



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

IPIB AO 2016-12

July 21, 2016

SUBJECT: Juvenile Court Records

Jason Wittgraf
West Des Moines City Attorney's Office
4200 Mills Civic Parkway
PO Box 65320
West Des Moines, Iowa 50265

Dear Mr. Wittgraf:

This opinion is in response to your letter of June 10, 2016, 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 request this opinion in your capacity as the Assistant City Attorney for West Des Moines (City). You advise us that two high school juvenile females reported to their school alleged sexual assaults committed by a high school juvenile male. These incidents were referred to the West Des Moines Police Department. Both juvenile females requested criminal investigations. After criminal investigations into both matters, the Polk County Attorney's Office has so far declined to file criminal charges. The City has received an open records request requesting copies of all police reports concerning the accused then-juvenile male and also the two then-juvenile females and the fact that these two females reported their respective incidents to the police department.

QUESTIONS:

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

1. Are police investigative reports regarding alleged criminal activity committed by a juvenile, where no criminal charges have been brought against the juvenile, deemed confidential?
2. Are written statements, made by an alleged victim who is a juvenile regarding criminal activity committed by another juvenile, that are provided to the school and then to the police department, deemed confidential?

Board Members

Anthony Gaughan • Keith Luchtel • Jo Martin • Andrew McKean
Gary Mohr • William Peard • Suzan Stewart

3. Is the City required to disclose the date, time, specific location, and immediate facts and circumstances surrounding an alleged crime or incident committed by a juvenile against another juvenile when the requesting individual had identified the juvenile parties by name in the request and such a disclosure would result in identifying the juvenile individuals?
4. Does Iowa Code section 915.36 apply to any and all juvenile parties identified who were above the age of 14 and below the age of 18 when these alleged incidents occurred?

OPINION:

Iowa Code section 22.7(5) provides the following:

“Peace officers’ investigative reports, and specific portions of electronic mail and telephone billing records of law enforcement agencies if that information is part of an ongoing investigation, except where disclosure is authorized elsewhere in this Code. However, the date, time, specific location, and immediate facts and circumstances surrounding a crime or incident shall not be kept confidential under this section, except in those unusual circumstances where disclosure would plainly and seriously jeopardize an investigation or pose a clear and present danger to the safety of an individual. Specific portions of electronic mail and telephone billing records may only be kept confidential under this subsection if the length of time prescribed for commencement of prosecution or the finding of an indictment or information under the statute of limitations applicable to the crime that is under investigation has not expired.”

In applying this language to your first question, a peace officer investigative report would be confidential except as to the information set out in this section. The same analysis would apply to your second question.¹ Turning to your third question, the statute requires the disclosure of the “date, time, specific location, and immediate facts and circumstances surrounding a crime or incident” without regard to the other information in the possession of the requesting party. However, the statute also then exempts disclosure of that information in “unusual circumstances where disclosure would plainly and seriously jeopardize an investigation or pose a clear and present danger to the safety of an individual.”

Your fourth question asks the Board to interpret the application of Iowa Code section 915.36. We understand that Iowa Code sections 915.35 through 915.38 contain confidentiality provisions concerning juveniles and alleged criminal activity. However, we do not have the statutory authority to interpret those Code provisions as they fall outside the scope of Iowa Code chapters 21, 22, and 23. You may want to contact the Attorney General’s office for guidance on Iowa Code section 915.36 as well as recent amendments to Iowa Code chapter 232 dealing with juveniles.²

¹ We do note that the provision for a confidential record in Iowa Code section 22.7(1) pertaining to personal information in records regarding a student would no longer apply when those records have been submitted to the City.

² For instance SF 2288 from the 2016 legislative session that amended Iowa Code section 232.11 concerning juvenile court records.

In closing, we do note that there is currently litigation on the issue of whether or not the exception for a peace officer investigative report applies to all investigate reports or only when those reports relate to an ongoing investigation.³

BY DIRECTION AND VOTE OF THE BOARD

Suzan Stewart, Chair
Anthony Gaughan
Keith Luchtel
Jo Martin
Andrew McKean
Gary Mohr
William Peard

Submitted by: W. Charles Smithson, IPIB Director

³ See IPIB FC:0030, 15FC:0034, and 15MO:0017.