



502 East 9th Street
Des Moines, Iowa 50319
www.ipib.iowa.gov

W. Charles Smithson, JD
Executive Director
(515) 725-1782
charlie.smithson@iowa.gov

Margaret Johnson, JD
Deputy Director
(515) 725-1783
margaret.johnson@iowa.gov

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SUBJECT: Application of “Draft” Document Exception to Release of Public Records

Gavin Aronsen
Reporter
Ames Tribune
Via Email

Dear Mr. Aronsen:

This opinion is in response to your email letter of January 12, 2015, requesting an opinion from the Iowa Public Information Board (IPIB) pursuant to Iowa Code section 23.6 and rule 497—1.2. 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.

FACTUAL STATEMENT:

You advise us that Iowa Code section 22.7 contains subsection (65) dealing with “draft” documents that are exempt from disclosure as a public record. You are concerned with how that subsection is to be interpreted.

QUESTION:

When is a document considered to be a “draft” document and thus able to be kept confidential under Iowa Code section 22.7(65)?

OPINION:

Iowa Code section 22.7(65) states:

“Tentative, preliminary, draft, speculative, or research material, prior to its completion for the purpose for which it is intended and in a form prior to the form in which it is submitted for use or used in the actual formulation, recommendation, adoption, or execution of any official policy or action by a public official authorized to make such decisions for the governmental body or the government body. This subsection shall not apply to public records that are actually submitted for use or are used in the

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formulation, recommendation, adoption, or execution of any official policy or action of a governmental body or a government body by a public official authorized to adopt or execute official policy for the governmental body or the government body.”

IPIB establishes the following criteria to determine if a document falls within this exception:

1. The document is tentative, preliminary, draft, speculative or research material;
2. The document exists in a form prior to completion of its intended purpose;
3. The document exists in a form prior to the form that is ultimately submitted for use or used in the actual formulation, recommendation, adoption or execution of any official policy or action by a public official with authority to make such decisions; and
4. The document must not have been submitted to or used by a public official authorized to adopt or execute official policy.

In applying this criteria, the document must truly be a draft that is not in its final form to be submitted to a public official who has authority to make decisions regarding the subject matter to which the draft applies. In addition, if the draft has been submitted to a public official authorized to adopt or execute official policy, the exception does not apply.

BY DIRECTION AND VOTE OF THE BOARD

Robert Andeweg, Chair
Anthony Gaughan
Jo Martin
Andrew McKean
Gary Mohr
William Monroe
Kathleen Richardson
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Peggy Weitzl

Submitted by: W. Charles Smithson, IPIB Director