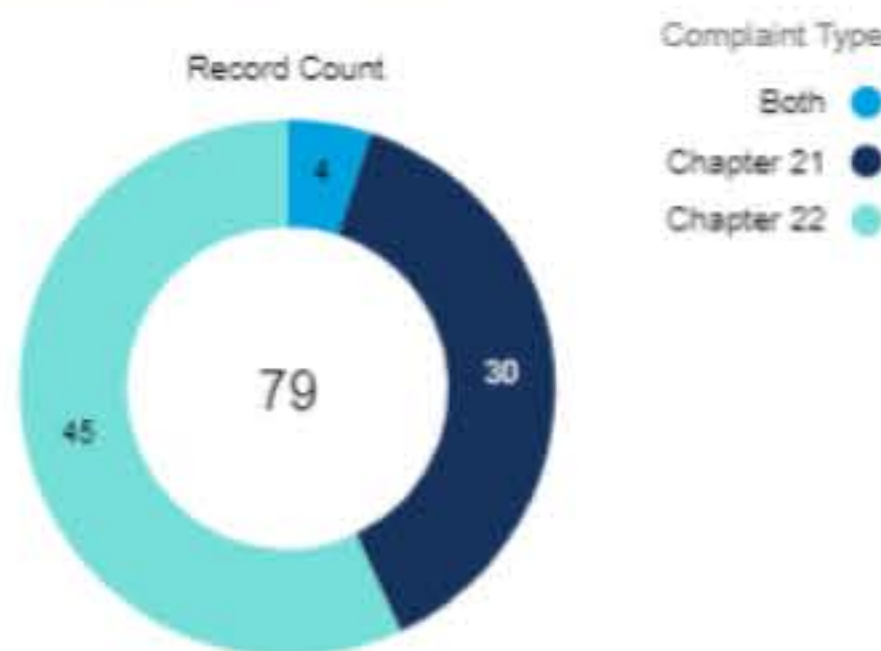
[View Report \(Cases by Entity\)](#)

Cases by Type (Active)



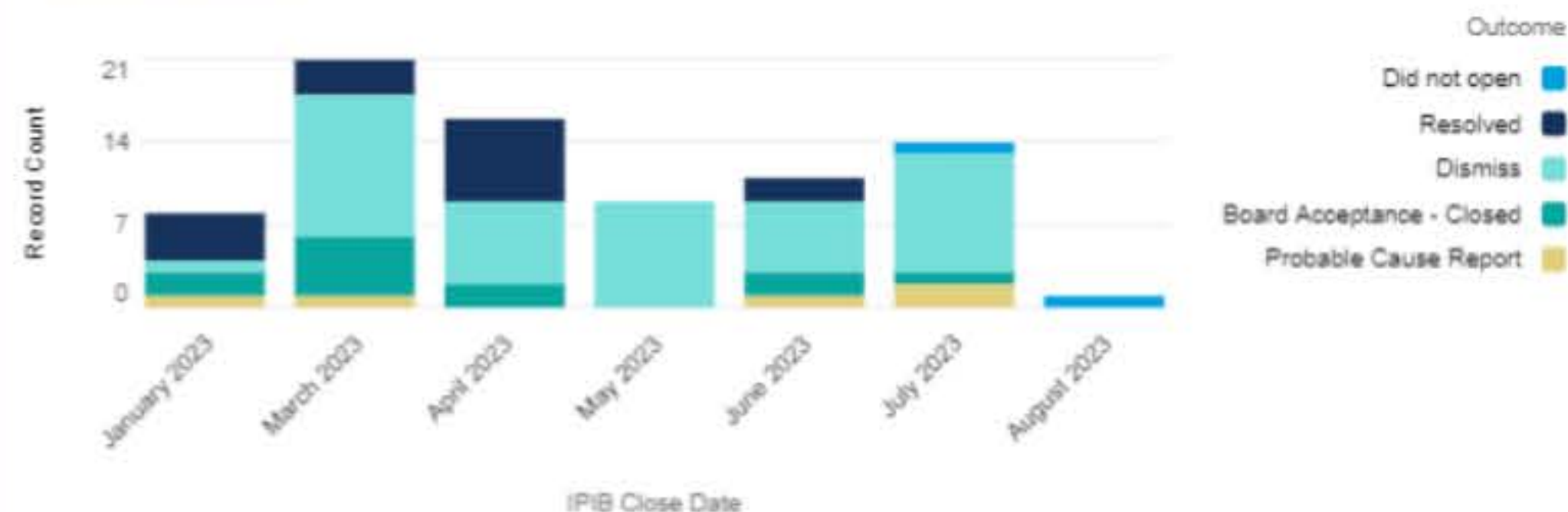
[View Report \(Cases by Type \(Active\)\)](#)

Broad Type (Filed in Current)



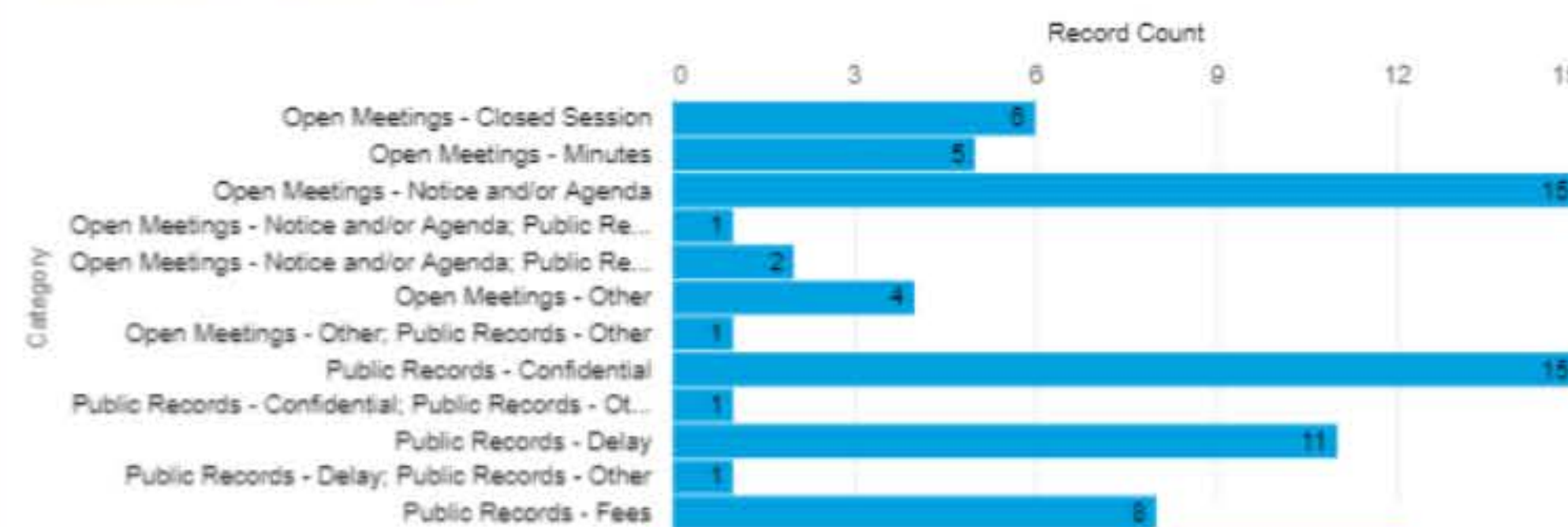
[View Report \(Broad Type \(Filed in Current\)\)](#)

Closed cases 2023



[View Report \(Closed cases 2023\)](#)

Cases by Type (Current Year)



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

Report ID: SCHED 6 DEPT/APPR

STATE OF IOWA

Page: 1 of 3

Source: I/3 Budget

FINANCIAL INFORMATION SCHEDULE BY APPROPRIATION

Run Date: 08/11/2023

Spec Dept: All Fund: All Unit Detail: All

Run Time: 09:24:19 AM

Department: All Appropriation: All Recap Unit: All

Special Department: 760SD **Public Information Board**
Department: 592 **Public Information Board**
Fund: 0001 **General Fund**
Appropriation: P22 **Iowa Public Information Board**

Object Class	Year to date	Revised Budget	Actuals
	Actuals	I/3 Financial	
	FY 2024	FY 2024	FY 2023

RESOURCES

Appropriations

05A	Appropriation	357,407	357,407	358,039
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Appropriations TOTAL:		357,407	357,407	358,039
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Receipts

234R	Gov Fund Type Transfers - Other Agencies			8,050
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Receipts TOTAL:				8,050
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Other Resources

04B	Balance Brought Forward (Approps)			11,374
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Other Resources TOTAL:				11,374
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TOTAL RESOURCES:		357,407	357,407	377,462
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DISPOSITION OF RESOURCES

Expenditures

101	Personal Services-Salaries	27,552	286,459	288,030
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202	Personal Travel In State	188	5,298	117
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301	Office Supplies	49	3,000	2,178
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309	Printing & Binding		500	1
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313	Postage		150	54
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401	Communications		5,000	3,352
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Report ID: SCHED 6 DEPT/APPR

STATE OF IOWA

Page: 2 of 3

Source: I/3 Budget

FINANCIAL INFORMATION SCHEDULE BY APPROPRIATION

Run Date: 08/11/2023

Spec Dept: All Fund: All Unit Detail: All

Run Time: 09:24:19 AM

Department: All Appropriation: All Recap Unit: All

Special Department: 760SD Public Information Board
Department: 592 Public Information Board
Fund: 0001 General Fund
Appropriation: P22 Iowa Public Information Board

Object Class		Year to date	Revised Budget	Actuals
		Actuals	I/3 Financial	
		FY 2024	FY 2024	FY 2023
405	Professional & Scientific Services		9,000	8,050
406	Outside Services			325
414	Reimbursement to Other Agencies		17,000	12,424
416	ITS Reimbursements		22,000	33,965
418	IT Outside Services			1,826
434	Gov Fund Type Transfers - Other Agencies Services		9,000	
602	Other Expense & Obligations			55
Expenditures TOTAL:		27,788	357,407	350,377
Other Dispositions				
91B	Balance Carry Forward (Approps)			
Other Dispositions TOTAL:				
TOTAL DISPOSITION OF RESOURCES:		27,788	357,407	350,377
FTE				
FTE Summary				
FTE	FTE		3	
FTE Summary TOTAL:			3	
TOTAL FTE:			3	
Appropriation P22 Net (Res-Disp):		329,619		27,086

Report ID: SCHED 6 DEPT/APPR

STATE OF IOWA

Page: 3 of 3

Source: I/3 Budget

FINANCIAL INFORMATION SCHEDULE BY APPROPRIATION

Run Date: 08/11/2023

Spec Dept: All Fund: All Unit Detail: All

Run Time: 09:24:19 AM

Department: All Appropriation: All Recap Unit: All

Special Department: 760SD Public Information Board
Department: 592 Public Information Board
Fund: 0001 General Fund
Appropriation: P22 Iowa Public Information Board

Object Class	Year to date	Revised Budget	Actuals
	Actuals	I/3 Financial	
	FY 2024	FY 2024	FY 2023
Appropriation P22 FTE:		3.00	
Fund 0001 Net:	329,619		27,086
Fund 0001 FTE:		3.00	
Department 592 Net:	329,619		27,086
Department 592 FTE:		3.00	
Special Department 760SD Net:	329,619		27,086
Special Department 760SD FTE:		3.00	
Report Total Net:	329,619		27,086
Report Total FTE:		3.00	