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Advisory Opinion 21AO:0001

DATE: April 15, 2021

SUBJECT: "Possession" in the context of the definition of lawful custodian

RULING:

Mike Wolf
Clinton County Attorney
612 North 2nd Street
Clinton, IA 52733

Sent via email to mwolf@clintonca.net

Mr. Wolf,

We are writing in response to your request dated March 15, 2021, 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.

BACKGROUND:

Your request for an advisory opinion pertains to a records request received by the Clinton County Attorney's Office. The request was for various DeWitt Police Department records from a case concerning the death of an individual and asked for, but was not limited to the following:

- Dispatch logs
- Incident reports
- Pictures and sketches
- Lab analysis reports
- A hammer and clothing recovered at the scene of the incident

Board Members

Joan Corbin • E. J. Giovannetti • Barry Lindahl • Keith Luchtel • Monica McHugh
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- Witness statements

You responded with five records which you possessed that were responsive to the request. Among the responsive records were the 911 call recording and the command log of the police officers responding to the incident. The date, time, specific location, and immediate facts and circumstances surrounding the incident were provided pursuant to Iowa Code section 22.7(5). Additionally, you noted that the investigation into the incident was not conducted by the Clinton County Sheriff's Office, but by the DeWitt Police Department with assistance from the Iowa Division of Criminal Investigation.

You further informed the requestor of the following:

"The remaining records that the Clinton County Attorney's Office has access to review are held electronically in a DeWitt Police Department database, now known as 'CentralSquare Safety Suite Professional (hereinafter 'CS records')'.¹

"As the Clinton County Attorney, I am given permission to authorized access by computer with a password to review cases specific to my statutory duties by using the CS records software to open up and review the database case records created and held in the DeWitt Police Department's CS records. I cannot add to, subtract from, alter or delete the DeWitt PD CS records."

Further response to the requestor is pending guidance from the IPIB and clarification of whether the Clinton County Attorney's Office qualifies as the lawful custodian of the requested records.

QUESTION POSED:

Given the broad authority the State of Iowa has given County Attorney's Offices to obtain/review records and the special role a county attorney is granted to have access to law enforcement records in order to review cases for criminal charges, does a county attorney's office qualify as the lawful custodian of government records if they have access to another office's records database?

OPINION:

Iowa Code section 22.1(2) states:

"Lawful custodian" means the government body currently in physical possession of the public record. *The custodian of a public record in the physical possession of persons outside a government body is the government body owning that record. The records relating to the investment of public funds are the property of the public body responsible for the public funds. Each government body shall delegate to particular officials or employees of that government body the responsibility for implementing the requirements of this*

¹ The Clinton County Attorney informed IPIB staff that there is no formal agreement governing their use of the CS records software. The DeWitt Police Department only grants access for records of cases which the Clinton County Attorney is also working on as part of their statutory duties.

*chapter and shall publicly announce the particular officials or employees to whom responsibility for implementing the requirements of this chapter has been delegated. **“Lawful custodian” does not mean an automated data processing unit of a public body if the data processing unit holds the records solely as the agent of another public body, nor does it mean a unit which holds the records of other public bodies solely for storage.**”*
(Emphasis Added).

Your question relates to who qualifies as a lawful custodian based on their degree of access to the records at issue in any particular request. Iowa Code section 22.1(2) states that a government body must be “currently in physical possession of the public record” in order to qualify as a lawful custodian.

The Clinton County Attorney’s Office does have restricted access to the DeWitt Police Department’s records database. However, having a modicum of access is not enough to conclude that there is possession. While it may be possible for the county attorney’s office to retrieve the requested records, the facts presented lead us to conclude that the records are not possessed by the county attorney’s office nor is it a lawful custodian of the records.

Furthermore, the limited access provided to the Clinton County Attorney’s Office is categorically not for the purpose of retrieving DeWitt Police Department’s records to fulfill public records requests. As stated in an email to the requestor, the county attorney’s office is given access to review cases as it relates to its statutory duties.² Using the access to fulfill records requests would go beyond the scope of the county attorney office’s authorized use. And obtaining the records in an unauthorized/unlawful fashion would still not make the county attorney’s office a lawful custodian.³

If the ability to access records equated to the possession of records, then the county attorney’s office would become something that it clearly is not — an agent that exists to fulfill records requests on behalf of the DeWitt Police Department. Similarly, if limited access to a remote server containing records of another government body equated to possession in the context of Iowa Code section 22.1(2), then countless government bodies would automatically become responsible for fulfilling the records requests that should be handled by other possessory entities.

In this case, the Clinton County Attorney’s Office has complied with Iowa Code chapter 22 and provided the responsive records that it possesses. The outstanding requests for records held in the DeWitt Police Department’s database are not the responsibility of the Clinton County Attorney’s Office.

² Iowa Code section 331.756 outlines the duties of the county attorney. There is no statutory duty of an Iowa county attorney to respond to records requests on behalf of other government bodies.

³ The Iowa Supreme Court has stated that “lawful possession” equals “lawful custodian.” *Howard v. Des Moines Register and Tribune Co.*, 283 N.W.2d 289 (Iowa 1979).

BY DIRECTION AND VOTE OF THE BOARD:

Joan Corbin
E.J. Giovannetti
Barry Lindahl
Keith Luchtel
Monica McHugh
Rick Morain
Julie Pottorff
Suzan Stewart
Stan Thompson

SUBMITTED BY:

Zachary S. Goodrich
Legal Counsel

ISSUED ON:

April 15, 2021

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.