

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.

To unmute your phone, enter ##1 on your key pad

Agenda

September 21, 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 August 17, 2023 minutes *
- III. Public Forum (5-minute limit per speaker)
- IV. Public input regarding policies to address potentially abusive conduct surrounding record requests. (5-minute limit per speaker)
- V. Comments from the board chair. (Lindahl)
- VI. Advisory Opinion – Deliberation/Action.
 1. 23AO:0005 (IPIB – Chapter 22) 8/22/2023 - * What limits can government entities place on electronic records requests to address cyber security concerns?
 2. 23AO:0006 (Brent Ruther - Chapter 22-) 8/25/2023 – * Whether a county can be considered the lawful custodian of all records, including employment records, of the sheriff’s office within that county?

3. 23AO:0007 (Matthew Byrne - Calhoun County Board of Supervisors – Chapter 21) 8/28/2023 - * Is it normal for an elected County Supervisor to review and personally edit the meeting minutes before publishing?

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

1. 22FC:0069 Mari Radtke - Chapter 22- City of Paulina 7/25/2022 - * Update Report Informal Resolution
2. 22FC:0118 Dakoda Sellers - Chapter 22- City of Vinton 11/14/2022 - * Informal Resolution Report
3. 23FC:0056 Ruth Bolinger - Chapter 21- Creston City Council 5/22/2023 - * Acceptance
4. 23FC:0059 William Kreijanovsky - Chapter 22- Polk County 6/16/2023 - * Dismissal
5. 23FC:0064 Julie Ann Madden - Both- Akron Care Center 6/19/2023 – * Dismissal
6. 23FC:0068 Nolan McGowan - Chapter 21- Osceola County Board of Supervisors 6/22/2023 - * Dismissal
7. 23FC:0070 Eric Henely - Both- Gilbert Community School District 8/22/2023 - * Dismissal
8. 23FC:0074 Chad Miller - Chapter 21- Scott County Board of Review 7/18/2023 - * Acceptance
9. 23FC:0076 Stan Walk - Chapter 21- Mitchell County Economic Development Commission 7/21/2023 - * Dismissal
10. 23FC:0079 Steve St. Clair - Chapter 21- Winneshiek County Board of Supervisors 8/4/2023 - * Dismissal

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 Matters Withdrawn, No Action Necessary.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

1. 23FC:0084 (Ginger Wander - Chapter 22- Elgin Library Board) 8/21/2023 – * Withdrawn
2. 23FC:0062 (Chuck Morris - Chapter 21- Page County Board of Supervisors) 6/16/2023 - * Withdrawn
3. 23FC:0089 Drew Barden - Chapter 22- City of Churdan 9/1/2023 - * Withdrawn

IX. Pending Complaints. Informational Only (Eckley)

1. 23FC:0044 Cliff Sheakley – Chapter 22 – Tama County Assessor – 3/31/23 Pending Informal Resolution
2. 23FC:0053 Debra Schiel-Larson – Both Chapters – Indianola Community School District – 5/1/23 Pending Informal Resolution
3. 23FC:0060 Dina Raley - Chapter 22- Delaware County Sheriff 6/16/2023 - Information Gathering
4. 23FC:0063 Laurie Kramer - Chapter 21- City of Delhi 6/19/2023; & 23FC:0063 Greg Preussner – Chapter 21– City of Delhi - Pending Informal Resolution
5. 23FC:0065 Neetu Arnold - Chapter 22 – University of Northern Iowa 6/14/23 Pending Informal Resolution
6. 23FC:0069 Roger Hurlbert – Chapter 22 – Montgomery County Assessor 6/26/23 – Information Gathering
7. 23FC:0071 Bradley Wendt – Chapter 21 – City of Adair – 7/11/23 – Information Gathering
8. 23FC:0072 Don Benedict – Chapter 22 – City of Sidney – 7/11/23 – Pending Informal Resolution
9. 23FC:0075 Less Grossman – Chapter 21 – Eastern Iowa Community College – 7/17/23 – Information Gathering
10. 23FC:0081 Elijah Mathern – Chapter 21 – GMG Community School District – 8/10/23 – Information Gathering
11. 23FC:0082 Melisa Mattingly – Both Chapters – McCallsburg City Council – 8/3/23 – Information Gathering
12. 23FC:0083 Brendan Chaney – Chapter 21 – City of Iowa Falls – 8/14/23 – Information Gathering

13. 23FC:0085 Jackie Stonewall – Chapter 21 – GMG Community School Board – 8/22/23 – Information Gathering
14. 23FC:0086 Todd Banner – Chapter 22 – Iowa State University – 8/23/23 – Information Gathering
15. 23FC:0087 Travis Scott – Chapter 22 – O’Brien County Conservation Board – 8/24/23 – Information Gathering
16. 23FC:0088 Concerned Citizen – Chapter 21 – O’Brien County Conservation Board – 8/28/23 – Information Gathering
17. 23FC:0090 Richard Radtke – Chapter 22 – City of Paulina 9/6/2023 – Information Gathering
18. 23FC:0091 Michelle Hillman – Chapter 21 – Grand Junction City Council 9/14/23 – Information Gathering

X. Committee Reports

1. Communications – (Toresdahl)
2. Legislative – (Eckley)
3. Rules – (Strawhun)

XI. Office status report.

1. Office Update * (Eckley)
2. Financial/Budget Update (FY23) * (Toresdahl)
3. Presentations/Trainings (Eckley)
4. District Court Update (Strawhun)

XII. Next IPiB Board Meeting will be held in the Wallace Building, 3rd Floor, E/W Conference Room October 19, 2023 at 1:00 p.m.

XIII. Adjourn

*** Attachments**

IOWA PUBLIC INFORMATION BOARD

August 17, 2023

Approved Minutes

The Board met on August 17, 2023 for its monthly meeting at 1:00 in the 3rd floor E/W Conference Room in the Wallace Building with the following members participating: Joan Corbin, Pella; E. J. Giovannetti, Urbandale; Barry Lindahl, Dubuque; Joel McCrea, Pleasant Hill; Monica McHugh, Zwingle; Julie Pottorff, Des Moines; Jackie Schmillen, Urbandale (phone). Absent: Daniel Breitbarth, Des Moines. Also present were IPIB Executive Director Erika Eckley; Daniel Strawhun, Legal Counsel. A quorum was declared present.

Others identified present or by phone: Randy Evans, Brian Guillaume, Trent Henkering, Deb Schiel-Larson, Tim Beck, Molly Kilker, Beth Manley, Ryan Eaton.

On a **motion** by Giovannetti, **second** by Lindahl, the agenda was unanimously adopted 7-0.

On a **motion** by Corbin, **second** by Pottorff, to approve the July 20, 2023 minutes. Unanimously adopted 7-0.

Public Forum – Tim Beck spoke.

Board Chair Comments – McHugh shared with the Board a recent article related to the work of the Board which appeared in the Cedar Rapids Gazette.

Advisory Opinions –

1. 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). A motion by Pottorff and second by Lindahl to approve the Advisory Opinion. Unanimously approved, 7-0.
2. 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. A motion by Giovannetti and second by Lindahl to approve the Advisory Opinion. Unanimously approved, 7-0.

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

1. 23FC:0063 (Laurie - Chapter 21- City of Delhi) 6/19/2023 & 23FC:0066 (Greg Preussner - Chapter 21- Delhi City Council) 6/19/2023. A motion by Lindahl and second by Pottorff to approve the consolidation and acceptance order. Unanimously approved, 7-0.
2. 23FC:0068 (Nolan McGowan - Chapter 21- Osceola County Board of Supervisors) 6/22/2023. A motion by Giovannetti and second by Corbin to table this matter until the next meeting. Unanimously approved, 7-0.

3. 23FC:0035 (Concerned Citizen - Chapter 21- O'Brien County Conservation Board) 3/11/2023. A motion by Pottorff and second by McCrea to approve the informal resolution final report and dismissal order as resolved. Unanimously approved, 7-0.
4. 23FC:0047 (Darran Sellers - Chapter 21- Vinton City Council) 4/18/2023. A motion by Giovenetti and second by Lindahl to approve the informal resolution final report and dismissal order as resolved. Unanimously approved, 7-0.
5. 23FC:0053 (Debra Schiel-Larson - Both- Indianola Community School District) 5/4/2023. A motion by Giovannetti and second by Lindahl to approve the acceptance order. Unanimously approved, 7-0.
6. 23FC:0056 (Ruth Bolinger - Chapter 21- Creston City Council) 5/22/2023. A motion by McCrea and second by Pottorff to table this matter until the next meeting. Unanimously approved, 7-0.
7. 23FC:0065 (Neetu Arnold - Chapter 22- University of Northern Iowa) 6/19/2023. A motion by Corbin and second by Pottorff to approve the acceptance order. Unanimously approved, 7-0.
8. 23FC:0072 (Don Benedict - Chapter 22- City of Sidney) 7/18/2023. A motion by Pottorff and second by McCrea to approve the acceptance order. Unanimously approved, 7-0.
9. 23FC:0080 (Kenneth Brown – Chapter 22 – City of Sidney) 8/3/23. A motion by Pottorff and second by Giovenetti to approve the dismissal order. Unanimously approved, 7-0.
10. 23FC:0073 (Don Burgmaier - Chapter 22- Iowa Attorney General's Office) 7/18/2023. A motion by Lindahl and second by Corbin to approve the dismissal order. Unanimously approved, 7-0.
11. 23FC:0077 (Clifford Davis - Chapter 21- City of Grand River) 7/21/2023. A motion by Lindahl and second by McCrea to approve the dismissal order. Unanimously approved, 7-0.

Matters Withdrawn. No Action -

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

Pending complaints that required no board action. Informational

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
11. Open
12. 23FC:0071 (Bradley Wendt - Chapter 21- City of Adair) 7/18/2023 - Information Gathering
13. 23FC:0074 (Chad Miller - Chapter 21- Scott County Board of Review) 7/18/2023 - Information Gathering
14. 23FC:0075 (Less Grossman - Chapter 21- Eastern Iowa Community College) 7/21/2023 – Information Gathering
15. 23FC:0076 (Stan Walk - Chapter 21- Mitchell County Economic Development Commission) 7/21/2023 - Information Gathering
16. 23FC:0079 (Steve St. Clair - Chapter 21- Winneshiek County Board of Supervisors) 8/4/2023 – Information Gathering

Committee Reports

1. Communications – No report
2. Legislative – The committee is meeting immediately after this Board meeting.
3. Rules – No report

Updates for the board.

- a. Executive Director Report:
 - Updated case management system
 - Website change over is progressing
 - Eckley led a discussion regarding cyber security risks the governmental bodies may be exposed to as they receive and send records in electronic formats. Also discussed were volumous public record requests sent to multiple government bodies. The IPIB should provide guidance to entities. Several speakers representing various entities provided comments.
- b. Eckley shared the FY24 financials.
- 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**, September 21, 2023, at 1:00 p.m.

At 3:12 p.m. the meeting adjourned on a motion by Lindahl and a second by Pottorff. Unanimously approved.

Respectfully submitted
Brett Toresdahl, Deputy Director

IPIB, Chair
Approved



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Erika Eckley, JD
Executive Director
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Advisory Opinion 23AO:0005

DATE: September 21, 2023

SUBJECT: Limits on electronic records requests.

This opinion is in response to a policy question raised with the Iowa Public Information Board (IPIB) concerning the cybersecurity protections and 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:

What limits can government entities place on electronic records requests to address cyber security concerns?

OPINION:

Cyber security importance

Governmental entities have increasingly become the targets of cyber security attacks in recent years. *See, e.g.* U.S. Department of Homeland Security Cybersecurity and Infrastructure Security Agency, PROTECTING OUR FUTURE: PARTNERING TO SAFEGUARD K–12 ORGANIZATIONS FROM CYBERSECURITY THREATS, January 2023, https://www.cisa.gov/sites/default/files/2023-01/K-12report_FINAL_V2_508c_0.pdf (last accessed August 31, 2023) (“Increasingly, school or school district systems have been breached, with data deleted, misused, or even held for ransom. This trend has continued throughout 2022, and leaders across the K–12 community are coming to recognize that no school, district, or organization is immune from cyber intrusions.”). With the frequency and sophistication of attacks continuing to rise, it is imperative that governmental entities remain vigilant in assessing and remediating vulnerabilities in their networks, computer systems, and processes.

Criminals often breach an organization’s cyber security through the use of malicious email links and attachments. U.S. Department of Homeland Security, Malware Tip Card, https://www.cisa.gov/sites/default/files/publications/Malware_1.pdf (last accessed August 31, 2023) (“When in doubt, throw it out: Links in emails and online posts are often the way criminals compromise your computer. If it looks suspicious, even if you know the source, it’s best to delete it.”). The ubiquity and frequency of email communication makes it a particularly effective and vulnerable point of access for cyber attackers to exploit.

Board Members

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

Under chapter 22 of the Iowa Code, governmental entities must be responsive to requests for public records. These requests may be made “in person . . . , in writing, by telephone, or by electronic means.” Iowa Code § 22.4. The vast majority of public records requests today are submitted electronically, via email.

Despite the apparent tension between governmental entities’ need to protect against cyber-attacks while remaining accessible and responsive to public records requests, best practices and policies exist that, if utilized, will allow government entities of all sizes to safely respond to electronic records requests. The purpose of this advisory opinion is to assist government entities in implementing these practices and policies, which include placing reasonable restrictions on electronic records requests under Iowa Code chapter 22. Additionally, this opinion seeks to educate the public on best practices to better communicate electronic records requests.

Public Records Requests

Under Iowa Code § 22.4(2), individuals may request records “[i]n writing, by telephone, or by electronic means.” In addition, individuals may request records in person during the customary hours the government entity is open and available.

By their nature, requests made in person, by telephone, or in writing have built in protections for government entities. An individual can make a request in person when the government is regularly open for business. A telephone call can be answered during regular hours or a message can be left on voice mail. The number of ways a request can be made electronically, however, continues to expand and can create hidden risks to government entities’ computer systems that do not exist in the other delivery mechanisms. The level of risk in accepting electronic communications from unknown and potentially anonymous sources is too great to require that government entities be forced to do so without limitation.

While Iowa Code chapter 22 does not allow government entities to require that individuals make records requests through one communication method versus another, government entities are allowed to place reasonable restrictions on how electronic records requests are received to ensure electronic messages are free from malware or other cyber security risks. Placing reasonable restrictions on the form of an electronic request still allows requesters the option of making requests through any desired communication method under the statute. No entity can prohibit individuals from making a request in person, through writing, by telephone, or by electronic means.

Records Request Best Practices

In whatever format a records request is made, it is important to ensure that the request is made clearly and as concisely as possible. The request should clearly state that records are being sought. It should include the type of document sought, including any information that can help to better identify the records, such as the name of the individual or group involved in creating the document; the date it was presented or created; and any other identifying information that will help the custodian to properly identify and locate the document. Broad requests can be time-consuming and expensive--the more specific the request is, the more likely the records can be located quickly and efficiently.

In some instances, requesters may have only limited knowledge of the types of records the government entity has and may not be able to describe precisely the records they seek. The records custodian should appropriately assist a requester to clarify their request when feasible. In general, there is no requirement that the requester give the reason for a request or identify themselves, however, providing some information about the reason for the request can be helpful in identifying the record or if the actual costs of compiling a broad request are a concern, the information could assist in appropriately limiting the scope of the request.

While there is not a requirement under Iowa Code chapter 22 to post public records on a website, providing access to public documents, such as minutes, budgets, agendas, ordinances, etc. that are frequently requested or useful can reduce the burden on both the government entity and the requester. Iowa Code § 22.3(1) encourages

government entities “to provide the public record requested at no cost other than copying costs for a record which takes less than thirty minutes to produce.”

Upon receipt of a request for a copy of a public record, the lawful custodian should promptly acknowledge the request. (Promptly means using reasonable, good-faith efforts to respond taking into account the circumstances as they exist at the time the request was received.) The custodian should provide an approximate date by which an estimate for any reasonable expenses and the release of a copy of the public record or a response to the request will be provided. The custodian should also continue to communicate with the requester and inform them of any expected delay.

Email Requests, Generally

Electronic requests sent through email to the records custodian should include the specific request within the body of the email. There is no reason a request needs to be sent in an attachment or through a link. The email request provides written notice of the request and also includes the date and time when it was sent, so there is a documented record of the request. Including links or attachments to email increases the risk that the message may be automatically routed to a “spam” folder or quarantine filters to address cyber security and phishing concerns. Requesters should provide the request in a format that enables the government entity to receive and respond to the request.

Government entities should request the sender resubmit the request in the body of the email if requests are received that have attachments or other extraneous information. Like all requests, government entities should provide acknowledgement of the request and responses regarding the records and fees.

Request Portals and online forms

Some government entities have developed or are considering developing an online portal that allows records requests to quickly and easily be submitted and sent to the appropriate records custodian.

“[O]nline public record requests portals can save time and money and increase efficiency and responsiveness to request, process and disseminate public records.” National Freedom of Information Coalition, *Portal to Compliance: A Qualitative Analysis of Online Public Record Request Services in Major U.S. Cities*, September 2019, <https://www.nfoic.org/wp-content/uploads/pages/2019-09/NFOIC%20Portal%20to%20Compliance.pdf> (last accessed 08/30/2023).

Online forms that generate an email to the custodian of a government entity are slightly less sophisticated than an online portal, but just as effective at allowing individuals to contact a government entity quickly and easily to make an electronic, written records request.

Providing a portal or online request form is an appropriate and safe way to allow for electronic requests to be submitted. It will be important that the portal or form system provide requesters a copy of their request including when and to whom it was submitted. Acknowledgment of the request and other appropriate follow up information and documents should be provided as well. If a records request is such that fees are charged, communication about how the fees can be paid, including whether they can be handled through the portal, should be clearly communicated.

Summary

Iowa Code § 22.4(2) requires that individuals have the option to submit requests in person, by telephone, in writing, and by electronic means. Government entities have the ability to put reasonable restrictions on how electronic requests are received. These restrictions should be uniformly enforced. Individuals requesting records need to follow the restrictions or choose another method of communicating their request. Information should be provided for how and to whom individuals can submit their request if they choose to not utilize the electronic methods as outlined.

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:

September 21, 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:0006

DATE: September 21, 2023

SUBJECT: Who is the lawful custodian when there are multiple levels of political subdivisions involved

RULING:

This opinion is in response to a question filed with the Iowa Public Information Board (IPIB) concerning chapter 22 of the Iowa Code. 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:

Whether a county can be considered the lawful custodian of all records, including employment records, of the sheriff’s office within that county.

OPINION:

You asked whether a county can be considered the lawful custodian of all records, including employment records, of the sheriff’s office within that county. In essence, you are asking whether under chapter 22, a political subdivision of the state can be considered to be the lawful custodian of all records held by a smaller political subdivision within it.

To answer this question, we must begin with the definition of a lawful custodian under chapter 22: “Lawful custodian” means the government body currently in physical possession of the public record.” Iowa Code § 22.1(2).

Chapter 22 defines “government body” in the following way:

“Government body” means this state, or any county, city, township, school corporation, *political subdivision*, tax-supported district, nonprofit corporation other than a fair conducting a fair event as



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provided in chapter 174, whose facilities or indebtedness are supported in whole or in part with property tax revenue and which is licensed to conduct pari-mutuel wagering pursuant to chapter 99D . . . or any branch, department, board, bureau, commission, council, committee, official, or officer of any of the foregoing or any employee delegated the responsibility for implementing the requirements of this chapter.”

Iowa Code § 22.1(1) (emphasis added).

“Counties are political subdivisions of the state.” *State ex rel. Iowa Emp. Sec. Comm’n v. Des Moines Cnty.*, 260 Iowa 341, 346, 149 N.W.2d 288, 291 (1967). A political subdivision of a county is a “legally identifiable political instrumentality” whose “purpose is to aid in the governmental functions of the county.” *Id.* The sheriff’s office is therefore a political subdivision of the county in which it is located.

A sheriff’s office is a political subdivision of the county in which it is located, which means it is a “government body” under the definition provided in § 22.1(1). As stated earlier, a lawful custodian is defined as the “government body currently in physical possession of the public record.” Because the sheriff’s office is a government body, it is the lawful custodian of all records in its physical possession, including employment records—not the county.

BY DIRECTION AND VOTE OF THE BOARD:

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Julie Pottorff
Jackie Schmillen

SUBMITTED BY:

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Advisory Opinion 23AO:0007

DATE: September 21, 2023

SUBJECT: Editing meeting minutes before publishing.

Matthew Byrne
Via email [redacted]

Mr. Byrne,

We are writing in response to your request dated July 19, 2023, requesting an advisory opinion from the Iowa Public Information Board (IPIB) pursuant to Iowa Code chapter 23 and Iowa Administrative Code rule 497-1.3.

We note at the outset that the IPIB's jurisdiction is limited to the application of Iowa Code chapters 21, 22 and 23, as well as 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 it normal for an elected County Supervisor to review and personally edit the meeting minutes before publishing?

OPINION:

Iowa Code § 21.3 requires that “[e]ach governmental body shall keep minutes of all its meetings showing the date, time and place, the members present, and the action taken at each meeting. The minutes shall show the results of each vote taken and information sufficient to indicate the vote of each member present. The vote of each member present shall be made public at the open session. The minutes shall be public records open to public inspection.”

In this case, the Auditor or their delegate acts as a clerk to the Board of Supervisors and prepares the minutes on behalf of the Board. It is the Board's responsibility to ensure the minutes comply with the statutory requirements under Iowa Code chapters 21 and 331.¹ The members of the Board of Supervisors should review

¹ “When comparing the duties of a county board of supervisors and a county auditor, it is clear that the board of supervisors has the responsibility to actually manage the record books described in section 331.303(1). In fact, section 331.303(2) expressly requires the county board of supervisors to manage its records in compliance with Code chapter 22. In comparison, a county auditor merely acts as a board of supervisors' agent to make sure that the board's proceedings are recorded in an accurate and correct manner. Iowa Code section 331.504(1) (1991).” 1992 Iowa Op. Atty. Gen. 167 (Iowa A.G.), 1992 WL 470371

Board Members

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

the minutes to ensure they reflect the actions taken by the Board, including the complete text of the motions, resolutions, amendments, and ordinances adopted as required under Iowa Code § 331.504.

It would be advisable for a County Supervisor to review the minutes for accuracy and to provide potential edits. Then, it would be the responsibility of the Board to ensure any inaccuracies are revised and the official minutes are approved as amended by the Board.²

Your request, however, included additional details. You state that it was discovered that there were discrepancies in the minutes between what actually occurred versus what the Supervisor wanted to include in the minutes as evidenced by the audio/video recording. When asked about one of the items, the Supervisor stated he was putting in what he meant to say rather than what occurred. The other Supervisors voted to amend the minutes to remove the inaccurate edits.

If it is determined that minutes are inaccurate or have been edited incorrectly, it is the responsibility of the Board or Council to amend or restore the minutes to be accurate as occurred in this situation. Minutes, above all, need to be factually accurate. They are not, however, a transcript of the proceedings. The Auditor, City Clerk, or Board Secretary tasked with drafting the minutes for the Board or Council cannot take down every word that is spoken. As a best practice, the Iowa League of Cities recommends providing the legally required content in the minutes and enough additional information to be of historical and functional value without being too lengthy. It recommends providing a factual accounting that ensures that editorial remarks are omitted.

Choosing which comments to include or exclude or how comments are phrased, whether intentional or not, is editorializing the minutes. This creates minutes that are not objective and factual and instead causes issues of misunderstanding and inaccuracies. By avoiding editorial comments and focusing only on the actions taken, motions and resolutions passed, and enough factual information about reports and issues to provide context, the minutes have historical and functional value.

Minutes are the public record of a governmental body's activities and decisions. Their usage should be to document the official actions of a governmental body. This means they should contain the legally required information as well as enough information in context to ensure understanding of the actions and topics covered by the Board or Council. Minutes should not include partial commentary or editorial additions. Including these items in minutes causes unnecessary issues such as the one addressed in this opinion in which a Supervisor feels compelled to revise the minutes to address quotes or commentary.

Minutes should include facts rather than opinions, rumor, preference, or innuendo. Minutes are a public record of a governmental body. They should reflect the propriety and objectivity of the governmental body itself.

BY DIRECTION AND VOTE OF THE BOARD:

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

² "Iowa Code section 21.3(2) states in part, 'Each governmental body shall keep minutes of all its meetings. . . .'" "Despite the council having the clerk keeps [sic] minutes in its stead, the delegation does not nullify the council's status as the official preparer of the minutes. It may appear that the clerk is keeping notes/minutes, but from a legal perspective pursuant to Iowa Code section 21.3(2) it is actually the council keeping notes/minutes, even though they are acting through the clerk." Iowa Public Information Board 20AO:0006, December 16, 2020.

SUBMITTED BY:



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

ISSUED ON:

September 21, 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.

Before The Iowa Public Information Board

In re the Matter of: MARI RADTKE, Complainant And Concerning: CITY OF PAULLINA, Respondent	Case No. 22FC:0069 Status Report
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COMES NOW, Daniel M. Strawhun, Legal Counsel for the Iowa Public Information Board (IPIB), and respectfully submits this status report for formal complaint 22FC:0069.

Background

On July 21, 2022, Mari Radtke filed formal complaint 22FC:0069 against the City of Paullina ("City") alleging a violation of Iowa Code chapter 22. She alleged that the City failed to provide records she requested.

IPIB accepted this complaint on November 17, 2022. Pursuant to section 23.9, IPIB made efforts to reach an informal resolution between the parties. At the February IPIB meeting, IPIB staff presented a probable cause report. The report concluded that probable cause existed because the City had failed to release certain records the Complainant requested. The City stated that the records had been deleted, but did not state when the records were deleted or provide documentation thereof.

Because it was unclear whether the documents were deleted before or after the City received notice of the Complainant's records request, the Board declined to decide whether probable cause existed to believe a violation occurred. Instead, it instructed IPIB staff to continue investigating the complaint to determine when the records were deleted.

Current Status

IPIB staff drafted questions designed to determine when the documents were deleted. The answers to the questions are to be recorded in the form of an affidavit and signed by each individual whose records were deleted. Staff sent these questions and an affidavit template to the City's attorney with instructions. Staff also called the relevant individuals to collect their email addresses (the City does not have a website or official email addresses) so that the affidavits could also be sent directly to them. The individuals who responded have been sent the affidavits and instructed to confer with the City's attorney when completing them.

Respectfully submitted on September 21, 2023.



Daniel M. Strawhun
Attorney
Iowa Public Information Board

CERTIFICATE OF MAILING

This document was sent by electronic mail on September 13, 2023, to:

Mari Radtke
Tisha Halverson, City Attorney for the City of Paullina, Iowa.

Before The Iowa Public Information Board

In re the Matter of: Dakoda Sellers, Complainant And Concerning: City of Vinton, Respondent	Case Number: 22FC:0118 Informal Resolution Report
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COMES NOW, Daniel M. Strawhun, Legal Counsel for the Iowa Public Information Board (IPIB), and submits this Informal Resolution Report:

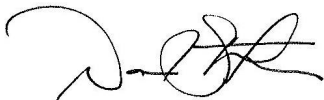
On November 11, 2022, Dakoda Sellers filed formal complaint 22FC:0118, alleging that the City of Vinton violated Iowa Code chapter 22.

On October 28, 2022, Sellers submitted a request for all emails sent or received by the City Administrator from October 21 through October 27, 2022. The City provided Sellers a fee estimate of \$1,295.75, prompting Sellers to file this complaint challenging the reasonableness of the fee. IPIB accepted the complaint on January 19, 2023.

The parties have agreed to informally resolve the complaint. A copy of the informal resolution is attached to this report as Exhibit A.

It is recommended that the IPIB approve the proposed informal resolution, direct the IPIB chair to sign the informal resolution, and set the matter for compliance review in accordance with its terms.

Respectfully submitted,



Daniel M. Strawhun
Legal Counsel, IPIB

CERTIFICATE OF MAILING

This document was sent by electronic mail on DATE, 2023, to:

Dakoda Sellers

Douglas Herman, Attorney for the City of Vinton

INFORMAL RESOLUTION

22FC:0118

Sellers/City of Vinton

Dakoda Sellers filed formal complaint 22FC:0118 on November 11, 2022, alleging that the City of Vinton (City) violated Iowa Code chapter 22 on November 10, 2022.

Mr. Sellers sought review from IPIB of the fee estimate and underlying policy imposed by the City for records requests.

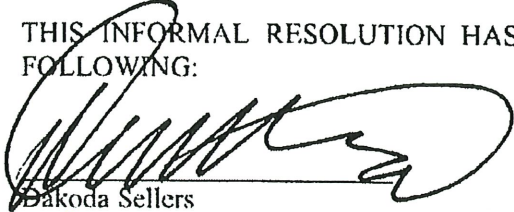
IPIB accepted this complaint on January 19, 2023. Pursuant to Iowa Code section 23.9, the parties approve an Informal Resolution with the following terms:

1. The City acknowledges that the fees at issue were not reasonable and were not based upon actual costs.
2. The City shall revise its fee policy to comply with Iowa Code Chapter 22. These revisions will include the following items:
 - a. That any fees charged for records requests, including fee estimates, will be charged based on the hourly rate of the employee who completes the record request multiplied by the number of hours it takes to complete the request.
 - b. That attorney fees will only be charged to the requester, if at all, for the time an attorney spends reviewing confidential records, not for the time the attorney spends reviewing records to determine whether they are confidential.
 - c. That the City may charge requesters for time spent by IT professionals to complete records requests if utilization of such professionals is reasonable given the specific circumstances of the request. However, work that is unrelated or incidental to the request may not be charged to the requester.
3. The parties acknowledge that the above items relate only to the fees that may be charged to requesters and do not purport to limit the City's freedom to utilize services at its own expense.
4. The City shall send the revised fee policy to IPIB for review and guidance before implementing the revised fee policy.
5. After IPIB reviews the policy, legal counsel for the City shall meet with the relevant City staff to explain and answer questions regarding the policy changes. The City shall notify IPIB staff by email after this training session has been held.
6. The parties shall work together to ensure that the records at issue in this complaint are released to Mr. Sellers upon payment of a revised fee.
7. The City shall notify IPIB staff by email when the records have been released to Mr. Sellers, and Mr. Sellers shall respond by email confirming receipt of the records and stating whether the records released satisfy his request.

8. If the parties are unable to effectuate such release of the records, the parties shall inform IPIB staff, at which point IPIB staff will mediate the release of the records.

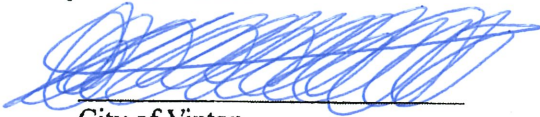
The terms of the Informal Resolution will be completed within 60 days of the approval of all parties. Upon successful completion of the terms, IPIB will dismiss this complaint.

THIS INFORMAL RESOLUTION HAS BEEN REVIEWED AND APPROVED BY THE FOLLOWING:



Dakota Sellers

8-16-23
Date



City of Vinton

8-24-23
Date

By: MAX MANWARD JR
(Print Name)

IPIB:

Chair

Date

Before The Iowa Public Information Board

In re the Matter of: Dakoda Sellers, Complainant And Concerning: City of Vinton, Respondent	Case Number: 22FC:0118 Order Approving Informal Resolution
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The Board has reviewed the informal resolution and approves it pursuant to Iowa Administrative Rule 497-2.4(3). The IPIB chair is directed to sign the Informal Resolution on behalf of IPIB.

If the terms of the Informal Resolution are completed within the specified timeframe, IPIB will dismiss the complaint.

So Ordered September 21, 2023.

IPIB Chair

CERTIFICATE OF MAILING

This document was sent by electronic mail on September 8, 2023, to:

Dakoda Sellers
Douglas Herman, Attorney for the City of Vinton

The Iowa Public Information Board

In re the Matter of:	Case Number: 23FC:0056
Ruth Bolinger, Complainant	Acceptance Order
And Concerning:	
Creston City Council, Respondent	

COMES NOW, Erika Eckley, Executive Director for the Iowa Public Information Board (IPIB), and enters this Acceptance 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 includes Council members 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.

Upon further inquiry, it was discovered that the mayor of the City on June 29, 2022, sent an email from his private email account to City council members with his express intention to create a Rental Housing Committee to advance a change in ordinance and policy regarding rental properties in the City. The subject line stated: "Rental Inspection Ordinance." The email said,

Hello all-

The council needs to provide feedback on our rental ordinance and recommend what they would like it to entail. I would like to put three of you on a committee to review the Oskaloosa ordinance and recommend changes, so that we can get this put on the agenda and get it passed rather soon, as we'd like it to take effect January 1st and will need to have landlord meetings before implementing. Please respond and let me know if you're willing to take this on.

Thanks

Gabe

Applicable Law

The intention of Chapter 21 is clearly stated, "[t]his chapter seeks to assure, through a requirement of open meetings of governmental bodies, that the basis and rationale of governmental decisions, as well as those decisions themselves, are easily accessible to the people. Ambiguity in the construction or application of this chapter should be resolved in favor of openness." Iowa Code § 21.1

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 reviewed minutes from the Council as well as any available information regarding the Rental Housing Committee. In reviewing the Council's minutes, there was no official Council action taken to establish a Housing Committee or a Rental Housing Committee. This is, of course, because the mayor sought to create a Rental Housing Committee outside the established meetings and public documentation of the City. The mayor asked for volunteers for the Rental Housing Committee through personal email communications with the City Council in a manner most unlikely to be transparent to the residents of the City.

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 Rental Housing Committee clearly considered measures within the scope of the Council's policy-making duties. The Rental Housing Committee was tasked with and did review changes to a Rental Housing Regulatory & Inspection Program ordinance, which was presented to the Council for consideration and adoption. The Rental Housing Committee, however, was made up of only three council members, so there was never a quorum of the City Council. The mayor's email makes it clear that he was seeking only three members to participate, presumably to avoid the definition of a meeting and transparent deliberation. In fact, emails show that more than three council members were willing to work on the issue.

Without any formal action by the Council to establish a Rental Housing Committee, the Committee does not appear to technically meet the definition of a governmental body under Iowa Code § 21.2(1)(h). and with only three members, the Committee's gatherings, did not meet the definition of a meeting subject to its transparency requirements.

IPIB, however, is concerned about the manner in which this Rental Housing Committee was created. The evidence of the mayor's personal email appears to show that he sought to avoid the transparency of chapter 21 requirements in sending the email from a personal account. And, the City Council signed on to the creation of a Committee in this manner outside the bounds of an open meeting. It is hard to believe this was not done to avoid ensuring “the basis and rationale of governmental decisions, as well as those decisions themselves, are easily accessible to the people.” Iowa Code § 21.1.

If the mayor and Council had provided notice to citizens impacted by the proposed Rental Housing Regulatory & Inspection Program ordinance that a Rental Housing Committee was being formed, Ms. Bolinger and other 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. And, upon seeing the mayor's email correspondence with the Council, it appears they were right. They were being kept in the dark.

Whether the Rental Housing Committee technically meets the definition of a governmental body under chapter 21 is not strictly the question to be considered. It is unclear whether the mayor's actions to establish a Rental Housing Committee through his declaration of intent to create the committee to review the ordinance and specific request for volunteers means the Committee was "created by an executive order of a political subdivision of this state to develop and make recommendations on public policy issues" under Iowa Code § 21.2(1)(h).

The informality of utilizing his personal email and establishing the Rental Housing Committee outside the bounds of official government communications, makes the format ambiguous. Yes, his directive to the Council was clear that he intended to create a Rental Housing Committee to make recommendations on public policy issues.

Iowa Code § 21.1 requires that "[a]mbiguity in the construction or application of this chapter should be resolved in favor of openness." Therefore, this Complaint should be resolved in favor of openness and this Complaint should be accepted to address the matter.

Conclusion

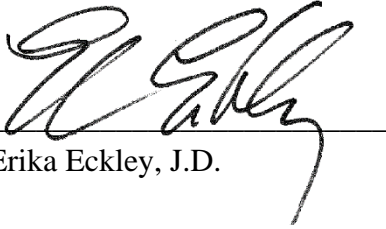
Iowa Code § 23.8 requires that a complaint be within the IPIB's jurisdiction, appear legally sufficient, and have merit before the IPIB accepts a complaint. This complaint meets the necessary requirements for acceptance.

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, however, was created by the Mayor with agreement by the Council. Whether the Mayor's actions were an executive order to create the Committee to review public policy issues is ambiguous and should be resolved in favor of finding the City violated Iowa Code chapter 21.

IT IS SO ORDERED: Formal complaint 23FC:0056 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 September 21, 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 September 14, 2023, to:

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

The Iowa Public Information Board

In re the Matter of: William Kreijanovsky, Complainant And Concerning: Polk County, Respondent	Case Number: 23FC:0059 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 June 16, 2023, the Complainant, William Kreijanovsky, filed formal complaint 23FC:0059, alleging that Polk County violated Iowa Code chapter 22.

Background

On June 2, 2023, Mr. Kreijanovsky submitted a public records request to the Polk County Attorney's Office for digital copies of video recorded by the Polk County Administration Building's security cameras. Mr. Kreijanovsky sought "security footage of all public and publicly accessible areas" in the Administration Building taken on May 16, 2023, between the hours of 11:45 am and 12:45 pm.

Polk County immediately acknowledged the request and began working to compile and review the records. On June 16, 2023, the County released all records that were responsive to Mr. Kreijanovsky's request, as documented in the extensive fulfillment log provided to IPIB.

Upon receiving the records requested, Mr. Kreijanovsky filed this complaint, stating that he had only received six files despite the fact that the Administration Building has "over 70 cameras." IPIB attempted to contact Mr. Kreijanovsky to obtain more information about the basis for this complaint but received no response.

Analysis

The fulfillment log shows the extent of the records that were released to Mr. Kreijanovsky pursuant to his records request, as well as which records Mr. Kreijanovsky accessed and viewed. Mr. Kreijanovsky has received, accessed, and viewed far more than six records, contrary to the

allegations in his complaint. Further, Mr. Kreijanovsky has not taken the opportunity to respond to or clarify this discrepancy between his allegations and the fulfillment log.

Conclusion

The fulfillment log shows that Polk County released all responsive records to Mr. Kreijanovsky, and that Mr. Kreijanovsky between June 16 and July 20, 2023, has had access to and viewed the records released. Mr. Kreijanovsky has declined to address or otherwise explain the discrepancy between his complaint allegations and the fulfillment log. For these reasons, the complaint lacks merit.

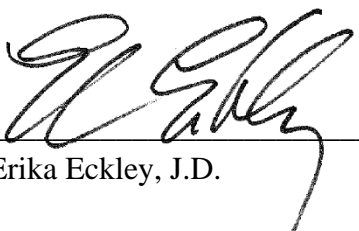
Iowa Code § 23.8 requires that a complaint be within the IPIB's jurisdiction, appear legally sufficient, and have merit before the IPIB accepts a complaint. Following a review of the allegations on their face, it is found that this complaint does not meet those requirements.

Mr. Kreijanovsky's record request was fulfilled, he viewed the records, and he failed to clarify the discrepancies between his complaint and the fulfillment log documenting his access to the records requested.

IT IS SO ORDERED: Formal complaint 23FC:0059 is dismissed as lacking merit 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



Erika Eckley, J.D.

CERTIFICATE OF MAILING

This document was sent on September 14, 2023, to:

William Kreijanovsky
Donald Stanley, Polk County Attorney

The Iowa Public Information Board

In re the Matter of:	Case Number: 23FC:0064
Julie Madden, Complainant	
And Concerning:	Dismissal Order
Akron Care Center, Respondent	

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

On June 13, 2023, the complainant, Julie Madden, filed formal complaint 23FC:0064, alleging that Akron Care Center (Center) violated Iowa Code chapters 21 and 22.

Background

The Center is a nursing care facility. Pursuant to chapter 24 of the City of Akron municipal code, the Center is governed by a publicly elected Board of Trustees. As such, it is subject to the requirements of Iowa Code chapter 21 under Iowa Code § 21.2(1)(c).

Since the beginning of the COVID-19 pandemic, the regular public meeting of the Board of Trustees has been held at the Akron Care Center. As a healthcare facility, the Center is required to abide by various regulations set forth by the CMS, CDC, and state and local health agencies with regard to the pandemic and the at-risk group the Center serves. When meetings were held at the Center, these regulations required unvaccinated attendees to either take a COVID-19 test or provide a vaccine exemption form before entering the meeting in person. Alternatively, attendees were given the option to call in to the meeting via telephone.

The complaint alleges that on May 16, 2023, five days after the pandemic officially ended, the Center still required that the complainant comply with the above requirements to attend the meeting and that this “may be in violation of my HPPA [*sic*] rights and First Amendment Freedom of the Press.”

Further, the complainant alleges the Center did not comply with her public records requests for salary information made in 2022.

In response to the complaint, the Center stated that although the pandemic ended on May 11, 2023, it was following guidance from the Iowa Healthcare Association and Leading Age in continuing to enforce the requirements. It also explained that on June 5, 2023, “guidance came out that states the exemptions are not going to be required 60 days after the publish date, August 4, 2023.”

Regarding the public records portion of the complaint, the Center provided letters from its legal counsel explaining to the complainant that the Center is not subject to the requirements of chapter 22.

Analysis

Open meetings are required to “be held at a place reasonably accessible to the public and at a time reasonably convenient to the public, unless for good cause such a place or time is impossible or impracticable. Special access to the meeting may be granted to persons with disabilities.” Iowa Code § 21.4(1)(b).

Here, the meetings were held in a place reasonably accessible to the public at a reasonably convenient time. The complainant could have taken a COVID-19 test or provided a vaccine exemption form if she wished to attend the meeting in person while remaining unvaccinated. Alternatively, the complainant was given the option to access the meeting via telephone.

Regarding the complainant’s suggestion that the Center’s COVID-19 requirements may have violated her health privacy or First Amendment rights, IPIB lacks subject matter jurisdiction to hear and decide such legal issues.

The complainant’s allegations related to public records were for a request made August 8, 2022. Resolution of these allegations by Iowa Public Information Board is time-barred. “The complaint must be filed within sixty days from the time the alleged violation occurred or the complainant could have become aware of the violation with reasonable diligence.” Iowa Code § 23.7.

Conclusion

The Center held its meetings in a place reasonably accessible to the public at a reasonably convenient time. As a healthcare facility, the Center must comply with other regulations in addition to its requirements under Iowa Code chapter 21 as a public facility. The fact that the complainant disagreed with these regulations or otherwise did not wish to comply with them does not amount to a violation of chapter 21. Further, the complainant’s allegations regarding the Center’s compliance with chapter 22 are time-barred, as they occurred more than sixty days before the date on which this complaint was filed.

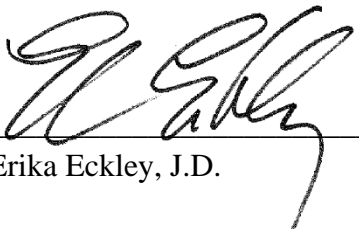
Iowa Code § 23.8 requires that a complaint be within the IPIB's jurisdiction, appear legally sufficient, and have merit before the IPIB accepts a complaint. Following a review of the allegations on their face, it is found that this complaint does not meet those requirements.

IT IS SO ORDERED: Formal complaints 23FC:0064 is dismissed as legally insufficient. pursuant to Iowa Code § 23.8(2) and Iowa Administrative Rule 497-2.1(2)(b).

The Center held its public meetings in the care facility. The Center implemented COVID-19 restrictions for in-person attendance to the meetings. The Center provided telephonic access to Ms. Madden to address her inability to attend in person and because of COVID-19 restrictions. Whether the restrictions were a violation of her federal or Constitutional rights is beyond the jurisdiction of IPIB. Her public records complaint is also outside IPIB's jurisdiction.

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



Erika Eckley, J.D.

CERTIFICATE OF MAILING

This document was sent on September 13, 2023, to:

Julie Madden
Angela Auchstatter, Akron Care Center

On Mon, Sep 18, 2023 at 1:10 PM Julie Madden <sweetjam1979@gmail.com> wrote:

I'm giving you a written statement but I can be available to answer questions on September 21.

Until COVID happened, I was allowed full access to the Care Center nursing home, the trustees' meetings and all residents' activities. The Care Center trustees/city officials operated it as a public entity -- the same as the city councils and county supervisors' meetings and activities that I covered. Since March 2020, I have not been allowed to physically attend a trustees' meeting unless they held it in another community facility -- even though the public meetings are held in the trustees' conference room which is just off the main entrance lobby -- not in one of the "neighborhoods" where the residents live. The neighborhoods' entrances are at least 100 feet farther into the facility than the conference room is. Probably more like a couple hundred feet or so. The meetings are held at the time the residents would normally be having supper so there is little chance that I would interact with them to attend the public meeting. In my 22 years of covering the Akron Care Center (approximately 240 meetings prior to COVID), only once did a resident attend a public meeting. With just a few rare exceptions, I am the only non-trustee, non-employee to attend the public meetings.

Requiring a journalist to submit to an actual COVID test at every attempt to enter a building owned by the city because the nursing home administrator deems me an unvaccinated "business" person is discrimination as I was allowed to enter the building any time I wanted as a journalist prior to COVID and I've been allowed to enter all other city-owned and county-owned buildings. None of the other city, county and state officials denied me entrance to their facilities and meetings even during COVID. Also, when the Care Center trustees and administrator had to allow the public to attend their meetings for public notification and comments during and after COVID to meet federal funding requirements, they moved the meetings to another community facility and there were no COVID screenings, tests required at those meetings. I was treated the same as the rest of the public.

These denying me physical access to the meetings violations have been ongoing since COVID began and even after May 2022 when COVID was declared over. The last meeting I would have had to undergo testing and/or sign the resident's medical record form was in July of 2023. I have not been allowed into the city-owned facility for the monthly public meetings in the nursing home because 1) I wasn't vaccinated (I've had COVID); 2) I wasn't willing to give them access to my medical history and sign a form declining vaccinations that also states my signature is of a resident, resident's representative or employee because I am not any of those categories. Please note vaccinations are no longer required to enter any public facility. Furthermore, the Care Center doesn't require COVID boosters for entrance. I'm sure there are other "business" people who have been/are being allowed in but I'm not a business person. I am a journalist. 3) The general public may enter the facility without being vaccinated, required to test, or signing the residents' vaccination form as long as they say they are visiting a resident. 4) I have gone into other nursing homes and hospitals and there have not been any screenings, testing required. In fact, they didn't even ask if I was there as a journalist to cover a meeting or visit someone. Those officials have been most helpful in making sure I get to where I need to be. No one has asked if I am vaccinated, am a journalist, etc. So how can the Care Center trustees/administrator pick and choose who they physically let into a public meeting at a public building? Most importantly, based on whether they are vaccinated or not vaccinated?, a business person or a resident's visitor?

Yes, they have offered to let me phone in to the meeting. However, I have not been able to hear much as the administrator just puts me on her cell phone's speaker. It's impossible to hear details or who is speaking for quotes. When I have asked for more details or questioned things, the majority of the time they don't know the answer. They try to get their meetings over in less than 15 minutes so there is not much said publicly at their meetings. Trying to keep the public informed on the Care Center's operation, especially in light of the fact they have been trying to move forward with a multi-million dollar Assisted Living Project for several years under this administrator/these trustees has been a challenge. It's also been challenging to get other information such as employees' salaries and wage increases.

Please review the tape recording I sent in.

I believe their actions also violate the Freedom of Press regulations. A journalist's role is to be the watchdog of government officials and to hold them accountable, especially for how they spend citizens' monies. The trustees are city-elected officials. The Care Center has a long history as a public entity -- since its inception in 1986. Although their main source of funding is from residents, they receive Medicare/Medicaid funding, have a USDA federal loan and if the nursing home fails, the citizens of Akron will finish picking up the tab of the nursing home facility which was just built in August 2013 and has a 40-year government loan payment.

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 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 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 is a liaison on the board with three other supervisors from other counties, a member of juvenile court services and two state Health and Human Services members. This committee is funded with dollars from the state and the County does not make any decisions or policies for the committee.

Mr. Jones wanted to inform the Board about a situation involving a provider involved with the committee, but unrelated to the Board's work.

Further, it is agreed that the microphone is switched off at the end of a meeting, but the camera is not automatically switched off. Mr. Jones stated that he switched the microphone off because the meeting had ended. No information was provided about why there was concern with the microphone being shut off initially.

Applicable Law

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

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. 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. It is not known why there was concern beyond that there was still a quorum of the members present when Mr. Jones was providing his information. Mr. Jones has stated that he was providing information about possible criminal conduct, so it is possible there was discomfort in being included in potential gossip. Taking these factors into consideration, there does not appear to be evidence that an update on DCAT would be within the scope of the Board regardless of what was stated after the meeting was adjourned.

Conclusion

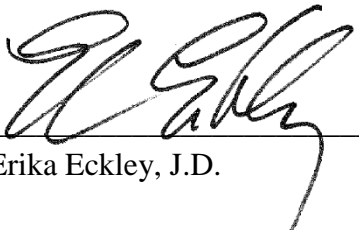
Iowa Code § 23.8 requires that a complaint be within the IPIB's jurisdiction, appear legally sufficient, and have merit before the IPIB accepts a complaint. Following a review of the allegations on their face, it is found that this complaint does not meet those requirements.

It is clear that Mr. Jones turned off the microphone following the adjournment of the Board meeting. This appears to be the standard way to end a meeting with the camera still recording. Mr. Jones provided some information regarding a provider involved with the DCAT committee on which he is a liaison. This information is apparently not within the scope of the Board's policy-making duties. While it would be better for Board members to refrain from relaying information related to duties as a liaison of the Board outside an open meeting, there does not appear to have been a violation in this instance.

IT IS SO ORDERED: Formal complaint 23FC:0068 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 September 21, 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 September 12, 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: Eric Henely, Complainant And Concerning: Gilbert Community District School Board, Respondent	Case Number: 23FC:0070 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

Eric Henely filed formal complaint 23FC:0070 on July 10, 2023, alleging that the Gilbert Community School Board (“Board”) violated Iowa Code chapter 22 on June 12, 2023, June 21, 2023, and July 1, 2023.

Mr. Henely made a records request on June 20, 2023, for a copy of all documents reviewed, considered, discussed, and/or approved by the school board at the June 12, 2023, board meeting. He received a response from the school district on the next day that included a copy of policy 804.6. On July 1, 2023, he downloaded policy 804.6 from the school districts website. The two versions differ. One version uses the term “building administration” while the other uses the term “staff member.”

Mr. Henely alleges the school district violated Iowa Code chapter 22 by providing an inaccurate or false record in response to his request. He also alleges the board held an illegal meeting to change the policy to resolve the discrepancy between June 21, 2023, and July 1, 2023.

Carrie Weber, attorney for the Board, provided a response to this complaint. The revised policy 804.6 received by Mr. Henely was placed on the agenda for second reading on June 12, 2023, and included in the Board Packet. The Board adopted the policy on June 12, 2023. Mr. Henely received these records on June 21, 2023, in response to his request. The copy of policy 804.6 in the Board Packet for June 12, 2023, contains language requiring individuals to get permission from a “staff member” to record. This is the same language that appears on the District’s Board Policy website.

Analysis

IPIB staff reviewed the document in question that was provided to Mr. Henely on June 21, 2023, and compared that document to a copy of the policy downloaded from the district’s website on July 1, 2023, and provided as part of this complaint. Upon review, staff determined these two documents were the same. There is no violation of Iowa Code chapter 22.

Conclusion

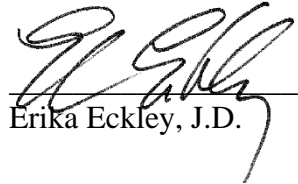
Iowa Code section 23.8 requires that a complaint be within the IPIB’s jurisdiction, appear legally sufficient, and could have merit before the IPIB accepts a complaint. This complaint does not meet those requirements.

IT IS SO ORDERED: Formal complaint 23FC:0070 is dismissed as legally insufficient pursuant to Iowa Code section 23.8(2) and Iowa Administrative Rule 497-2.1(2)(b).

Upon review the document provided to Mr. Henely following his public records request is the same document that is available on the website. Both documents contain the term “staff member.”

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 September 21, 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 by electronic mail on the September 13, 2023, to:

Eric Henely
Carrie Weber, Gilbert Community School District Board

From: **Eric Henely** <ehenely@hotmail.com>

Date: Mon, Sep 18, 2023 at 7:27 AM

Subject: Re: 23FC:0070

To: Eckley, Erika

<erika.eckley@iowa.gov>, cweber@ahlerslaw.com <cweber@ahlerslaw.com>, IPIB@iowa.gov <IPIB@iowa.gov>

Ms. Eckley,

The district's response, and the IPIB's conclusion in this matter, are both inaccurate. What it appears actually happened is that the school district provided 2 different copies of policy 804.6 in response to my records request. In the document that the district provided the IPIB, there are two links: "Series 800.pdf" and "804.6 Recording Policy - Draft Gilbert.pdf". Because I am accustomed to finding the policies in documents with collections of policies such as the "Series 800.pdf" document, that is what I looked at. I did not see the link to the other document. If you look at both documents, I believe you will find that they do not match in the manner that I raised in my complaint.

It seems inadvisable at best for a school district to provide two copies of the same record in response to a records request that do not match. If the school district had simply provided an explanation that there were two copies of this policy and why in their response to my records request this complaint could have been avoided. I also find it problematic that the IPIB lost track of my complaint and failed to consider it at last month's board meeting.

Thank you,
Eric Henely

The Iowa Public Information Board

<p>In re the Matter of:</p> <p>Chad Miller, Complainant</p> <p>And Concerning:</p> <p>Scott County Board of Review, Respondent</p>	<p style="text-align: center;">Case Number: 23FC:0074</p> <p style="text-align: center;">Acceptance Order</p>
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COMES NOW, Erika Eckley, Executive Director for the Iowa Public Information Board (IPIB), and enters this Acceptance Order:

On July 9, 2023, Chad Miller filed formal complaint 23FC:0074, alleging that Scott County Board of Review (Board) violated Iowa Code chapter 21.

Facts

In his complaint, Mr. Miller alleged the Scott County Board of Review did not file a public notice or provide an agenda 24 hours prior a meeting held on May 3, 2023. He further alleged that the meeting minutes did not include the vote of the Board, the meetings were not conducted openly and only one petitioner is allowed in the meeting at a time. He alleged the public cannot listen to other petitioners and that the petitioners are required to leave before the board votes and are not able to listen to any discussion between the Board and Scott County Assessor representatives.

In response, the Board stated all Board agendas were physically posted on the public notice board located at the Scott County Administrative Building at least 24 hours in advance. The list of petitioners for each day changes due to scheduling issues, but is available upon request due to the frequent changes. In response to the portion of the complaint regarding the failure to provide minutes in compliance with Iowa Code chapter 21, the Board stated that each member takes notes during each hearing in their own handwriting and then at the end of the session, all member notes and votes are compiled into a larger board minutes file. The Board also stated that all meetings are open, that protests hearings are scheduled back-to-back, so Board discussion and voting on each petition is done at the end of the day.

Mr. Miller provided copies of the Board’s notes on his petition for the past years. The Board provided a copy of its minutes from its last meeting, which did not include any actions taken by the Board on petitions. Upon request for minutes showing the actions on petitions, the Board responded that they would be happy to scan the information, but that “it’s a very LARGE ‘paper’ file and we don’t post it on our website due to file size issues.” It was agreed that the Board

would provide a sample of the documents and notes taken by Board members during their review of petitions. The documents include the notes for each property. The notes of the members do show the result of votes taken on the petitions, but they do not indicate the vote of each member present, rather they show a notation such as “1-N” on “No Change” or “2-Y” on a specific reduction in value.

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. Each governmental body shall keep minutes of all its meetings showing the date, time and place, the members present, and the action taken at each meeting. The minutes shall show the results of each vote taken and information sufficient to indicate the vote of each member present. The vote of each member present shall be made public at the open session. The minutes shall be public records open to public inspection.” Iowa Code § 21.3.

Analysis

The Board does an excellent job of maintaining all of the public documents created during the petition. The photographs provided show several stacks of documents — one for each member — each a couple inches thick. The Board also provided minutes from its organizing meeting, which provided information about the topics of discussion, actions taken, and the result of any vote taken.

The Board, however, does not have a single document that lists all of the actions the Board has taken on petitions during the course of its work. Instead, the Board compiles the notes from each of the members on all the petitions and compiles these records as a “Board’s minutes file.” The file is also used to notify petitioners regarding the disposition of their petition.

Meeting minutes are “the official record of the proceedings of a meeting.”¹ Creating a “Board minutes file” rather than a document showing the individual actions taken on each petition means it is very difficult for anyone to follow what actions the Board is actually taking. If a citizen requests a copy of the minutes, as IPIB did, it requires extensive scanning by the Board or the citizen reviewing “a very LARGE ‘paper’ file.”

The Board stated that each day that petitions are heard, Board discussion and voting takes place at the end of the day, and petitioners are notified regarding the outcome of their petition.² The Board, however, does not keep an official record of the Board actions. Instead, it collects the individual

¹ Merriam-Webster dictionary.

² The Board states that the deliberations are open to the public and individuals can attend.

notes taken by each Board member and deposits those notes into a “minutes file.” Such notes can be used to create minutes, but they are not the same as the minutes of the organization.³

The Board needs to keep minutes of all its meetings showing . . . “the action taken at each meeting . . . [and] . . . the results of each vote taken and information sufficient to indicate the vote of each member present.

The Board’s primary purpose is to determine the outcome of petitions protesting property tax assessments.⁴ It is imperative that the Board document, in its minutes, all of the actions and votes taken. The Board should continue to keep the public records of the Board members notes as public records according to the Board’s record retention policies, but relying on these notes as the minutes of the Board does not comply with Iowa Code § 21.3.

It is recommended this Complaint be accepted to assist the Board in implementing policies and practices sufficient to properly document in its minutes all actions and votes of the Board going forward. The Board is well-qualified and expresses commitment to compliance, so it is expected that an informal resolution to address the issue will be successful.

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.

The Board has historically kept a “minutes file” to document its actions rather than preparing minutes in compliance with Iowa Code § 21.3.

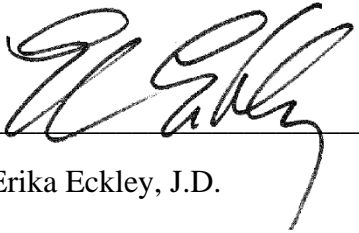
IT IS SO ORDERED: Formal complaint 23FC:0074 is accepted pursuant to Iowa Code § 23.8(1) and Iowa Administrative Rule 497-2.1(2)(a).

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 September 21, 2023. Pursuant to IPIB rule 497-2.1(4), the parties will be notified in writing of its decision.

³ See 20AO:0006, <https://ipib.iowa.gov/notes-open-meeting> (question regarding draft nature of city clerk notes prepared for meeting minutes).

⁴ Iowa Code § 441.33.

By the IPIB Executive Director



Erika Eckley, J.D.

CERTIFICATE OF MAILING

This document was sent on September 14, 2023, to:

Tom McNamus, Scott County Assessor

Chad Miller

The Iowa Public Information Board

In re the Matter of: Stan Walk, Complainant And Concerning: Mitchell County Economic Development Commission, Respondent	Case Number: 23FC:0076 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

Stan Walk filed formal complaint 23FC:0076 on July 17, 2023, alleging that the Mitchell County Economic Development Commission (“Commission”) violated Iowa Code chapter 21 on May 22, 2023.

Mr. Walk alleged the May 22, 2023, meeting minutes of the Mitchell County Economic Development Commission were in violation because they did not provide any details of actions taken. He alleged the minutes were vague and did not provide enough details as to the action taken by the motions and subsequent votes. He alleged that because actions were taken without detailed descriptions that secret documents existed. He cited three examples in the minutes of the May 22, 2023 meeting.

Jenny Backer, Executive Director, responded on behalf of the Commission. The Commission agreed that each vote taken was not completely clear in our meeting minutes. But, going forward, they agreed to ensure all votes taken are recorded in an acceptable manner on the minutes. All of the background material provided to the Council has been shared with Mr. Walk.

Law

Iowa Code §21.3 requires that the “governmental body shall keep minutes of all its meetings showing the date, time and place, the members present, and the action taken at each meeting. The minutes shall show the results of each vote taken and information sufficient to indicate the vote of each member present. The vote of each member present shall be made public at the open session. The minutes shall be public records open to public inspection.”

Analysis

IPIB staff reviewed the minutes of the May 22, 2023, meeting. The minutes included sufficient information to understand the action that was taken by the Commission as required by Iowa Code § 21.3. Staff did, however, note the minutes did not indicate the votes. Votes on motions were indicated as “passed” but not how members voted.

In response to the concern, the Commission provided amended minutes that the votes of the members on the actions taken. The failure to list the results of votes taken has been swiftly

remedied. The Commission acted to remedy its minutes to include the outcome of votes taken in order to comply with Iowa Code chapter 21 and has stated it will ensure this is done going forward.

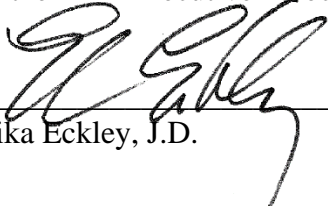
Conclusion

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.

IT IS SO ORDERED: Formal complaint 23FC:0076 is dismissed as legally insufficient pursuant to Iowa Code section 23.8(2) and Iowa Administrative Rule 497-2.1(2)(b). The Commission's omission of the voting results in the minutes was harmless error that has been addressed and remedied.

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 September 21, 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 by electronic mail on the September 13, 2023, to:

Stan Walk
Jenny Backer, Mitchell County Economic Development Commission

The Iowa Public Information Board

In re the Matter of: Steve St. Clair, Complainant And Concerning: Winneshiek County Board of Supervisors, Respondent	Case Number: 23FC:0079 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

Steve St. Clair filed formal complaint 23FC:0079 on July 28, 2023, alleging that the Winneshiek County Board of Supervisors (“Board”) violated Iowa Code chapter 21 on June 26, 2023.

Mr. St. Clair alleged that the Board failed to provide notice the Pledge of Allegiance would be recited at the meeting. He stated the Chair of the Board announced at the beginning of the weekly meetings that attendees would henceforth be called upon to recite the pledge. Mr. St. Clair alleges that no motion was made, no discussion was invited, and no vote was taken. He says the agenda provided the public no indication the change in procedure was under consideration. The sudden and unexpected change in policy involved no public notice or input.

The Winneshiek County Attorney responded to this complaint. The Board’s position is that choosing to recite the Pledge of Allegiance “does not constitute ‘deliberation’ on a matter within the ‘policy-making’ duties of the Board. Reciting the pledge is more akin to a ministerial act than policy-making, as reciting the pledge was done without exercise of personal judgment by members of the Board and did not involve any discussion of policy.”

Mr. St. Clair claims choosing to adopt a practice and policy regarding the recitation of the pledge involved decision-making and the public should have had notice of the potential change. He believes that given religious and constitutional issues related to the recitation of the Pledge, that the public should have been notified of the modification to policy and been privy to the Board’s deliberation in choosing to adopt the Pledge. His complaint, therefore, is not that the Agenda failed to list the Pledge of Allegiance, but that the Board added the common ceremony of reciting the Pledge to its meetings at all without public input or discussion.

Law

Iowa Code § 21.4 states that “...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.” The code does not give any further guidance as to the content of the agenda for a governmental body.

Iowa Code § 331.301 grants Board of Supervisors the authority to exercise any power and perform any function it deems appropriate to protect and preserve the rights, privileges, and property of the county or of its residents, and to preserve and improve the peace, safety, health, welfare, comfort, and convenience of its residents.

Analysis

This complaint focuses on the failure of the Board to include notice of its intent to include the Pledge of Allegiance at the beginning of its meetings. However, the addition of the Pledge of Allegiance to the beginning of a Board meeting adds a common, ceremonial component to the Board meeting. Much like calling a meeting to order, taking roll call and adjourning the meeting, including the Pledge of Allegiance does not involve discussion or deliberation of policy within the scope of the Board.¹ There is lengthy historical precedent of reciting the Pledge of Allegiance.² Since the complaint was filed, the Board has added the Pledge of Allegiance to its agendas.

The Board did not violate Iowa Code § 21 by failing to include the Pledge of Allegiance on its agenda. The Board has taken steps to ensure the recitation of the Pledge has been added to its agendas. Any failure to place the Pledge of Allegiance on the Board agenda was harmless error that has been remedied. Including a ceremonial component to the meeting did not require the Board to deliberate and debate before invoking the practice.

Conclusion

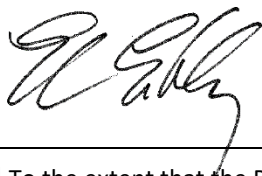
Iowa Code section 23.8 requires that a complaint be within the IPIB's jurisdiction, appear legally sufficient, and could have merit before the IPIB accepts a complaint. This complaint does not meet those requirements.

IT IS SO ORDERED: Formal complaint 23FC:0079 is dismissed as legally insufficient pursuant to Iowa Code section 23.8(2) and Iowa Administrative Rule 497-2.1(2)(b).

The Board's inclusion of the Pledge of Allegiance at the beginning of its meetings without first including the item on the Board's agenda was harmless error that has been remedied.

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 September 21, 2023. Pursuant to IPIB rule 497-2.1(4), the parties will be notified in writing of its decision.

By the IPIB Executive Director



¹ To the extent that the Pledge of Allegiance is controversial, the Supreme Court of the United States has clearly held that individuals cannot be compelled to participate under First Amendment grounds which are beyond the jurisdiction of IPIB. See *West Virginia State Board of Education v. Barnett*, 319 U.S. 624 (1943).

² See Pub.L. 83-396, 68 Stat. 249, H.J.Res. 243, enacted June 14, 1954.

Erika Eckley, J.D.

CERTIFICATE OF MAILING

This document was sent by electronic mail on the September 13, 2023, to:

Steve St. Clair

Andrew Van Der Maaten, Winneshiek County Attorney

From: **Steve St. Clair** <smstclair@gmail.com>
Date: Monday, September 18, 2023
Subject: Orders sent to parties before Board Meeting
To: "Eckley, Erika" <erika.eckley@iowa.gov>
Cc: Andy F Van Der Maaten <avandermaaten@co.winneshiek.ia.us>

Thank you for your September 13 email providing a copy of the proposed Order and an opportunity to submit comments.

In all due respect, the proposed Order conflates the ceremonial act of reciting the Pledge with the policy-making act of deciding whether to modify a long-standing practice by adding this ceremonial component to each meeting. For example, the Order states that "the Board did not violate Iowa Code section 21 by failing to include the Pledge of Allegiance on its agenda," and that "including the Pledge of Allegiance does not involve discussion or deliberation of policy within the scope of the Board." But the complaint alleges that the violation of section 21 was the failure to include on the agenda the fact that a policy decision with religious and constitutional implications would be made at the upcoming meeting. Advance notice of this policy decision would have permitted county residents with religious or free speech concerns to prepare, organize, and make their views known to Board members in advance. These residents could thus have avoided being closed out of a decision that had the effect of marginalizing them. Advance notice might also have prevented the constitutionally suspect manner in which the Pledge was presented as compulsory by the Board Chair. Advance notice would also have allowed interested residents to research the matter and establish the falsity of one Supervisor's claim that the county was "one of the few" that had not adopted the Pledge.

The Order characterizes the Board's lack of notice through the agenda as "harmless error that has been remedied." However, adopting without advance notice a recurring ceremony that excludes members of some religious traditions should not be dismissed as "harmless error." And the violation in question should not be regarded as having been "remedied" until a proper agenda informs the public that an upcoming meeting will involve a policy decision that may be important to them, a decision they may wish to influence by making their opinions known.

To the extent there is uncertainty in how the agenda requirements apply to the policy decision that is the subject of the complaint, the Open Meetings Law provides that ambiguity is to be resolved in favor of openness. Section 21.1.

Thanks again for this opportunity. Steve St. Clair

9/15/23, 10:47 AM

Iowa Public Information Board Complaint 23FC:0084 - brett.toresdahl@iowa.gov - State of Iowa Mail

Ginger Wander <gyorko28@gmail.com>

to Erika, Leon, me, Lisa, Steve, Jim, Amanda, Candis, Deanna, Carissa, Alaina

Wed, Sep 6, 11:0

You may withdraw as resolved, thank you.

----- Forwarded message -----

From: **Chuck Morris** <chuckmorris.sup@gmail.com>

Date: Tue, Aug 29, 2023 at 8:46 PM

Subject: Re: Informal Resolution for 23FC:0062

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

Erika,

Thank you for your email this afternoon. After a very trying day in Omaha, I finally have some time tonight to process what you are proposing.

At this time, I would like to formally withdraw my complaint against the Page County Board of Supervisors for meeting with Fremont County regarding the Johnson Run Drainage District.

Please also withdraw my complaint about the June 29th meeting when Mr. Holmes made a motion about a non-agenda item, even though that complaint has not been acknowledged.

I've given this a lot of thought this evening and it seems to me the original complaint has been morphed into some sort of crusade by Mr. Holmes to impose his personal will on how minutes are recorded and published in Page County. That was not the focus of my complaint to the IPIB.

For obvious reasons, I don't want my name associated with what I would call a "witch-hunt" by Mr. Holmes and others who don't like the answers provided to the Board by the County Attorney.

Chuck Morris

Drew Barden

2:28 PM (8 minutes ago)

to me

Brett and IPIB,

Please withdrawal my complaint in relation to the city of Churdan. They have furnished the required information requested.

Drew Barden

Active Cases Report

33

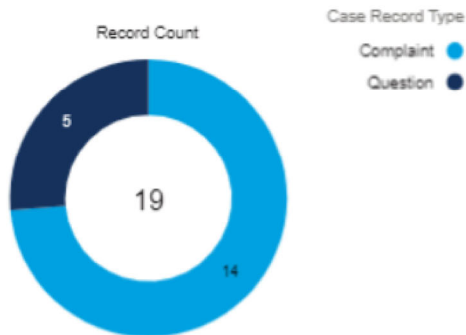
[View Report \(Active Cases Report\)](#)

Active Questions Report

3

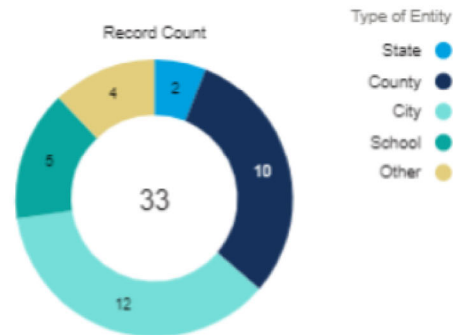
[View Report \(Active Questions Report\)](#)

New complaints &/or question last 30 day



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

Cases by Entity



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

Broad Type (Filed in Current)



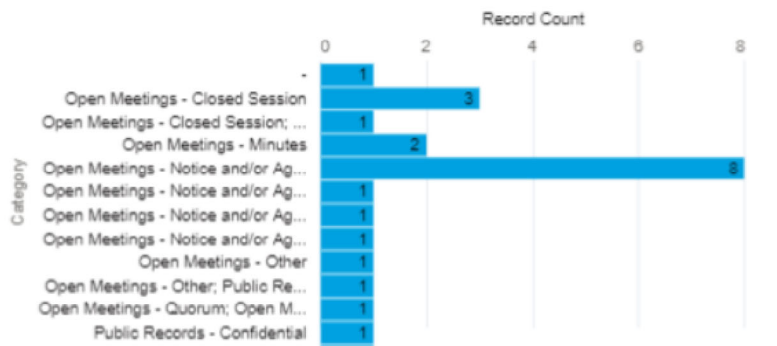
[View Report \(Broad Type \(Filed in Current\)\)](#)

Closed cases 2023



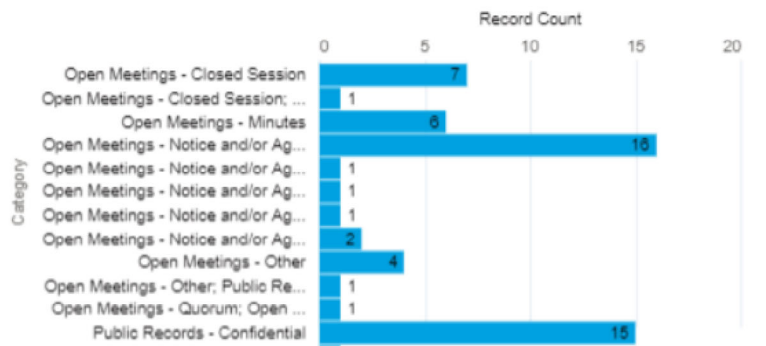
[View Report \(Closed cases 2023\)](#)

Cases by Type (Active)



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

Cases by Type (Current Year)



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

Source: I/3 Budget

FINANCIAL INFORMATION SCHEDULE BY APPROPRIATION

Run Date: 09/15/2023

Spec Dept: All Fund: All Unit Detail: All

Run Time: 10:06:27 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 Actuals FY 2024	Revised Budget I/3 Financial FY 2024	Actuals FY 2023
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RESOURCES

Appropriations

05A Appropriation

Appropriations TOTAL:

Receipts

234R Gov Fund Type Transfers - Other Agencies

Receipts TOTAL:

Other Resources

04B Balance Brought Forward (Approps)

Other Resources TOTAL:

TOTAL RESOURCES:

DISPOSITION OF RESOURCES

Expenditures

101 Personal Services-Salaries

202 Personal Travel In State

301 Office Supplies

309 Printing & Binding

313 Postage

401 Communications

05A Appropriation	357,407	357,407	358,039
Appropriations TOTAL:	357,407	357,407	358,039
234R Gov Fund Type Transfers - Other Agencies			8,050
Receipts TOTAL:			8,050
04B Balance Brought Forward (Approps)	13,543	13,543	11,374
Other Resources TOTAL:	13,543	13,543	11,374
TOTAL RESOURCES:	370,950	370,950	377,462
101 Personal Services-Salaries	50,147	286,459	288,030
202 Personal Travel In State	188	5,298	117
301 Office Supplies	49	3,000	2,178
309 Printing & Binding		500	1
313 Postage	10	150	54
401 Communications	174	5,000	3,352

Source: I/3 Budget

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Department: 592 Public Information Board

Fund: 0001 General Fund

Appropriation: P22 Iowa Public Information Board

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

405 Professional & Scientific Services		9,000	8,050
406 Outside Services	975		325
414 Reimbursement to Other Agencies	1,177	17,000	12,424
416 ITS Reimbursements	9,651	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: 62,370 357,407 350,377

Other Dispositions

91B Balance Carry Forward (Approps)			13,543
93R Reversions			13,543

Other Dispositions TOTAL: 27,086

TOTAL DISPOSITION OF RESOURCES: 62,370 357,407 377,462

FTE

FTE Summary

FTE FTE

3

FTE Summary TOTAL:

3

3

TOTAL FTE: 3

3

Source: I/3 Budget

FINANCIAL INFORMATION SCHEDULE BY APPROPRIATION

Run Date: 09/15/2023

Spec Dept: All Fund: All Unit Detail: All

Run Time: 10:06:27 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	FY 2024	I/3 Financial	FY 2024	FY 2023	FY 2023

Appropriation P22 Net (Res-Disp):

308,580 13,543

Appropriation P22 FTE:

3.00

Fund 0001 Net:

308,580 13,543

Fund 0001 FTE:

3.00

Department 592 Net:

308,580 13,543

Department 592 FTE:

3.00

Special Department 760SD Net:

308,580 13,543

Special Department 760SD FTE:

3.00

Report Total Net:

308,580 13,543

Report Total FTE:

3.00