

CITY OF AUDUBON OPEN MEETINGS AND OPEN RECORDS LAWS  
REMEDATION PLAN  
(Draft: OCTOBER 31, 2014)

The City of Audubon, Iowa, City Council (Council) violated the Open Meetings and Open Records laws on at least three occasions in the 60 days prior to the complaint filed by Audubon County Attorney Francine Andersen on March 14, 2014. Subsequent to that complaint, additional timely complaints were filed and accepted by the Iowa Public Information Board (IPIB) by Dawn Rohe (March 23, 2014) and by Jessica Rohe (May 9, 2014).

The confirmed complaints include not providing public records in a timely manner, confusion over public record custodial designation, and failing to provide adequate notice for decisions acted upon at a city council meeting. The events may have resulted from ignorance of the applicable laws, although Iowa Code Sections 21.6(4) and 22.10(4) do not excuse government officials for non-willful violations.

On January 13, 2014, the rush to accomplish an action that was politically divisive in the community led to an insufficient agenda and employment practices concerns. The agenda for that meeting was amended late and too broadly, resulting in insufficient notice under *Iowa Code Section 21.4* for significant actions taken. The net result was that a new City Clerk was named, without notice to the public or to the City Clerk of over 20 years. Those decisions were rescinded after Open Meetings violations were brought to the attention of the Council. Several weeks later, a new City Clerk/Treasurer was named in compliance with Open Meetings and due process. The Council pledges to avoid future non-compliance.

At times the council members sought advice of legal counsel; on the change of city clerk agenda violation, they did not. A change in legal counsel following the clerk agenda violation may have exacerbated the confusion. Other complaints brought to the IPIB's attention, such as concerns about following governmental regulations on hiring practices, job descriptions and such, while possibly valid concerns, are beyond the jurisdiction of the IPIB.

Absence of Council-approved policies on electronic equipment use, preservation of electronic public records, and social media use, complicated compliance as did the level of some council members' computer skills and issues concerning cloud storage. Also, the City Clerk was unable to take charge of providing the requested public records for one or more of the following reasons: council-controlled emails on the council drive of city computers and council matters on council members' personal computers were inaccessible to the clerk, her status as clerk was unclear, conflict questions resulting from the council's actions made her role unclear, and some requests were directed to individual council members rather than the city record custodian.

There is insufficient evidence to establish that city officials engaged in inappropriate electronic meetings under *Iowa Code Section 21.8*. Even if emails concerning the city clerk position were

sufficiently contemporaneous to meet the definition of a meeting, these actions occurred more than 60 days prior to the filing of the first complaint and are beyond the jurisdiction of the IPIB.

Prior to a public records request being made, or a discovery request being requested in litigation, there is insufficient statutory language or case law to conclude that failure, if any, to preserve all texts and emails of the Mayor and individual council members violates the Open Records law. Not all texts and emails are official records required to be maintained. Requests to one Council member or Mayor are deemed requests to the City. If a document is provided by one Council member it is deemed provided by the City. However, failure to provide or retain such documents following a public record or discovery request may lead to an inference that the information destroyed was unfavorable to the City. Moreover, it fails to engender public confidence in governmental operations being by and for the public.

In addressing the public records requests for emails and text, there was no City Ordinance or Policy, or State law denoting the custodial designee when the Clerk could not act or providing individual council members guidance on how to address requests made to them individually in their official council capacity with appropriate documentation for the City.

Many public entities err from time to time in strictly meeting Open Meetings and Open Records violations. However, once noted, both remedial measures on violations which necessitate corrective responses and careful, systemic changes to make future violations less likely, are warranted and allowed by Iowa law. Further, education on requirements of the Open Meetings and Open Records laws for the public and the public entities involved in violations of form, or substance, would facilitate compliance and reasonable expectations by the public.

WHEREFORE, actions of the Council call for a remediation plan which undoes the actions taken and fosters a greater sensitivity by Council members to the right of the public and all council members to be fully and timely informed of intended Council action and to make systemic changes to reduce the likelihood of future violations.

The remedial plan follows. Actions already completed are so noted.

**The Council shall do the following:**

1. Vote to rescind the actions taken on January 13, 2014, concerning the City Clerk position and the appointment of a new City Clerk. The Council did so.
2. Make the Clerk/Treasurer/Administrator job description consistent with City Ordinances and State law to provide clarity for the public on agenda items referencing this position. The Council is engaged in efforts to do so. Same is to be completed on or before the first meeting in May, 2015.

3. Publicly advertise for the City Clerk position and provide notice to the public, compliant with the law. Provide access to applications and the filing of completed applications for consideration. The City Council did so in compliance with the *Iowa Code* on public notice. Although the Council may have struggled with employment notice matters, there were no complaints from the applicant pool, the ones with standing to do so. Employment notice matters are beyond enforcement powers of IPIB but the Council pledges to comply.
4. Form a sub-committee of two Council members and three members of the community to review applications and recommend applicants for Council consideration. The Council did so. This subcommittee recommended two names to be considered as finalists and considered by the Council. The Council accepted the recommendations of the committee and notified the two applicants of the interview process.
5. Provide public notice of the public meeting interview process for the finalists. Timely post agenda for Council meeting including information about public interviews of the finalists being considered for appointment as City Clerk. The Council did so.
6. Conduct open meeting with timely and adequate agenda at which finalists for the City Clerk position are interviewed, closure occurring only if an exception exists under *Iowa Code Section 21.5*, with meeting to be re-opened and action taken only in public forum. Although no finding that closure was necessary "to prevent needless and irreparable harm to that person's reputation" was made and memorialized in the Council Minutes when each Applicant requested closure under *Iowa Code Section 21.5(i)*, the Council did so indirectly and pledges to specifically do so in the future. The decision on appointment was made in an Open Meeting.
7. Become better educated about Iowa laws on Open Meetings and Open Records and the role of IPIB, and promote current and future employee and public education on these laws. Require each new Mayor, City Council member, City Appointee, and City Employee to complete the IPIB open Meetings/Open Records Training, or comparable training. Document completion in the employee's personnel file or in Council or Committee Minutes, for elected or appointed officials. For the public, sponsor an informational session, post at least one link to informational sources for Open Meetings and Open Records and IPIB contact information on any official city social media site and website.

Council members, the Mayor, the City Clerk's Office, the Police Chief and the City Public Works Director watched the League of Cities' informational presentation on Open Meetings. Some Officials viewed the Iowa Public Information Board's Open Meetings/Open Records training on the IPIB website and through IPIB Power Points supplied to Council members. Each City Council Member now possesses an Iowa Open

Meetings, Open Records Handbook prepared by the Iowa Freedom of Information Council, for quick reference; copies were made available to the public at a Council meeting. The Audubon City Attorney is assisting in sponsoring an Open Meetings and Open Records training session in Atlantic for the area on November 10, 2014.

The remaining act of posting a link on City web sites for Open Meeting/Records information shall be completed on or before the first meeting in May of 2015.

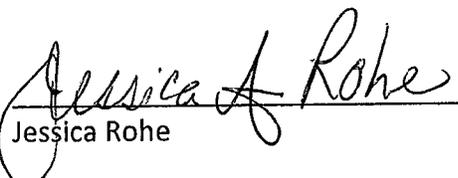
**Follow-Up**

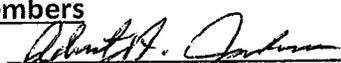
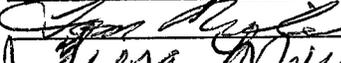
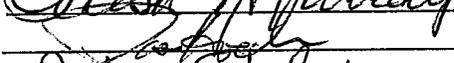
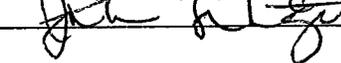
The Audubon City Council will follow-up on remaining OPEN items with email updates by the last day of each month commencing February 2015 through May 2015, or until all items are complete, whichever comes first, to the IPIB, and Complainants Fran Andersen as County Attorney, Jessica Rohe and Dawn Rohe.

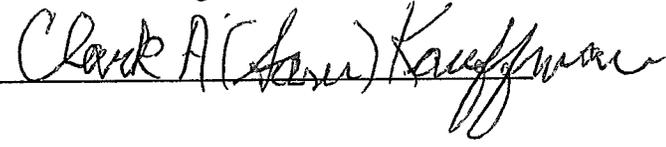
THIS REMEDIAL PLAN HAS BEEN REVIEWED AND APPROVED BY THE FOLLOWING:

  
Francine O'Brien Anderson, Audubon County Attorney 11-14-14  
Date

\_\_\_\_\_  
Dawn Rohe \_\_\_\_\_  
Date

  
Jessica Rohe 11-14-14  
Date

<u>City Council Members</u>		<u>Date</u>
Bob Jacobsen		11-10-14
Tom Nielsen		11/10/14
Teresa Murray		11-10-14
Jason Hocker		11/10/14
John Whetzal		11/10/14

Mayor  
Clark (Sam) Kauffman  11/10/14