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Annual Status Report As Required by Code Subsection 23.6(12) 2016

Iowa Code chapter 23, enacted in 2012 and amended in 2013 to establish the Iowa Public Information Board (IPIB or Board), requires the Board to “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.” This report reviews the work performed by the Board in 2016 in accordance with the directives of Chapter 23.

The Board was created to provide a free, efficient way for Iowans to receive information and resolve complaints related to chapters 21 and 22, Iowa’s open meetings and public records laws. The agency’s case load has far exceeded expectations since its inception, with the Board receiving 107 formal complaints and answering 768 informal inquiries in 2016, an increase of 64 (8%) over 2015. The vast majority of complaints were settled informally, with the Board attorneys negotiating a compromise that satisfied both parties, reduced community conflict, and resulted in increased government transparency. In addition, Board staff attorneys conducted training sessions for hundreds of state, county, and city officials. The Board identified continuing problems in the areas of meeting notice, governmental subcommittees, and law enforcement records.

In particular, the number of informal inquiries, from around the state, establishes the value of the services of the IPIB. Many complaints are handled within 24 hours and without the need for formal IPIB action. Examples include:

- A news reporter from central Iowa felt she was not being provided the information required to be released by a city police department pursuant to Iowa Code section 22.7(5). Following a telephone call from IPIB staff, the records were released within three days.
- Based upon concerns voiced by a western Iowa citizen, the IPIB assisted his town with drafting adequate agendas and minutes, thus avoiding the filing of a formal complaint by the citizen.
- A media representative from northern Iowa was concerned about access to an electronic meeting scheduled by a city council. An IPIB staff attorney contacted legal counsel for the city and ensured that appropriate public access to the electronic meeting was provided.
- An eastern Iowa citizen raised questions about the reason for a school district to redact names from emails he requested. Upon IPIB staff attorney review, the school was advised that there were no reasons for the redaction under Iowa Code chapter 22, and the appropriate records were released.

Board Members

Keith Luchtel • William Peard • Suzan Stewart • Renee Twedt • Mary Ungs-Sogaard

- According to information maintained by the IPIB around 350 government officials or staff contacted the IPIB seeking assistance with transparency issues. Issues ranged from basic information about posting agendas and writing minutes to more complicated issues concerning the nuances of determining whether a closed session was handled properly or records were appropriately withheld. IPIB staff attorneys would often assist the government representative to recognize the advantages of a transparent government even if the transparency was not specifically mandated by Iowa law.

The Board

Governor Branstad appointed the Board in July, 2012. Since then the Board has met regularly.

The Board achieved operational status on July 8, 2013, with the opening of an office on the third floor of the Wallace Building in the Capitol Complex.

Chapter 23 states no more than three members of the nine-member board shall represent the media, and not more than three shall represent cities, counties, or other local governments. The members serve staggered four-year terms, and the Board must be balanced by political party and gender. The Board appoints a chair and vice chair from among its members. The Board is an independent agency.

Board membership fluctuated in 2016, as various terms ended and new members were appointed:

- **Robert Andeweg, JD**, Urbandale (Republican) (Until 4/30/16) - Robert is an attorney with the Nyemaster Goode Law Firm in Des Moines. He has served on the Urbandale City Council and currently serves as that city's Mayor.
- **Tony Gaughan, JD**, West Des Moines (Republican) (vice chair) (Until 11/30/16) - Tony is an attorney who is an Associate Professor of Law at Drake University in Des Moines.
- **Keith Luchtel, JD**, Clive (Republican) (Since 6/6/16) – Keith was the first Executive Director for the IPIB. He retired from the Nyemaster Goode Law Firm in Des Moines. He has served more than 25 years as legislative counsel for the Iowa Newspaper Association and the Iowa Broadcasters Association. He is currently the Governor's Transparency Advisor (a volunteer position).
- **Jo Martin**, Spirit Lake (Democrat) (Until 12/31/16) - Jo is a retired vice president of Times-Citizen Communications in Iowa Falls, having worked for several other Iowa newspapers prior to that. She is a Past President of the Iowa Newspaper Association (INA) and the Iowa Newspaper Foundation (INF).
- **Andy McKean, JD**, Anamosa (Republican) (Until 11/28/16) – Andy is an attorney who has served as a City Attorney (Morley, Martelle, and Mechanicsville), a County Supervisor (Jones County 2003-2011) and a State Legislator (State Representative 1979-1993 and State Senator 1993-2003).
- **Gary Mohr**, Bettendorf (Independent) (Until 12/31/16) - Gary is the retired Executive Director, External Affairs for Eastern Iowa Community College in Davenport. He was elected to the Bettendorf City Council in November, 2013.
- **Bill Monroe**, Johnston (Republican) (Until 5/31/16) - Bill retired after 29 years as Executive Director of the Iowa Newspaper Association in 2009. Prior to that, he worked at several Iowa newspapers as an editor or publisher. In 2011, Governor Branstad named him to serve (in a volunteer capacity) as the Governor's

Transparency Advisor. He has served on the Executive Committee of the Iowa Freedom of Information Council.

- **William Peard**, Waukee (Democrat) (Since 7/1/16) – William is the Mayor of Waukee.
- **Kathleen Richardson, JD**, Des Moines (Democrat) (Until 4/30/16) - Kathleen is Dean and Professor at the Drake University School of Journalism and Mass Communication in Des Moines and has served as Executive Director of the Iowa Freedom of Information Council (IFOIC) from 2000 to 2015. She has also served as central coordinator for the Expanded News Media Coverage (electronic coverage of the judiciary) program for the Supreme Court.
- **Suzan Stewart, JD**, Sioux City (Republican) (chair) - Suzan retired in 2015 from her position as Senior Managing Attorney with MidAmerican Energy Company.
- **Renee Twedt**, Story City (Republican) (Since 9/15/16) – Renee is the Story County Treasurer.
- **Mary Unga-Sogaard**, Dyersville (Democrat) (Since 9/15/16) – Mary is the Publisher and General Manager for Woodward Communications.
- **Peggy Weitl**, Carroll (Democrat) (Until 4/30/16) - Peggy retired as the Treasurer of Carroll County on December 31, 2013.

Board Staff

W. Charles Smithson, JD, was selected as Executive Director on October 30, 2014, upon the retirement of Keith Luchtel and served until December 2, 2016. Charlie received his bachelor's degree in history/political science/sociology from Westmar College and his law degree from Washburn University. He served as Legal Counsel and then also as Executive Director between 1998 to 2010 to the Iowa Ethics and Campaign Disclosure Board. Most recently he served as Legal Counsel and Legislative Liaison in the Iowa Secretary of State's Office. He was Chief Clerk of the Iowa House of Representatives from November of 2010 to November of 2012 and is also an adjunct professor of election law at Drake University Law School.

Margaret E. Johnson, JD, served as deputy director of the Board until December 2, 2016. Since then she serves as Interim Executive Director. She received a bachelor's degree in Journalism from Iowa State University and a law degree from Marshall/Wythe Law School at the College of William and Mary. Her prior legal experience includes serving as a captain with the Army JAGC; assistant district attorney in the 4th Judicial District, Colorado; assistant county attorney for Teller County, Colorado; private practice; the El Paso County GAL office; contract prosecutor for the Iowa Attorney Disciplinary Board and Fremont County, Iowa, county attorney. Her judicial experience is as a substitute juvenile magistrate in Colorado. She joined the staff on July 22, 2013.

Cindy Meyerdirk serves as Administrative Assistant to the Board. She moved from northwest Iowa, where she held business staff positions, to Des Moines in 2007. Cindy then began government employment with the Iowa Fire Marshal Division of the Department of Public Safety. She served as Assistant to the Building Code Director and served as the Assistant to the Fire Marshal when hired by the IPIB commencing July 5, 2013.

The Board's vision

At its first meeting on July 19, 2012, the Board outlined its vision for the agency it was setting out to define. The minutes of that meeting state the Board said its operation should

- be inexpensive
- be convenient
- provide a one-stop service
- provide uniformity of information and
- provide consistency of information.

Transparency

It is the goal of the Board to be the state's most transparent state agency.

The IPIB routinely sends notice out earlier than the required 24 hours prior to all meetings and to many more people than only those from the media. To date, around 200 people, media, and agencies are sent meeting notices, board packets, and other information.

In addition to distributing required tentative agendas the Board also sends agenda materials and prior meeting minutes when notifying requestors about meetings. The Board also posts its agendas and minutes on the Board's website.

IPIB minutes are posted on the Board's website and sent to all who have requested meeting notice.

IPIB Year in Review

Staff processed 875 cases in 2016. Not all are complaints as indicated below. Case inquiries arrive via the website, mail, phone, email, and office contacts. The Case Management System (CMS) developed by staff assigns a number and case type to each, as well as statistical information and case notes. Prior to opening the office, it was anticipated the IPIB would see an annual case rate of 300 to 350. The 875 cases opened in 2016 include:

Formal Complaints (107) – these cases require investigation and are processed for Board review as outlined in the Rules. Complainants have included citizens, media, and elected officials. Selected documents are posted on the IPIB website (www.ipib.iowa.gov) under “Rulings.”

Advisory Opinions (18) – these cases require research and investigation and are processed for Board review as outlined in the Rules. Requests have been made by agencies, media, and private citizens. The finalized opinions are published to the IPIB website under “Rulings.”

Declaratory Orders (1) – these requests involve research, investigation, and coordination with governmental bodies and other organizations as outlined by the IPIB administrative rules prior to presentation to the Board.

Informal Complaints (99) – these informal cases also require investigation, research, and mediation. Informal Complaints are resolved without the filing of a formal complaint to the Board. The majority of these complaints in 2016 were from citizens requesting assistance in obtaining records or accessing meetings.

Informal Requests (629) – these informal cases require review and research. Informal Requests can normally be resolved within 24 hours. They do not require Board review and action under the Rules. Usually the requestor is a public official, staff, or legal counsel seeking assistance in the interpretation of Chapters 21 and 22. In 2016, the requestor breakdown was citizen 44%, media 13%, and government official or staff 43%.

Miscellaneous Other (21) – this category includes other requests for assistance that do not fall within the above categories, such as training, legislative issues, etc.

Decisions Rendered

Of the 107 formal complaints filed in 2016, twelve remained open at year's end, primarily to complete an informal resolution. Thirteen complaints progressed through informal resolution as envisioned by Iowa Code section 23.9, resulting in remedial plans that were negotiated by IPIB staff.

Some cases were dismissed as having not been timely filed - outside the Board's sixty-day period of jurisdiction. Also, some requests seek assistance on problems that are not within the Board's jurisdiction. Frequently staff attorneys have been able to be of assistance on an informal basis to help citizens obtain a satisfactory result with the cooperation of public officials in other agencies.

In 2016, 68% of the incoming matters were resolved in less than a day, 15% were resolved in one to five days, and 17% were resolved in six or more days, almost a six percent improvement over 2015.

Investigations

Some meetings and research investigatory trips on formal complaints occurred out of the IPIB office. The investigatory phase of most cases occurs in the process of conciliation, the preferred method of dispute resolution. Good cooperation among parties has been the rule, not the exception. The occasional exception has been overcome with patient persistence and the cooperation of local government organizations and the attorneys who represent involved local governments.

Hearings Conducted

No formal hearings were concluded in 2016.

At year's end, two contested case proceedings were pending concerning public records (chapter 22) requests to the City of Burlington, the Iowa Department of Public Safety, and the Des Moines County Attorney. The IPIB Board approved the filing of formal charges in the matters on December 17, 2015. The contested case involving the Des Moines County Attorney was successfully settled; the other two cases are set for hearing in April 2017.

Board proceedings

All IPIB meeting minutes for the past year are available on the website (www.ipib.iowa.gov).

Board Outreach and Training

IPIB staff attorneys represented the Board at events listed on the IPIB website. In most cases presentations were made concerning the operation of the Board, its goals, and its powers and duties. The Board has made it known to civic, law enforcement, local government, media, and professional organizations that it welcomes the opportunity to provide speakers and training opportunities. All presentations emphasize the statutory goal, embraced by the Board, of using a conciliatory approach to solving transparency issues. Building a reputation as a convenient resource to be used free of charge by local government officials and custodians of public records is a key Board goal.

Resources and activities

The IPIB met nine times in open meetings in 2016 to review cases and conduct other required business. Board committees have been formed to focus on several tasks including:

- Developing and implementing a communications plan;
- Developing and implementing a legislative recommendations process; and
- Developing and implementing a training program in cooperation with government and media organizations.

Committees met as needed throughout the year in open meetings.

Board tasks continued in 2016 include:

---**Website.** The IPIB website, www.ipib.iowa.gov, opened in late August 2013. The website includes the full text of Chapters 21, 22, and 23. It also includes questions and answers (FAQs) about various issues, copies of selected formal complaint decisions of likely interest, all minutes and agendas for the IPIB, activities of the IPIB, and contact information. The website also has links to file a formal complaint or to ask a question. Statistics from the web host for January through December 2016 note 12,703 visitors (up over 3000 from 2015) viewing 52,390 pages on the website. Around 64% of the visitors to the website were new, first-time visitors.

The Training Committee met with other agencies in 2014 to draft, refine, and publish a training PowerPoint presentation to the website: "Iowa Sunshine Law – Open Meetings and Open Records in Iowa." The free training

program is available to any group, agency, governmental body or individual wanting basic, comprehensive training on Chapters 21 and 22. This continues to be a valuable resource.

---Developing a training program. For the past decade or so, the Iowa League of Cities, the Iowa State Association of Counties, the Iowa Association of School Boards, the Iowa Newspaper Foundation, the Iowa Broadcasters Association, and the Iowa Freedom of Information Council have worked together to present training opportunities for their constituents and the general public. Development of the website training program (above) was an integral part of developing a universal training curriculum for this combined effort.

In addition, IPIB staff attorneys draft and publish an educational monthly column entitled “Open.Iowa.gov”. The column is posted on the website and emailed to the IPIB distribution lists. The Iowa Newspaper Association prepares and distributes a PDF version of the column for all its members.

---Information policies and processes established. An email distribution list is available to anyone who wants to receive copies of all general notice items such as meeting notices, agendas, and minutes. Other general interest items are also circulated on this list. The policies and processes reflect the Board’s transparency goal stated above. The executive director is responsible for securing information in the custody of the Board that is required to be kept confidential. The media distribution list assists with disseminating information of particular interest to the media.

---Establishing Board goals and metrics to measure progress. The Board has established a case management system that continues to be refined and adjusted as experience warrants. The new, refined system allows for statistical reporting on audience served (citizen, media, government), location by city and county, the length of time a case is open, whether a case meets the jurisdictional requirements of Chapter 23, types of cases (complaint, opinion, ruling), and whether the complaint is focused on state, city, county, school, or other governmental bodies. The new system also allows staff to enter notes and comments and upload emails and other documents to the case record.

REVIEWED AND APPROVED ON JANUARY 19, 2017.

Suzan Stewart, Chair