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IPIB AO 2015-04

June 18, 2015

SUBJECT: Creation of Records and Associated Fees

Matthew S. Brick  
Erin M. Clanton  
Brick Gentry P.C.  
6701 Westown Parkway, Suite 100  
West Des Moines, Iowa 50266

Dear Mr. Brick and Ms. Clanton:

This opinion is in response to your letter of May 7, 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 you are seeking this opinion on behalf of your client, the City of Muscatine (City). The City has received an open records request for information concerning the City's automatic traffic enforcement cameras. You advise us that much of the information sought in the records request is not collected or kept by the City. However, if the City were to do research and then compile the information, a record could be created. As part of your opinion request to us, you have included the City's written policy on fees and public records. You cite Iowa Code sections 22.2, 22.3, and 22.3A as part of your opinion request.

**QUESTION:**

Based on this factual statement, you ask us the following questions:

1. Is the City required to create a record?
2. If the City is required to create a record, may it assess the fees to do so and may the City assess fees for records that do exist under the City's written policy on fees and public records?

**Board Members**

Robert Andeweg • Anthony Gaughan • Jo Martin • Andrew McKean • Gary Mohr • William Monroe  
Kathleen Richardson • Suzan Stewart • Peggy Weitzl

OPINION:

Obviously the City would be required to provide any information or data pertaining to the request that was available on the City's computer systems or that was on the computer system of any entity that the City contracted with to maintain information or data unless the information or data is confidential.<sup>1</sup> However, there is nothing in Iowa Code chapter 22 that mandates a governmental body to create a record that does not otherwise exist.

At this time the Board is going to decline to issue an opinion on the fee schedule you have submitted. To do so would have the potential force and effect of the Board establishing a statewide fee schedule without the input of the General Assembly and other interested stakeholders. The issue of what constitutes a "reasonable fee" is an important one to all of state and local government as well as the public and that determination needs to be done in a very deliberative and collaborative manner.<sup>2</sup>

In closing, we note that Senate File 435 amended Iowa Code sections 22.2 and 22.3A effective July 1, 2015. While the amendments do not appear to impact this opinion, we invite you to submit another opinion request concerning the amended language after July 1, 2015, if you deem it necessary.

BY DIRECTION AND VOTE OF THE BOARD

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

Submitted by: W. Charles Smithson, IPIB Director

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<sup>1</sup> The City would be permitted to assess any reasonable fees as permitted under Iowa Code chapter 22 for access to this information or data.

<sup>2</sup> This is not to say that we would not issue an opinion in the future on the application of a specific fee to a specific factual situation.