
Iowa sunshine laws

Erika Eckley, Iowa Public Information Board

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DISCLAIMER

This presentation is not intended to serve as legal advice. You should consult with your government entity's attorney about specific situations you encounter.

IOWA PUBLIC INFORMATION BOARD

Enacted in 2013, the Iowa Public Information Board provides:

***an official, efficient and free legal resource for
citizens and government officials***

To ask questions about Iowa open meetings and records laws, and to address complaints about alleged violations of the laws.

The board is one of a few agencies in the nation with the authority to advise and enforce the state's sunshine laws.



IOWA PUBLIC INFORMATION BOARD

The board is authorized by Iowa Code section 23.6...

- To issue advice regarding the applicability of the public records and open meetings laws.
- To receive and investigate complaints alleging violations and seek resolution through informal assistance, mediation and settlement.
- If a complaint cannot be resolved informally, and the board has probable cause to believe the law has been violated, to prosecute the government body or official in a contested-case proceeding under the Administrative Procedures Act.
- To issue subpoenas to investigate complaints and prosecute cases, and to issue declaratory orders with the force of law to require compliance with the sunshine laws.



IOWA PUBLIC INFORMATION BOARD

- Any person can bring a complaint before the board or can bring an action in state district court.
- If more than one party simultaneously brings an action before the board and in court, the court shall stay the case pending resolution of the complaint by the board.
- A final board order is subject to judicial review.

IOWA PUBLIC INFORMATION BOARD

- Has no jurisdiction over the judicial or legislative branches, or over the governor and governor's office.
- Limited to addressing issues involving Chapters 21 and 22 of the Iowa Code.
- Complaints must be made within 60 days of the alleged violation.
- Declaratory orders issued by the board, determining the applicability of the open meetings or records law to specific fact situations, have the force of law.

IPIB BOARD MEMBERS

Joan Corbin, Pella - Government Representative

E. J. Giovannetti, Urbandale - Public Representative

Barry Lindahl, Dubuque - Government Representative

Catherine Lucas, Johnston – Government Representative

Joel McCrea, Pleasant Hill - Media Representative

Monica McHugh, Zwingle - Public Representative

Luke Martz, Ames - Public Representative

Jackie Schmillen, Urbandale - Media Representative

Board meetings are typically the 3rd Thursday of the month.

Livestreamed and available at

<https://www.youtube.com/@IowaPublicInformationBoard>

IPIB STAFF



Erika Eckley
Executive Director
Erika.Eckley@iowa.gov



Kimberly Murphy
Deputy Director
Kim.murphy@iowa.gov



Alexander Lee
Agency Counsel
Alexander.Lee@iowa.gov

Open Meetings 101

Iowa Code Chapter 21

HISTORY

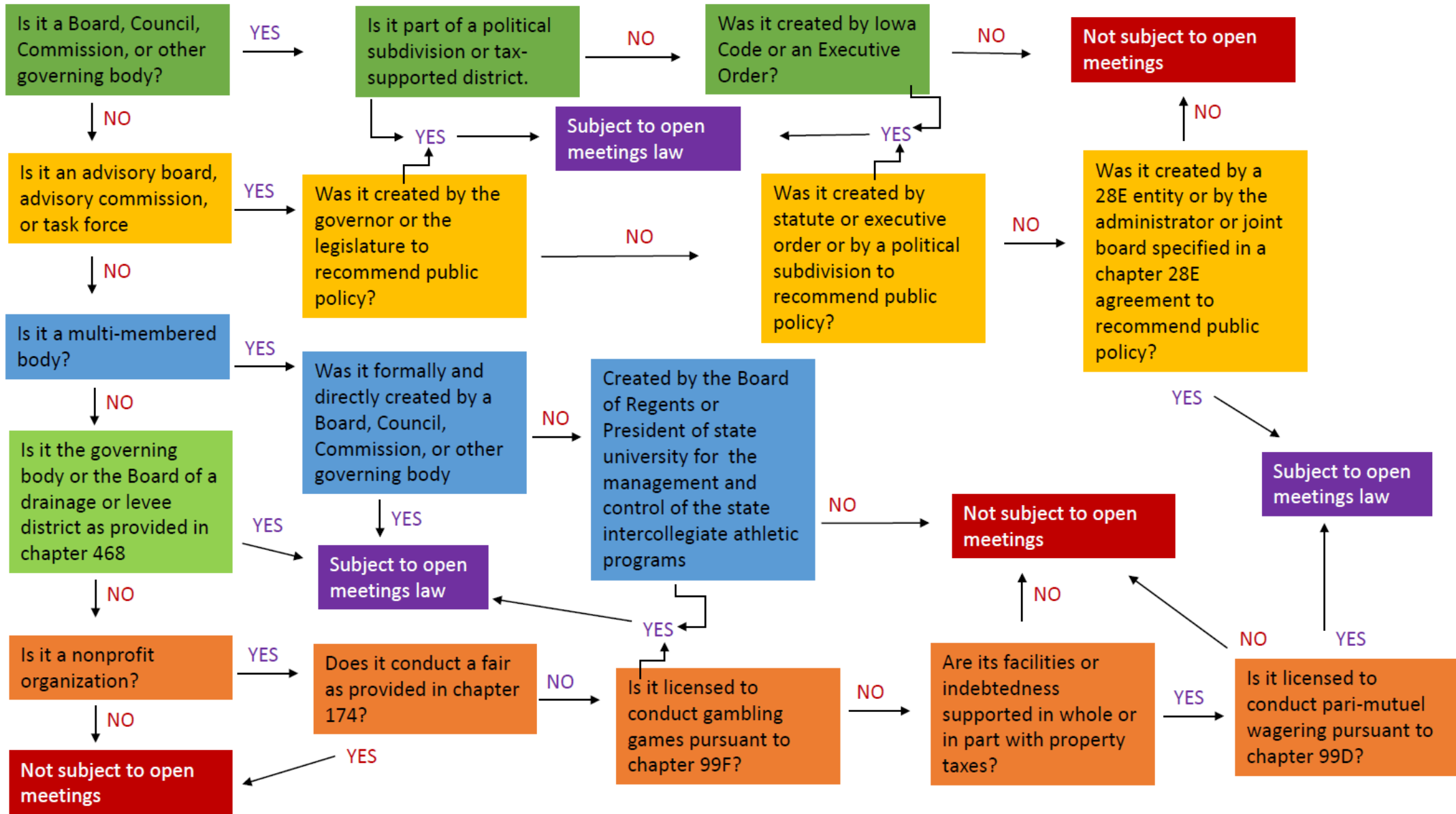
“Ambiguity in the construction or application of this chapter should be resolved in favor of openess.”

Iowa Code Section 21.1

DEFINING A GOVERNMENT BODY

Governmental Bodies are:

- Boards, Councils and Commissions created by law or appointed by other governing bodies
- Bodies created by the Board of Regents or a president of a university
- Advisory boards, advisory commissions, and task forces created by state or local governments to develop and make recommendations on public policy
- Non-profit corporations (other than a fair) who are supported with property tax revenue and licensed to conduct pari-mutual betting
- Non-profit corporations licensed to conduct gambling games pursuant to chapter 99F
- Governing bodies of drainage or levee districts
- Advisory boards, advisory commissions, advisory committees, task forces created through 28E agreements or by statute or executive order of state or subdivision to develop and make recommendations on public policy



BEST PRACTICES

- While some ad hoc committees, advisory board or task forces may not be required to be open, they are often encouraged to do so as a matter of good public policy.
- Allowing the public to observe the deliberations will add to the “buy in” necessary to enact any decision or recommendation made by the group.

DEFINING A MEETING

“...a gathering in person or by electronic means, formal or informal, of a majority of the members of a governmental body where there is deliberation or action upon any matter within the scope of the governmental body’s policy–making duties.”

1. A formal or informal gathering of members of a governmental body;
2. In such numbers so as to constitute a majority;
3. During which deliberation or actions occurs; and
4. Such deliberation or action is within the scope of the governmental body’s “policy-making duties.”

1981 Iowa Op. Att’y Gen. 162 (1981).

24AO:0001 - CHAPTER 21

REQUIREMENTS FOR WORK SESSIONS

A work session is a meeting that requires appropriate notice under Iowa Code § 21.4.

No matter what the gathering is called, if there is deliberation or action upon any matter within the scope of the body's policy-making duties by a majority of the members, it is considered a meeting and must be open.

If a chapter 21 meeting occurs, minutes of that meeting must be taken.

PREPARING FOR A MEETING

Meetings must –

- Be preceded by a public notice of at least 24 hours giving the date, time, place and a tentative agenda.
- Notice of the meeting must be sent to any news organization requesting it.
- The notice must be posted in a prominent place accessible to the public at the government office. If no office is available, notice should be prominently placed where the meeting will be held.
 - Posting on the inside of a glass door into the governmental building, posting on a website or community calendar, or at the post office are all ways to promote transparency in government.

AGENDAS

What needs to be included in an agenda? Barebones agenda information such as “approval of old minutes, old business, new business” would **not** be sufficient, nor would using the same agenda for meeting after meeting.

- Tentative agenda can be changed under certain circumstances.
- The law allows discussion and action on emergency items, **but if action can reasonably be deferred to a later meeting, it should be.**
- Information on the agenda must be reasonably sufficient to alert interested people as to the subject matter to be considered.
- The agenda must specifically state any issues the board intends to discuss in open or in closed sessions.

KCOB/KLVN, Inc. v. Jasper Cty. Bd. Of Sup'rs, 473 N.W.2d 171, 174-75 (Iowa 1991).

SOCIAL GATHERINGS

Can members get together socially? Yes, BUT they cannot discuss business.

- A gathering becomes a “meeting” when a quorum of officials engage in discussion on matters over which they exercise judgment.
 - Deliberation occurs “if the members of the governmental body engage in any discussion that focuses at all concretely on matters over which they exercise judgment or discretion.”
Hutchison v. Shull, 878 N.W.2d 221, 231 fn. 1 (Iowa 2016).
- The purpose of the law is to allow citizens to see how their officials arrive at a decision and to hear discussion and opinions.
- Even retreats are public meetings if a quorum is present and policy is discussed.

BEST PRACTICES

If all members will be gathering together, prepare a notice of the event.

The agenda can describe the event as a social event and indicate that no business will be conducted.

Make sure there is no deliberation.

ATTENDANCE AT SOCIAL AND MINISTERIAL EVENTS

“Chapter 21 excludes events attended by members of a government body, such as social, political and civic events, so long as the members avoid deliberation on policy issues within their policy-making duties and their attendance at the event is not to avoid the transparency requirements of the open meetings law.”

To avoid deliberation, the members of a governmental body should ensure they take in the information received and ask clarifying questions if needed, but avoid providing any commentary on the topic. They should avoid any comments that begin with phrases similar to the following, which will likely lead toward deliberation.

- “I think we should..”, “I feel this could...”, “I support/won’t support this...”, “My opinion on this matter is...”, “I want to take a poll/see what you all are thinking”

ATTENDANCE AT SOCIAL AND MINISTERIAL EVENTS (CONT.)

A better option is to conduct the conversation in an open meeting following the requirements of chapter 21, so there is no concern with the ministerial gathering becoming an improper meeting.

Persons serving on governmental bodies should be constantly aware that their activities are subject to public scrutiny and should avoid even the appearance of engaging in unauthorized [meetings]. ...

Provide notice the members of the government body will be attending the social event. Providing notice when the government body will be attending the event demonstrates transparency.

Do not sit together or gather in a majority at the event. Ensuring members are socializing with other attendees at the event prevents any deliberation on matters within the members' scope.

If members are together, make sure the conversation topics are social in nature to avoid bringing up government business.”

See IPIB Advisory Opinion 24AO:0004

EMAIL

Can members e-mail each other concerning governmental business?

- Every situation is fact specific, and it is easy to send an e-mail to all members just to share relevant information on a topic without the intent to avoid the Open Meetings Law.
- If members want to share an opinion or debate policy, they should save that discussion for the open session.
- Emails are public records.

Best Practice- if some information, such as an agenda, is shared with the members, sending as a BCC to the members helps prevent any inadvertent discussion through “reply all.”

MINUTES

Minutes should show, at a minimum:

- the date, time and place of the meeting,
- the members present, and
- the action taken at any meeting
 - All votes must be recorded
 - **Votes by each member must be noted individually but a unanimous vote can be so noted as long as all present vote.**

Minutes become public record as soon as they are complete and must be published as required by law, in the appropriate newspaper. Although not a substitute to publishing, minutes can also be made available online.

ADVISORY OPINION- 23AO:0007

Minutes are the public record of a governmental body's activities and decisions. Their usage should be to document the official actions of a governmental body. This means they should contain the legally required information as well as enough information in context to ensure understanding of the actions and topics covered by the Board or Council. Minutes should not include partial commentary or editorial additions. Including these items in minutes causes unnecessary issues ...

<https://ipib.iowa.gov/23ao0007-editing-meeting-minutes-publishing>

DO MEMBERS OF THE PUBLIC HAVE THE RIGHT TO SPEAK AT AN OPEN MEETING?

While most bodies have a time noted on their agendas for public comment, members of the public have no right to participate in the discussion of an item unless they are on the agenda.

Comments made do not have to be placed in the minutes. Minutes only need to include the actions taken and other information required in Iowa Code chapter 21.

Iowa Code 21.7 allows a governmental body to make and enforce reasonable rules for the conduct of its meetings to assure those meetings are orderly, and free from interference or interruption by spectators. **BUT, make sure this is uniformly enforced and not based on the content of the message.** *See Peterson v. City of Newton*

CLOSED SESSIONS

Closed sessions may be held only by the vote in open session of two-thirds of the members of the body or all members present and only after citing one of the following reasons

- To review or discuss a record which is required or authorized by state or federal law to be kept confidential or as a condition to retain federal funding.
- To discuss application for a patent.
- To discuss strategy with counsel on matters that are currently or may imminently be in litigation.
 - ***Note- counsel must be identified and must be present in some capacity.***
- To discuss contents of a licensing examination, initiate disciplinary investigation or proceeding if the body is involved with licensing or examining.

CLOSED SESSIONS

- To conduct a hearing or discuss whether to conduct a hearing to suspend or expel a student unless the student and/or parent wants the meeting to remain open.
- To discuss the decision to be rendered in a contested case.
- To avoid disclosure of specific law enforcement matters which if disclosed would enable law violators to avoid detection or facilitate disregard of requirements imposed by law.
- To evaluate the professional competency of an individual whose appointment, hiring, performance, or discharge is being considered.

The individual must request a closed session.

- *Teig v. Loeffler*, No. 24-0029 (Ia. Ct. App. Dec. 4, 2024)- requires the government body to determine whether a closed session is necessary to prevent needless and irreparable injury to the reputation of the individual requesting the closed session and only being in closed session for that portion.

CLOSED SESSIONS

- To discuss the purchase or sale of real estate. The minutes and audio recording of the closed session shall be made available when the transaction is dropped or completed. (j) [this section may require an entity to retain the closed session records longer than as required in 21.5]
- To discuss records concerning security procedures and emergency preparedness for the protection of government employees, visitors, people under the care and protection of the government and its property.
- To discuss patient care quality and process improvement initiatives in a meeting of a public hospital that if disclosed might harm the hospital's competitive position.

Other sections of the Iowa Code may permit a government agency to close a meeting OR exempt meetings from the requirements of the open meetings law. (For example, Iowa Code § 279.15 exempts some meetings and records involving the termination of a teacher.)

PROCEDURE DURING CLOSED SESSION

- **No additional topics can be discussed.**
 - The purpose and topics for the closed meeting must be the same
 - Recent district court case- Dewitt School Board
 - “The scope of the meeting was breathtaking in contrast to its stated purpose.”
- The session must be recorded and “detailed minutes” must be taken. These records must be retained for at least one year and are not public record.
- Members who would have otherwise had access to the closed session may get access to the closed session recording and minutes.
- **Final action must happen in open session.**
- Nothing in Iowa Code 21 *requires* a governmental body to hold a closed session to discuss or act upon any matter.

NEW LAW: ELECTRONIC MEETINGS

Amendment to Iowa Code section 21.8 – passed during the 2024 legislative session

- “A governmental body shall provide for hybrid meetings, teleconference participation, virtual meetings, remote participation, and other hybrid options for the members of the governmental body to participate in official meetings.”
- Effective July 1, 2024
- No longer a requirement to state in the minutes why an in-person meeting was impossible or impractical.

TYPES OF ELECTRONIC MEETINGS

- “**Hybrid meeting**” means a meeting involving both remote participation and in-person participation by members.
- “**Remote participation**” means real-time participation by a remotely located individual in a meeting which is being held in a different physical location using integrated audio, video, and other digital tools.
- “**Teleconference participation** ” means participation using audio conference tools involving multiple participants in at least two separate locations.
- “**Virtual meeting**” means a meeting involving real-time interaction using integrated audio, video, and other digital tools, in which participants do not share a physical location.

24AO:0006: ELECTRONIC MEETING

IPIB has received a lot of questions from governmental bodies regarding implementation of the law. These are common questions:

Is a governmental body required to provide electronic access to meetings for members of the governmental body pursuant to the new law?

Yes. Effective July 1, 2024, Iowa Code § 21.8 requires that a governmental body provide for electronic meeting options for members of the governmental body.

Is a governmental body required to provide electronic meeting options if none have been requested or it is believed none will be utilized?

The language is mandatory that the option be provided for official meetings of the governmental body.

Is a governmental body required to provide all electronic meeting options?

No. A governmental body is not required to utilize all options for every meeting.

EXEMPT SESSIONS

A meeting of a governmental body to discuss strategy in matters relating to employment conditions of employees of the governmental body who are not covered by a collective bargaining agreement under chapter 20 is exempt from this chapter. For the purpose of this section, “employment conditions” mean areas included in the scope of negotiations listed in section 20.9:

- wages,
- hours,
- vacations,
- insurance,
- holidays,
- Leaves of absence,
- Shift differentials,
- Overtime compensation,
- Supplemental pay,
- seniority,
- Transfer procedures,
- Job classifications,
- Health and safety matters,
- Evaluation procedures,
- Procedures for staff reduction,
- in-service training,
- grievance procedures for resolving any questions arising under the agreement, and
- Other matters mutually agreed upon

Public Records 101

Iowa Code Chapter 22

PUBLIC RECORDS

All governmental bodies, officials and employees are covered by Chapter 22 - public records.

- “Record” includes:
 - documents, tape or other information stored or preserved in any medium of or belonging to a governmental body
 - including electronic communication such as e-mails, websites, or texts
 - all records relating to the investment of public funds
- Each body must designate a “lawful custodian” and publicly announce who holds that responsibility.

PRIVATE EMAIL COMMUNICATION ON PUBLIC DEVICE

Are private email communications sent from a government email address public records?

The records requested included email communications from a city police officer to agencies, individuals, and various email addresses on government email in both a personal and public capacity.

Case law consistently states, that whether a document is a public record depends on the nature of the document and whether they are created and/or held by the police officer in his official capacity. Records related to the police officer's children, personal court cases, and personal communications were deemed not created or held by him in his official capacity and were not be public records. Records related to his investigative role as a police officer would be public records subject to disclosure according to Iowa Code chapter 22. See Iowa Public Information Board Advisory Opinion 24AO:0007.

PUBLIC EMAIL COMMUNICATION ON PRIVATE DEVICE

Personal emails ARE public records.

In *Kirkwood Institute v. Sand*, No. 23–0201 (Apr. 26, 2024) -

The court held that a factual issue was created about whether the delay in producing the records request was reasonable when the auditor's office failed to provide an email thread sent from an employee's personal email to a reporter.

The email thread was related to the government body's business and was a public record.

LAWFUL CUSTODIANS – PRIVATE DEVICES

Recording made by employee of the County Auditor's Office includes interaction between government officials related to government business. Clear precedent exists to establish that "any medium," as used to define a public record, includes personal recording devices. The recording is a public record that belongs to the county. It is a violation of Iowa Code Chapter 22 to refuse to disclose a public record unless it falls within an exception.

The public records request should be made to the government body, and more specifically, the publicly-designated, responsible official or employee of the government body.

See Iowa Public Information Board Advisory Opinion 24AO:0008.

BEST PRACTICES

Best practices dictate that a government body should develop a policy governing the use of private devices for government business. This policy could require that the government body or lawful custodian have access to private devices and could establish the specifics of access.

Best practices also should include discussion of the public records request with legal counsel if there is a question regarding disclosure. This will ensure that governmental bodies comply with Iowa law and avoid civil damages, payment of costs, and attorney fees.

GOVERNMENT-MODERATED SOCIAL MEDIA

Assuming the social media platform in question is free to use and widely available to the public, that format would also presumably qualify as “useable with commonly available data processing or database management software.” If a requester submits a Chapter 22 request for public records in this category, the government body may satisfy its responsibilities as lawful custodian by directing the requester to the public social media page, as doing so provides the requester with access.

If a county board of supervisors chooses to publish PDF copies of its weekly meeting minutes to its Facebook page as a supplement to other publication requirements set forth elsewhere in the Code, a requester seeking a PDF for a particular meeting would still be entitled to the release of that particular record as normal. The county board in this instance could not discharge its duties simply by directing the requester to its Facebook page to locate the minutes for themselves, as social media would not be the only format in which the requested PDF, as an electronic record, would be readily accessible to the government body.

A government body may be required to produce existing data, “even if some type of manipulation is required to make the data readable,” but there is no accompanying requirement that the government body perform custom searches or rearrange existing data to answer a query. Similarly, Chapter 22 does not impose any retention requirements for public records, meaning that nothing in this analysis would prevent a government body from deleting or editing a social media post consistent with an applicable retention policy. 24AO:0012: Public Records Requests and

BEST PRACTICES

- Do not use text or other informal means to conduct government body business.
- Put in place a policy regarding the use of and how to obtain access to public records created on personal devices, such as texts, or on personal accounts, such as non-government email addresses
- Put in place a retention policy and follow it.
- Keep your public and personal information separate-
 - Different phones for email or do not download work emails to personal devices.

WHO HAS THE RIGHT TO EXAMINE PUBLIC RECORDS?

- Anyone can examine, photograph or copy a public record without charge while the public record is in the physical possession of the custodian.
- The governmental body cannot prevent examination of the records by contracting with a nongovernmental entity to create, hold, or store those records. (Section 22.2(6))
- Governmental bodies can control the terms and conditions of the examination of non-confidential records stored within geographic computer databases. Bodies must establish reasonable rates (actual costs) for the examination of these records. (Section 22.2(3)(a)).
 - But if it is provided to the public as a public record...
- **If it's a public document for one person, it is a public document for everyone!**
- **Remember, public documents can be posted on the internet, shared with anyone, etc.**

MUST A REQUEST BE BY AN IDENTIFIABLE INDIVIDUAL?

Although “person” is not defined in Iowa Code chapter 22, Iowa Code section 4.1(20) defines “person” to mean “individual, corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.” There are many examples of records requests filed by media groups or organizations that are considered valid and enforceable record requests.

A requestor of public records can remain anonymous and does not need to provide a contact name. There just needs to be enough information to provide the information sought.

HOW MUCH TIME DOES A CUSTODIAN HAVE TO RESPOND TO A RECORD REQUEST?

- Chapter 22 is silent as to the time for response to a records request.
- 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. *Horsfield Materials, Inc. v. City of Dyersville*, 834 N.W.2d 444 (Iowa 2013).
 - If a request is routine, work to provide it immediately or as soon as possible.
 - A good faith delay is allowed to determine whether the record in question is a public record or confidential. (Section 22.8(4))
 - A reasonable delay for this purpose ordinarily should not exceed 10 business days and cannot exceed 20 calendar days.
 - Record custodians should communicate with requesters to ensure that the correct records are released in as timely a manner as possible and any issues are discussed.
- But, several Supreme Court decisions have raised specifically fact questions regarding “unreasonable delay.” See *Belin, Kirkwood Institute, and Teig*

24AO:0010 “REASONABLE DELAY” INQUIRY

How promptly the defendant acknowledged the plaintiff's requests and follow-up inquiries Best practices are to “promptly acknowledge” the receipt of a records request, but what is considered “promptly” has always been based on the facts existing at the time the request is made.

Whether the defendant assured the plaintiff of the defendant's intent to provide the requested records Showing an intent to provide the requested records would include considering such things as communications by the custodian to the requestor establishing an estimate for when the records may be available or the custodian providing an estimate regarding the cost of retrieval and copying the records, and communications seeking clarification of the request.

Whether the defendant explained why requested records weren't immediately available (e.g., what searches needed to be performed or what other obstacles needed to be overcome) The Court has repeatedly refused to provide a specific timeframe for when requests must be produced because the variety and scope of requests is as vast as the type of government body subject to the requirements of Iowa Code Chapter 22. For simple requests, generally, there should be limited delay in producing the records by the custodian. For more complex or broad requests, however, retrieval and production could take time.

ADVISORY OPINION- 23AO:0005

Email Requests, Generally

Electronic requests sent through email to the records custodian should include the specific request within the body of the email. There is no reason a request needs to be sent in an attachment or through a link. The email request provides written notice of the request and also includes the date and time when it was sent, so there is a documented record of the request. Including links or attachments to email increases the risk that the message may be automatically routed to a “spam” folder or quarantine filters to address cyber security and phishing concerns. Requesters should provide the request in a format that enables the government entity to receive and respond to the request.

Government entities should request the sender resubmit the request in the body of the email if requests are received that have attachments or other extraneous information. Like all requests, government entities should provide acknowledgement of the request and responses regarding the records and fees.

Request Portals and online forms

Providing a portal or online request form is an appropriate and safe way to allow for electronic requests to be submitted. It will be important that the portal or form system provide requesters a copy of their request including when and to whom it was submitted. Acknowledgment of the request and other appropriate follow up information and documents should be provided as well. If a records request is such that fees are charged, communication about how the fees can be paid, including whether they can be handled through the portal, should be clearly communicated.

SUPERVISION AND FEES

- The custodian may charge a reasonable fee for the services of the custodian in retrieval and for the copies. (upheld by *Teig* case)
- Fees should be based on the **actual costs** directly attributable to examination or copies of records.
- Fulfillment may be made contingent upon pre-payment of a fee
- Estimated expenses must be communicated to the requestor.
- Fees cannot exceed the **actual cost** of providing the service and cannot include the costs of ordinary administrative office expenses, such as insurance, depreciation, etc.
- Iowa Code states the custodian shall make reasonable effort to provide the record at no cost other than actual copying costs for a record taking less than thirty minutes to produce.

FEES- LEGAL REVIEW

- "Costs for legal services should only be utilized for the redaction or review of legally protected confidential information." Iowa Code 22.3 (eff. 7/1/22).
- A lawful custodian should not charge a requester for legal services used to determine whether the records requested contain confidential information.
- The lawful custodian should only charge the requester for the time an attorney spends actually redacting or reviewing confidential information.

See 23AO:0002, March 3, 2023 Costs for legal services

IS REDACTION REQUIRED?

Records cannot be withheld because they contain both non-confidential and confidential material. Government entities need to ensure examination of a public record is possible and need to find a way to remove or redact confidential material from records if applicable. (Section 22.3A(2))

CONFIDENTIAL RECORDS

- Section 22.7 includes a list of records that are confidential under the open records law.
- Additional laws may also contain provisions on confidentiality.
- The most common confidential records are-
 - Medical records.
 - Trade secrets protected by law. (Trade secrets are defined in Iowa Code Chapter 550),
 - The work product of an attorney related to litigation by or against a public body.
 - Note- there must be litigation.
 - Attorney-client privilege is different and should be invoked if it applies. (*Teig* confirms long-standing attorney-client confidentiality under Iowa Code chapter 22 documents)

CONFIDENTIAL RECORDS, CONT.

- Peace officers' investigative reports, except for date, time, specific location, and immediate facts and circumstances surrounding a crime or incident.
- A crisis intervention report generated by a law enforcement agency regarding a person experiencing a mental health crisis, substance-related disorder crisis, or housing crisis.
- Appraisal information concerning the sale or purchase of property for public purposes prior to announcement of the project.
- Information that if released would cause the loss of federal funding
- Information regarding homeland security.

CONFIDENTIAL PERSONNEL RECORDS

- Certain personal information held in confidential personnel records of government employees is confidential such as
 - age, race, sex, address
 - Social Security,
 - home telephone numbers,
 - reason for sick leave. (This does not include the dates and times of use of sick or vacation leave.) 22.7(11) and (32)
- The following information in personnel records **is public** under 22.7(11):
 - employee's name,
 - compensation (anything of value given to an employee, including pay, benefits, vacation, severance payments and retirement benefits, including any written agreement about terms of employment
 - employment dates and positions held,
 - educational background and previous employment
 - whether the individual resigned in lieu of termination, was discharged, or was demoted as the result of a disciplinary action, and the documented reasons and rationale

PERSONS OUTSIDE GOV'T

- Persons outside government
- Communication not required by law or rule
- If the lawful custodian could reasonably determine that the person would be dissuaded from reporting if made public
 - The communication is a public record to the extent that the person outside of government making that communication consents to its treatment as a public record.
 - Information contained in the communication is a public record to the extent that it can be disclosed *without directly or indirectly indicating the identity of the person outside of government making it or enabling others to ascertain the identity of that person.*
 - Information contained in the communication is a public record to the extent that it indicates the date, time, specific location, and immediate facts and circumstances surrounding the occurrence of a crime or other illegal act, except to the extent that its disclosure would plainly and seriously jeopardize a continuing investigation or pose a clear and present danger to the safety of any person.

JOB APPLICATIONS

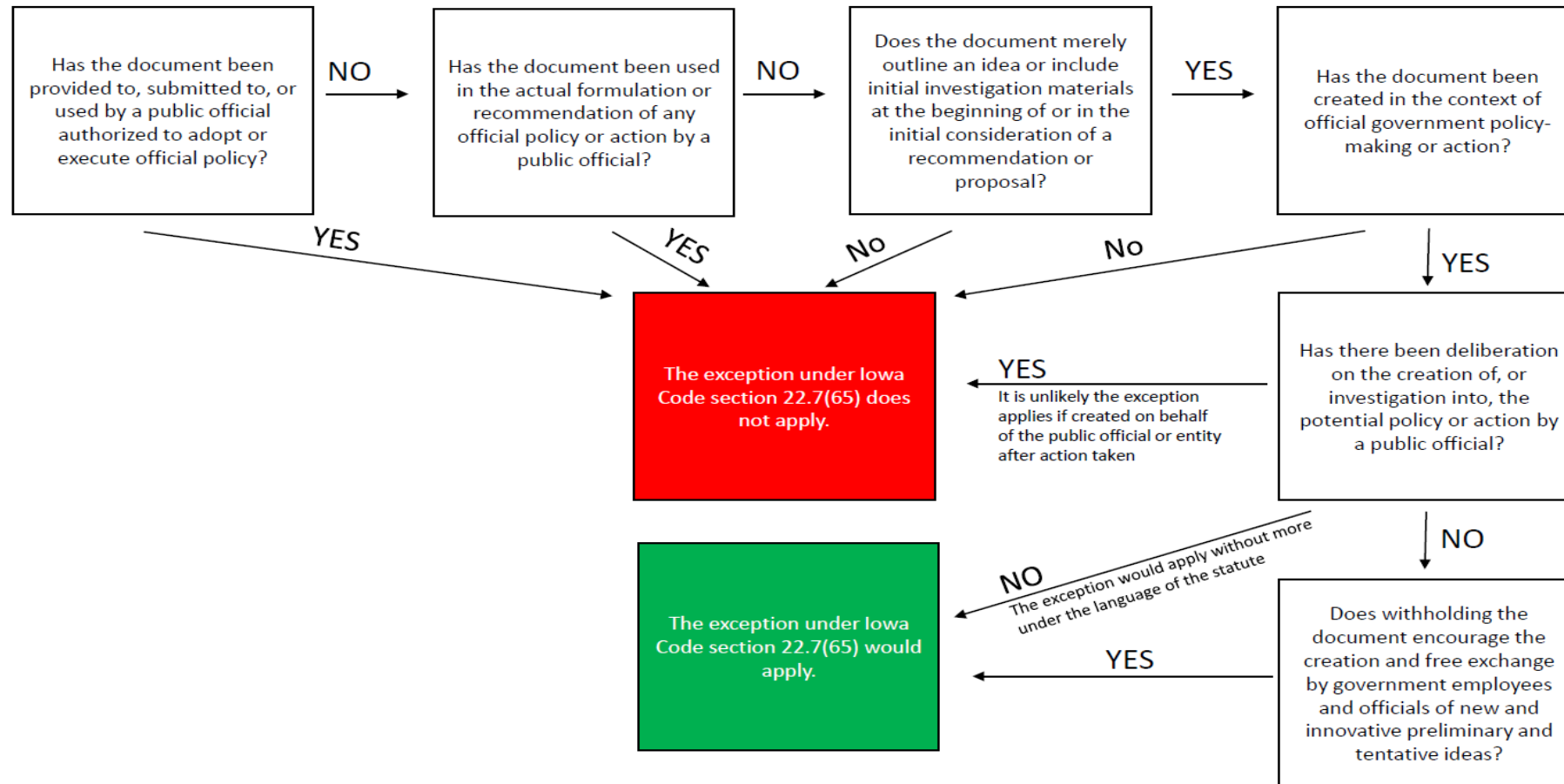
Teig v. Chavez, No. 23–0833 (June 7, 2024)- Job applications from external candidates (not currently employed by the government entity) can be confidential under Iowa Code 22.7(18) if the custodian has reason to believe disclosure would discourage outsiders from future communications.

Does not apply to internal government body candidates because they have an “arrangement for compensation” with the government body.

“DRAFT” RECORDS

- Custodians can withhold “tentative, preliminary, draft, speculative, or research material, prior to its completion for the purpose for which it is intended.”
- This exception does not apply to public records that are actually submitted for use by government bodies or that are used in the formulation, recommendation, adoption of government policy or action. Section 22.7(65).
- Notes taken to create minutes are a public record.

23AO:0008 DRAFT DOCUMENTS



22.7(5) INVESTIGATIVE REPORTS

Peace officers' investigative reports, privileged records or information specified in section 80G.2, 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.

23AO:0003: CONFIDENTIALITY OF POLICE INVESTIGATIVE FILES

Qualified Privilege of Confidentiality

The confidentiality afforded to police investigative reports under 22.7(5) is a qualified, rather than categorical, privilege. See *Mitchell v. City of Cedar Rapids*, 926 N.W.2d 222, 232–234 (Iowa 2019). ...demonstrating that a particular record is part of a police investigative report is a necessary, but not sufficient, condition to an ultimate determination that the record is in fact confidential under § 22.7(5).

In addition to demonstrating that the record in question is part of an investigative report, “[a]n official claiming the privilege must satisfy a three-part test: (1) a public officer is being examined, (2) the communication [to the officer] was made in official confidence, and (3) the public interest would suffer by disclosure.” *Mitchell v. City of Cedar Rapids*, 926 N.W.2d 222, 232 (Iowa 2019) (citing *Hawk Eye v. Jackson*, 521 N.W.2d 750, 752 (Iowa 1994)).

RELEASE OF CONFIDENTIAL RECORDS

The public records law allows the release of confidential information when “ordered by a court, by the lawful custodian of the records, or by another person duly authorized to release such information...”

SETTLEMENT RECORDS

- When a government entity is involved in a legal dispute, the entity must prepare a summary after the dispute is resolved that indicates the identity of the parties involved, the nature of the dispute and the terms of the settlement.
- The summary and the settlement agreement are public records. (Section 22.13)

PENALTIES

- The law provides for civil lawsuits.
- A court can issue an injunction ordering a government body to comply, assess damages between \$100 and \$500, order payment of costs and attorney fees, and remove repeat violators from office. If a member of a governmental body knowingly participated in a violation, damages increase to \$1,000-\$2,500. (Section 22.10(3)(b))
- Ignorance of the law is not a defense, but damages will not be assessed against officials who
 - voted against the violation,
 - refused to participate in the violation,
 - engaged in efforts to resist the violation, or
 - relied upon a formal opinion of the attorney general, the advice of an attorney provided in writing or memorialized in a meeting or the Iowa Public Information Board. (Section 22.10(3)(b))

BEST PRACTICES FOR RECORDS REQUESTS

- Promptly acknowledge the request and provide contact information for the lawful custodian's authorized designee.
- Provide an approximate date by which an estimate for any reasonable expenses and the release of a copy of the public record or a response to the request will be provided
- Inform the requester of any expected delay
- Communicate, communicate, communicate!

BEST PRACTICES FOR RECORDS REQUESTS

- If lengthy text, attachments, or links are included in what appears to be an emailed records request-
 - Kindly request the sender resubmit the specific records requested in the body of the email.
 - If pushback is received, kindly restate that the information needs to be submitted clearly in the body of the email for you to process the request.
 - If necessary, remind them that there is an option to mail the request if unable to put the request in the body of an email.
 - **BEST PRACTICE: Clearly articulate the limitations on electronic records requests that will be required and enforce them uniformly.**
- If extensive email records are sought or requests for everything on a specific server, contact IT provider quickly regarding any cyber security concerns and to determine a reasonable estimate of the time and expense of responding. Clearly communicate any estimated costs and time frames and any limitations on what may be confidential.

BEST PRACTICES FOR RECORDS REQUESTS

- If no record exists, then clearly articulate that there is no record. A record is not required to be created if it does not exist.
- If a record is being withheld due to it being a confidential document, clearly articulate that the document(s) is being withheld and the legal authority for withholding it.
- If a record request is simple and takes less than 30 minutes to provide it, then consider providing it at no charge.
- If a record request is extensive, provide a reasonable, good faith estimate of the expected costs of fulfilling the request and ask for payment before working on the request. If the costs are too high, try to work with the requester to narrow the search or make the documents more targeted to reduce time and expense.

CONTACT US WITH ANY QUESTIONS

ipib.iowa.gov

ipib@iowa.gov

515-393-8339

