



Iowa General Assembly

2012 Legal Updates

Legislative Services Agency – Legal Services Division

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Purpose. *Legal update briefings are prepared by the nonpartisan Legal Services Division of the Legislative Services Agency. A legal update briefing is intended to inform legislators, legislative staff, and other persons interested in legislative matters of recent court decisions, Attorney General Opinions, regulatory actions, federal actions, and other occurrences of a legal nature that may be pertinent to the General Assembly's consideration of a topic. Although a briefing may identify issues for consideration by the General Assembly, a briefing should not be interpreted as advocating any particular course of action.*

OPEN RECORDS VIOLATIONS AND ATTORNEY FEES

Filed by the Iowa Supreme Court

November 18, 2011

City of Riverdale v. Dierks et al.

No. 09-1670

http://www.iowacourts.gov/Supreme_Court/Recent_Opinions/20111118/09-1670.pdf

Background. The original action in the case was based upon the issue of whether the defendants were entitled to view security camera video (a City record) of a confrontation that occurred in the city clerk's office between the mayor and the defendants over prior records requests made by the defendants in previous years. The mayor of Riverdale (City) had been advised by a city attorney that the video was subject to disclosure and the mayor subsequently allowed a newspaper reporter to view the video. Despite this, the mayor did not allow the video to be disclosed to the defendants after the security firm that installed the video camera advised against disclosure for security reasons and, on the advice of another attorney, the mayor filed a declaratory judgment action to determine the City's obligations under Iowa Code chapter 22. The trial court ordered the City to turn over a copy of the videotape and awarded the defendants attorney fees. The Court of Appeals reversed the district court and vacated the attorney fee award because the district court failed to make a finding of bad faith on the part of the City.

Issue. The Supreme Court (Court) considered the issue of what the appropriate standards are for an award of attorney fees for a violation of Iowa Code chapter 22.

Analysis. The Court began its analysis with an overview of Iowa's open records law (Iowa Code chapter 22) with an emphasis on the award of attorney fees as "an incentive for private enforcement of the public disclosure obligations of government officials." Iowa Code §22.10 allows for civil lawsuits by citizens to enforce the statute as well as declaratory judgment actions by lawful custodians to determine whether a government record can legally be released. The defendants argued that the City violated Iowa Code chapter 22 when it did not allow the release of the video and, pursuant to Code §22.10, that the Court is required to award reasonable attorney fees to a citizen who proves a violation of Iowa Code chapter 22 has occurred. The City's defense relied on Iowa Code §22.8 in arguing that a good-faith, reasonable delay by the City, due to the filing of a declaratory injunction action to determine whether the City record is public or confidential, is not a violation of the law.

Good-faith, Reasonable Delay Defense. The Court noted that its review in this case was complicated by the fact that although the district court did not expressly reject the City's defense of a "good-faith reasonable delay," the district court did state that it "made no specific finding of bad faith." The Court found that a finding of a violation of Iowa Code chapter 22 is inconsistent with a finding of good-faith, reasonable delay. The Court thus assumed the district court "implicitly rejected the City's good-faith defense" and also "implicitly found the facts necessary to support the attorney fee award, including that the City did not litigate in good faith." This assumption was also supported by the fact the City failed to file a motion to enlarge or amend the findings for a specific finding on good-faith, reasonable delay on the part of the City. The Court encouraged district courts adjudicating attorney-fee claims under Iowa Code chapter 22 to make an express finding whether a delay in allowing public release of a government record was reasonable and in good faith.

Advice of Counsel Defense. The Court also considered whether the record supported the district court's implicit rejection of the City's good-faith defense notwithstanding the City's argument that it relied on the advice of legal counsel. The City argued that its reliance on counsel advice supports its good-faith, reasonable delay defense as a matter of law. The Court rejected this argument, finding that advice of counsel is only a factor to consider in determining whether a party acted in good or bad faith. The Court based this finding on the facts in this case that the City had received conflicting

legal advice and had engaged in “selective disclosure” as it was “untenable for Riverdale to play the video for a reporter covering the dispute between the parties and yet withhold the same video from the defendants who requested it.” Such disclosure in a situation like this waived any confidentiality claim. The Court noted that the correct legal advice in this situation would have been to produce the video to the defendants, rather than have the issue in litigation for a 16-month period.

Holding. The Court vacated the decision of the Court of Appeals and affirmed the district court’s award of attorney fees. The Court remanded the case to the district court for a determination of the defendants’ reasonable appellate attorney fees.

Enforcement of Open Records and Public Meetings Laws in Iowa—Update. 2012 Iowa Acts, SF 430 established the Iowa Public Information Board to provide an alternative means by which an aggrieved person may secure compliance with and the enforcement of open records and public meetings requirements under Iowa law. As of July 1, 2013, the board will have the authority to provide complainants informal assistance and mediation and settlement services, as well as preside at contested cases brought before the board. The board will have the authority to conduct formal investigations, issue subpoenas, issue orders with the force of law, and impose civil penalties and other remedies for violations of the open records and public meetings laws.

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