

IPIB Monthly Column - Time to Produce Records (Chapter 22)

Question: I want the record right now. How much time does the public agency have to produce a requested record?

ANSWER: Chapter 22 is silent as to the time for response to a records request. The time to locate a record can vary considerably depending on the specificity of the request, the number of potentially responsive documents, the age of the documents, the location of the documents, and whether documents are stored electronically. The large number of variable factors affecting response time makes it very difficult, and probably unwise, to establish any hard and fast objective standards. The statute was adopted more than forty years ago. Today's electronic records environment adds to the complexity of this issue.

The only specific response time standard established by the statute addresses a good-faith reasonable delay incurred in order to determine whether a confidential document should be released. Iowa Code subsection 22.8(4)(d) states that a reasonable good-faith delay is not a violation of Chapter 22 if the purpose of the delay is:

“d. To determine whether a confidential record should be available for inspection and copying to the person requesting the right to do so. A reasonable delay for this purpose shall not exceed twenty calendar days and ordinarily should not exceed ten business days.”

While the Code states a delay under Iowa Code subsection 22.8(4)(d) shall not exceed twenty calendar days, the Iowa Supreme Court does not view this as an absolute deadline:

“Based on our review of section 22.8(4)(d), we believe it is not intended to impose an absolute twenty-day deadline on a government entity to find and produce requested public records, no matter how voluminous the request. Rather, it imposes an outside deadline for the government entity to determine ‘whether a confidential record should be available for inspection and copying to the person requesting the right to do so.’ We do not think we should extrapolate section 22.8(4)(d)’s twenty-day deadline to other contexts, when the legislature chose not even to include that deadline in other portions of section 22.8(4).” *Horsfield Materials, Inc. v. City of Dyersville*, 834 N.W.2d 444, 461 (Iowa 2013).

According to an Iowa Attorney General Sunshine Advisory Opinion from August 2005, “Delay is never justified simply for the convenience of the governmental body, but delay will not violate the law if it is in good faith or reasonable.”

The Court in *Horsfield* also lists several considerations for determining if a delay is reasonable:

“Under this interpretation, practical considerations can enter into the time required for responding to an open records request, including ‘the size or nature of the request.’ But the records must be provided promptly, unless the size or nature of the request makes that infeasible” *Horsfield Materials, Inc. v. City of Dyersville*, 834 N.W.2d 444, 461 (Iowa 2013).

Best Practices: Communication between lawful custodians and records requestors is strongly encouraged. Communication and cooperation can reduce disagreements over responsiveness to records requests including issues of timing, redaction, and completeness. It is recommended that the custodian:

- Contact the requestor to acknowledge receipt of the request immediately and provide a probable timeline for record release.
- Make additional contact in the event of a potential delay to discuss possible ways to process the request in a timely manner.
- Work diligently to retrieve and release the records.
- Release records as they are ready unless the requestor has asked that the records be compiled and then released together.

The Iowa Public Information Board (IPIB) was created to provide a free, efficient way for Iowans to receive information and resolve complaints related to Iowa Code chapters 21 and 22, Iowa’s open meetings and public records laws.

IPIB Facts and Figures for February 2018 and for 2018 year-to-date:

During the month of February 2018, 68 contacts were made with the Iowa Public Information Board office.

TYPE	<u>February 2018</u>	<u>2018 Year-To-Date</u>
Formal complaints	4	16
Advisory opinions	0	3
Declaratory orders	0	0
Informal complaints	7	10
Informal requests	49	97
Miscellaneous	8	12
TOTALS:	68	138

Who can contact the IPIB and how long does it take?

Any person can contact the IPIB for assistance:

telephone - 515-725-1781

email - ipib@iowa.gov

website - ipib.iowa.gov

In February 2018, 68 people contacted the IPIB.

43% - private citizens

45% - government officials or employees

12% - members of the media.

For the year, 67% of the incoming contacts were resolved the first day, 15% were resolved in one to five days, and 18% were resolved in six or more days.