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Annual Status Report As Required by Code Subsection 23.6(12) 2017

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 2017 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 94 formal complaints and answering 661 informal inquiries in 2017. 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 western Iowa was not given access to a document that was discussed at a city council meeting. IPIB Advisory Opinion 2015-08 addresses this issue and determines that these are public records and the reporter should have access.
- A woman from eastern Iowa asked about the proper procedure a person should use to request information in a 911 call. She was directed to the custodian of the record and then shown the sample request letter that is available on the IPIB website. She responded, “Thank you so very much for responding so quickly. You guys are great”.
- A city attorney in northeast Iowa called the IPIB to discuss his concerns about releasing personnel records according to new Iowa Code section 22.7(11)(a)(5).
- A city clerk had questions about charging fees for the production of public records. She was referred to Iowa Code section 22.3 for guidance. It was suggested that the city set a policy on the issue in accordance with Iowa Code chapter 22.

Board Members

E.J. Giovannetti • Keith Luchtel • Monica McHugh • Rick Morain • William Peard • Julie Pottorff • Suzan Stewart •
Renee Twedt • Mary Unga-Sogaard

- 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.
- According to information maintained by the IPIB, around 282 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. The IPIB attorney assisted government representatives 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 at least every two months.

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. 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:

- **E.J. Giovannetti, JD**, Urbandale (Republican) (2017-2018) – E.J. is currently active as an attorney for Hopkins & Huebner, P.C. and has been a public servant for the past 40 years including being Mayor of the City of Urbandale (20 years) and member of the Board of Supervisors (10 years).
- **Keith Luchtel, JD**, Clive (Republican) (2016-2018) – Keith was the first Executive Director for the IPIB. He retired from the Nyemaster Goode Law Firm in Des Moines in 2012. 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).
- **Monica McHugh, CPA**, Zwingle, (Republican) (2017-2018) – Monica is the controller for JJ Scheckel Heavy Equipment Corp in Bellevue, IA and owns Monica J McHugh, CPA, PC, a small tax and accounting practice. She also serves as co-chair of the Jackson County Zoning Board of which she has been a member of since 2010.
- **Rick Morain**, Jefferson, (Unaffiliated) (2017-2018) – Rick is a retired longtime editor-publisher of the Jefferson Bee and Herald newspapers, and a past president of the Iowa Newspaper Association.
- **William Peard**, Waukee, (Democrat) (2016-2020) – William is the Mayor of Waukee.
- **Julie Pottorff**, Des Moines, (Democrat) (2017-2020) – Julie is retired from the Iowa Department of Justice in 2013. She joined the Department in 1979 where she served as a staff attorney until she was appointed as the Division Director for the Administrative Law Division in 1990 and then appointed as a Deputy Attorney General in 1994 until her retirement.

- **Suzan Stewart, JD**, Sioux City (Republican) (2014-2018) - Suzan served as legal counsel for MidAmerican Energy Company and its predecessors from 1980 until 2015 when she retired as Managing Senior Attorney. She serves on the city of Sioux City, Iowa Planning and Zoning Commission and Board of Adjustment and has served on many state and local boards and commissions, including the Iowa Transportation Commission and the Iowa Board of Dentistry.
- **Renee Twedt**, Story City (Republican) (2016-2020) – Renee is the Story County Treasurer.
- **Mary Unga-Sogaard**, Dyersville (Chair) (Democrat) (2016-2020) – Mary is a Regional Publisher for Woodward Communications, Inc. overseeing weekly newspapers and ancillary products in Dyersville, Cascade and Manchester. She has served as President of the Iowa Newspaper Association and will be the 2018 President of the Iowa Newspaper Foundation.

Board Staff:

Margaret E. Johnson, JD, was named the Executive Director on July 20, 2017. Previous to this appointment, she served as the interim and the deputy director of the Board since its inception. 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.

Brett J. Toresdahl serves as Administrative Assistant to the Board. He received his bachelor’s degree in Political Science from Iowa State University. Prior to coming to work with the Board in July 2017, he led the ISBA Public Service Project as its Executive Director for the past 24 years working on pro bono and access to justice issues. Before that he served a term as Executive Assistant in the Office of Lieutenant Governor in Iowa which at that time was a stand-alone state agency and served as the President of the Senate.

Travis L. Starr serves as the Legal Counsel to the Board. He received his Bachelor of Science degree in Psychology from the University of Iowa in 2000. He attended the University of Arkansas at Little Rock William H. Bowen School of Law earning his Juris Doctor degree in 2005. Thereafter, he took an independent consulting position with a national law firm that represents investors and consumers in Class Action and Corporate Governance litigation. His prior legal experience includes managing Consumer Protection & Bankruptcy law firms and directing non-profit entities engaged in the joint exercise of government powers as well as serving the States of Arkansas and Iowa in the fields of unemployment insurance benefits, tax, and worker classification as an Administrative Law Judge and Administrative Law Compliance & Enforcement Attorney. Travis joined the staff of the IPIB on January 5, 2018.

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. Over 150 citizens, media, and agencies are sent meeting notices, board packets, and other information related to IPIB activities.

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 for all Board and committee meetings are posted on the Board's website and sent to all who have requested meeting notices.

IPIB Year in Review

Staff processed 755 cases and inquiries in 2017. 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 in 2013, it was anticipated the IPIB would see an annual case rate of 300 to 350. The 755 cases/inquiries opened in 2017 include:

Formal Complaints (94) – 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 (13) – 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 (101) – 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 2017 were from citizens requesting assistance in obtaining records or accessing meetings.

Informal Requests (484) – 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. Often the requestor is a public official, staff, or legal counsel seeking assistance in the interpretation of Chapters 21 and 22. In 2017, the requestor breakdown was citizen 48%, media 15%, and government official or staff 37%.

Miscellaneous Others (62) – this category includes other requests for assistance that do not fall within the above categories, such as training, legislative issues, etc.

Cases and inquires directed to the IPIB involve various governmental entities: state 19%, county 17%, city 34%, schools 9%, and others 21%.

Decisions Rendered

Of the 94 formal complaints filed in 2016, 25 remained open at year's end, primarily to complete an intake or informal resolution. All 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 2017, 64% of the incoming matters were resolved in less than a day, 17% were resolved in one to five calendar days, and 19% were resolved in six or more calendar days.

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

There was one formal hearing held in 2017.

At year's end, two contested case proceedings were pending concerning public records (chapter 22) requests to the City of Burlington, and the Iowa Department of Public Safety. The IPIB Board approved the filing of formal charges in the matters on February 18, 2016.

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 ten times in open meetings in 2017 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
- Reviewing and revising administrative rules.

Committees were reinstated and met throughout the Fall months in open meetings.

Board tasks continued in 2017 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 with or to ask a question of the IPIB. Statistics from the web host for January through December 2017 show that more than 15,000 visitors viewed our website. Around 78% of the visitors to the website were new, first-time visitors.

A training PowerPoint presentation is a feature that is hosted on 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.

---**A coordinated 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 drafted and published educational articles entitled “Open.Iowa.gov”. The articles are posted on the website and emailed to the IPIB distribution lists.

---**Information policies and processes established.** The IPIB maintains an email distribution list. Anyone can be added to the list 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 system also allows staff to enter notes and comments and upload emails and other documents to the case record.

REVIEWED AND APPROVED ON JANUARY 18, 2018.

Mary Unga-Sogaard, Chair