

# PUBLIC RECORDS LAW - IOWA CODE CHAPTER 22

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## I. ELEMENTS

A. **Definition** - 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 other than a fair conducting a fair event as provided in 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 chapter 99D, or tax-supported district in this state, or any branch, department, board, bureau, commission, council, or committee of any of the foregoing" and includes "all records relating to the investment of public funds including but not limited to investment policies, instructions, trading orders, or contracts, whether in the custody of the public body responsible for the public funds or a fiduciary or other third party." Iowa Code § 22.1 (2011).

B. **Scope** - reaches writings held by public officers in their official capacities regardless of origin. Howard v. Des Moines Register & Tribune Co., 283 N.W.2d 289 (Iowa 1979), *cert. denied*, 445 U.S. 904, 100 S. Ct. 1081, 63 L.Ed.2d 320 (1980).

C. **Limitations** - encompasses any comprehensible writing developed and/or maintained by a public body or official as a convenient, appropriate, or customary method by which the body or official discharges a public duty. 1982 Op.Att'y.Gen. 215. See State v. Barnholtz, 613 N.W.2d 218 (Iowa 2000) ("there must be some action by a public official to make a document a public record").

1. The Iowa Senate's decision whether to release telephone records pursuant to request under chapter 22 is a political question and nonjusticiable. Des Moines Register & Tribune Co. v. Dwyer et al., 542 N.W.2d 491 (Iowa 1996).
2. Where the law does not impose a duty to maintain weapon permit

justification forms and they are returned to the applicant after a permit determination is made, the records are not accessible to the public after return to the applicant. Clark v. Banks, 515 N.W.2d 5 (Iowa 1994).

**D. Application**- includes and excludes:

1. Includes records not generated by a state agency but in its possession by virtue of its quasi-judicial function. Bruner v. Varley, 411 N.W.2d 150 (Iowa 1987).
2. Excludes minutes of board meetings of a private, nonprofit corporation, even when a city mandates participation by city officials on the board of directors and the minutes are maintained in city offices, where disclosure will not facilitate public scrutiny of the conduct of a public body. City of Dubuque et al. v. Dubuque Racing Association, 420 N.W.2d 450 (Iowa 1988). But see Iowa Code § 7C.13(3) (2011) (“The deliberations or meetings of the board of directors of the qualified student loan bond issuer that relate to the issuance of bonds in accordance with this chapter shall be conducted in accordance with chapter 21.”).
3. Includes personal notes taken by a school superintendent which he made and filed in his own office while carrying out official duties to investigate allegations of misconduct by a teaching assistant and coach. The notes were records “of” the school and “belonged to” it, even though the superintendent did not share the notes with anyone other than the school district attorney. V.H. v. Hampton-Dumont Community School Dist., No. 09-0364, 2009 WL 5126111 (Iowa App. Dec. 30, 2009).

**E. Examples** - includes: packets of informational material prepared by a city administrator for use at an open meeting of the city council (1982 Op.Att’y.Gen. 215); minutes of open meetings of governmental bodies (1980 Op.Att’y.Gen. 88); a police department operation manual (1980 Op.Att’y.Gen. 825); jury trial lists (Des Moines Register and Tribune Co. v. Osmundson, 248 N.W.2d 493 (Iowa 1976)); a verification of age form required to be executed for purchase of liquor (1984 Op.Att’y.Gen. 88); and tax protests filed by taxpayers (1992 Op.Att’y.Gen. 1).

**F. Forms** - may exist in forms other than paper, for example: city addressograph plates (1982 Op.Att’y.Gen. 212); magnetic tapes or cards (1982 Op.Att’y.Gen. 207); and copies of computer tape or other computer readable medium (1980 Op.Att’y.Gen. 378).

1. Geographic Computer Data Base - A government body is not required to

permit access to or use of a geographic computer data base or data processing software; however, the government body shall establish reasonable rates and procedures for retrieval of specific records which are not confidential. Iowa Code §22.2(3) (2011).

2. Data Processing Software - A government body may provide, 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. A government body shall establish policies and procedures to provide access to public records which are combined with its data processing software. A public record shall not be withheld from the public because it is combined with data processing software. Iowa Code § 22.3A. In administering this section, a government body:

- a. may establish payment rates and procedures to provide access to data processing software, regardless of whether the software is separated from or combined with a public record;
- b. may establish an amount for access data processing software in its discretion based on competitive market considerations, if access to the data processing software is for a purpose other than that provided in section 22.3A(2)(a);
- c. shall not acquire any electronic data processing system that would impair the body's ability to permit examination and copying of a public record in either written or electronic form;
- d. shall bear the cost of separation of a public record from data processing software, if it is necessary to separate the record from the software in order to permit examination or copying;
- e. shall make a record separated from data processing software available for a charge not in excess of the charge under chapter 22, unless the person requesting the record also requests special processing; and
- f. shall make an electronic public record available in a format useable with commonly available data processing or data base management software. Iowa Code § 22.3A(2) (2011).

## II. ACCESS

A. **Examination/Copying/Publication** - confers on every person the right to examine and copy and to publish or otherwise disseminate public records. The right to examine includes the right to examine a public record without charge while the public record is in the physical possession of the custodian. The right to copy includes the right to photograph or make photographic copies while the records are in the possession of the lawful custodian. Iowa Code § 22.2(1) (2011).

B. **Scope** - provides that 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.” Iowa Code § 22.2(2) (2011).

C. **Application** - means that:

1. Private not-for-profit corporation which operated as a foundation that solicited and managed private gifts for the exclusive benefit of a public university performed a government function by virtue of its service agreement with the university and, therefore, the corporation’s records were “public records.” Gannon v. Board of Regents et al., 692 N.W.2d 31 (Iowa 2005). See Iowa Code § 22.7(52) (2011).

2. A government function for purposes of applying section 22.2(2) is not limited to those functions set out in statutes. Not every private entity that performs a duty or function that may be characterized as a “government function” in theory is subject to chapter 22. Cases must be viewed in their factual context. But a government body’s subjective intent to prevent disclosure of records by contracting with a private entity is irrelevant to the determination. Gannon v. Board of Regents et al., 692 N.W.2d 31 (Iowa 2005), reversing KMEG Television, Inc. v. Board of Regents et al., 440 N.W.2d 382 (Iowa 1989).

## III. PROCEDURE

A. **Supervision** - requires examination and copying be done under the supervision of the lawful custodian or an authorized deputy. Iowa Code § 22.3 (2011).

B. **Lawful Custodian** - means “the government body currently in physical possession of the public record. The custodian of a public record in the physical possession of persons outside a government body is the government body owning that record. The records relating to the investment of public funds are the property of the public body

responsible for the public funds.” Iowa Code § 22.1 (2011).

1. Each government body shall delegate to particular officials or employees responsibility for implementing chapter 22 and publicly announce the officials or employees to whom responsibility has been delegated. Iowa Code § 22.1 (2011).

2. The lawful custodian may adopt reasonable rules regarding examination, copying to protect the records against damage or disorganization. Iowa Code § 22.3 (2011).

3. The lawful custodian should not relinquish control of the records to the requestor. 1982 Op.Att’y.Gen. 76.

4. The lawful custodian shall provide a suitable place for examination and copying unless it is impractical to do so. If it is necessary to copy at a separate location, the copying should be performed under the supervision of the custodian or a deputy. 1982 Op.Att’y.Gen. 76.

5. The lawful custodian shall not require the requester to be physically present to request or to receive a copy of a public record and shall fulfill requests for copies of public records received in writing, by telephone, or by electronic means. Iowa Code § 22.3 (2011).

**C. Copies** - requires the lawful custodian to provide any person a reasonable number of copies of any public record if copy equipment is available at the office of the lawful custodian. Iowa Code § 22.3 (2011).

**D. Charges** - authorizes the lawful custodian to charge a reasonable fee for the services of supervising records during examination and copying and for copies provided. Iowa Code § 22.3 (2011).

1. The fee for copying service shall not exceed the actual cost of providing the service. “Actual costs” shall include only those expenses directly attributable to supervising the examination of and making and providing copies of public records. “Actual costs” shall 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. Iowa Code § 22.3 (2011). See Op. Att’y Gen. #96-2-1.

2. Any fee schedule adopted by a custodian must be uniformly applied to all requesters. 1982 Op. Att'y Gen. 76.

3. The fee may include a retrieval fee to cover the costs of retrieving public records, but this fee may not be charged to a member of a government body to inspect records which the member has a right to see in the capacity of a member of the government body. Rathmann v. Board of Directors, 580 N.W.2d 773 (Iowa 1998).

4. A fee may be charged to cover actual costs of making available to requesters information in electronic storage systems such as magnetic tapes and cards. 1982 Op. Att'y Gen. 207. See Iowa Code § 22.3A (2011).

5. Providing copies of public records may be made contingent on receipt of payment for expenses to be incurred in fulfilling the request. Estimated expenses shall be communicated to the requester upon receipt of the request. Iowa Code § 22.3 (2011).

**E. Availability** - authorizes persons to exercise rights conferred at any time during customary office hours of the lawful custodian. Iowa Code § 22.4 (2011).

1. If the lawful custodian does not have customary office hours of at least 30 hours per week, the rights under chapter 22 may be exercised at any time between 9:00 a.m. - 12:00 noon and 1:00 p.m. - 4:00 p.m. Monday through Friday except legal holidays. Iowa Code § 22.4 (2011).

2. The requestor and the lawful custodian may agree on a different time for exercise of the rights under chapter 22. Iowa Code § 22.4 (2011).

3. The allegation that the lawful custodian did not provide access to public records under chapter 22 is measured by substantial compliance. Braunschweig v. Bormann, No. 04-0537, 2005 WL 1224685 (Iowa App. May 25 2005)(unpublished opinion); Wings v. Dunlap, 527 N.W.2d 407 (Iowa App. 1994).

#### **IV. EXCEPTIONS - CHAPTER 22**

**A. Confidential Records** - provides that the following public records shall be kept confidential unless otherwise ordered by a court, the lawful custodian, or another person duly authorized to release information:

1. Personal information in records regarding a student, prospective student, or former student maintained, created, collected or assembled by or for a school corporation or educational institution maintaining such records. This subsection shall not be construed to prohibit a postsecondary education institution from disclosing to a parent or guardian information regarding a violation of a federal, state, or local law, or institutional rule or policy governing the use or possession of alcohol or a controlled substance if the child is under the age of twenty-one years and the institution determines that the student committed a disciplinary violation with respect to the use or possession of alcohol or a controlled substance regardless of whether that information is contained in the student's education records. This subsection shall not be construed to prohibit a school corporation or educational institution from transferring student records electronically to the department of education, an accredited nonpublic school, an attendance center, a school district, or an accredited postsecondary institution in accordance with section 256.9, subsection 48. Iowa Code § 22.7(1) (Supp. 2011).

2. Hospital records, medical records, and professional counselor records of the condition, diagnosis, care, or treatment of a patient or former patient, or a counselee or former counselee, including outpatient. However, confidential communications between a crime victim and the victim's counselor are not subject to disclosure except as provided in section 915.20A. However, the Iowa department of public health shall adopt rules which provide for the sharing of information among agencies concerning the maternal and child health program, while maintaining an individual's confidentiality. Iowa Code § 22.7(2) (2011).

a. A hospital record of a patient includes the records of a person who submitted to tissue typing tests to determine her suitability as a blood platelet donor to a member of her family. Head v. Colloton, 331 N.W.2d 870 (Iowa 1983).

b. A medical record of a patient includes a fire rescue report. The determination of whether any record is a medical record must be made on the basis of the record as a whole. The lawful custodian cannot be compelled to delete nonmedical information for examination and copying. 1982 Op. Att'y Gen. 512.

c. A hospital or medical record of a patient does not include letters and reports relating to an involuntary sterilization which were filed in the governor's office but neither compiled for diagnostic or treatment purposes by hospital or medical personnel nor maintained as records of a hospital or

physician. Howard v. Des Moines Register & Tribune Co., 283 N.W.2d 289 (Iowa 1979), *cert. denied*, 445 U.S. 904, 100 S.Ct. 1081, 63 L.Ed.2d 320 (1980).

3. Trade secrets which are recognized and protected as such by law. Iowa Code § 22.7(3) (2011). See Iowa Code ch. 550 (2011).

a. "Trade secret" means information, including but not limited to a formula, pattern, compilation, program, device, method, technique, or process that meets both of the following:

1) Derives independent economic value, actual or potential, from not being generally known to, and by not being readily ascertainable by proper means by a person able to obtain economic value from its disclosure or use; and

2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. See Brown v. Iowa Legislative Council, 490 N.W.2d 551 (Iowa 1992).

b. An agency in the possession of an item makes the preliminary determination whether it is a trade secret. If an agency has reasonable grounds for concluding that an item is a trade secret, it need not make the item available for inspection and copying. 1980 Op. Att'y Gen. 224.

c. Copies of lease and real estate transactions provided to the Office of Consumer Advocate by a utility company do not constitute "trade secrets" under chapter 550 and, therefore, are not exempt from disclosure under § 22.7(3). U.S. West Communications et al. v. Office of Consumer Advocate, 498 N.W.2d 711 (Iowa 1993).

4. Records which represent and constitute the work product of an attorney, which are related to litigation or claim made by or against a public body. Iowa Code § 22.7(4) (2011).

a. In assessing whether the work product doctrine applies, the controlling question is whether the primary motivating purpose for the creation of the materials was to prepare for litigation. Schaffer v. Rogers, 362 N.W.2d 552 (Iowa 1985).



b. A routine investigation of an accident by a liability insurer is conducted in anticipation of litigation, even though litigation may not be imminent, where the primary purpose of the investigation is to prepare to defend a third party claim. Ashmead v. Harris, 336 N.W.2d 197 (Iowa 1983).

5. Peace officers' investigative reports, and specific portions of electronic mail and telephone billing records of law enforcement agencies if that information is part of an ongoing investigation, except where disclosure is authorized elsewhere in this Code. However, the date, time, specific location, and immediate facts and circumstances surrounding a crime or incident shall not be kept confidential under this section, except in those unusual circumstances where disclosure would plainly and seriously jeopardize an investigation or pose a clear and present danger to the safety of an individual. Specific portions of electronic mail and telephone billing records may only be kept confidential under this subsection if the length of time prescribed for commencement of prosecution or the finding of an indictment or information under the statute of limitations applicable to the crime that is under investigation has not expired. Iowa Code § 22.7(5) (2011). See Hawk Eye et al. v. Jackson, 521 N.W.2d 750 (Iowa 1994); State ex rel. Shanahan v. Iowa District Court, 356 N.W.2d 523 (Iowa 1984).

a. The name and address of a sexual assault victim are part of the "immediate facts and circumstances surrounding the crime" in a peace officer's investigative report which shall not be kept confidential under § 22.7(5) "except in those unusual circumstances where disclosure would plainly and seriously jeopardize an investigation or pose a clear and present danger to the safety of an individual." 1990 Op. Att'y Gen. 85.

b. A laboratory report on a blood sample constitutes a "peace officers' investigative report" under § 22.7(5) which may be kept confidential "except where disclosure is authorized elsewhere in this Code." Section 810.15, in turn, authorizes release to the "person who was the subject" of the sample ordered under chapter 810 and in appropriate circumstances includes the deceased person's estate. AFSCME v. Department of Public Safety, 434 N.W.2d 401 (Iowa 1988).

c. A "peace officers' investigative report" may include a video recording of a police chase. Neer v. State of Iowa et al., 2011 WL

662725 (Iowa App.).

d. A citizen may request information concerning the date, time, specific location, and immediate facts and circumstances surrounding a crime or incident for a particular day or time or any number of days or times. The request is not required to specify the particular criminal incident for which the information is sought. 1982 Op. Att'y Gen. 538.

e. The lawful custodian may not keep an entire peace officer's investigative report confidential on the ground that the report contains some confidential information, but the lawful custodian may delete the confidential information before disclosure. 1982 Op. Att'y Gen. 538.

6. Reports to governmental agencies which, if released, would give advantage to competitors and serve no public purpose. Iowa Code § 22.7(6) (2011).

a. In evaluating the applicability of § 22.7(6) the advantage to competitors is weighed against the public purpose to be served by disclosure. This section does not bar an examination of cost reports filed with the Department of Social Services by intermediate health care facilities. Craigmont Care Center v. Department of Social Services et al., 325 N.W.2d 918 (Iowa App. 1982).

b. Prior grant applications for public funds are not confidential records. Northeast Council on Substance Abuse, Inc. v. Department of Public Health et al., 513 N.W.2d 757 (Iowa 1994).

c. A report of test results held by the Department of Transportation that pertain to a manufactured electronic traffic signal will not provide competitors any economic advantage. Further, the manufacturer failed to support in any fashion the second requirement for confidentiality under Iowa Code section 22.7(6); i.e., that the disclosure would serve no public purpose. "Indeed, it would be very difficult to convince [a court] that there is no public interest in ascertaining whether the temporary traffic signals . . . comply with established safety standards." O.M.J.C. Signal, Inc. v. Iowa Dept. of Transp., No. 09-0771, 2009 WL 4842832 (Iowa App. Dec. 17, 2009) (unpublished opinion).

7. Appraisals or appraisal information concerning the sale or purchase of real or personal property for public purposes, prior to the execution of any contract for such sale or the submission of the appraisal to the property owner or other interest holders as provided in section 6B.45. Iowa Code § 22.7(7) (Supp. 2011).

8. Iowa department of economic development information on an industrial prospect with which the department is currently negotiating. Iowa Code § 22.7(8) (2011).

9. Criminal identification files of law enforcement agencies. However, records of current and prior arrests and criminal history data shall be public records. Iowa Code § 22.7(9) (2011).

10. Reserved. Iowa Code § 22.7(10) (Supp. 2011).

11(a). Personal information in confidential personnel records of government bodies relating to identified or identifiable individuals who are officials, officers, or employees of the government bodies. However, the following information relating to such individuals contained in personnel records shall be public records:

(1). The name and compensation of the individual including any written agreement establishing compensation or other terms of employment excluding any information otherwise excludable from public information pursuant to this section or any other applicable provision of law. For purposes of this paragraph, "compensation" means payment of, or agreement to pay any money, thing of value, or financial benefit conferred including but not limited to casualty, disability, life, or health insurance, other health or wellness benefits, vacation, holiday, and sick leave, severance payments, retirement benefits, and deferred compensation.

(2). The dates the individual was employed by the government body.

(3). The position the individual holds or has held with the governmental body.

(4). The educational institutions attended by the individual, including any diplomas and degrees earned, and the names of the individual's

previous employers, positions previously held, and the dates of previous employment.

(5). The fact that the individual was discharged as the result of a final disciplinary action, upon the exhaustion of all applicable contractual, legal, and statutory remedies.

- (b.) Personal information in confidential personnel records of government bodies relating to student employees shall only be released pursuant to 20 U.S.C. § 1232g. Iowa Code § 22.7(11) (Supp. 2011).

Information in confidential personnel records revealing gender, home address or birth date is personal information which can be kept confidential under section 22.7. Clymer v. City of Cedar Rapids, 601 N.W.2d 42 (Iowa 1999). Note: The Clymer holding departs from dicta in City of Dubuque v. Telegraph Herald, Inc., 297 N.W.2d 523 (Iowa 1980), which states that personal information in confidential personnel records generally does not include information concerning the employee's name, address, previous employers, education, training, and experience. See 1982 Op. Att'y Gen. 3.

Job performance records are personal information exempt from disclosure under § 22.7(11). The records may remain confidential under this section even if the records have been placed in an investigative file rather than placed in the confidential personnel file. Des Moines Independent Community School District v. Des Moines Register & Tribune Co., 487 N.W.2d 666 (Iowa 1992).

Privacy interests are implicated where the score of a particular person on a civil service examination is sought; however, the privacy interest can be protected by revealing raw scores without the name of the examinee attached. This information can be revealed even if the identity can be inferred from other information that is publicly available. DeLaMater v. Marion Civil Service Commission, 554 N.W.2d 875 (Iowa 1996).

The amount of sick leave and vacation leave used by individual public employees is a matter of legitimate concern to the public and is not personal information which can be kept confidential under section 22.7. Clymer v. City of Cedar Rapids, 601 N.W.2d 42 (Iowa 1999).

Employment applications are not personnel records under section 22.7(11). City of Dubuque v. Telegraph Herald, Inc., 297 N.W.2d 523 (Iowa 1980); 1982 Op. Att'y Gen. 3. But see Iowa Code § 22.7(18) (2011).

12. Financial statements submitted to the department of agriculture and land stewardship pursuant to chapter 203 or chapter 203C, by or on behalf of a licensed grain dealer or warehouse operator or by an applicant for a grain dealer license or warehouse license. Iowa Code § 22.7(12) (2011).

13. The records of a library which, by themselves or when examined with other public records, would reveal the identity of the library patron checking out or requesting an item or information from the library. The records shall be released to a criminal or juvenile justice agency only pursuant to an investigation of a particular person or organization suspected of committing a known crime. The records shall be released only upon a judicial determination that a rational connection exists between the requested release of information and a legitimate end and that the need for the information is cogent and compelling. Iowa Code § 22.7(13) (2011).

14. The material of a library, museum or archive which has been contributed by a private person to the extent of any limitation that is a condition of the contribution. Iowa Code § 22.7(14) (2011).

15. Information concerning the procedures to be used to control disturbances at adult correctional institutions. Such information shall also be exempt from public inspection under section 17A.3. As used in this subsection disturbance means a riot or a condition that can reasonably be expected to cause a riot. Iowa Code § 22.7(15) (2011).

16. Information in a report to the state department of health, to a local board of health, or to a local health department, which identifies a person infected with a reportable disease. Iowa Code § 22.7(16) (2011).

17. Records of identity of owners of public bonds or obligations maintained as provided in section 76.10 or by the issuer of the public bonds or obligations. However, the issuer of the public bonds or obligations and a state or federal agency shall have the right of access to the records. Iowa Code § 22.7(17) (2011).

18. Communications not required by law, rule, procedure, or contract that

are made to a government body or to any of its employees by identified persons outside of government, to the extent that the government body receiving those communications from such persons outside of government could reasonably believe that those persons would be discouraged from making them to that government body if they were available for general public examination. As used in this subsection, “persons outside of government” does not include persons or employees or persons who are communicating with respect to a consulting or contractual relationship with a government body or who are communicating with a government body with whom an arrangement for compensation exists. Notwithstanding this provision:

a. The communication is a public record to the extent that the person outside of government making that communication consents to its treatment as a public record.

b. Information contained in the communication is a public record to the extent that it can be disclosed without directly or indirectly indicating the identity of the person outside of government making it or enabling others to ascertain the identity of that person.

c. Information contained in the communication is a public record to the extent that it indicates the date, time, specific location, and immediate facts and circumstances surrounding the occurrence of a crime or other illegal act, except to the extent that its disclosure would plainly and seriously jeopardize a continuing investigation or pose a clear and present danger to the safety of any person. In any action challenging the failure of the lawful custodian to disclose particular information of the kind enumerated in this paragraph, the burden of proof is on the lawful custodian to demonstrate that the disclosure of that information would jeopardize such an investigation or would pose such a clear and present danger. Iowa Code § 22.7(18) (2011).

(1). Employment applications may be kept confidential under § 22.7(18) where the employer reasonably believes applicants will not make application if the applications are available for general public examination and the applicants do not authorize disclosure. City of Sioux City v. Greater Sioux City Press Club, et al., 421 N.W.2d 895 (Iowa 1988); Wings v. Dunlap, 527 N.W.2d 407 (Iowa App. 1994).

(2). The name and address of a sexual assault victim are part

of the "immediate facts and circumstances surrounding the occurrence of a crime or other illegal act" which is a public record under § 22.7(18)© "except to the extent that its disclosure would plainly and seriously jeopardize a continuing investigation or pose a clear and present danger to the safety of any person." Op.Att'y Gen. #90-8-3.

(3). Records generated by interviewing people in the course of an investigation of a school administrator may be kept confidential under section 22.7(18), but redacted copies must be produced under Iowa Code section 22.7(18)(b) where redaction will render the source unknown. Des Moines Independent Community School District v. Des Moines Register & Tribune Co., 487 N.W.2d 666 (Iowa 1992).

19. Examinations, including but not limited to cognitive and psychological examinations for law enforcement officer candidates administered by or on behalf of a governmental body, to the extent that their disclosure could reasonably be believed by the custodian to interfere with the accomplishment of the objectives for which they are administered. Iowa Code § 22.7(19) (2011).

a. The confidentiality of a performance assessment test for high school students turns on whether the lawful custodian reasonably believes disclosure would destroy objectives of the test. Galbrilson v. Flynn, 554 N.W.2d 267 (Iowa 1996).

b. This exception is inapplicable where the requester seeks raw scores and the grading scale. DeLaMater v. Marion Civil Service Commission, 554 N.W.2d 875 (Iowa 1996).

20. Information concerning the nature and location of any archaeological resource or site if, in the opinion of the state archaeologist, disclosure of the information will result in unreasonable risk of damage to or loss of the resource or site where the resource is located. This subsection shall not be construed to interfere with the responsibilities of the federal government or the state historical preservation officer pertaining to access, disclosure, and use of archaeological site records. Iowa Code § 22.7(20) (2011).

21. Information concerning the nature and location of any ecologically sensitive resource or site if, in the opinion of the director of the department of

natural resources after consultation with the state ecologist, disclosure of the information will result in unreasonable risk of damage to or loss of the resource or site where the resource is located. This subsection shall not be construed to interfere with the responsibilities of the federal government or the director of the department of natural resources and the state ecologist pertaining to access, disclosure, and use of the ecologically sensitive site records. Iowa Code § 22.7(21) (2011).

22. Reports or recommendations of the Iowa insurance guarantee association filed or made pursuant to § 515B.10(1)(a)(2). Iowa Code § 22.7(22) (2011).

23. Information or reports collected or submitted pursuant to section 508C.12, subsections 3 and 5, and section 508C.13, subsection 2, except to the extent that release is permitted under those sections. Iowa Code § 22.7(23) (2011).

24. Reserved. Iowa Code § 22.7(24) (Supp. 2011).

25. Financial information, which if released would give advantage to competitors and serve no public purpose, relating to commercial operations conducted or intended to be conducted by a person submitting records containing the information to the department of agriculture and land stewardship for the purpose of obtaining assistance in business planning. Iowa Code § 22.7(25) (2011).

26. Applications, investigation reports, and case records of persons applying for county general assistance pursuant to section 252.25. Iowa Code § 22.7(26) (2011).

27. Marketing and advertising budget and strategy of a nonprofit corporation which is subject to this chapter. However, this exemption does not apply to salaries or benefits of employees who are employed by the nonprofit corporation to handle the marketing and advertising responsibilities. Iowa Code § 22.7(27) (2011).

28. The information contained in records of the centralized employee registry created in chapter 252G, except to the extent that disclosure is authorized pursuant to chapter 252G. Iowa Code § 22.7(28) (2011).

29. Records and information obtained or held by independent special



counsel during the course of an investigation conducted pursuant to section 68B.31A. Information that is disclosed to a legislative ethics committee subsequent to a determination of probable cause by independent special counsel and made pursuant to section 68B.31 is not a confidential record unless otherwise provided by law. Iowa Code § 22.7(29) (2011).

30. Information contained in a declaration of paternity completed and filed with the state registrar of vital statistics pursuant to section 144.12A, except to the extent that the information may be provided to persons in accordance with section 144.12A. Iowa Code § 22.7(30) (2011).

31. Memoranda, work products, and case files of a mediator and all other confidential communications in the possession of a mediator, as provided in chapter 86 and 216. Information in these confidential communications is subject to disclosure only as provided in section 86.44 and 216.15B, notwithstanding any other contrary provision of this chapter. Iowa Code § 22.7(31) (2011).

32. Social security numbers of the owners of unclaimed property reported to the treasurer of state pursuant to section 556.11, subsection 2, included on claim forms filed with the treasurer of state pursuant to section 556.19, included in outdated warrant reports received by the treasurer of state pursuant to section 556.2C, or stored in record systems maintained by the treasurer of state for purposes of administering chapter 556, or social security numbers of payees included on state warrants included in records systems maintained by the department of administrative services for the purpose of documenting and tracking outdated warrants pursuant to section 556.2C. Iowa Code § 22.7(32) (2011).

33. Data processing software, as defined in section 22.3A, which is developed by a government body. Iowa Code § 22.7(33) (2011).

34. A record required under the Iowa financial transaction reporting Act listed in section 529.2, subsection 9. Iowa Code § 22.7(34) (2011).

35. Records of the Iowa department of public health pertaining to participants in the gambling treatment program except as otherwise provided in this chapter. Iowa Code § 22.7(35) (2011).

36. Records of a law enforcement agency or the state department of transportation regarding the issuance of a driver's license under section

321.189A. Iowa Code § 22.7(36) (2011).

37. Mediation communications as defined in section 679C.102, except written mediation agreements that resulted from a mediation which are signed on behalf of a government body. However, confidentiality of mediation communications resulting from mediation conducted pursuant to chapter 216 shall be governed by chapter 216. Iowa Code § 22.7 (37) (2011).

38(a). Records containing information that would disclose, or might lead to the disclosure of, private keys used in an electronic signature or other similar technologies as provided in chapter 554D. Iowa Code § 22.7(38)(a) (2011).

(b). Records which if disclosed might jeopardize the security of an electronic transaction pursuant to chapter 554D. Iowa Code § 22.7(38)(b) (2011).

39. Information revealing the identity of a packer or a person who sells livestock to a packer as reported to the department of agriculture and land stewardship pursuant to section 202A.2. Iowa Code § 22.7(39) (2011).

40. The portion of a record request that contains an internet protocol number which identifies the computer from which a person requests a record, whether the person using such computer makes the request through the IowAccess network or directly to a lawful custodian. However, such record may be released with the express written consent of the person requesting the record. Iowa Code § 22.7 (40) (2011).

41. Medical examiner records and reports, including preliminary reports, investigative reports, and autopsy reports. However, medical examiner records and reports shall be released to a law enforcement agency that is investigating the death, upon the request of the law enforcement agency, and autopsy reports shall be released to the decedent's immediate next of kin upon the request of the decedent's immediate next of kin unless disclosure to the decedent's immediate next of kin would jeopardize an investigation or pose a clear and present danger to the public safety or the safety of an individual. Information regarding the cause and manner of death shall not be kept confidential under this subsection unless disclosure would jeopardize an investigation or pose a clear and present danger to the public safety or the safety of an individual. Iowa Code § 22.7(41) (2011).

Iowa Code section 22.7(41) does not allow the disclosure of an autopsy

report to the decedent's mother when the mother was not the decedent's next of kin. Iowa state law dictates that autopsy reports are confidential, with the exception that reports would be released upon a request from the decedent's "immediate next of kin." The decedent's next of kin was his wife of 23 years with whom the man had two adult children and two minor children. Even though the decedent's wife had been in the process of divorce, there is no basis to bypass the wife and the two adult children who were the next "immediate next of kin" and provide access to the mother. Simington v. Banwart, No. 09-1561, 2010 WL 2089348 (Iowa App. May 26, 2010).

42. Information obtained by the commissioner of insurance in the course of an investigation as provided in section 523C.23. Iowa Code § 22.7(42) (2011).

43. Information obtained by the commissioner of insurance pursuant to section 502.607. Iowa Code § 22.7(43) (2011).

44. Information provided to the court and state public defender pursuant to section 13B.4, subsection 5; section 814.11, subsection 6; or section 815.10, subsection 5. Iowa Code § 22.7(44) (2011).

45. The critical asset protection plan or any part of the plan prepared pursuant to section 29C.8 and any information held by the homeland security and emergency management division that was supplied to the division by a public or private agency or organization and used in the development of the critical asset protection plan to include, but not be limited to, surveys, lists, maps, or photographs. However, the administrator shall make the list of assets available for examination by any person. A person wishing to examine the list of assets shall make a written request to the administrator on a form approved by the administrator. The list of assets may be viewed at the division's offices during normal working hours. The list of assets shall not be copied in any manner. Communications and asset information not required by law, rule, or procedure that are provided to the administrator by persons outside of government and for which the administrator has signed a nondisclosure agreement are exempt from public disclosures. The homeland security and emergency management division may provide all or part of the critical asset plan to federal, state, or local governmental agencies which have emergency planning or response functions if the administrator is satisfied that the need to know and intended use are reasonable. An agency receiving critical asset protection plan information from the division shall not disseminate the information without prior approval of the administrator. Iowa Code § 22.7(45)

(2011).

46. Military personnel records recorded by the county recorder pursuant to section 331.608. Iowa Code § 22.7(46) (2011).

47. A report regarding interest held in agricultural land required to be filed pursuant to chapter 10B. Iowa Code § 22.7(47) (2011).

48. Sex offender registry records under chapter 692A, except as provided in section 692A.121. Iowa Code § 22.7(48) (Supp. 2011).

49. Confidential information, as defined in section 86.45, subsection 1, filed with the workers' compensation commissioner. Iowa Code § 22.7(49) (2011).

50. Information concerning security procedures or emergency preparedness information developed and maintained by a government body for the protection of governmental employees, visitors to the government body, persons in the care, custody, or under the control of the government body, or property under the jurisdiction of the government body, if disclosure could reasonably be expected to jeopardize such employees, visitors, persons, or property. Such information includes but is not limited to information directly related to vulnerability assessments; information contained in records relating to security measures such as security and response plans, security codes and combinations, passwords, restricted area passes, keys, and security or response procedures; emergency response protocols; and information contained in records that if disclosed would significantly increase the vulnerability of critical physical systems or infrastructures of a government body to attack. This subsection shall only apply to information held by a government body that has adopted a rule or policy identifying the specific records or class of records to which this subsection applies and which is contained in such a record. Iowa Code § 22.7(50) (2011).

51. The information contained in the information program established in section 124.551, except to the extent that disclosure is authorized pursuant to section 124.553. Iowa Code § 22.7(51) (2011).

52(a). The following records relating to a charitable donation made to a foundation acting solely for the support of an institution governed by the state board of regents, to the board of the Iowa state fair foundation when the record relates to a gift for deposit in or expenditure from the Iowa state fairgrounds trust fund as provided in section 173.22A, to a foundation acting solely for the

support of an institution governed by chapter 260C , to a private foundation as defined in section 509 of the Internal Revenue Code organized for the support of a government body, or to an endow Iowa qualified community foundation, as defined in section 15E.303 , organized for the support of a government body:

- (1). Portions of records that disclose a donor's or prospective donor's personal, financial, estate planning, or gift planning matters.
- (2). Records received from a donor or prospective donor regarding such donor's prospective gift or pledge.
- (3). Records containing information about a donor or a prospective donor in regard to the appropriateness of the solicitation and dollar amount of the gift or pledge.
- (4). Portions of records that identify a prospective donor and that provide information on the appropriateness of the solicitation, the form of the gift or dollar amount requested by the solicitor, and the name of the solicitor.
- (5). Portions of records disclosing the identity of a donor or prospective donor, including the specific form of gift or pledge that could identify a donor or prospective donor, directly or indirectly, when such donor has requested anonymity in connection with the gift or pledge. This subparagraph does not apply to a gift or pledge from a publicly held business corporation.

(b). The confidential records described in paragraph "a", subparagraphs (1) through (5) shall not be construed to make confidential those portions of records disclosing any of the following:

- (1) The amount and date of the donation.
- (2) Any donor-designated use or purpose of the donation.
- (3) Any other donor-imposed restrictions on the use of the donation.
- (4) When a pledge or donation is made expressly conditioned on receipt by the donor, or any person related to the donor by blood or marriage within the third degree of consanguinity, of any privilege, benefit, employment, program admission, or other special consideration from the government body, a description of any and all such consideration offered or given in exchange for the pledge or donation.

(c). Except as provided in paragraphs "a" and "b", portions of records relating to the receipt, holding, and disbursement of gifts made for the benefit of regents institutions and made through foundations established for support of regents institutions, including but not limited to written fund-raising policies and documents evidencing fund-raising practices, shall be subject to this chapter.

(d). This subsection does not apply to a report filed with the ethics and campaign disclosure board pursuant to section 8.7. Iowa Code § 22.7(52) (Supp. 2011).

53. Information obtained and prepared by the commissioner of insurance pursuant to section 507.14. Iowa Code § 22.7(53) (2011).

54. Information obtained and prepared by the commissioner of insurance pursuant to section 507E.5. Iowa Code § 22.7(54) (2011).

55. An intelligence assessment and intelligence data under chapter 692, except as provided in section 692.8A. Iowa Code § 22.7(55) (2011).

56. Individually identifiable client information contained in the records of the state database created as a homeless management information system pursuant to standards developed by the United States department of housing and urban development and utilized by the economic development authority. Iowa Code § 22.7(56) (2011).

57. The following information contained in the records of any governmental body relating to any form of housing assistance:

- a. An applicant's social security number.
- b. An applicant's personal financial history.
- c. An applicant's personal medical history or records.
- d. An applicant's current residential address when the applicant has been granted or has made application for a civil or criminal restraining order for the personal protection of the applicant or a member of the applicant's household. Iowa Code § 22.7(57) (2011).

58. Information filed with the commissioner of insurance pursuant to sections 523A.204 and 523A.502A. Iowa Code § 22.7(58) (2011).

59. The information provided in any report, record, claim, or other document submitted to the treasurer of state pursuant to chapter 556 concerning unclaimed or abandoned property, except the name and last known address of each person appearing to be entitled to unclaimed or abandoned property paid or delivered to the treasurer of state pursuant to that chapter. Iowa Code § 22.7(59) (2011).

60. Information in a record that would permit a governmental body subject to chapter 21 to hold a closed session pursuant to section 21.5 in order to avoid

public disclosure of that information, until such time as final action is taken on the subject matter of that information. Any portion of such a record not subject to this subsection, or not otherwise confidential, shall be made available to the public. After the governmental body has taken final action on the subject matter pertaining to the information in that record, this subsection shall no longer apply. This subsection shall not apply more than ninety days after a record is known to exist by the governmental body, unless it is not possible for the governmental body to take final action within ninety days. The burden shall be on the governmental body to prove that final action was not possible within the ninety-day period. Iowa Code § 22.7(61) (2011).

61. Records of the department on aging pertaining to clients served by the office of substitute decision maker. Iowa Code § 22.7(62) (Supp. 2011).

62. Records of the department on aging pertaining to clients served by the elder abuse prevention initiative. Iowa Code § 22.7(63) (Supp. 2011).

63. Information obtained by the superintendent of credit unions in connection with a complaint response process as provided in section 533.501, subsection 3. Iowa Code § 22.7(64) (2011).

64. Information obtained by the commissioner of insurance in the course of an examination of a cemetery as provided in section 523I.213A, subsection 7. Iowa Code § 22.7(65) (2011).

65. Tentative, preliminary, draft, speculative, or research material, prior to its completion for the purpose for which it is intended and in a form prior to the form in which it is submitted for use or used in the actual formulation, recommendation, adoption, or execution of any official policy or action by a public official authorized to make such decisions for the governmental body or the government body. This subsection shall not apply to public records that are actually submitted for use or are used in the formulation, recommendation, adoption, or execution of any official policy or action of a governmental body or a government body by a public official authorized to adopt or execute official policy for the governmental body or the government body. Senate File 430, 84<sup>th</sup> G.A., 2<sup>nd</sup> Sess., § 2 (Iowa 2012). Note: This subsection is not effective until July 1, 2013.

**B.** **Discretion** - vests the lawful custodian with discretion to release records listed in section 22.7. But see [insert ACLU case] *Brown v. Iowa Legislative Council*, 490 N.W.2d 551 (Iowa 1992).

1. A member of a government body has a right of access to records otherwise confidential under section 22.7 in order to fulfill his/her duties, but the individual member does not have the right to disseminate the records in derogation of the decision of the lawful custodian to maintain confidentiality. Gabrilson v. Flynn, 554 N.W.2d 267 (Iowa 1996).

2. Where the determination whether to release telephone records of the Iowa Senate is a nonjusticiable political question and the Senate has decided NOT to release the records, a lawful custodian of copies of the same records does not have authority to release the copies without Senate permission. Des Moines Register & Tribune Co. v. Dwyer et al., 542 N.W.2d 491 (Iowa 1996).

3. When the lawful custodian makes records listed under § 22.7 available to some members of the news media, the lawful custodian may no longer withhold the same records from other members of the news media on grounds that the records are confidential under § 22.7. Quad-City Community News Services, Inc. v. Jebens, 334 F.Supp. 8 (S.D. Iowa 1971); 1980 Op. Atty. Gen. 720 (“Any attempt to limit access to some members of the public after access has been provided to others . . . would require a strong justification.”). But see Gabrilson v. Flynn, 554 N.W.2d 267 (Iowa 1996)(limited disclosure of examination for field testing does not destroy confidentiality under section 22.7).

4. The power of a court to order disclosure of records listed in § 22.7 is limited to situations in which a statute or rule outside of chapter 22 gives a party a specific right of access superior to that of the public generally. Head v. Colloton, 331 N.W.2d 870 (Iowa 1983).

a. Section 22.7(2) does not bar an administrative subpoena of an investigative agency for medical records. Iowa Civil Rights Commission v. City of Des Moines, 313 N.W.2d 491 (Iowa 1981).

b. Section 22.7(13) does not bar a prosecutor's subpoena duces tecum requiring the custodian of library records to appear and present all records of persons who have checked out certain books. Brown v. Johnston, 328 N.W.2d 510 (Iowa), *cert. denied*, 463 U.S. 1208, 103 S.Ct. 3540, 77 L.Ed.2d 1390 (1983).

c. Iowa Code chapter 22 pertains to persons seeking access to government documents and “ordinarily has no application to discovery of such information in litigation.” Mediacom, L.L.C. v. Incorporated



City of Spencer, 682 N.W.2d 62 (Iowa 2004).

5. The “unless otherwise ordered by a court” language in section 22.7 does not provide authority for a court to order release of an otherwise confidential public record whenever it thinks that would be fair or appropriate. Rather, this language is meant to provide an “escape valve” when strict application of the literal language of the exemption would undermine either the exemption itself or some other provision of law. Simington v. Banwart, No. 09-1561, 2010 WL 2089348 (Iowa App. May 26, 2010). *But see* American Civil Liberties Union Foundation of Iowa et al. v. Records Custodian, Atlantic Community School Dist., 818 N.W.2d 231, 233 (Iowa 2012) (“The Act essentially gives all persons the right to examine public records. Iowa Code § 22.2 (2009). However, it then lists specific categories of records that must be kept confidential by those responsible for keeping records. Id. § 22.7. Accordingly, these records are exempt from disclosure.”).

## V. EXCEPTIONS - GENERALLY

A. **Confidential Records** - include records under other provisions of the Code which may expressly limit the right to examine and copy public records or require such records to be kept secret or confidential. Burton v. University of Iowa, 566 N.W.2d 182 (Iowa 1997).

B. **Application** - includes, for example:

1. Tax return information. Iowa Code § 422.20 (2007); Goodale v. Bray, 546 N.W.2d 212 (Iowa 1996).
2. Pre-sentence investigation reports. Iowa Code § 901.4 (2007).
3. Criminal history and intelligence data. Iowa Code §§ 692.2 - 3 (2007).
4. Investigative files of licensing boards. Iowa Code § 272C.6(4) (2007).
5. Accident reports filed by a driver as required under Iowa Code section 321.266, or filed by a law enforcement officer as required by Iowa Code section 321.266; however, the date, time, specific location and immediate facts and circumstances surrounding a crime or incident shall not be kept confidential except in those unusual circumstances where disclosure would plainly and seriously jeopardize an investigation or pose a clear and present danger to the safety of an individual. Iowa Code § 321.271. Compare Iowa

Code § 22.7(5) (2011).

## VI. INJUNCTION

A. **Prohibition** - authorizes the district court to grant an injunction restraining the examination and copying of a specific public record or a narrowly drawn class of public records. Iowa Code § 22.8 (2011).

B. **Grounds** - an injunction may issue only if the petition supported by affidavit shows and the court finds that examination both would not be in the public interest and would substantially and irreparably injure any person or persons. Iowa Code § 22.8 (2011).

1. A good-faith, reasonable delay in allowing examination of a particular document is not a violation of chapter 22 if the purpose of the delay is any of the following:

a. To seek an injunction under this section.

b. To determine whether the lawful custodian is entitled to seek an injunction or should seek such an injunction.

c. To determine whether the record in question is a public record, or a confidential record.

d. To determine whether a confidential record should be available for inspection and copying to the person requesting the right to do so. A reasonable delay for this purpose shall not exceed twenty calendar days and ordinarily should not exceed ten business days. Iowa Code § 22.8(4) (2011).

2. Where the lawful custodian cannot locate documents in the possession of another, but provides the documents as soon as they become available, the lawful custodian has substantially complied with the Public Records Law.

Braunschweig v. Bormann, No. 04-0537, 2005 WL 1224685 (Iowa App. May 25 2005) (unpublished opinion).

3. Inconvenience or embarrassment to public officials or others is insufficient to support an injunction. City of Dubuque v. Telegraph Herald, Inc., 297 N.W.2d 523 (Iowa 1980).

## VII. VIOLATIONS - CIVIL ENFORCEMENT

A. **Availability** - can be enforced by any of the following persons:

1. Any aggrieved person;
2. Taxpayer to the State of Iowa;
3. Citizen of the State of Iowa;
4. Attorney General; or
5. County Attorney. Iowa Code § 22.10(1) (2011).

B. **Remedies** - can be imposed for violation of any provision of chapter 22. Upon finding by a preponderance of the evidence that a governmental body has violated any provision a court **shall**:

1. Issue an injunction punishable by civil contempt ordering the offending lawful custodian and other appropriate persons to comply with the requirements of chapter 22 in the case before the court. Iowa Code § 22.10(3)(a) (2011).
2. Assess damages against each person who participated in the violation in the amount of not more than \$500 and not less than \$100. Iowa Code § 22.10(3)(b) (2011).
3. Assess damages against each member who *knowingly* participated in the violation in the amount of not more than \$2,500 and not less than \$1,000. Senate File 289, 84<sup>th</sup> G.A., 1<sup>st</sup> Sess., § 11 (Iowa 2011).
3. Order payment of all costs and reasonable attorney fees, including appellate attorney fees, to any plaintiff successfully establishing a violation.
  - a. Costs and fees shall be paid by the particular persons assessed damages. If no persons were assessed damages, costs and fees shall be paid from the budget of the governmental body or its parent. Iowa Code § 22.10(3)(c)(2011).
  - b. When the custodian of a public record brings an action in good faith to determine whether documents are subject to disclosure, it should

not face the sanction of having to pay attorney fees. Des Moines Independent Community School District v. Des Moines Register and Tribune Co., 487 N.W.2d 666 (Iowa 1992). See also City of Riverdale v. Diercks, 2011 WL 1583934 (Iowa App.).

4. Issue an order removing from office any person who has engaged in a prior violation of chapter 22 for which damages were assessed against the member during his or her term. Iowa Code § 22.10(3)(d) (2011).

In addition to these remedies the court may:

5. Order the lawful custodian and any other appropriate persons to refrain for one year from future violations of chapter 22. Iowa Code § 22.10(3)(a) (2011).

**C. Administrative Proceedings** - Complaints can be filed with the Iowa Public Information Board *after July 1, 2013*, to secure compliance with and enforcement of chapters 21 and 22.

1. Members - The Board is composed of nine members appointed by the Governor with no more than three representatives of the media and no more than three representatives of cities, counties and other political subdivisions. Senate File 430, 84<sup>th</sup> G.A., 2<sup>nd</sup> Sess., § 6 (Iowa 2012).

2. Election of Remedies - An aggrieved person, any taxpayer 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. Senate File 430, 84<sup>th</sup> G.A., 2<sup>nd</sup> Sess., § 8(1) (Iowa 2012).

a. Stay of Court Action - 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. Senate File 430, 84<sup>th</sup> G.A., 2<sup>nd</sup>

Sess., § 8(2) (Iowa 2012).

b. Removal - 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. Senate File 430, 84<sup>th</sup> G.A., 2<sup>nd</sup> Sess., § 8(3) (Iowa 2012).

3. Complaints - The Board shall receive complaints alleging violations of chapter 21 and 22, formally investigate complaints, and – if the Board finds probable cause – prosecute the respondent before the Board in a contested case proceeding conducted under Iowa Code chapter 17A. Senate File 430, 84<sup>th</sup> G.A., 2<sup>nd</sup> Sess., § 9(4) (Iowa 2012).

a. Subpoenas - The Board may issue subpoenas enforceable in court for the purpose of investigating complaints<sup>5</sup> and facilitating the prosecution of contested cases. Senate File 430, 84<sup>th</sup> G.A., 2<sup>nd</sup> Sess., § 9(7) (Iowa 2012). See Iowa Code § 17A.13(1) (2011).

b. Confidential Documents - The Board may examine a record of a governmental body that is the subject matter of a complaint, including a record that is confidential by law. Confidential records provided to the Board by a governmental body shall continue to maintain their confidential status. Senate File 430, 84<sup>th</sup> G.A., 2<sup>nd</sup> Sess., § 9(6) (Iowa 2012).

4. Informal Resolution - In lieu of prosecuting a contested case, the Board may:

a. issue informal advice concerning the applicability of chapter 21 or 22; or

b. seek resolution of complaints through informal assistance, or through mediation and settlement. Senate File 430, 84<sup>th</sup> G.A., 2<sup>nd</sup> Sess., §§ 9(3)-(4), 12(1) (Iowa 2012).

5. Remedies - If the Board determines in a final decision by a majority vote of the members that the respondent has violated chapter 21 or chapter 22, the

Board may do any or all of the following:

- a. Damages - require the respondent to pay damages as provided in Iowa Code section 21.6 (open meetings) or section 22.10 (public records), whichever is applicable, to the extent that provision would make such damages payable if the complainant had sought to enforce a violation in court; and/or
- b. Void Actions - 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; and/or
- c. Remedial Action - require the respondent to take any remedial action deemed appropriate by the Board. Senate File 430, 84<sup>th</sup> G.A., 2<sup>nd</sup> Sess., § 13(3)(b)(1)-(3) (Iowa 2012).

6. Removal - The Board shall not have the authority to remove a person from public office for a violation of chapter 21 or 22, but 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. Senate File 430, 84<sup>th</sup> G.A., 2<sup>nd</sup> Sess., § 13(3)(c) (Iowa 2012).

**D. Private Cause of Action** - cannot be based on negligent release of confidential information under chapter 22. Marcus v. Young, 538 N.W.2d 285 (Iowa 1995).

**E. Defenses** - are available against assessment of damages upon proof that the person did any of the following:

1. Voted against the action violating chapter 22, refused to participate in the action violating chapter 22, or engaged in reasonable efforts under the circumstances to resist or prevent the action in violation of chapter 22.
2. Had good reason to believe and in good faith believed facts which, if true, would have indicated compliance with chapter 22.
3. 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, given in writing, or memorialized in the minutes of the meeting at which the formal oral opinion was given, or an advisory opinion of the Iowa public information board, the attorney general or the attorney for the

government body, given in writing. Iowa Code § 21.6(3)(a)(1)-(3) (Supp. 2011), as amended by Senate File 430, 84<sup>th</sup> G.A., 2<sup>nd</sup> Sess., § 1 (Iowa 2012). . See generally Grell v. Building Appeals Board, No. 98-1992, 1999 WL 1255744 (Iowa App. Dec. 27 1999) (unpublished opinion) (decision construing "reasonable reliance" upon opinion of counsel under Open Meetings Law).

Note: Reasonable reliance on an advisory opinion of the Iowa Public Information Board becomes a defense *after July 1, 2013*. See section C. *supra*.

### VIII. VIOLATIONS - ADDITIONAL ENFORCEMENT

- A. **Prohibition** - provides it is unlawful for "any person to deny or refuse any citizen any right" under chapter 22 or "to cause any such right to be denied or refused." Iowa Code § 22.6 (2011).
- B. **Criminal Penalty** - provides that any person knowingly violating or attempting to violate any provision of chapter 22 where no other penalty is provided is guilty of a simple misdemeanor. Iowa Code § 22.6 (2011).
- C. **Alternative Enforcement** - Chapter 22 may be enforced by mandamus, injunction, or by petition for judicial review under chapter 17A. Iowa Code § 22.5 (2011).
- D. **Denial of Federal Funds** - Application of any provision of chapter 22 to a state agency shall be suspended if it is determined that application of the provision would cause denial of federal funds, services, or essential information which would otherwise definitely be available. The suspension shall be only to the extent necessary to prevent denial of the funds, services or essential information. An agency as defined in § 17A.2(1) shall identify by rule the provisions of chapter 22 which must be waived to prevent denial of federal funds, services, or information. Iowa Code § 22.9 (2011).

### IX. SETTLEMENTS/GOVERNMENTAL BODIES

- A. **Settlement Documents** - 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 shall, upon request and to the extent allowed under applicable law, 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, including any payments made by or on behalf of the government body and any actions to be taken by the government body. A government body is not required to prepare a summary if the settlement agreement includes the information required to be included in the summary. The settlement agreement and any

required summary shall be a public record. Iowa Code § 22.13 (Supp. 2011).

**B. Prospective Application** - Although application of § 22.13, enacted in 1991, is prospective, settlements of claims against a governmental body executed prior to the effective date of the statute which involve payment of public funds may, nevertheless, be public record under chapter 22. Des Moines Independent Community School District v. Des Moines Register and Tribune Co., 487 N.W.2d 666 (Iowa 1992).