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About the Author:

This Guide was written by Rachele Hjelmaas, J.D., University of Iowa, 1988. Ms. Hjelmaas has been Legal Counsel with the Legal Services Division of the Legislative Services Agency since 2000. She staffs the Health and Human Services Appropriations and Human Resource Committees. She drafts legislation in the areas of public assistance, child welfare, mental health and developmental disability services, child, dependent adult, and domestic abuse, human services, and public records.

Questions concerning this Guide may be directed to Ms. Hjelmaas by telephone at: (515) 281-8127 or by e-mail at: rachele.hjelmaas@legis.iowa.gov

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OPEN MEETINGS AND PUBLIC RECORDS

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Open Meetings and Public Records

I. Purpose

The purpose of this Legislative Guide is to provide a general overview of Iowa's open meetings (Iowa Code chapter 21) and public records (Iowa Code chapter 22) laws. While other provisions of the Iowa Code may address specific requirements and procedures in particular substantive areas relating to open meetings and public records, this guide is only intended to provide a basic framework of the laws as contained in Iowa Code chapters 21 and 22.

Unless otherwise indicated, references in this Legislative Guide to the Iowa Code are to the 2015 Iowa Code. Iowa Administrative Code references include updates through October 15, 2014.

II. Freedom of Information Laws — Overview and Brief History of Iowa Law

A. Overview

Open meetings and public records laws, also known as freedom of information or "sunshine" laws, seek to assure public access to the decisions and conduct of governmental officials and to information contained in records held and stored by governmental bodies. However, such public access must be balanced with the need to preserve certain governmental information for the efficiency of government operations and with respect to personal privacy and homeland security concerns. Like all federal, state, and local sunshine laws, Iowa's open meetings and public records laws operate under a general presumption of openness. These laws address the conflict between public access and personal privacy and homeland security concerns by allowing limited circumstances under which access to an open meeting or a public record can be denied by a governmental body or the lawful custodian of a governmental record. Such laws also provide enforcement mechanisms through which allegations of violations may be pursued by an aggrieved party through agency administrative action, by filing a complaint with the Iowa Public Information Board, or by filing a civil lawsuit in district court.

B. History of Iowa Law

1. Iowa's Open Meetings Law

Iowa's open meetings law, enacted in 1967[1] and originally codified at Iowa Code chapter 28A,[2] gave every Iowa citizen the right to "be present" at certain meetings of public agencies which included state and local governmental agency meetings "of every kind."[3] The purpose of the law was to prevent secret agency action and to allow the public to observe the process by which governmental bodies make decisions through the deliberative process.[4] The law did not contain any specific exceptions to the open meeting requirement other than a general, broadly crafted exemption

[1] 1967 Iowa Acts, ch. 98.
[2] 1971 Iowa Code ch. 28A.
[3] 1971 Iowa Code §§28A.1, 28A.2.
[4] Dobrovolny v. Reinhardt, 173 N.W.2d 837, 840 (Iowa 1970).

provision recognizing closed meetings as expressly permitted by other laws.[5] In 1978, major revisions of the law relating to intent, key definitions, electronic meetings, notice, exceptions under which such meetings may be closed, and enforcement were made.[6] Since 1985, the law has been codified at Iowa Code chapter 21.[7]

2. Iowa's Public Records Law

In Iowa, the first case involving the establishment of a right of inspection of a public record was decided by the Iowa Supreme Court in August of 1967 in *Linder v. Eckard*,[8] which involved a request by property owners for certified copies of written appraisal reports prepared by a nongovernmental entity but under the custody and control of the City Clerk and the Director of Urban Renewal of Iowa City. The case was brought under the provisions of Iowa Code section 622.46.[9] The narrow issue before the Court was whether the appraisals were public records or writings. The Court noted that Iowa Code section 622.46 did not contain a definition of what constituted a public record or writing and opined that "it is the nature and purpose of the document, not the place where it is kept, which determines its status."[10] The Court held that the appraisals in this case were not public records or writings but only "preliminary matters of investigation to assist the city in deciding whether to adopt an urban renewal plan. … Until acted upon, material of this kind does not assume the status of public record or writing."[11]

In July of 1967, the Iowa General Assembly enacted Iowa's Public Records Law.[12] Iowa's public records law, originally codified at Iowa Code chapter 68A,[13] provided every Iowa citizen the right to examine and copy all public records, unless another provision of the Iowa Code expressly limited this right or required such records to be kept secret or confidential.[14] The 1967 Act specified that all rights conferred under the Act were in addition to the right of a citizen of Iowa to obtain certified copies of records pursuant to Iowa Code section 622.46.[15] This law also included provisions relating to procedures to follow when requesting access to a public record, civil and criminal remedies for violations of the Act, and limitations on the right of access, including 11 express confidential record exemptions.[16] According to one commentator:

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[5] 1971 Iowa Code §28A.1.

[6] 1978 Iowa Acts, ch. 1037. The original law contained a criminal penalty provision for knowingly violating or attempting to violate any provision of the open meetings law, which was held to be unconstitutionally vague by the Iowa Supreme Court in Knight v. Iowa District Court of Story County, 269 N.W.2d 430 (Iowa 1978).

[7] 1985 Iowa Code ch. 21.

[8] Linder v. Eckard, 152 N.W.2d 833, 835 (Iowa 1967).

[9] See Iowa Code §622.46 (Every officer having the custody of a public record or writing shall furnish any person, upon demand and payment of the legal fees therefor, a certified copy thereof).

[10] Linder at 835.

[11] Id.

[12] 1967 Iowa Acts, ch. 106.

[13] 1971 Iowa Code ch. 68A.

[14] 1967 Iowa Acts, ch. 106, §2.

[15] 1967 Iowa Acts, ch. 106, §2.

[16] 1967 Iowa Acts, ch. 106, §7. Early drafts of this legislation did not contain any specific exemptions limiting the right of public access to certain governmental records. See Note, *Iowa's Freedom of Information Act: Everything You've Always Wanted to Know About Public Records But Were Afraid to Ask*, 57 Iowa L. Rev. 1163, 1177-1178 (1972)(hereinafter FOIA Note).

> [t]he most important feature of [Iowa Code] chapter 68A [was] its repudiation of the common law concept of public records. The common law confronted the question of whether records were public by balancing the interests of the litigants. Because such analysis often tended to weigh most heavily the governmental interests in operational secrecy, while ignoring the general public right to know, the impact of common law records-inspection attempts was frequently detrimental to the right of the citizenry to monitor official decision-making.

Iowa Code chapter 68A, however, made public all records in the possession of the legal custodian and … "generally presumes that inspection is in the public interest."[17] Since 1985, this law has been codified at Iowa Code chapter 22.[18]

III. Iowa's Open Meetings Law — Iowa Code Chapter 21

Iowa Code chapter 21 is the state's "Open Meetings Law," whereby a person has a right to attend open sessions of meetings conducted by a governmental body. The clearly stated legislative intent of this Iowa Code chapter "seeks to assure, through a requirement of open meetings of governmental bodies, that the basis and rationale of governmental decisions, as well as those decisions themselves, are easily accessible to the people. Ambiguity in the construction or application of this chapter should be resolved in favor of openness."[19]

A. Definitions

1. Governmental Body

A "governmental body" is defined as a board, council, commission, or other governing body expressly created by state law or executive order or of a political subdivision or tax-supported district in this state, a multimember body formally and directly created by one or more boards, councils, or commissions of the state or a political subdivision, and board of regents-directed bodies in charge of managing intercollegiate athletic programs at state universities.[20] This definition includes certain advisory boards, commissions, and task forces that develop and make public policy recommendations, and publicly supported nonprofit organizations which conduct pari-mutuel wagering. This definition also includes the governing body of a drainage or levee district and an advisory board, advisory commission, advisory committee, task force, or other body organized under Iowa Code chapter 28E (Joint Exercise of Governmental Powers) to develop and make recommendations on public policy issues.[21] The definition does not include nonprofit organizations generally, except for certain nonprofit corporations whose facilities or indebtedness are supported in whole

[17] FOIA Note, at 1189.

[18] 1985 Iowa Code ch. 22.

[19] Iowa Code §21.1.

[20] Iowa Code §21.2(1). A 1973 Attorney General Opinion found that Iowa's open meetings law does not apply to the Iowa General Assembly or any of its committees. 1973 Op. Iowa Att'y Gen. 41. In addition, Article III, sections 9, 11, and 13 of the Iowa Constitution provide that each house of the General Assembly has authority to determine its own rules of proceedings, that the members retain certain privileges with regard to legislative acts, and that in each house legislative deliberations not requiring secrecy shall be open.

[21] Iowa Code §21.2(1).

or in part with property tax revenue and who are licensed to conduct pari-mutuel wagering under Iowa Code chapter 99D, nonprofit corporations that are successors to such a nonprofit corporation that built such facilities, and nonprofit corporations licensed to conduct gambling games under Iowa Code chapter 99F.[22]

2. Meeting

A "meeting" of a governmental body is defined as a gathering in person or by electronic means, either formal or informal, of a majority of the members of the governmental body, for the purpose of deliberating or acting upon any matter within the scope of the governmental body's policymaking duties. This definition of a meeting for Iowa Code chapter 21 purposes does not include purely social gatherings when there is no discussion of policy or no intent to avoid the purposes of the open meetings law.[23] The statute does not address situations where "serial gatherings" or "serial communications" occur, each involving less than a majority of the members of a governmental body, where the intent of such gatherings or communications is to discuss and develop policies within the scope of the governmental body's duties, although the Iowa courts have considered this issue.[24]

Although not specifically defined in Iowa Code chapter 21, an electronic meeting between members of a governmental body may take place where a meeting in person is not possible or is impractical, public access to the conversation of the meeting is provided, the appropriate notice requirements are met, and minutes are kept of the meeting.[25] This provision in the law does not specifically address the use of electronic mail, instant messaging, text messaging, third-party message services such as Facebook, chat rooms, or other related electronic means of communications between members of a governmental body where a quorum of members of the governmental body are simultaneously participating in the electronic communication.

3. Open Session

An "open session" is defined as a meeting to which all members of the public have access.[26] Except for certain exceptions under which closed meetings are allowed, all actions and discussions at meetings of governmental bodies must be conducted in open session.[27] Special access to the meeting may be granted to persons with disabilities.[28]

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[22] Iowa Code §21.2(1)(f),(g).

[23] Iowa Code §21.2(2). See Hettinga v. Dallas County Board of Adjustment, 375 N.W.2d 293 (Iowa Ct. App. 1985) (deliberation includes discussion and evaluative processes at arriving at a decision or policy).

[24] See, e.g., Fleener v. City of Oskaloosa, 778 N.W.2d 66 (Iowa Ct. App. 2009)(serial communications between city council members and county board of supervisors, either in-person or electronic, not meetings as no deliberation occurred between members); Dooley v. Harney, 760 N.W.2d 210 (Iowa Ct. App. 2008)(serial discussions between county board of supervisors and consultant which occurred with two board members at a time not a meeting as no deliberation occurred).

[25] Iowa Code §21.8. The minutes must include a statement stating why an in-person meeting was not possible. Iowa Code §21.8(1)(c).

[26] Iowa Code §21.2(3).

[27] Iowa Code §21.3.

[28] Iowa Code §21.4(2)(a).

B. Basic Requirements

1. Notice

a. Procedure. Notice of a meeting, including a reconvened meeting, of a governmental body must include, at a minimum, the time, date, place, and tentative agenda "in a manner reasonably calculated to apprise the public of that information." Reasonable notice includes notice to news media requesting notice and posting the notice in a prominent place at the principal office of the governmental body holding the meeting or the place at which the meeting is to be held. Notice must be given 24 hours prior to the meeting unless there is good cause for not doing so and the meeting must be held in a place reasonably accessible to the public, including special access to the meeting for persons with disabilities, during a reasonably convenient time of day. Good cause for meeting on less than 24 hours notice or at a place or time not reasonably convenient to the public must be stated in the minutes.[29] It is important to note that other provisions of Iowa law may require a specific manner of giving notice of a meeting and compliance with those provisions constitutes compliance with the general notice requirement in Iowa Code chapter 21.[30]

b. Exceptions to Notice Requirement. A meeting that is reconvened within four hours of the start of the recess of the meeting may be held without notice if the time, date, and place of the reconvened meeting is announced at the original meeting and there is no change in the meeting agenda. A meeting of a subunit of a governmental body may be held without notice if the meeting is held during a lawful meeting of the parent governmental body, during a recess in the meeting of the parent governmental body of up to four hours, or immediately following the meeting of a parent governmental body, if the meeting of the subunit is announced publicly in open session at the meeting of the parent governmental body and the subject of the meeting "reasonably coincides" with the subjects discussed or acted upon by the parent governmental body.[31]

2. Minutes

Each governmental body is required to keep minutes of each meeting reflecting, at a minimum, the time, date, place, members present, and the action taken including voting results. If applicable, the minutes must also reflect why an exception to the 24-hour notice rule was made and why the place of the meeting or the time the meeting was held failed to accommodate public convenience. Minutes of public meetings are public records and should be available for public access as soon as they are prepared.[32]

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[29] Iowa Code §21.4(1),(2). See also KCOB/KLNV, Inc. v. Jasper County Board of Supervisors, 473 N.W.2d 171 (Iowa 1991); tentative agenda requirement does not necessarily prohibit discussion on an item that was not included on the "tentative agenda," particularly in an emergency situation (compliance with agenda and notice provisions should be substantial rather than absolute).

[30] Iowa Code §21.4(4).

[31] Iowa Code §21.4(3).

[32] Iowa Code §§21.3 and 21.4(2)(b).

3. Rules of Conduct

A governmental body may make and enforce reasonable rules relating to the conduct of a meeting. The public may use cameras and recording devices at a meeting of a governmental body.[33] The public does not have a right to speak at a meeting but the governmental body may allow for a public comment period.

4. Information Regarding Statutory Requirements

The authority which appoints members of a governmental body or the appropriate commissioner of elections is required to provide appointed or elected members of a governmental body with information about Iowa Code chapters 21 and 22.[34]

C. Closed Meetings

Iowa's open meetings law contains 12 exceptions to the general rule of openness allowing a governmental body the discretion to close a meeting of the body.[35] The exceptions allowing a governmental body to close a meeting include an exception for the review or discussion of records required or authorized by state or federal law to be kept confidential or to be kept confidential as a condition for that governmental body's receipt of federal funds,[36] an exception to discuss the disclosure of certain law enforcement matters,[37] and an exception to evaluate the professional competency of an individual whose appointment, hiring, performance, or discharge is being considered.[38] However, under the statute, a governmental body has the discretion to keep a meeting open even if one of the exceptions for holding a closed meeting could apply to a particular situation.[39]

If the governmental body decides to hold a closed session, the governmental body must take action to do so either by an affirmative vote of two-thirds of the members or by a vote of all members present at the meeting. The vote on whether to close a meeting including the individual members' votes and the reason for closing the meeting must be specifically stated in the minutes. Once a meeting is closed, the governmental body can only discuss matters relating to the reason for closing the meeting and any final action must be taken in open session unless another Iowa Code provision expressly permits such actions to be taken in closed session.[40] It is important to note that a governmental body cannot begin an otherwise open meeting in closed session but must begin the meeting in open session, close the meeting only if the governmental body votes to close the meeting, and take any final action in open session. Detailed minutes and an audio recording must be made of the closed session and the minutes and the audio recording must be sealed and are not accessible to the public for at least one year from the meeting date unless otherwise ordered by a court or required by law.[41]

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[33] Iowa Code §21.7.
[34] Iowa Code §21.10.
[35] Iowa Code §21.5.
[36] Iowa Code §21.5(1)(a).
[37] Iowa Code §21.5(1)(g).
[38] Iowa Code §21.5(1)(i).
[39] Iowa Code §21.5(1).
[40] Iowa Code §21.5(2),(3).
[41] Iowa Code §21.5(2)-(4).

D. Exemption

Meetings of a governmental body that are held to discuss strategy relating to employment of employees not covered by a collective bargaining agreement under Iowa's collective bargaining law (Iowa Code chapter 20) are exempt from the requirements of Iowa Code chapter 21.[42]

IV. Iowa's Public Records Law — Iowa Code Chapter 22

Iowa Code chapter 22 contains this state's general "Public Records Law," which allows every person to inspect and copy public records and to publish or otherwise disseminate information contained in public records that are under the supervision of the lawful custodian of the public records or the custodian's authorized deputy.[43] The clearly stated intent of this law is that "free and open examination of public records is generally in the public interest even though such examination may cause inconvenience or embarrassment to public officials or others."[44] This statute controls public access to certain public records information in the possession of or created by a government body, including public records held by others in cooperation with government bodies.[45]

A. Definitions

1. Government Body

A "government body" is defined as:

> this state, or any county, city, township, school corporation, political subdivision, tax-supported district, nonprofit corporation other than a fair conducting a fair event as provided in [Iowa Code] chapter 174, whose facilities or indebtedness are supported in whole or in part with property tax revenue and which is licensed to conduct pari-mutuel wagering pursuant to [Iowa Code] chapter 99D; the governing body of a drainage or levee district as provided in [Iowa Code] chapter 468 … ; or other entity of this state, or any branch, department, board, bureau, commission, council, committee, official, or officer of any of the foregoing or any employee delegated the responsibility for implementing the requirements of [Iowa Code] chapter 22.[46]

2. Lawful Custodian

The "lawful custodian" of the public records means the government body currently in possession of the public record.[47] A government body is required to delegate the

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[42] Iowa Code §21.9.

[43] Iowa Code §22.2(1).

[44] Iowa Code §22.8(3).

[45] A government body cannot prevent public access to a public record by contracting with a nongovernment body to perform its duties. Iowa Code §22.2(2); See Gannon v. Board of Regents, 692 N.W.2d 31 (Iowa 2005)(records of a private, nonprofit fundraising foundation that collects private monetary contributions to benefit Iowa State University subject to public disclosure because foundation exercised "governmental functions").

[46] Iowa Code §22.1(1). See also Iowa Code §22.14 (public funds investment records in custody of a fiduciary or other third party are public records and are property of the public body).

[47] Iowa Code §22.1(2).

responsibility for implementing the requirements of Iowa Code chapter 22 to a particular official or employee and is also required to provide public notice of such person's delegation.[48] The lawful custodian has the duty to maintain the integrity of the public records and may adopt and enforce reasonable rules regarding public access.[49]

3. Public Record

The public records law through its broad definition of a public record establishes a liberal policy of public access. "Public record" includes:

> all records, documents, tape, or other information, stored or preserved in any medium, of or belonging to this state or any county, city, township, school corporation, political subdivision, nonprofit corporation … whose facilities or indebtedness are supported in whole or in part with property tax revenue and which is licensed to conduct pari-mutuel wagering pursuant to [Iowa Code] chapter 99D, or tax-supported district in this state, or any branch, department, board, bureau, commission, council, or committee of any of the foregoing.[50]

This definition includes all communications regardless of physical form, and includes electronic data and electronic mail. The law does not specifically include or exempt in the definitions of government body and public record legislative or court records, documents, tapes, or other information as a whole, or under the general rule of openness.[51]

B. Procedure

Examination and copying of a public record must be done under the supervision of the lawful custodian or the lawful custodian's designee during the lawful custodian's customary business hours.[52] The physical presence of a person requesting or receiving a copy of a public record is not required and the request may be made in writing, by telephone, or by electronic means. As a general rule, a person requesting a public record is not required to provide identification or state the reason for the request.[53] The lawful custodian is required to provide a suitable place for examination and copying, if practicable.[54]

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[48] Iowa Code §22.1(2).

[49] Iowa Code §22.3(1).

[50] Iowa Code §22.1(3). This definition of a "public record" for purposes of public access to state and local government records is not to be confused with the definition of "record" in Iowa's State Records and Archives Act (Iowa Code chapter 305) relating to the creation, storage, retention, and disposition of state agency records (excluding records of the Iowa Department of Transportation and Iowa Board of Regents). See Iowa Code §305.2(1) and (9).

[51] But see Des Moines Register v. Dwyer, 542 N.W.2d 491 (Iowa 1996)(Senate's policy on public access to telephone records constituted a Senate rule of proceeding and was beyond the reach of either the judiciary or the executive branch. The Iowa Supreme Court therefore lacked the authority to resolve this issue under Iowa's public records law.).

[52] Iowa Code §§22.3(1) and 22.4.

[53] In some circumstances, access to certain public records may be restricted only to certain classes of persons. See e.g., Iowa Code §321.271 (motor vehicle accident reports); Iowa Code §331.802(5)(b)(autopsy reports); and Iowa Code §556.11(9)(unclaimed property reports).

[54] Iowa Code §22.3(1).

Iowa's public records law provides immediate access to a public record. However, a good faith, reasonable delay may be allowed if the purpose of the delay is to seek an injunction, to determine whether the lawful custodian is entitled to seek an injunction, to determine the nature of the government record requested, or to determine whether a confidential record is available to the requester.[55] A reasonable delay for this latter purpose should not exceed 20 calendar days and ordinarily should not exceed 10 business days.[56]

C. Fees

The right to examine a public record includes the right to do so free of charge while the public record is in the physical possession of the lawful custodian of the record.[57] However, the lawful custodian may charge a reasonable fee for services associated with supervising the records during examination and copying and for any copies provided[58] and fulfillment of a request for a copy of a public record may be contingent upon payment of expenses to be incurred based upon estimated expenses communicated to the requester at the time of the request.[59] The copying fee cannot exceed the actual cost of providing the service. Actual costs do not include charges for ordinary expenses or costs such as employment benefits, depreciation, maintenance, electricity, or insurance associated with the administration of the office of the lawful custodian.[60] In addition, a government body may establish fees for providing access to data processing software regardless of whether the data processing software is separated from or combined with a public record.[61]

D. Confidential Record Exceptions

Iowa Code chapter 22 contains 67 confidentiality exceptions to the general rule of openness. The law provides that public records "shall be kept confidential" unless released by court order, by the lawful custodian of the records, or by another person duly authorized to release the records.[62] Many of the exceptions can be placed in distinct categories such as personal information records,[63] agency records,[64] and law enforcement records,[65] while

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[55] Iowa Code §22.8(4).

[56] Iowa Code §22.8(4)(d).

[57] Iowa Code §22.2(1); See also Iowa Code §22.2(2) (A government body shall not prevent the examination or copying of a public record by contracting with a nongovernment body to perform any of its duties or functions).

[58] Iowa Code §22.3(2).

[59] Iowa Code §22.3(1).

[60] Iowa Code §22.3(2).

[61] Iowa Code §22.3A(2).

[62] Iowa Code §22.7.

[63] See, e.g., Iowa Code §22.7(1)(student records), (2)(hospital records), (11)(confidential personnel records), (46)(military personnel records), and (67)(electronic mail address records).

[64] See, e.g., Iowa Code §22.7(8)(Economic Development Authority records), (12) and (39)(Department of Agriculture and Land Stewardship records), (16) and (35)(Department of Public Health records), (21)(Department of Natural Resources records), (36)(Department of Transportation records), and (61) and (62)(Department on Aging records).

[65] See, e.g., Iowa Code §22.7(5)(peace officer investigative reports), (9)(criminal identification files of law enforcement agencies), (15)(adult correctional institution records), (19)(law enforcement officer candidate records), and (48)(certain sex offender registry records).

other exceptions do not fit easily into any distinct category.[66] The exceptions must be narrowly construed so that the legislative policy of openness will be honored.[67]

E. Other Public Record Exceptions — Geographic Computer Database and Data Processing Software

A government body is not required to permit access to or use of a geographic computer database except on terms and conditions acceptable to the governing body.[68] In addition, a government body may restrict or prohibit access to data processing software developed by the government body regardless of whether the data processing software is separated or combined with a public record.[69]

F. Fair Information Practices

All state agencies[70] are required to adopt rules that provide for the nature and extent of the personally identifiable information collected by the agency to include a description of which of its records are public records, which are confidential records, and which are partially public and partially confidential records and the legal authority for the confidentiality of the records. The description is to indicate whether the records contain personally identifiable information.[71] The rules must also specify a procedure for providing the public with access to public records, a procedure for allowing a person to review a government record about that person and have additions, dissents, or objections entered in that record unless the review is prohibited by statute, and a procedure by which the subject of a confidential record may have a copy of that record released to a named third party.

In addition, the rules are required to provide the procedures by which the agency notifies persons supplying information of the use that will be made of the information, which persons outside of the agency might be provided this information, which parts of the information requested are required, the consequences of failing to provide the information requested, and whether a data processing system links personally identifiable information in one record system with personally identifiable information in another record system.[72] A political subdivision or public body which is not a state agency is not subject to this requirement.[73] However, if a political subdivision or public body chooses to adopt policies implementing fair information practices, the policies must be adopted by the appropriate governing body of the political subdivision or, if the public body is established pursuant to

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[66] See, e.g., Iowa Code §22.7(18)(certain communications from persons outside government) and (65)(deliberative, preliminary, or draft documents prior to final form).

[67] See In re Des Moines Independent Community School District Public Records, 487 N.W.2d 666, 669 (Iowa 1992).

[68] Iowa Code §22.2(3).

[69] Iowa Code §22.3A(2).

[70] "Agency" means each board, commission, department, officer, or other administrative office or unit of the state. "Agency" does not mean the general assembly, the judicial branch or any of its components, the office of consumer advocate, the governor, or a political subdivision of the state or its offices and units. Unless provided otherwise by statute, no less than two-thirds of the members eligible to vote of a multimember agency constitute a quorum authorized to act in the name of the agency. Iowa Code §17A.2(1).

[71] The phrase "personally identifiable information" is not defined in Iowa Code chapter 22 but is defined by each state agency by rule. See e.g., Iowa Admin. Code 191-1.3(1) (Insurance Division, Department of Commerce) and Iowa Admin. Code 761-4.1(9) (Department of Transportation).

[72] Iowa Code §22.11(1).

[73] Iowa Code §22.12.

an Iowa Code chapter 28E agreement, the policy must be adopted by a majority of the public agencies subject to the agreement.[74]

G. Injunction to Restrain Examination

An action for an injunction to restrain examination of a record may be brought in district court by the lawful custodian of a government record or by another government body or a person who would be aggrieved or adversely affected by the examination or copying of such a public record.[75] A hearing must be held on a request for injunction upon notice to persons requesting access to the record which is the subject of the request for injunction. Such an injunction may be issued only if the petition supported by the appropriate affidavit shows and if the court finds, by clear and convincing evidence, that the examination would clearly not be in the public interest and that the examination would substantially and irreparably injure any person or persons.[76]

H. Denial of Federal Funds or Services

Application of any provision of the public records law is suspended as to any state agency where such application would cause the state agency to be denied any federal funds, services, or essential information otherwise available to the state agency.[77]

I. Settlement Agreements

When a government body reaches a final, binding, written settlement agreement that resolves a legal dispute claiming monetary damages, equitable relief, or a violation of a rule or statute, the government body is required, upon request and to the extent allowed under applicable law, to prepare a brief summary of the resolution of the dispute indicating the identity of the parties involved, the nature of the dispute, and the terms of the settlement. The summary shall also include any payments made by or on behalf of the government body and any actions to be taken by the government body. The settlement agreement and any required summary are public records.[78]

V. Civil Enforcement Options

A. District Court

1. Civil Lawsuit

Both Iowa Code chapters 21 and 22 contain similar civil enforcement provisions for violations of either chapter. Both laws provide that any aggrieved person, taxpayer, or citizen of Iowa, or the Attorney General or the county attorney may file a civil lawsuit

[74] Iowa Code §22.12.

[75] Iowa Code §22.8(4)(e).

[76] Iowa Code §22.8(1), (3).

[77] Iowa Code §22.9. In determining the relationship between the federal Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. §1232g, and the Iowa Open Records Law, the Iowa Supreme Court held that Iowa Code §22.9 effectively suspended the "operation" of Iowa Code §22.2(1)(basic open records provision requiring public record access), since giving effect to that provision would have resulted in the loss of federal funding for the University of Iowa if the university were to disclose certain public records. Press-Citizen Co., Inc. v. University of Iowa, 817 N.W.2d 480 (Iowa 2012).

[78] Iowa Code §22.13.

in district court to enforce violations of either law.[79] This right to file a civil lawsuit is in addition to the right to file an action for judicial review in the district court under the provisions of the Iowa Administrative Procedures Act (Iowa Code chapter 17A) if the violation occurred through state agency action.[80] In addition, violations of the public records law may be enforced by mandamus (seeking to compel enforcement where a public official or entity has a duty to act) or injunction. [81]

2. Remedies

Upon a finding by a preponderance of the evidence that a governmental body or a government body has violated any provision of the open meetings or the public records law, a court is required to assess each member of the governmental body or government body who participated in the violation civil damages of not less than $100 nor more than $500. If a member of the governmental body or government body knowingly participated in such a violation, the court is required to assess damages of not less than $1,000 nor more than $2,500. The court shall also order the payment of all costs and reasonable attorney fees to the successful party, shall also remove a member of a governmental body or government body from office if that member has committed one previous violation of Iowa Code chapter 21 or 22 for which damages were assessed and may also issue an injunction ordering the members of the governmental body or government body to refrain for one year from future violations. [82] In addition, for certain open meetings violations, the court is also required to void any action taken in violation of the law if the lawsuit was brought within six months of the violation and the court finds that the public interest in enforcing the law outweighs the public interest in sustaining the validity of the action taken in closed session.[83]

3. Defenses

A member of a governmental body or government body found in violation of the open meetings or public records law may avoid the assessment of damages if the member can prove the member voted against a closed session or refused to participate in the violation or took reasonable actions to resist or prevent the violation of the law, had good reason to believe and in good faith believed facts, which if true, would have indicated compliance with the requirements of either law, or reasonably relied upon a decision of a court, a formal opinion of the Iowa Public Information Board, the Attorney General, or the attorney for the governmental body or government body. [84] The member cannot claim ignorance of the law as an excuse for violating either law.[85]

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[79] Iowa Code §§21.6 and 22.10. In Gavin v. City of Cascade, 500 N.W.2d 729 (Iowa Ct. App. 1993), the Iowa Court of Appeals held that a violation for purposes of the enforcement provision of the Iowa open meetings law means holding a closed meeting in violation of the law.

[80] Iowa Code §§21.6(1) and 22.10(1).

[81] Iowa Code §§22.5, 22.8.

[82] Iowa Code §§21.6(3)(a)-(d) and 22.10(3)(a)-(c).

[83] Iowa Code §21.6(3)(c).

[84] Iowa Code §§21.6(3)(a)(1)-(3) and 22.10(3)(b)(1)-(3).

[85] Iowa Code §§21.6(4) and 22.10(4).

B. Iowa Public Information Board

1. Authority

In 2012, the Legislature created the Iowa Public Information Board, an independent executive branch agency, to provide an alternative means by which a person may elect to enforce the provisions of Iowa Code chapter 21 or 22.[86] The board has nine members, appointed by the Governor and subject to Senate confirmation.[87] The executive director of the board executes the board's authority, represents the board in court proceedings, and prosecutes respondents appearing before the board.[88] The board has the authority to provide complainants informal assistance, as well as preside at contested case hearings.[89] The board also has the authority to conduct formal investigations; issue subpoenas, advisory opinions, and declaratory orders; conduct contested case proceedings; and impose the same civil penalties for violations of both laws as the district court.[90]

2. Jurisdiction

The board's jurisdiction is limited to actions of local and state entities, officers, or employers. The board does not have jurisdiction over the judicial or legislative branches of state government or over the Governor or the Office of the Governor.[91]

3. Advisory Opinions and Declaratory Orders

Any person may request the board to issue an advisory opinion interpreting or applying Iowa Code chapter 21 or 22 to a specific legal question or a specific fact situation.[92] Advice contained in a formal board advisory opinion to a governmental official or a lawful custodian of a public record constitutes a defense for such persons to a subsequent complaint based upon the same set of facts and circumstances.[93] A person who has received an advisory opinion from the board may petition the board for a declaratory order pursuant to Iowa Code section 17A.9, although the board has the discretion to refuse the request if the person has previously received a board opinion on the same question.[94]

Any person may file a petition with the board for a declaratory order relating to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the board.[95] A declaratory order has the same binding effect as a final

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[86] 2012 Iowa Acts, ch. 1115 (SF 430), codified at Iowa Code ch. 23. The board's Internet site is located at https://ipib.iowa.gov.

[87] Iowa Code §23.3.

[88] Iowa Code §23.6(1).

[89] Iowa Code §§23.6(3)-(4) and 23.9; Iowa Admin. Code 497-1.1(8).

[90] Iowa Code §23.6(3), (4), (7), and (8).

[91] Iowa Code §23.12.

[92] Iowa Admin. Code 497-1.2(2). The board's first advisory opinion was issued on August 15, 2013, and revised on October 3, 2013. The Iowa Civil Rights Commission (ICRC) requested an interpretation of Iowa Code §22.13 (public disclosure of settlement agreements) as applied to conciliation agreements reached by parties prior to the filing of charges by the ICRC. The board concluded that such agreements are subject to the confidentiality provision of Iowa Code §216.15(5)(special confidentiality provisions concerning complaints and investigations undertaken by the ICRC) and are consequently exempt from the public disclosure requirement in Iowa Code §22.13. https://ipib.iowa.gov/advisory-opinions/request-advisory-opinion-iowa-civil-rights.

[93] Iowa Admin. Code 497-1.3(2); Iowa Code §§21.6(3)(a)(3) and 22.10(3)(b)(3).

[94] Iowa Admin. Code 497-1.3(5).

[95] Iowa Admin. Code 497-3.1.

order issued in a contested case proceeding and constitutes final agency action on the petition. A declaratory order is binding on the board, the petitioner, and any intervenors who consent to be bound and is applicable only in circumstances where the relevant facts and the applicable law are indistinguishable from those on which the order was based. As to all other persons, a declaratory order serves only as precedent and is not binding on the board.[96]

4. Complaints

Any aggrieved person, taxpayer, or citizen of Iowa, or the Attorney General or the county attorney may, instead of filing a civil lawsuit in district court, elect to file a complaint with the board within 60 days from the time an alleged violation occurred or the complainant could have become aware of a violation with reasonable diligence.[97] All complaints filed with the board are public records.[98]

If the board accepts the complaint, the board is required to work with the parties involved to reach an informal, expeditious resolution of the complaint.[99] If any party to the dispute declines informal assistance or if informal assistance fails to resolve the matter, the board is required to initiate a formal investigation to determine whether there is probable cause to believe that a violation of either Iowa Code chapter 21 or 22 has occurred.[100] If the board finds the complaint is outside the board's jurisdiction or that no probable cause exists, the board is required to dismiss the complaint.[101] If the board finds probable cause exists, the board is required to issue a written order and commence a contested case proceeding under the Iowa Administrative Procedure Act against the respondent. At the end of the contested case proceeding, the board is required, by a majority vote, to make a final determination as to the merits of the complaint.[102]

5. Defenses

A respondent may defend against a complaint in a board proceeding on the ground that if a violation of Iowa Code chapter 21 or 22 occurred, it was only harmless error or that clear and convincing evidence existed to justify a court to issue an injunction to prevent the examination or copying of the requested public record. A respondent may also claim that the respondent reasonably relied upon a formal or advisory opinion of the board.[103]

6. Enforcement

If the board determines, by a majority vote, that the respondent is in violation of Iowa Code chapter 21 or 22, the board may require the respondent to pay the same damages as a court would assess in a civil lawsuit under either Iowa Code chapter 21

[96] Iowa Admin. Code 497-3.12.
[97] Iowa Code §§23.5, 23.7(1).
[98] Iowa Code §23.7(1).
[99] Iowa Code §23.9.
[100] Iowa Code §23.10(1).
[101] Iowa Code §23.10(2).
[102] Iowa Code §23.10(3)(a).
[103] Iowa Admin. Code 497-1.3(2); Iowa Code §§21.6(3)(a)(3) and 22.10(3)(b)(3).

or 22, void any action taken in violation of Iowa Code chapter 21, and require the respondent to take any remedial action deemed appropriate by the board.[104] The board does not have the authority to remove a person from office for a violation of either law, but may file an action for removal.[105] A final board order may be enforced in court and is subject to judicial review under Iowa Code section 17A.19.[106]

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[104] Iowa Code §23.10(3)(b).
[105] Iowa Code §23.10(3)(c).
[106] Iowa Code §23.10(3)(d).