

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

Editor's Note: This is a monthly column prepared by the Iowa Public Information Board to update Iowans on the IPIB's activities and provide information on some of the issues routinely addressed by the board.



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 good-faith reasonable delay incurred in order to determine whether a document is confidential. Iowa Code subsection 22.8(4)(d) addresses what is considered a good faith reasonable delay when there is a question as to the release. It states:

"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 pur-

pose 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:

"Open Records Act provision, stating that a reasonable delay for the purpose of determining whether a confidential record should be available for inspection and copying to the person requesting the right to do so shall not exceed 20 calendar days, does not impose an absolute 20-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 make the particular determination mentioned." *Horsfield Materials, Inc. v. City of Dyersville, 834 N.W.2d 444* (Iowa 2013).

According to the 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* 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 always to be encouraged. Communication and cooperation reduce disagreements over responsiveness to records requests including issues of timing, redaction and completeness. It is recommended that the custodian contact the requestor in the event of a potential delay and discuss possible ways to process the request in a timely manner.

IPIB Facts and Figures

During the month of July, 68 contacts were made with the Iowa Public Information Board office. Website statistics show 574 visits in July 2014, of which 58% were new visitors. To contact the IPIB, call 515-725-1781 or send an e-mail to Margaret.Johnson@iowa.gov.

<u>TYPE</u>	<u>JULY</u>	<u>JAN-JULY</u>	<u>FISCAL '13-'14</u>
Formal complaints	2	60	101
Formal opinions	2	5	6
Declaratory orders	0	3	5
Informal complaints	11	61	101
Informal requests	53	326	412
Misc.	0	5	18
TOTAL:	68	460	643