CHAPTER 23

PUBLIC ACCESS TO GOVERNMENT INFORMATION
(IOWA PUBLIC INFORMATION BOARD ACT)

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23.1 Citation and purpose.

This chapter may be cited as the "*Iowa Public Information Board Act*". The purpose of this chapter is to provide an alternative means by which to secure compliance with and enforcement of the requirements of chapters 21 and 22 through the provision by the Iowa public information board to all interested parties of an efficient, informal, and cost-effective process for resolving disputes.

2012 Acts, ch 1115, §4, 17

23.2 Definitions.

1. "*Board*" means the Iowa public information board created in section 23.3.
2. "*Complainant*" means a person who files a complaint with the board.
3. "*Complaint*" means a written and signed document filed with the board alleging a violation of chapter 21 or 22.
4. "*Custodian*" means a government body, government official, or government employee designated as the lawful custodian of a government record pursuant to section 22.1.
5. "*Government body*" means the same as defined in section 22.1.
6. "*Governmental body*" means the same as defined in section 21.2.
7. "*Person*" means an individual, partnership, association, corporation, legal representative, trustee, receiver, custodian, government body, or official, employee, agency, or political subdivision of this state.
8. "*Respondent*" means any agency or other unit of state or local government, custodian, government official, or government employee who is the subject of a complaint.

2012 Acts, ch 1115, §5, 17

23.3 Board appointed — executive director.

1. An Iowa public information board is created consisting of nine members appointed by the governor, subject to confirmation by the senate. No more than three members appointed shall be representatives from the media including newspapers and no more than three members appointed shall be representatives of cities, counties, and other political subdivisions of the state.
2. Appointments to the board shall be subject to sections 69.16 and 69.16A.
3. Members appointed to the board shall serve staggered four-year terms beginning and ending as provided in section 69.19.
4. A quorum of the board shall consist of five members.
5. A vacancy on the board shall be filled by the governor, as provided in subsection 1.
6. The board shall select one of its members to serve as chairperson and shall employ a person who shall be an attorney admitted to practice law before the courts of this state to serve as the executive director of the board.
7. The board shall meet at least quarterly and at the call of the chairperson.
8. The board shall be an independent agency.

2012 Acts, ch 1115, §6, 17

Referred to in §23.2
Confirmation, see §2.32

23.4 Compensation and expenses.

Board members appointed by the governor shall be paid a per diem as specified in section 7E.6 and shall be reimbursed for actual and necessary expenses incurred while on official board business. Such per diem and expenses shall be paid from funds appropriated to the board.

2012 Acts, ch 1115, §7, 17

23.5 Election of remedies.

1. An aggrieved person, any taxpayer to or citizen of this state, the attorney general, or any county attorney may seek enforcement of the requirements of chapters 21 and 22 by electing either to file an action pursuant to section 17A.19, 21.6, or 22.10, whichever is applicable, or in the alternative, to file a timely complaint with the board.

2. If more than one person seeks enforcement of chapter 21 or 22 with respect to the same incident involving an alleged violation, and one or more of such persons elects to do so by filing an action under section 17A.19, 21.6, or 22.10, and one or more of such persons elects to do so by filing a timely complaint with the board, the court in which the action was filed shall stay the action pending resolution of the complaint with the board, authorizing the complainant to file a complaint with respect to the same incident with the board without regard to the timeliness of the filing of the complaint at the time the action in court is stayed.

3. If a person files an action pursuant to section 22.8 seeking to enjoin the inspection of a public record, the respondent or person requesting access to the record which is the subject of the request for injunction may remove the proceeding to the board for its determination by filing, within thirty days of the commencement of the judicial proceeding, a complaint with the board alleging a violation of chapter 22 in regard to the same matter.

2012 Acts, ch 1115, §8, 17

23.6 Board powers and duties.

The board shall have all of the following powers and duties:

1. Employ one employee as executive director who is an attorney admitted to practice law in the courts of this state to execute its authority including prosecuting respondents in proceedings before the board and representing the board in proceedings before a court, as appropriate.

2. Adopt rules pursuant to chapter 17A calculated to implement, enforce, and interpret the requirements of chapters 21 and 22 and to implement any authority delegated to the board by this chapter.

3. Issue, consistent with the requirements of section 17A.9, declaratory orders with the force of law determining the applicability of chapter 21 or 22 to specified fact situations and issue informal advice to any person concerning the applicability of chapters 21 and 22.

4. Receive complaints alleging violations of chapter 21 or 22, seek resolution of such complaints through informal assistance, formally investigate such complaints, decide after such an investigation whether there is probable cause to believe a violation of chapter 21 or 22 has occurred, and if probable cause has been found prosecute the respondent before the board in a contested case proceeding conducted according to the provisions of chapter 17A.

5. Request and receive from a governmental body or a government body assistance and information as necessary in the performance of its duties.

6. Examine, as deemed necessary by the board, a record of a governmental body or a government body that is the subject matter of a complaint, including any record that is confidential by law. Confidential records provided to the board by a governmental body or a government body shall continue to maintain their confidential status. Any member or employee of the board is subject to the same policies and penalties regarding the confidentiality of the document as an employee of the governmental body or the government body.

7. Issue subpoenas enforceable in court for the purpose of investigating complaints and to facilitate the prosecution and conduct of contested cases before the board.

8. After appropriate board proceedings, issue orders with the force of law, determining whether there has been a violation of chapter 21 or 22, requiring compliance with specified

provisions of those chapters, imposing civil penalties equivalent to and to the same extent as those provided for in section 21.6 or 22.10, as applicable, on a respondent who has been found in violation of chapter 21 or 22, and imposing any other appropriate remedies calculated to declare, terminate, or remediate any violation of those chapters.

9. Represent itself in judicial proceedings to enforce or defend its orders and rules through attorneys on its own staff, through the office of the attorney general, or through other attorneys retained by the board, at its option.

10. Make training opportunities available to lawful custodians, governmental bodies, government bodies, and other persons subject to the requirements of chapters 21 and 22 and require, in its discretion, appropriate persons who have responsibilities in relation to chapters 21 and 22 to receive periodic training approved by the board.

11. Disseminate information calculated to inform members of the public about the public's right to access government information in this state including procedures to facilitate this access and including information relating to the obligations of governmental bodies under chapter 21 and lawful custodians under chapter 22 and other laws dealing with this subject.

12. Prepare and transmit to the governor and to the general assembly, at least annually, reports describing complaints received, board proceedings, investigations, hearings conducted, decisions rendered, and other work performed by the board.

13. Make recommendations to the governor and the general assembly proposing legislation relating to public access to government information deemed desirable by the board in light of the policy of this state to provide as much public access as possible to government information as is consistent with the public interest.

2012 Acts, ch 1115, §9, 17; 2013 Acts, ch 135, §59; 2014 Acts, ch 1092, §16

23.7 Filing of complaints with the board.

1. The board shall adopt rules pursuant to chapter 17A providing for the timing, form, content, and means by which any aggrieved person, any taxpayer to or citizen of this state, the attorney general, or any county attorney may file a complaint with the board alleging a violation of chapter 21 or 22. The complaint must be filed within sixty days from the time the alleged violation occurred or the complainant could have become aware of the violation with reasonable diligence. All complaints filed with the board shall be public records.

2. All board proceedings in response to the filing of a complaint shall be conducted as expeditiously as possible.

2012 Acts, ch 1115, §10, 17

23.8 Initial processing of complaint.

Upon receipt of a complaint alleging a violation of chapter 21 or 22, the board shall do either of the following:

1. Determine that, on its face, the complaint is within the board's jurisdiction, appears legally sufficient, and could have merit. In such a case the board shall accept the complaint, and shall notify the parties of that fact in writing.

2. Determine that, on its face, the complaint is outside its jurisdiction, is legally insufficient, is frivolous, is without merit, involves harmless error, or relates to a specific incident that has previously been finally disposed of on its merits by the board or a court. In such a case the board shall decline to accept the complaint. If the board refuses to accept a complaint, the board shall provide the complainant with a written order explaining its reasons for the action.

2012 Acts, ch 1115, §11, 17

23.9 Informal assistance.

After accepting a complaint, the board shall promptly work with the parties, through employees of the board, to reach an informal, expeditious resolution of the complaint.

2013 Acts, ch 135, §60; 2014 Acts, ch 1092, §17

23.10 Enforcement.

1. If any party declines informal assistance or if informal assistance fails to resolve

the matter to the satisfaction of all parties, the board shall initiate a formal investigation concerning the facts and circumstances set forth in the complaint. The board shall, after an appropriate investigation, make a determination as to whether the complaint is within the board's jurisdiction and whether there is probable cause to believe that the facts and circumstances alleged in the complaint constitute a violation of chapter 21 or 22.

2. If the board finds the complaint is outside the board's jurisdiction or there is no probable cause to believe there has been a violation of chapter 21 or 22, the board shall issue a written order explaining the reasons for the board's conclusions and dismissing the complaint, and shall transmit a copy to the complainant and to the party against whom the complaint was filed.

3. *a.* If the board finds the complaint is within the board's jurisdiction and there is probable cause to believe there has been a violation of chapter 21 or 22, the board shall issue a written order to that effect and shall commence a contested case proceeding under chapter 17A against the respondent. If there are no material facts in dispute, the board may order that the contested case procedures relating to the presentation of evidence shall not apply as provided in section 17A.10A. The executive director of the board or an attorney selected by the executive director shall prosecute the respondent in the contested case proceeding. At the termination of the contested case proceeding the board shall, by a majority vote of its members, render a final decision as to the merits of the complaint. If the board finds that the complaint has merit, the board may issue any appropriate order to ensure enforcement of chapter 21 or 22 including but not limited to an order requiring specified action or prohibiting specified action and any appropriate order to remedy any failure of the respondent to observe any provision of those chapters.

b. If the board determines, by a majority vote of its members, that the respondent has violated chapter 21 or 22, the board may also do any or all of the following:

(1) Require the respondent to pay damages as provided for in section 21.6 or 22.10, whichever is applicable, to the extent that provision would make such damages payable if the complainant had sought to enforce a violation in court instead of through the board.

(2) Void any action taken in violation of chapter 21 if a court would be authorized to do so in similar circumstances pursuant to section 21.6.

(3) Require the respondent to take any remedial action deemed appropriate by the board.

c. The board shall not have the authority to remove a person from public office for a violation of chapter 21 or 22. The board may file an action under chapter 21 or 22 to remove a person from office for violations that would subject a person to removal under those chapters.

d. A final board order resulting from such proceedings may be enforced by the board in court and is subject to judicial review pursuant to section 17A.19.

2012 Acts, ch 1115, §13, 17; 2013 Acts, ch 135, §61, 62

23.11 Defenses in a contested case proceeding.

A respondent may defend against a proceeding before the board charging a violation of chapter 21 or 22 on the ground that if such a violation occurred it was only harmless error or that clear and convincing evidence demonstrated that grounds existed to justify a court to issue an injunction against disclosure pursuant to section 22.8.

2012 Acts, ch 1115, §14, 17

23.12 Jurisdiction.

The board shall not have jurisdiction over the judicial or legislative branches of state government or any entity, officer, or employee of those branches, or over the governor or the office of the governor.

2012 Acts, ch 1115, §15, 17