

OPEN GOVERNMENT GUIDE

Access to Public Records
and Meetings in

IOWA

**REPORTERS
COMMITTEE**
FOR FREEDOM OF THE PRESS

Sixth Edition
2011

OPEN GOVERNMENT GUIDE

OPEN RECORDS AND MEETINGS LAWS IN

IOWA

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**SIXTH EDITION
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Previously Titled
Tapping Officials' Secrets

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Introductory Note

The OPEN GOVERNMENT GUIDE is a comprehensive guide to open government law and practice in each of the 50 states and the District of Columbia. Fifty-one outlines detail the rights of reporters and other citizens to see information and attend meetings of state and local governments.

The OPEN GOVERNMENT GUIDE — previously published as *Tapping Officials' Secrets* — is the sole reference on open government laws in many states.

Written to follow a standard outline to allow easy comparisons between state laws, the compendium has enabled open government advocates in one state to use arguments successful in other states to enhance access rights at home. Press associations and lobbyists have been able to invoke other sunshine laws as they seek reforms in their own.

Volunteer attorneys, expert in open government laws in each state and in Washington, D.C., generously donated their time to prepare the initial outlines for the first incarnation of this project in 1989. In most states these same attorneys or their close associates updated and rewrote the outlines for the 1993, 1997, 2001 and 2006 editions as well this current 2011 edition.

Attorneys who are new to the compendium in this edition are also experts in open government and access issues, and we are grateful to them for their willingness to share in this ongoing project to create the first and only detailed treatise on state open government law. The rich knowledge and experience all the participating attorneys bring to this project make it a success.

While most of the initial users of this compendium were journalists, we know that lawyers and citizens have discovered it and find it to be indispensable as well.

At its core, participatory democracy decries locked files and closed doors. Good citizens study their governors, challenge the decisions they make and petition or vote for change when change is needed. But no citizen can carry out these responsibilities when government is secret.

Assurances of open government exist in the common law, in the first state laws after colonization, in territorial laws in the west and even in state constitutions. All states

have passed laws requiring openness, often in direct response to the scandals spawned by government secrecy. The U.S. Congress strengthened the federal Freedom of Information Act after Watergate, and many states followed suit.

States with traditionally strong access laws include Vermont, which provides virtually unfettered access on many levels; Florida, which was one of the first states to enact a sunshine law; and Ohio, whose courts have issued several access-friendly rulings. Other jurisdictions, such as Pennsylvania and the District of Columbia, have made significant changes to their respective open government laws since the fifth edition was published designed to foster greater public access to information. Historically, Pennsylvania had a reputation as being relatively non-transparent while the District of Columbia was known to have a very restrictive open meetings law.

Some public officials in state and local governments work hard to achieve and enforce open government laws. The movement toward state freedom of information compliance officers reflects a growing activism for access to information in the states.

But such official disposition toward openness is exceptional. Hardly a day goes by when we don't hear that a state or local government is trying to restrict access to records that have traditionally been public — usually because it is feared release of the records will violate someone's "privacy" or threaten our nation's security.

It is in this climate of tension between broad democratic mandates for openness and official preference for secrecy that reporters and good citizens need to garner their resources to ensure the passage and success of open government laws.

The Reporters Committee genuinely hopes that the OPEN GOVERNMENT GUIDE will help a vigorous press and citizenry to shape and achieve demands for openness, and that it will serve as a primer for those who battle in government offices and in the courts for access to records and meetings. When challenges to secrecy are successful, the news is better and so is the government.

User's Guide

Whether you are using a guide from one state to find a specific answer to an access issue, or the complete compendium encompassing all states to survey approaches to a particular aspect of open government law around the country, knowing a few basics on how the OPEN GOVERNMENT GUIDE is set up will help you to get the most out of it.

Following the outline. Every state section is based on the same standard outline. The outline is divided into two parts: access to records and access to meetings.

Start by reviewing the table of contents for each state. It includes the first two tiers of that state's outline. Once you are familiar with the structure of the outline, finding specific information is simple. Typically, the outline begins by describing the general structure of the state law, then provides detailed topical listings explaining access policies for specific kinds of records or meetings.

Every state outline follows the standard outline, but there will be some variations. Some contributors added items within the outline, or omitted subpoints found in the complete outline which were not relevant to that state's law. Each change was made to fit the needs of a particular state's laws and practices.

In general, outline points that appear in boldface type are part of the standard outline, while additional topics will appear in italicized type.

Whether you are using one state outline or any number of outlines, we think you will find the outline form helpful in finding specific information quickly without having to read an entire statute or search through many court cases. But when you do need to consult statutes, you will find the complete text of the relevant portions at the end of each outline.

Additional copies of individual state booklets, or of the compendium covering the 50 states and the District of Columbia, can be ordered from The Reporters Committee for Freedom of the Press, 1101 Wilson Blvd., Suite 1100, Arlington, Virginia 22209, or by calling (703) 807-2100. The compendium is available in electronic format on CD.

The state outlines also are available on our World-Wide Web site, www.rcfp.org/ogg. The Internet version of the outlines allows you to search the database and compare the law in different states.

Updates: The Reporters Committee published new editions of THE OPEN GOVERNMENT GUIDE in 1989, 1993, 1997, 2001, 2006, and now in 2011. We expect future updates to follow on approximately the same schedule. If we become aware of mistakes or material omissions in this work, we will post notices on this project's page on our World-Wide Web site, at www.rcfp.org/ogg. This does not mean that the outlines will constantly be updated on the site — it simply means known errors will be corrected there.

For our many readers who are not lawyers: This book is designed to help journalists, lawyers, and citizens understand and use state open records and meetings law. Although the guides were written by lawyers, they are designed to be useful to and readable by nonlawyers as well. However, some of the elements of legal writing may be unfamiliar to lay readers. A quick overview of some of these customs should suffice to help you over any hurdles.

Lawyers are trained to give a "legal citation" for most statements of law. The name of a court case or number of a statute may therefore be tacked on to the end of a sentence. This may look like a sentence fragment, or may leave you wondering if some information about that case was omitted. Nothing was left out; inclusion of a legal citation provides a reference to the case or statute supporting the statement and provides a shorthand method of identifying that authority, should you need to locate it.

Legal citation form also indicates where the law can be found in official reporters or other legal digests. Typically, a cite to a court case will be followed by the volume and page numbers of a legal reporter. Most state cases will be found in the state reporter, a larger regional reporter, or both. A case cite reading 123 A.2d 456 means the case could be found in the Atlantic (regional) reporter, second series, volume 123, starting at page 456.

Note that the complete citation for a case is often given only once. We have tried to eliminate as many cryptic second-reference cites as possible, but you may encounter cites like "Jackson at 321." This means that the author is referring you to page 321 of a case cited earlier that includes the name Jackson. Authors may also use the words *supra* or *infra* to refer to a discussion of a case appearing earlier or later in the outline, respectively.

Except for these legal citation forms, most "legalese" has been avoided. We hope this will make this guide more accessible to everyone.

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FOREWORD

1967 was a year of substantial progress toward open government in Iowa. In that year, the legislature passed statutes which, for the first time, opened specified meetings and records of certain governmental bodies to certain members of the public. What follows is a brief introduction to the development of the respective statutes.

Open Records. In August of 1967 the Iowa legislature enacted *An Act to protect the right of citizens to examine public records and make copies thereof*. This public records statute gave every citizen the right to examine and copy all public records not otherwise made confidential. Iowa Code § § 68A.1, 2 and 7.

Chapter 68A was enacted in response to citizen complaints about the denial of access to public records. *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, 1166 (1972). Prior to enactment of chapter 68A, an Iowa citizen's right to inspect public records was severely limited. The situation was not as serious as that described in early England, where "the public business was not the public's business," *id.*, but the only reported Iowa decision on the subject held: "Not every document which comes into the possession or custody of a public official is a public record." *Linder v. Eckard*, 261 *Iowa* 216, 152 N.W.2d 833, 835 (1967).

In the twenty years that followed enactment of the statute, there was a significant amount of litigation concerning the meaning and extent of the Open Records law. Much of that litigation is summarized below. In 1988, the legislature amended the statute in such a way as to indicate that it still did not completely endorse the concept of public access. The statute was amended to extend its application, not just to citizens, but to all "persons." At the same time, however, access was restricted when the list of documents made confidential was expanded. The statute was also transferred from Chapter 68A to Chapter 22 and re-numbered accordingly. *See, generally, Iowa Code Chapter 22.*

Since 1988, the legislature has amended the Act to include within its definition of governmental bodies certain nonprofit corporations supported by property tax revenue and the nonprofit corporations created in response to liberalized gambling laws.

The scope of the litigation arising out of the Act has expanded as well; with suits filed over everything from contracts for broadcast rights to intercollegiate sporting events, to production of settlement documents in cases involving school districts. More recently, the legislature has acted to enhance the monetary sanctions for violations of these statutes, while expanding the scope of documents considered confidential.

The provisions of the statute, together with information and guidance from the courts and the Iowa attorney general, are set forth in the outline which follows. In construing these provisions, it is important to keep a number of "guiding principles" in mind:

First, Iowa Code Chapter 22 is Iowa's freedom of information statute. *Des Moines Register & Tribune Co. v. Osmundson*, 248 N.W.2d 493, 501 (Iowa 1976). Second, Iowa Code § 22.2(1) insures that "[e]very person shall have the right to examine and copy public records and to publish or otherwise disseminate public records or the information contained therein." From this we discern that the statute's purpose is 'to open the doors of govern-

ment to public scrutiny—to prevent government from secreting its decision-making activities from the public, on whose behalf it is its duty to act." *Iowa Civil Rights Comm'n v. City of Des Moines*, 313 N.W.2d 491, 495 (Iowa 1981). Third, the statute "establishe[s] a liberal policy of access from which departures are to be made only under discrete circumstances." *City of Dubuque v. Telegraph Herald Inc.*, 297 N.W.2d 523, 526 (Iowa 1980). Fourth, there is a presumption in favor of disclosure. *Id.* at 527. Fifth, the specific exemptions in § 22.7 are to be construed narrowly. *Id.* But this "narrow" construction principle is subject to two caveats. Over-utilization of the principle could easily thwart rather than promote the legislative intent underlying § 22.7. And where the legislative exception is broadly inclusive, the "narrow" construction rule does not aid in ascertainment of the legislature's intent. *City of Sioux City v. Greater Sioux City Press Club*, 421 N.W.2d 895, 897 (Iowa 1988). Last, the statute provides a procedure — independent of the § 22.7 exceptions — for injunctive relief against disclosure in a carefully circumscribed area. *City of Dubuque*, 297 N.W.2d at 528.

Northeast Council on Substance Abuse Inc. v. Iowa Dept. of Public Health, Div. of Substance Abuse, 513 N.W.2d 757, 759 (Iowa 1994).

Finally, two caveats are in order. The first relates to the search for records in the state of Iowa. Frequently, the statutory scheme which creates an individual agency also provides that the agency shall promulgate rules for the conduct of its daily affairs. Occasionally, those agency rules include provisions governing the confidentiality of certain of the agency records. When that happens, the custodian of the records which appear to be public pursuant to the provisions of chapter 22 may assert that the records are confidential and unavailable for purposes of inspection and copying. *See, e.g., Iowa Admin. Code § 441-28.12.* If such a situation should arise, the Act — not the agency rule — should control. Second, the Iowa legislature is continually seeking to alter the scope of these Acts. *See, e.g., An Act relating to the right of privacy of an individual or a group, association, or class of individuals, and the collection, storage, disclosure, verification, and matching of certain information, and providing penalties: Hearings on S.F. 2178 Before a subcommittee of the Senate Judiciary Committee, 73rd G.A. (1988).* Thus, while the attached statutes are intended to be accurate as of the date of this writing, the reader is urged to consult the Iowa Acts each time a question arises.

Open meetings. In July of 1967, the Iowa Legislature enacted "An Act requiring meetings of governmental agencies to be open to the public." S.F. 536, 62nd G.A. (1967). *Iowa Laws chapter 98.* This open meetings statute gave every citizen of the state of Iowa the right to attend certain specified meetings of public agencies. Iowa Code § § 28A.1 and 2.

The purpose of the statute was "to prohibit secret or 'star chamber' sessions of public bodies, to require such meetings to be open and to permit the public to be present unless within the exceptions stated therein." *Dobrovolny v. Reinhardt*, 173 N.W.2d 837, 840-841 (Iowa 1970). Prior to enactment of the statute, the public had no right to attend the meetings of governmental bodies. *See generally, 56 Am Jur 2d Municipal Corporations, Etc.*, 161 (1971).

In 1979, the statute underwent comprehensive revision. It was given a new title: "An Act relating to the holding of meetings by governmental bodies expressly created by statute or executive order, local governmental bodies, and other groups created by such governmental bodies, in open session, unless otherwise exempted by statute, and providing remedies and damages." H.F. 2074, 67th G.A. (1978). *Iowa Laws chapter 1037.* As a part of this amendment, and perhaps in response to criticism from those reviewing the earlier legislation, (see e.g., *The Iowa Open Meetings Act: A Lesson in Legislative Ineffectiveness*, 62 *Iowa L. Rev.* 1108, 1114 (1977)), the legislature included a statement of intent and declaration of policy. It provided: "This chapter seeks to assure, through a requirement of open meetings of governmental bodies, that the basis and rationale of government 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.” Iowa Code § 21.1. Its provisions were made applicable, not just to citizens, but to “members of the public.” Iowa Code § 21.2(3).

Since 1979, there have been few amendments to the Act. In 1989, § 21.10 was added, requiring appointed officials to be briefed on the provisions of both open meetings and public records laws, Iowa Code § 21.10; and in 1990, § 21.11 was added, extending the applicability of the Act to meetings of nonprofit corporations which relate to the conduct of pari-mutuel racing and wagering pursuant to chapter 99D, Iowa Code § 21.11.

During this same period, the Act has also been subjected to strict scrutiny by the courts and the Iowa attorney general. The Iowa Court has reiterated its commitment to the importance of open meetings. *See e.g., Donabue v. State*, 474 N.W.2d 537, 539 (Iowa 1991) (“The statute [chapter 21] was enacted for the public benefit and should be construed to favor openness.”).

Two things have remained constant: (1) The legislature continues to amend these acts as technology changes and the manner in which records are stored becomes more sophisticated; and (2) The notion of public access remains somewhat controversial. In the fall of 2000, for example, 13 Iowa newspapers combined to investigate local government compliance with the public records statute. The study concluded that Iowans are “routinely denied access to public records”, particularly when those records are in the hands of local law enforcement agencies. *See Sioux City Journal, Vol. 137 Nos. 20-23 (September 23-26, 2000)*.

The provisions of the statute, together with information and guidance from the courts and the Iowa attorney general, are set forth in the outline which follows. The caveats contained in the preliminary discussion of the open records law should be considered as they relate to this discussion as well.

Open Records

I. STATUTE — BASIC APPLICATION

“The purpose of chapter 22 is to remedy unnecessary secrecy in conducting the public’s business.” *US West Communications Inc. v. Office of Consumer Advocate*, 498 N.W.2d 711, 713 (Iowa 1993).

A. Who can request records?

1. Status of requestor.

There is no limitation on who can request records.

“Every person shall have the right to examine and copy public records” Iowa Code Sec. 22.2(1) (emphasis added).

See generally, Northeast Council on Substance Abuse Inc. v. Iowa Dept. of Public Health, Div. of Substance Abuse, 513 N.W.2d 757 (Iowa 1994).

2. Purpose of request.

The statute does not limit access to records based upon the purpose of the request. *See id. See also* 78 Op. Att’y Gen. 725, 728 (Oct. 30, 1978) (“Certainly it [the statute] does not concern itself with the purpose of the examination.”).

Those whose records are records “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 chapter 99D [the Iowa Pari-mutuel Wagering Act], or tax-supported district in this state, or any branch, department, board, bureau, commission, council or committee of any of the foregoing” are subject to the statute. Iowa Code § 22.1.

3. Use of records.

The statute does not limit the use of the records.

No restriction is placed on subsequent use of information provided. “Every person shall have the right to . . . publish or otherwise disseminate public records or the information contained therein.” Iowa Code Sec. 22.2(1). 78 Op. Att’y Gen. 725, 728 (Oct. 30, 1978) (“Certainly it [the statute] does not concern itself with . . . the use which is made of the information obtained.”) *See also* 68 Op. Att’y Gen. 656 (April 8, 1968).

The purpose for which data is obtained is immaterial. 81 Op. Att’y Gen. 212 (August 13, 1981) (“The fact that the information on the [addressograph] plates may be used for political purposes does not bar examination and copying.”) 81 Op. Att’y Gen. 76,77 (April 6, 1981) (“[T]he fact that the requestor intends to utilize the records for commercial purposes in not a bar to examination and copying of public records.”) 74 Op. Att’y Gen. 430, 432 (February 2, 1974) (“The statute does not make any distinctions as to the purpose for which public records [list of state employees] may be used.”).

B. Whose records are and are not subject to the act?

1. Executive branch.

No provision is made in the statute for exclusion of records in the custody of individual executives such as the governor, the several mayors, etc.

2. Legislative bodies.

Similarly to how executive branch records are treated under the law, no provision is made in the statute for exclusion of records in the custody of legislative bodies or the courts. “It is the nature and purpose of the document, not the place where it is kept, which determines its status.” 79 Op. Att’y Gen. 19, 20 (Oct. 9, 1979). *Des Moines Independent Community School District Public Records v. Des Moines Register &*

Tribune Company, 487 N.W.2d 666, 670 (Iowa 1992) (“The nature of the record is not controlled by its place in a filing system.”). *But see, Des Moines Register and Tribune Co. v. Dwyer*, 542 N.W.2d 491, 503 (Iowa 1996) (Senate decision to keep the records in question (long distance telephone records) confidential falls within the constitutionally granted power of the Senate to determine its rules of proceedings under Iowa Const. Art. III, § 9).

3. Courts.

Records are not confidential, simply because a court is the lawful custodian. Instead, the nature of the document over which the court has custody is determinative.

See, e.g., Iowa Code § 598.26(1) (“Until a decree of dissolution has been entered, the record and evidence shall be closed to all but the court, its officers, and the child support recovery unit . . .”).

4. Nongovernmental bodies.

a. Bodies receiving public funds or benefits.

Governmental bodies cannot prevent the examination or copying of public records by contracting with nongovernmental bodies to perform governmental duties or functions. Iowa Code § 22.2(2). “In other words, a governmental body may not delegate or ‘contract away’ its duties or functions in order to avoid disclosure of what would otherwise be a public record.” *KMEG Television Inc. v. Iowa State Board of Regents*, 440 N.W.2d 382, 385 (Iowa 1989) (network bid proposals received by communications company pursuant to company’s contract with state university for broadcast of sporting events are not public records because broadcasting sporting events is not a governmental function). *But see, Gannon v. Board of Regents*, 692 N.W.2d 31 (Iowa 2005), *overruling KMEG in part* and holding that the Iowa State University Foundation “performs a government function by virtue of its contract with ISU. Therefore, its records are ‘public records’ subject to examination.” *Id.* at p. 44.

“The term ‘governmental body’ means this state, or any county, city, township, school corporation, political subdivision, tax supported district, 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 chapter 99D, 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 this chapter [chapter 22].”

b. Bodies whose members include governmental officials.

The records of nongovernmental groups whose members include governmental officials are public if the records are held by governmental officials in their *official* capacity. *Dubuque v. Dubuque Racing Ass’n, Ltd.*, 420 N.W.2d 450, 453 (Iowa 1988).

5. Multi-state or regional bodies.

The records of multistate or regional bodies are public if the records are held by governmental officials in their *official* capacity. *Dubuque v. Dubuque Racing Ass’n, Ltd.*, 420 N.W.2d 450, 453 (Iowa 1988).

6. Advisory boards and commissions, quasi-governmental entities.

The records of advisory boards, commissions and quasi-governmental entities are public if the records are held by governmental officials in their *official* capacity. *Dubuque v. Dubuque Racing Ass’n, Ltd.*, 420 N.W.2d 450, 453 (Iowa 1988).

7. Others.

Records of public funds invested by private third-parties are public records. Iowa Code § 22.14.

C. What records are and are not subject to the act?

1. What kind of records are covered?

As a general rule, the records which are subject to the statute are those records which are “public.” Iowa Code § 22.2(1) (“Every person shall have the right to examine and copy *public* records”) (emphasis added).

Public records include: “[A]ll 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 chapter 99D, or tax-supported district in this state, or any branch, department, board, bureau, commission, council, or committee of any of the foregoing.” Iowa Code § 22.1.

Note: This section was amended in 2005 to include within the definition of public records: “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.”

See also, Clymer v. City of Cedar Rapids, 601 N.W.2d 42, 45 (Iowa 1999) (Defining “private” in the absence of statutory definition).

“When, as is the case under section 22.7(11), a statutory exemption does not articulate precisely what records or information the legislature considers private, courts commonly apply the following factors as a means of weighing individual privacy interests against the public’s need to know: (1) the public purpose of the party requesting the information; (2) whether the purpose could be accomplished without the disclosure of personal information; (3) the scope of the request; (4) whether alternative sources for obtaining the information exist; and (5) the gravity of the invasion of personal privacy. (*citing DeLaMater v. Marion Civil Serv. Comm’n*, 554 N.W.2d 875, 879 (Iowa 1996)).”

2. What physical form of records are covered?

The physical form of the record is immaterial. The statute applies to: “[A]ll records, documents, tape, or other information, stored or preserved in any medium . . .” Iowa Code § 22.1.

3. Are certain records available for inspection but not copying?

Public records may be examined *and* copied. Iowa Code § 22.2(1).

D. Fee provisions or practices.

1. Levels or limitations on fees.

The lawful custodian may charge a *reasonable* fee for services rendered in connection with supervision of the records which are the subject of the request. Iowa Code § 22.3. The custodian may not relinquish control of the records to the requesting individual. 81 Op. Att’y Gen. 76 (April 6, 1981). Thus, fees for supervisory services may also be charged. Supervisor fees, must, however, be uniformly applied to all who request records. *Id.*

The lawful custodian must provide a suitable place for examination and copying. If it is impracticable to do such work in the offices of the custodian, the person requesting the records must pay the *necessary* expense of providing a place to work. Iowa Code § 22.3.

“If copy equipment is available at the office of the lawful custodian of any public records, the lawful custodian shall provide any person a reasonable number of copies of any public record in the custody of the office upon the payment of a fee. The fee for the copying service as determined by the lawful custodian shall not exceed the cost of providing the service.” *Id.*

The provisions of § 22.3 generally contemplate reimbursement to a lawful custodian of public records for costs incurred in retrieving

public records. The phrase “all expenses of such work” to are indicative of the legislature’s intent that a lawful custodian has the authority to charge a fee to cover the costs of retrieving public records. Thus, access to public records does not necessarily mean “free” access. *Rathmann v. Board of Directors of Davenport Community School Dist.*, 580 N.W.2d 773, 778-779 (Iowa 1998).

2. Particular fee specifications or provisions.

a. Search.

No search fee is imposed. Instead, the custodian is allowed to charge a “reasonable fee” for “supervisory” services. Iowa Code § 22.3.

b. Duplication.

“The fee for the copying service as determined by the lawful custodian shall not exceed the cost of providing the service.”

Public records include records stored “in any medium.” Iowa Code § 22.1 (emphasis added). However, “a government body which maintains a geographic computer data base is not required to permit access to or use of the data base by any person except upon terms and conditions acceptable to the governing body. The governing body shall establish reasonable rates and procedures for the retrieval of specified records, which are not confidential records, stored in the data base upon the request of any person.” Iowa Code § 22.2(3).

3. Provisions for fee waivers.

There are no provisions for waiver of fees when disclosure would be in the public interest. However, the custodian need not charge for his or her services. Iowa Code § 22.3 (“The lawful custodian may charge a reasonable fee.”) Charges which are assessed, however, must be uniformly applied to all who request records. 81 Op. Att’y Gen. 76 (April 6, 1981).

4. Requirements or prohibitions regarding advance payment.

The statute is silent on the subject of advance payment.

It does provide, however, that the lawful custodian “may adopt . . . reasonable rules regarding such work” and that the custodian shall provide a reasonable number of copies “upon payment of a fee.” Iowa Code § 22.3.. The freedom to impose reasonable rules probably includes the freedom to require payment in advance.

5. Have agencies imposed prohibitive fees to discourage requesters?

Agencies have not, as a general rule, imposed prohibitive fees to discourage requests. For example, these departments of the State of Iowa, have made the following charges in the past:

- a. Agriculture and Land Stewardship: 10 cents;
- b. Commerce: 15 - 20 cents;
- c. Corrections: No charge for the first copy;
- d. Cultural Affairs: 10 cents (\$1.00 minimum);
- e. Elder Affairs: 5 - 10 cents;
- f. Employment Services: No charge for copies of one’s own file — \$10.00 for a copy of a hearing tape;
- g. General Services: 10 cents or hourly rate;
- h. Human Rights: 10 cents;
- i. Inspection and Appeals: 30 cents;
- j. Justice: 15 cents plus \$6.68/hour for services;
- k. Management: 35 cents;
- l. Personnel: 5 cents;

- m. National Guard: 2 cents;
- n. Public Health: 5 cents (first hour of service at no charge, \$5.00 thereafter);
- o. Public Safety: 15 cents (1 - 25 copies); 10 cents (25 - 100 copies); 5 cents (100 or more copies);
- p. Revenue and Finance: \$3.00 for copies of tax returns;
- q. Transportation: 10 cents (8 1/2 x 11); 10 cents (8 1/2 x 14); 2 cents (copies from manual); \$1.00/page (computer printouts); \$2.70/15 minutes (research and/or supervision).

E. Who enforces the act?

The rights and remedies provided by this section are in addition to any rights and remedies provided by § 17A.19. *Any aggrieved person, any taxpayer to or citizen of the state of Iowa, or the attorney general or any county attorney*, may seek judicial enforcement of the requirements of this chapter in an action brought against the lawful custodian and any other persons who would be appropriate defendants under the circumstances. Suits to enforce this chapter shall be brought in the district court for the county in which the lawful custodian has its principal place of business. Iowa Code § 22.10(1).

“The provisions of this chapter and all rights of persons under this chapter may be enforced by mandamus or injunction, whether or not any other remedy is also available. In the alternative, rights under this chapter also may be enforced by an action for judicial review according to the provisions of the Iowa administrative procedure Act, chapter 17A, if the records involved are records of an “agency” as defined in that Act.” Iowa Code § 22.5.

1. Attorney General’s role.

The attorney general has statutory authority to seek judicial enforcement.

2. Availability of an ombudsman.

The office of the Citizen’s Aide/Ombudsman has statutory authority to “[i]nvestigate, on complaint or on the citizens’ aide’s own motion, any administrative action of any agency, without regard to the finality of the administrative action, except that the citizens’ aide shall not investigate the complaint of an employee of an agency in regard to that employee’s employment relationship with the agency.” Iowa Code § 2C.9(1).

Under Chapter 2C, “Agency” means all governmental entities, departments, boards, commissions, councils or institutions, and any officer, employee or member thereof acting or purporting to act in the exercise of official duties, but it does not include:

- a. Any court or judge or appurtenant judicial staff.
- b. The members, committees, or permanent or temporary staffs of the Iowa general assembly.
- c. The governor of Iowa or the governor’s personal staff.
- d. Any instrumentality formed pursuant to an interstate compact and answerable to more than one state.”

Iowa Code § 2C.1(2)..

Thus, it appears that the Citizen’s Aide has the statutory authority to investigate a complaint regarding actions taken with respect to the Open Records Law.

3. Commission or agency enforcement.

There is no commission or agency charged with the responsibility for enforcement of the Act.

F. Are there sanctions for noncompliance?

Iowa Code § 22.6, which provided “It shall be unlawful for any per-

son to deny or refuse any citizen of Iowa any right under this chapter, or to cause any such right to be denied or refused. Any person knowingly violating or attempting to violate any provision of this chapter where no other penalty is provided shall be guilty of a simple misdemeanor.” was repealed by the Legislature in 2011. Ia. SF 289.

1. The rights and remedies provided by this section are in addition to any rights and remedies provided by section 17A.19. Any aggrieved person, any taxpayer to or citizen of the state of Iowa, or the attorney general or any county attorney, may seek judicial enforcement of the requirements of this chapter in an action brought against the lawful custodian and any other persons who would be appropriate defendants under the circumstances. Suits to enforce this chapter shall be brought in the district court for the county in which the lawful custodian has its principal place of business.

2. Once a party seeking judicial enforcement of this chapter demonstrates to the court that the defendant is subject to the requirements of this chapter, that the records in question are government records, and that the defendant refused to make those government records available for examination and copying by the plaintiff, the burden of going forward shall be on the defendant to demonstrate compliance with the requirements of this chapter.

3. Upon a finding by a preponderance of the evidence that a lawful custodian has violated any provision of this chapter, a court:

a. Shall issue an injunction punishable by civil contempt ordering the offending lawful custodian and other appropriate persons to comply with the requirements of this chapter in the case before it and, if appropriate, may order the lawful custodian and other appropriate persons to refrain for one year from any future violations of this chapter.

b. Shall assess the persons who participated in its violation damages in the amount of not more than five hundred dollars and not less than one hundred dollars. However, if a person knowingly participated in such a violation, damages shall be in the amount of not more than two thousand five hundred dollars and not less than one thousand dollars. These damages shall be paid by the court imposing them to the state of Iowa if the body in question is a state government body, or to the local government involved if the body in question is a local government body. A person found to have violated this chapter shall not be assessed such damages if that person proves that the person did any of the following:

(1) Voted against the action violating this chapter, refused to participate in the action violating this chapter, or engaged in reasonable efforts under the circumstances to resist or prevent the action in violation of this chapter.

(2) Had good reason to believe and in good faith believed facts which, if true, would have indicated compliance with the requirements of this chapter.

(3) Reasonably relied upon a decision of a court, a formal opinion of the attorney general, or the attorney for the government body, given in writing, or as memorialized in the minutes of the meeting at which a formal oral opinion was given, or an advisory opinion of the attorney general or the attorney for the government body, given in writing.

c. Shall order the payment of all costs and reasonable attorney fees, including appellate attorney fees, to any plaintiff successfully establishing a violation of this chapter in the action brought under this section. The costs and fees shall be paid by the particular persons who were assessed damages under paragraph “b” of this subsection. If no such persons exist because they have a lawful defense under that paragraph to the imposition of such damages, the costs and fees shall be paid to the successful plaintiff from the budget of the offending government body or its parent.

d. Shall issue an order removing a person from office if that person has engaged in a prior violation of this chapter for which damages were assessed against the person during the person’s term.

4. Ignorance of the legal requirements of this chapter is not a defense to an enforcement proceeding brought under this section. A lawful custodian or its designee in doubt about the legality of allowing the examination or copying or refusing to allow the examination or copying of a government record is authorized to bring suit at the expense of that government body in the district court of the county of the lawful custodian’s principal place of business, or to seek an opinion of the attorney general or the attorney for the lawful custodian, to ascertain the legality of any such action.

Iowa Code § 22.10.

II. EXEMPTIONS AND OTHER LEGAL LIMITATIONS

A. Exemptions in the open records statute.

1. Character of exemptions.

a. General or specific?

The statutory exemptions are *specific*. In addition, the district court may enjoin examination of specific records or a narrowly drawn class of records if examination would clearly not be in the public interest *and* the examination would result in substantial and irreparable injury to any person or persons. Iowa Code § 22.8(1). Inconvenience or embarrassment to officials or others is not sufficient to warrant grant of an injunction. Iowa Code § 22.8(3). *City of Dubuque v. Telegraph Herald Inc.*, 297 N.W.2d 523, 528 (Iowa 1980). Injunctions “restraining the examination of a narrowly drawn class of public records may be issued only if an injunction would be justified under this section for every member within the class of records involved if each of those members were considered separately.” Iowa Code § 22.8(3). *See generally, I.R.Civ.P. 320 - 330* (injunctions).

b. Mandatory or discretionary?

The exemptions are *discretionary*. “The following public records shall be kept confidential, *unless* otherwise ordered by a court, *by the lawful custodian of the records*, or by another person duly authorized to release such information.” Iowa Code § 22.7. (emphasis added).

c. Patterned after federal Freedom of Information Act?

The Iowa statute does not appear to be patterned after the federal statute. *But* when a federal provision is similar to a provision in the Iowa statute, federal court interpretations are helpful in construing the Iowa statute. *City of Dubuque v. Telegraph Herald Inc.*, 297 N.W.2d 523, 526 (Iowa 1980).

2. Discussion of each exemption.

a. 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).

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(1) A student's name and address in public records in the custody of a public school is *not*, however, confidential. 80 Op. Att'y Gen. 720 (June 18, 1980). *Cf.* 20 U.S.C. § 1232g (school must allow parents opportunity to inform school they do not want this information released without prior consent). *See also Iowa Code* § 22.9 (provisions of Chapter 22 which would cause denial of federal funds are suspended to the extent necessary to prevent denial).

(2) "We believe a subpoena is a sufficient court order under section 22.7(1) to allow a party to obtain possession of records to allow a court an opportunity to assess their relevancy and materiality." *Poole v. Hawkeye Area Community Action Program, Inc.*, 666 N.W.2d 560 (Iowa 2003) (subpoena served on school district for student records in tenant action against landlord alleging exposure to lead poisoning).

b. 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 § 915.20A. However, the Iowa department of public health shall adopt rules which provide for the sharing of information among agencies and providers concerning the maternal and child health program including but not limited to the statewide child immunization information system, while maintaining an individual's confidentiality. Iowa Code § 22.7(2).

(1) "Outpatient," as used in § 22.7(2), means one who is "treated at a clinic or dispensary connected with a hospital who is not a hospital inmate. (Citation)." *Head v. Colloton*, 331 N.W.2d 870, 874 (Iowa 1983).

(2) The identity of a potential bone marrow donor is a hospital record of the condition, diagnosis, care or treatment of a patient or former patient within the meaning of this section. *Head*, 331 N.W.2d at 876.

(3) But, documents filed in the office of the governor which pertain to the involuntary sterilization of a county home resident were public and not confidential hospital records within the meaning of the exemption because they were not maintained by the governor as hospital or physician records. *Howard v. Des Moines Register & Tribune Co.*, 284 N.W.2d 289, 300 (Iowa 1979).

(4) Records pertaining to medical services, including the identity of doctors, nurses and hospitals receiving public funds for services performed, the number and kind of services performed, and statistical information about patients (so long as identity is not revealed) are not excluded from public examination. 78 Op. Att'y Gen. 677, 678 - 679 (September 20, 1978).

c. Trade secrets which are recognized and protected as such by law. Iowa Code § 22.7(3).

(1) "The custodian of such a record (computer program and data base), however, is required to keep it confidential if the record is a trade secret recognized and protected by law." *Brown v. Iowa Legislative Council*, 490 N.W.2d 551, 552 (Iowa 1992).

(2) "Business information may also fall within the definition of a trade secret, including such matters as maintenance of data on customer lists and needs, source of supplies, confidential costs, price data and figures." *US West Communications Inc. v. Office of Consumer Advocate*, 498 N.W.2d 711, 714 (Iowa 1993).

(3) "A trade secret is a process or device for continuous use in the operation of a business." *Basic Chemicals Inc. v. Benson*, 251 N.W.2d 220, 226 (Iowa 1977).

(4) Information concerning pre-arranged funeral plans which must be filed with the county attorney in the county where the

plan is located pursuant to Iowa Code Chapter 523A is not protected as a trade secret. 83 Op. Att'y Gen. 70, 71 (July 18, 1983).

(5) *But note*, "[T]here is nothing in section 22.7 that suggests the legislature intended to limit the discovery rights of litigants in cases involving governmental entities." *Mediacom Iowa, L.L.C. v. Incorporated City of Spencer*, 682 N.W.2d 62, 69 (Iowa 2004) (cable company sued city and its utilities board for its actions in establishing a competing communications system and sought order compelling discovery of information concerning existing communications system).

(6) District court properly refused to enjoin the Iowa Department of Transportation (IDOT) from releasing test results on a manufacturer's temporary traffic signal to its competitor because the manufacturer did not show that IDOT's report was a confidential public record under Iowa Code ch. 22 as a trade secret under Iowa Code § 22.7(3) or as a report that would give the competitor an advantage under § 22.7(6). *O.M.J.C. Signal, Inc. v. Iowa DOT*, 2009 Iowa App. LEXIS 1645 (Iowa Ct. App. Dec. 17 2009).

d. 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).

I.R.Civ.P. 122(c) provides in pertinent part that: "[A] party may obtain discovery of documents and tangible things otherwise discoverable . . . and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including his attorney . . .) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his case and that he is unable without undue hardship to obtain the substantial equivalent of the materials by other means."

No Iowa case discusses the issue of whether *Rule 122(c)* provides an exception to the confidentiality imposed by *Section 22.7(4)*.

e. Peace officers' investigative reports, 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. Iowa Code § 22.7(5).

(1) Information about criminal activity which peace officers receive from third parties is confidential. *State Ex Rel. Shanahan v. Iowa District Court*, 356 N.W. 2d 523, 528 (Iowa 1984).

(2) "Daily logs" prepared at the direction of law enforcement agency heads are not protected under this section. 76 Op. Att'y Gen. 559, 561 (April 26, 1976).

(3) "Statements made by witnesses to peace officers investigating a motor vehicle accident to enable the officers to make their reports . . . [are public records]." *Shannon By Shannon v. Hansen*, 469 N.W.2d 412, 415 (Iowa 1991).

(4) *But see, Hawk Eye v. Jackson*, 521 N.W.2d 750 (Iowa 1994) (Privilege protecting peace officers' investigative reports and communications made to public officers in official confidence is *qualified*, and official claiming privilege must show that public officer is being examined, communication was made in official confidence, and public interest would suffer by disclosure).

(5) State must show public interest would suffer by disclosure of criminal investigative files; concerns about what might happen are insufficient to prevent disclosure. *State v. Henderson*, 2002 WL 987851 (Iowa App. 2002, unpublished).

(6) Summary judgment was properly granted to the State in a case relating to an open records request because video recordings, use of force reports, and pursuit reports were confidential and not subject to disclosure under Iowa Code § 22.7(5). The

video recording was a report; moreover, the requested materials were investigatory and did not fall within the date, time, specific location, and immediate facts, and circumstances surrounding the crime exclusion. *Neer v. State*, 2011 Iowa App. LEXIS 154 (Iowa Ct. App. Feb. 23 2011).

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

(1) Custodians of production data from individual mines are in the best positions to judge when revelation of the data would give advantage or serve no public purpose. 73 Op. Att’y Gen. 55, 56 (February 23, 1973). The agency in possession of the information makes the preliminary decision. 79 Op. Att’y Gen. 224 (June 14, 1979).

(2) Past grant applications *not* confidential even though they would give advantage to competitor, because public funds were involved and public has interest in seeing how its money is spent. *Northeast Council on Substance Abuse Inc. v. Iowa Dept. of Public Health, Div. of Substance Abuse*, 513 N.W.2d 757, 760 (Iowa 1994).

(3) District court properly refused to enjoin the Iowa Department of Transportation (IDOT) from releasing test results on a manufacturer’s temporary traffic signal to its competitor because the manufacturer did not show that IDOT’s report was a confidential public record under Iowa Code ch. 22 as a trade secret under Iowa Code § 22.7(3) or as a report that would give the competitor an advantage under § 22.7(6). *O.M.J.C. Signal, Inc. v. Iowa DOT*, 2009 Iowa App. LEXIS 1645 (Iowa Ct. App. Dec. 17 2009).

g. 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).

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

i. 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).

(1) Disclosure of prosecution witnesses’ criminal records in a criminal case (beyond conviction list) is prohibited by this section. *State v. Anderson*, 410 N.W.2d 231, 235-236 (Iowa 1987).

(2) Iowa Code section 692.17(1) does not require criminal cases that ended in dismissal or acquittal to be removed from ICIS or the website Iowa Court Online. *Judicial Branch & State Court Adm’r v. Iowa Dist. Court for Linn County*, 2011 Iowa Sup. LEXIS 50.

j. 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 any 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 in return for labor or services rendered by an official, officer, or employee plus the value of benefits 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 positions the individual holds or has held with the government 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 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) (as amended in 2011 by Ia. SF 289)

NOTES re decisions construing § 22.7(11) prior to its amendment include the following, which may or may not be helpful in construing the current provision:

(1) This section applies only to *personal* information in *confidential* personnel records. *City of Dubuque v. Telegraph Herald Inc.*, 297 N.W.2d 523, 526 (Iowa 1980). In determining whether information sought is personal information protected by right of privacy, balance public interest served by disclosure and private interest in protecting against invasion of privacy. *Id.* at 526-527, Applications for appointive city officer were *not* protected by this section. *Id.* at 527. *But see Iowa Code § 22.7(18)*.

(2) Ordinarily, information which includes one’s name, address, employer, education, training and experience is not considered “personal.” 81 Op. Att’y Gen. 3, 5 (January 19, 1981).

(3) Adjudicator decisions concerning termination of teacher contracts are protected by this section. 79 Op. Att’y Gen. 115, 118 (April 27, 1991).

(4) Lists of state employees participating in deferred compensation plans are public records, but extent of individual participation in plans is personal and confidential. 74 Op. Att’y Gen. 430, 433 (February 27, 1974).

(5) This subsection has also been construed to make *settlement agreements* between public bodies and employees public records. *Des Moines Independent Community School Dist. Public Records v. Des Moines Register & Tribune Co.*, 487 N.W.2d 666, 669 Iowa (1992) (“[T]he outstanding characteristic of the settlement agreement was the fact that public funds were being paid to settle a private dispute. We think the document was of the type the legislature designated for disclosure.”).

(a) *see also Iowa Code § 22.13* (“A written summary of the terms of settlement, including amounts of payments made to or through a claimant, or other disposition of any claim for damages made against a governmental body or against an employee, officer, or agent of a governmental body, by an insurer pursuant to a contract of *liability insurance* issued to the governmental body, shall be filed with the governmental body and shall be a public record.”) (emphasis supplied).

(6) Decision to enjoin the city from releasing city employees’ addresses, birth dates and gender affirmed. *Clymer v. City of Cedar Rapids*, 601 N.W.2d 42, 48 (Iowa 1999).

(7) Compensation allocated to and used by individual public employees, whether for salary, sick leave or vacation, is a matter of legitimate concern to the public. So long as the information disclosed does not reveal personal medical conditions or professional evaluations, the public has the right to examine it. *Clymer v. City of Cedar Rapids*, 601 N.W.2d 42, 48 (Iowa 1999).

k. 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).

l. 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).

(1) The requirements of particularity and the showing of a rational connection and need were added by amendment in 1984 to overcome the holding of the court in *Brown v. Johnston*, 328 N.W.2d 510 (Iowa 1983), allowing a county attorney access to library records through the vehicle of a “county attorney’s subpoena” issued pursuant to *I.R.Cr.P. 5(6)*.

m. 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).

n. Information concerning the procedures to be used to control disturbances at adult correctional institutions. Such information shall also be exempt from public inspection under § 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).

o. Information in a report to the Iowa department of public 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).

(1) The list of “reportable diseases” is found at Iowa Admin. Code § 641-1.2(1).

p. Records of identity of owners of public bonds or obligations maintained as provided in § 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).

(1) *See also*, Iowa Code § 76.11, allowing access by state agencies.

q. 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 of 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 any 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).

(1) This section was added by amendment in 1984, subsequent to (and presumably in response to) the holding of the court in *City of Dubuque v. Telegraph Herald Inc.*, 297 N.W.2d 523 (Iowa 1980).

(2) The purpose of this section, as amended, is “to permit public agencies to keep confidential a broad category of useful incoming communications which might not be forthcoming if subject to public disclosure.” *City of Sioux City v. Press Club*, 421 N.W.2d 895, 898 (Iowa 1988).

(3) There are three exceptions to this rule of confidentiality: (a) consent of person making communication; (b) information which does not disclose, or allow others to ascertain the identity of the person making the communication; and (c) information indicating the date, time, specific location and immediate facts and circumstances surrounding the occurrence of a crime (unless disclosure would jeopardize a continuing investigation or endanger an individual).

(4) Pursuant to the provisions of this section, employment applications for appointive city office, disclosure of which is not authorized by the applicants, may be maintained with confidentiality by the lawful custodian. *City of Sioux City v. Press Club*, 421 N.W.2d at 899.

(5) Documents which can be redacted to protect the identity of outside sources must be made available. *Des Moines Independent Community School District Public Records v. Des Moines Register & Tribune Company*, 487 N.W.2d 666, 671 (Iowa 1992).

(6) Grant of summary judgment to a school district and its board in an action brought by a mother, on behalf of her minor child, for disclosing a sexual relationship between the minor and a school coach was affirmed because Iowa Code § 22.7(18) authorized disclosure of the immediate facts and circumstances surrounding the occurrence of a crime or illegal act. *V.H. v. Hampton-Dumont Cmty. Sch. Dist.*, 2009 Iowa App. LEXIS 1721 (Iowa Ct. App. Dec. 30 2009)

r. 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).

(1) *See also*, Iowa Code Chapter 228, limiting the circumstances under which mental health information may be disclosed.

s. 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 historic preservation officer pertaining to access, disclosure, and use of archaeological site records. Iowa Code § 22.7(20).

t. 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 ecol-

ogist, 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).

u. Reports or recommendations of the Iowa insurance guaranty association filed or made pursuant to § 515B.10, subsection 1, paragraph “a”, subparagraph (2). Iowa Code § 22.7(22).

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

(1) Reports by the insurance commissioner to the board of directors of an insurance company that is alleged to be impaired or insolvent are confidential. Iowa Code § 508C.12.

w. 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).

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

y. 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).

z. 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).

aa. Records and information obtained or held by independent special counsel during the course of an investigation conducted pursuant to § 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 § 68B.31 is not a confidential record unless otherwise provided by law. Iowa Code § 22.7(29).

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

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

Iowa Code § 679.12 permits disclosure of the facts and circumstances surrounding a dispute if a governmental body is a party to the mediation; and disposition of cases arising from criminal complaints referred by a court or prosecuting attorney. § 679.12 does not apply if the mediator has reason to believe a party has given perjured testimony.

dd. Social Security numbers of the owners of unclaimed property reported to the treasurer of state pursuant to § 556.11, subsection 2, included on claim forms filed with the treasurer of state pursuant to § 556.19, included in outdated warrant reports received by the treasurer of state pursuant to § 25.2, or stored in record systems maintained by the treasurer of state for purposes of administering chapter 556, or So-

cial 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 § 25.2. Iowa Code § 22.7(32).

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

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

gg. 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).

hh. Records of a law enforcement agency or the state department of transportation regarding the issuance of a driver’s license under § 321.189A. Iowa Code § 22.7(36).

ii. Mediation communications as defined in § 679C.102, except written mediation agreements that resulted from a mediation which are signed on behalf of a governing 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).

jj. a. Records containing information that would disclose, or might lead to the disclosure of, private keys used in a digital an electronic signature or other similar technologies as provided in chapter 554D.

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

kk. 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 § 202A.2. Iowa Code § 22.7(39).

ll. 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 IowaAccess 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).

mm. 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).

(1) Where a decedent committed suicide while divorce proceedings were pending, where the autopsy report was released to the decedent’s wife, where his wife released only a redacted version to the decedent’s mother, and where the decedent’s mother filed suit against the county medical examiner to compel production of a complete copy of the autopsy report, the district court did not err in concluding that the mother was not entitled to compel production of the complete autopsy report because Iowa Code § 22.7(41) expressly exempted autopsy reports from disclosure except to the decedent’s immediate next of kin; even though the decedent and his wife were estranged and in the process of obtaining a divorce, the wife remained the decedent’s next of kin. Further, the district court did not err in rejecting the mother’s contention that a wife who filed for divorce should not be considered next of kin because, even if the wife were discounted, the decedent’s next of kin would be his children, not his mother. *Simington v. Ban-*

wart, 2010 Iowa App. LEXIS 512 (Iowa Ct. App. May 26 2010).

nn. Information obtained by the commissioner of insurance in the course of an investigation as provided in § 523B.8 or 523C.23. Iowa Code § 22.7(42).

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

pp. Information provided to the court and state public defender pursuant to section 13B.4, subsection 5; section 814.11, subsection 7; or section 815.10, subsection 5. Iowa Code § 22.7(44)

qq. 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)

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

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

tt. Sex offender registry records under chapter 692A, except as provided in § 692A.13. Iowa Code § 22.7(48).

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

vv. 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.

a. 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.

b. 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).

ww. The information contained in the information program estab-

lished in section 124.551, except to the extent that disclosure is authorized pursuant to section 124.553. Iowa Code § 22.7(51).

xx. 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 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)

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

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

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

bbb. Individually identifiable client information contained in the records of the state database created as a homeless management infor-

mation system pursuant to standards developed by the United States department of housing and urban development and utilized by the Iowa department of economic development. Iowa Code §22.7(56)

ccc. 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)

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

eee. 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)

fff. 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(60)

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

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

iii. 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(63)

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

B. Other statutory exclusions.

1. Accident Reports.

- a. filed by the driver of a vehicle involved in an accident;

- (1) Only the identity and address of person involved in accident is available; and only to persons involved in the accident, their insurers, agents and attorneys. Iowa Code § 321.271.

- b. filed by law enforcement officers;

- (2) Available to any party to an accident, the party's insurer, agent, attorney or the attorney general upon written request and payment of \$4 fee. Iowa Code § 321.271. 70 Op. Att'y Gen. 420, 421 (February 2, 1970).

2. Accountants.

Members of the accountancy examining board may not disclose

information relating to the criminal history or prior misconduct of an applicant, examination contents, or examination results other than final score (except to person who took the examination). Iowa Code § 116.16.

3. Architects.

Members of the architectural examining board may not disclose information relating to the criminal history or prior misconduct of an applicant, examination contents, or examination results other than final score (except to the person who took the examination). Iowa Code § 118.27.

4. Arrest Warrants.

Information filed with the court for the purpose of securing an arrest warrant is confidential until the arrest is made and the warrant is returned. Iowa Code § 804.29.

5. Arson Investigation Reports.

Authorized agencies or insurance companies receiving information relevant to arson prosecution must hold that information in confidence until the information is released pursuant to a criminal or civil proceeding. Iowa Code § 100A.3(1).

6. Attorneys.

- a. Attorneys must "maintain inviolate the confidence, and at any peril to the attorney or counselor . . . preserve the secrets of a client." Iowa Code § 602.10112(4).

- b. Members of the board of law examiners may not disclose information relating to the criminal history or prior misconduct of an applicant, examination contents, or examination results other than final score (except to the person who took the examination). Iowa Code § 602.10141.

- c. Information obtained by reason of employment may not generally be divulged in giving testimony. Iowa Code § 622.10. The confidence may be waived by the person in whose favor the prohibition is made. *Id.*

7. Bank Examinations and Records.

- a. "An examiner shall not disclose to any person, other than the superintendent, deputy superintendent, and the person examined, the name of any shareholder, member, partner, owner of, or borrower from, or disclose the nature of the collateral for any loan by any state bank or persons subject to chapters 533A, 533B, 536, and 536A, or any affiliate of any state bank or of any such persons, or any other information relating to the business of any state bank or of any such persons, or any affiliate of any state bank or of any such persons, except when ordered to do so by a court of competent jurisdiction and then only in those instances referred to in subsections 1, 2, and 3 of § 524.215 (relating primarily to decisions by and review of decisions by the superintendent). Iowa Code § 524.212. See also 75 Op. Att'y Gen. 370, 371 (January 4, 1974) (Superintendent may respond to subpoena in proceeding in which FDIC is party).

- b. "All records of the department of banking shall be public records subject to the provisions of chapter 22 [open records law], except that all papers, documents, reports, reports of examinations and other writings relating specifically to the supervision and regulation of any state bank or other person by the superintendent pursuant to the laws of this state shall not be public records and shall not be open for examination or copying by the public or for examination or publication by the news media. The superintendent, deputy superintendent, assistants or examiners shall not be subpoenaed in any cause or proceeding to give testimony concerning information relating specifically to the supervision and regulation of any state bank or other person by the superintendent pursuant to the laws of this state, nor shall the records of the banking division which relate specifically to the

supervision and regulation of any such state bank or other such person be offered in evidence in any court or subject to subpoena by any party except, where relevant:

- (1) In such actions or proceedings as are brought by the superintendent;
- (2) In any matter in which an interested and proper party seeks review of a decision of the superintendent;
- (3) In any action or proceeding which arises out of the criminal provisions of the laws of this state or the United States;
- (4) In any action brought as a shareholders derivative suit against a state bank; or
- (5) In any action brought to recover monies or to recover upon an indemnity bond for embezzlement, misappropriation or misuse of state bank funds.”

Iowa Code § 524.215.

8. *Department of Revenue and Finance.*

a. No bank may be required to divulge to the director information about the property of a person when that information was obtained as a part of a business transaction with the bank, in the ordinary course of bank business, and the information was necessary and proper to the discharge of the duty of the bank. Iowa Code § 421.17(7).

b. It is unlawful for the director or others to divulge information concerning the business affairs, income, etc., of any person examined pursuant to Chapter 422 (*Property Relief Act*). Iowa Code § 422.72(1).

Disclosure that a named individual has filed a return is not prohibited. 76 Op. Att’y Gen. 679 (July 27, 1976).

c. See also Iowa Code § 422.20 (applying to present and former state employees); and 81 Op. Att’y Gen. 302, 305 (November 25, 1981) (purpose of confidentiality “to promote accurate and complete reporting of information to the agency by insuring to the taxpayer that the agency will not disclose any secrets. (Citation)”).

9. *Birth Defects.*

Data collected by the birth defects institute to facilitate compilation of statistical information on the causes, treatment, etc. of birth defects is confidential. Iowa Code § 136A.6.

10. *Board of Veterinary Medicine.*

Members of the board may not disclose information relating to the criminal history or prior misconduct of an applicant, examination contents, or examination results other than final score except to the person who took the examination). Iowa Code § 169.6.

11. *Bondholders.*

The identity of public bondholders is confidential. Iowa Code § 76.11.

12. *Child Abuse Information.*

Information is available only to health care practitioners attending a victim, department of human services investigators, certain law enforcement officers, juvenile or district courts, agencies responsible for care of the child, those doing bona fide research (but without identifying information absent consent of guardian), persons referred to in the reports, department personnel where necessary, the mandatory reporter, a multidisciplinary team where appropriate, licensing authorities and the department of public safety. Iowa Code § 235A.15(2).

13. *Child Day Care Facilities.*

Information relevant to individuals in a child day care facility is,

without written consent or court inquiry, confidential. Iowa Code § 237A.7.

14. *Child Foster Care.*

Information concerning agencies and persons cared for by agencies is available only to designated governmental agencies and to such persons as may be in the interest of the child. Iowa Code § 238.24. Statistical analysis of data in such manner as to protect confidentiality is permissible. *Id.*

15. *Child Placing Agencies.*

Information concerning agencies and persons cared for by agencies is available only to designated governmental agencies and to such persons as may be in the interest of the child. Iowa Code § 238.24.

16. *Citizen’s Aide.*

These files are closed to all but the general assembly and the governor. Iowa Code § 601G.8.

17. *Clergy.*

Clergy may not divulge, in giving testimony, confidential communication properly entrusted in professional capacity where necessary and proper to enable clergy to discharge functions of office. Iowa Code § 622.10. The person in whose favor the prohibition is made may waive the confidence. *Id.*

18. *Coal Exploration Permits.*

Information submitted and determined to be confidential concerning trade secrets or privileged commercial or financial information which relates to competitive rights is not available to the public. Iowa Code § 83.18(2).

19. *Commission of Veteran Affairs.*

Applications, investigations and case records are privileged and confidential. Iowa Code § 250.10. See 55 Op. Att’y Gen. 114, 117 (November 14, 1955) (Veteran’s claim for payment should not be published with other claims allowed by the county board of supervisors).

20. *Iowa Competition Law.*

Documents produced pursuant to an investigation into alleged prohibited conduct shall be kept confidential by the attorney general until an action is filed. Iowa Code § 553.9(3). Confidence may be waived by the persons being investigated. *Id.* Protective orders may be available with regard to trade secrets and confidential research, development and commercial information. Iowa Code § 553.11(6).

21. *Continuing Education.*

Licensee disciplinary proceedings are privileged and confidential; but subsequent written decisions are public records. Iowa Code § 258A.6(4). Disclosure exception applies only when disciplinary proceeding initiated. *Doe v. Iowa State Bd. of Physical Therapy*, 320 N.W.2d 557, 559 (Iowa 1982).

22. *Corrections.*

a. “The following information regarding individuals receiving services from the department or from the judicial district departments of correctional services under chapter 905 is confidential and shall not be disseminated by the department to the public:

- (1) home street address of the individual receiving services or that individual’s family;
- (2) department evaluations;
- (3) medical, psychiatric or psychological information;
- (4) names of associates or accomplices;
- (5) name of employer;

- (6) Social Security number;
- (7) prior criminal history including information on offenses where no conviction occurred;
- (8) family and personal history;
- (9) financial information;
- (10) information from disciplinary reports and investigations other than that identified in subsection 1, paragraph 1;
- (11) investigations by the department or other agencies which are contained in the individual's file;
- (12) department committee records which include any information identified in paragraphs a through k. A record containing information which is both public and confidential which is reasonably segregable shall not be confidential after deletion of the confidential information;
- (13) presentence investigations as provided under chapter 901;
- (14) pretrial information that is not otherwise available in public court proceedings; and
- (15) correspondence directed to department officers or staff from an individual's family, victims, or employers of a personal or confidential nature. If the custodian of the record determines that the correspondence is confidential, in any proceeding under chapter 22 the burden of proof shall be on the person seeking release of the correspondence, and the writer of the correspondence shall be notified of the proceeding.

Iowa Code § 246.602(2).

23. *Credit Unions.*

"Records of the credit union division are public records subject to the provisions of chapter 22, except that papers, documents, reports, reports of examinations and other writing relating specifically to the supervision and regulation of a specific credit union or of other persons by the superintendent pursuant to the laws of this state are not public records and shall not be open for examination or copying by the public or for examination or publication by the news media." Iowa Code § 533.60(1).

24. *Crime Victim Reparation Program.*

"Information and records which are confidential under section 22.7 and information or records received from the confidential information or records remain confidential under this section." Iowa Code § 912.10.

25. *Crime Victim Registration.*

Registration with the appropriate law enforcement agency is confidential. Iowa Code § 910A.17. Similarly, the identity of a crime victim at a crime victim center is confidential under Iowa Code § 236A(1) and (2). 92 Op. Att'y Gen. #92-3-3 (March 12, 1992).

26. *Criminal History and Intelligence Data.*

- a. The department of public safety may disseminate criminal history data to criminal justice agencies, public agencies authorized by the director, department of human services, state racing commission, and state lottery agency. Iowa Code § 692.2(1).

Chapter 692 has been amended to expand the class of people to whom the Department of Public Safety may provide copies of data to include "persons, public or private agenc[ies]." See *HF 2448*

- b. Prosecutors are precluded from obtaining "rap sheets" for prospective jurors to use in jury selection. *State v. Bessenecker*, 404

N.W.2d 134, 138 (Iowa 1987).

c. Redissemination is limited to official purposes in connection with prescribed duties of a criminal justice agency. Iowa Code § 692.3(1). *Feeney v. Scott County*, 290 N.W.2d 885 (Iowa 1980).

d. Intelligence data may be disseminated only to peace officers, state or federal regulatory agencies, and criminal justice agencies. Iowa Code § 692.8. 81 Op. Att'y Gen. 31 (February 9, 1981).

e. "Criminal history data and intelligence data in the possession of the department [of public safety] or bureau [of identification], or disseminated by the department or bureau, are *not* public records within the provisions of chapter 22." Iowa Code § 692.18 (emphasis added).

27. *Department of Human Services.*

Specified information with regard to persons receiving services is confidential. Iowa Code § 217.30(1).

28. *Dispute Resolution.*

Information relating to agreements between parties and mediator is confidential except when governmental subdivision is a party. Where government is a party, facts and circumstances surrounding dispute are not confidential. Iowa Code § 679.12.

29. *Domestic Abuse.*

Information and records are confidential. Iowa Code § 236.10.

30. *Drug Abuse.*

Registration and other records of substance abuse facilities are confidential and privileged. Iowa Code § 125.37(1). Records of the identity, diagnosis, prognosis or treatment of one which are maintained in connection with treatment for substance abuse are confidential. Iowa Code § 125.93. See also 21 U.S.C. § 1175. An agency evaluation of an independent facility is, however, a public record. 76 Op. Att'y Gen. 448, 450 (Feb. 10, 1976). Records may be disclosed to medical personnel in a medical emergency without consent of patient. Iowa Code § 125.37(3).

31. *Engineers and Surveyors.*

Members of the engineering and land surveying examiners board may not disclose information relating to the criminal history or prior misconduct of an applicant, examination contents, or examination results other than the final score (except to the person who took the examination). Iowa Code § 114.32.

32. *Grain Dealers and Warehouse Operators.*

Financial statements required of grain dealers pursuant to chapter 542 are confidential and may be disclosed only to law enforcement agencies, as part of an administrative proceeding, in response to a subpoena, to bonding companies, at the request of the Iowa board of accountancy, or by consent. Iowa Code § 542.16. Financial statements required of warehouse operators are similarly confidential. Iowa Code § 543.24.

33. *Health Data Commission.*

Health data may be provided by the various hospitals, commissioners and other entities to the director of public health, notwithstanding the provisions of § 22.7(2). Iowa Code § 145.4.

34. *Health Maintenance Organizations.*

The "communications in professional confidence" rules and exceptions set forth in Iowa Code § 622.10, apply to HMO's. Iowa Code § 514B.30. An HMO may not release the names of its members. *Id.*

35. *Infectious Disease Reports.*

Reports of infectious diseases prepared pursuant to chapter 139 are confidential. Iowa Code § 139.2.

36. *Inheritance Tax Records.*

Information gathered by investigation and inspection pursuant to chapter 450 is confidential and shall not be disclosed except as necessary for enforcement. Iowa Code § 450.68.

37. *Inspections and Appeals* (performed by the department of inspections and appeals for the purpose of auditing the operations of the executive branch of state government).

Where disclosure would plainly and seriously jeopardize an investigation, information received through reports, inspections, audits, etc. shall not be disclosed in a manner which identifies individuals, corporations and others prior to issuance of results of inquiry. Iowa Code § 10A.105. Hospital records shall not be disclosed. *Id.*

38. *Judicial Qualifications Commission.*

Records, papers and proceedings are confidential *unless* the commission applies to the supreme court to retire, discipline or remove a judicial officer. Iowa Code § 602.2103.

39. *Mental Health Patient Information Disclosures.*

a. Mental health information is not subject to disclosure except as follows: (1) Voluntary disclosure by an individual or his representative; (2) Administrative disclosure where necessary to facilitate provision of services; (3) Compulsory disclosure to protect human health and safety, respond to court orders, initiate commitment proceedings, or overcome claims in legal proceedings. Iowa Code § § 228.2, 228.3, 228.5 and 228.6.

b. Records of involuntary hospitalization proceedings are confidential. Iowa Code § 229.24.

c. *Psychological Test Data.* Except as otherwise provided in this section, a person in possession of psychological test material shall not disclose the material to any other person, including the individual who is a subject of the test. In addition, the test material shall not be disclosed in any administrative, judicial, or legislative proceeding. However, upon the request of an individual who is the subject of a test, all records associated with a psychological test of that individual shall be disclosed to a psychologist licensed pursuant to chapter 154B designated by the individual. An individual's request for the records shall be in writing and shall comply with the requirements of § 228.3, relating to voluntary disclosures of mental health information, except that the individual shall not have the right to inspect the test materials. Iowa Code § 228.9.

40. *Morbidity and Mortality Studies.*

The identity of persons whose condition or treatment is studied in connection with medical research is confidential. Iowa Code § 135.41.

41. *Nursing Home Administrators.*

Members of the board of examiners for nursing home administrators may not disclose information relating to the criminal history or prior misconduct of an applicant, examination content, or examination results other than final score (except to the person who took the examination). Iowa Code § 135E.17.

42. *Peer Review Boards.*

In all disciplinary actions against licensed professional where privileged and confidential information becomes part of the record, "the identity of an individual whose privilege has been involuntarily waived shall be withheld." Iowa Code § 147.135(2).

43. *Physicians and Surgeons.*

a. Members of the examining board may not disclose information relating to the criminal history or prior misconduct of an applicant, examination content, or examination results other than final score (except to the person who took the examination). Iowa Code § 147.21.

b. "[A] . . . physician . . . who obtains information by reason of . . . employment . . . shall not be allowed, in giving testimony, to disclose any confidential communication properly entrusted to the person in the person's professional capacity, and necessary and proper to enable the person to discharge the functions of the person's office according to the usual course of practice or discipline." Iowa Code § 622.10. The person in whose favor the prohibition is made may waive the rights conferred. *Id.* § 622.10 does *not* apply in an action in which the condition is an element of the claim or defense. *Id.*

44. *Presentence Reports.*

Presentence investigation reports are confidential. Iowa Code § 901.4. 80 Op. Att'y Gen. 895 (December 10, 1980).

45. *Private Investigative and Security Agencies.*

a. All disciplinary complaints, investigations, reports and information in the possession of the department of public safety are confidential. Iowa Code § 80A.17(1). The records are, however, subject to discovery, subpoena, and other means of legal compulsion. *Id.*

b. Lists of employees and their personal histories are confidential. Iowa Code § 80A.17(2). Lists of agency names, agency owners, officers and directors, however, are public records. *Id.* The department of public safety may confirm that a specified individual is employed at a licensed agency. *Id.*

46. *Public Officials.*

"A public officer cannot be examined as to communications made to the public officer in official confidence, when the public interests would suffer by the disclosure." Iowa Code § 622.11. Consideration is given to potential for harm to the *public* interest, not the interest of the officer. *State Ex Rel. Shanahan v. Iowa Dist. Court for Iowa County*, 356 N.W.2d 523, 527 (Iowa 1984).

47. *Real Estate Brokers and Salespersons.*

Members of the real estate examining board may not disclose information relating to the criminal history or prior misconduct of an applicant, examination, contents, or examination results other than final score (except to the person who took the examination). Iowa Code § 117.52.

48. *Search Warrants.*

All information filed with the court for purposes of securing a search warrant is confidential until the warrant is executed and returned. Iowa Code § 808.13.

49. *Shorthand Reporters.*

Members of the board of shorthand reporters examiners may not disclose information relating to the criminal history or prior misconduct of an applicant, examination content, or examination results other than final score (except to the person who took the examination). Iowa Code § 602.3301(1).

50. *Social Workers.*

A licensed social worker may not disclose information acquired in a professional capacity except: "(1) If the information reveals the contemplation or commission of a crime; (2) If the privilege is waived by bringing charges; (3) Written consent; (4) Court testimony concerning child welfare; or (5) To seek consultation with professional colleagues." Iowa Code § 154C.5.

51. *Unemployment Compensation Records.*

Information obtained by the Division of Job Service in the course of administering chapter 96 is generally confidential. Iowa Code § 6.11(7).

52. Venereal Disease Records.

Reports to the Iowa Department of Health concerning persons infected with venereal disease are confidential to the extent necessary to protect the identity of persons named. Iowa Code § 140.3.

53. Veterans' Exposure to Chemicals (Agent Orange).

The veterans affairs division may not identify veterans consenting to epidemiological investigations pursuant to chapter 139A. Iowa Code § 139A.4. Statistical data compiled pursuant to this chapter are public records.

54. Vital Statistics.

The following vital statistics in the possession of a county registrar or state archivist may be inspected and copied (if the records are at least seventy-five years old):

- (1) a record of birth if, that birth did not occur out of wedlock;
- (2) a record of marriage;
- (3) a record of divorce, dissolution or annulment; and
- (4) a record of death, if that death was not a fetal death.

Iowa Code § 144.43.

C. Court-derived exclusions, common law prohibitions, recognized privileges against disclosure.

Court-derived exclusions, etc., are discussed throughout. No other decisions creating new, non-statutory or extra-statutory exemptions have been found.

D. Are segregable portions of records containing exempt material available?

1. The statute does not specifically provide for access to the segregable portions of records containing exempt material. Section 22.7(18) does provide that information contained in communications not required by law are public, to the extent the identity of persons outside of government can be protected. *See also, Des Moines Independent Community School District Public Records v. Des Moines Register & Tribune Company*, 487 N.W.2d 666, 671 (Iowa 1992) (“On remand the court should direct the district to produce redacted copies of any documents produced from an outside source as to which redaction will render its source unknown.”).

2. In addition, the statute provides that state agencies must adopt rules that describe which agency “records are public records, which are confidential records and which are partially public and partially confidential records.” Iowa Code § 22.11(1)(b). Presumably, this requirement is imposed to facilitate access to the segregable portions of otherwise confidential agency records.

3. Finally, in addition to this language in chapter 22, there are other, express statutory provisions allowing access to the segregable portions of records containing exempt material. *See e.g. Iowa Code § 246.602(2)(1)* (“A record containing information which is both public and confidential which is reasonably segregable shall not be confidential after deletion of the confidential information.”).

E. Homeland Security Measures.

In 2002, the Legislature added what is now Iowa Code § 22.7(43), which provides:

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 per-

son. 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.

More recently, the Legislature added § 22.7(5), *supra.*, dealing with security procedures for the protection of government employees.

III. STATE LAW ON ELECTRONIC RECORDS

Public records include all records, documents, tape, or other information, stored or preserved in *any* medium. Iowa Code § 22.1(3).

A. Can the requester choose a format for receiving records?

The right to copy a public record shall include the right to make photographs or photographic copies while the public record is in the possession of the custodian of the public record. Iowa Code § 22.2(1).

A government body shall not acquire any electronic data processing system for the storage, manipulation, or retrieval of public records that would impair the government body’s ability to permit the examination of a public record and the copying of a public record in *either written or electronic form*. Iowa Code § 22.3A(2).

B. Can the requester obtain a customized search of computer databases to fit particular needs?

Probably, if the custodian can accommodate the request. Iowa Code § 22.3A(1)(a) provides: “Access’ means the instruction of, communication with, storage of data in, or retrieval of data from a computer.”

C. Does the existence of information in electronic format affect its openness?

No. Iowa Code § 22.3A(2) provides: “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. *A government body shall not acquire any electronic data processing system for the storage, manipulation, or retrieval of public records that would impair the government body’s ability to permit the examination of a public record and the copying of a public record in either written or electronic form.*” (emphasis added).

D. How is e-mail treated?

E-mail is not specifically addressed. However, the public is permitted access to “data” and “Data’ means a representation of information, knowledge, facts, concepts, or instructions that has been prepared or is being prepared in a formalized manner and has been processed, or is intended to be processed, in a computer. Data may be stored in any form, including but not limited to a printout, magnetic storage media, disk, compact disc, punched card, or as memory of a computer.” Iowa Code § 22.3A(1)(d). This would appear to include e-mail.

1. Does e-mail constitute a record?

Yes. *See* definition of data, *supra.*

2. Public matter on government e-mail or government hardware

There is no specific statutory provision covering e-mail, and there are no reported cases.

3. Private matter on government e-mail or government hardware

There is no specific statutory provision covering e-mail, and there are no reported cases.

4. Public matter on private e-mail

There is no specific statutory provision covering e-mail, and there are no reported cases.

5. Private matter on private e-mail

There is no specific statutory provision covering e-mail, and there are no reported cases.

E. How are text messages and instant messages treated?

There is no specific statutory provision covering text messages or instant messages, and there are no reported cases.

1. Do text messages and/or instant messages constitute a record?

There is no specific statutory provision covering text messages or instant messages, and there are no reported cases.

2. Public matter message on government hardware.

There is no specific statutory provision covering text messages or instant messages, and there are no reported cases.

3. Private matter message on government hardware.

There is no specific statutory provision covering text messages or instant messages, and there are no reported cases.

4. Public matter message on private hardware.

There is no specific statutory provision covering text messages or instant messages, and there are no reported cases.

5. Private matter message on private hardware.

There is no specific statutory provision covering text messages or instant messages, and there are no reported cases.

F. How are social media postings and messages treated?

There is no specific statutory provision covering social media, and there are no reported cases.

G. How are online discussion board posts treated?

There is no specific statutory provision covering online discussion boards, and there are no reported cases.

H. Computer software

“Data processing software” means an ordered set of instructions or statements that, when executed by a computer, causes the computer to process data, and includes any program or set of programs, procedures, or routines used to employ and control capabilities of computer hardware. As used in this paragraph “data processing software” includes but is not limited to an operating system, compiler, assembler, utility, library resource, maintenance routine, application, or computer networking program. Iowa Code § 22.3A(1)(e)

1. Is software public?

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 proce-

dures 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. A government body shall not acquire any electronic data processing system for the storage, manipulation, or retrieval of public records that would impair the government body’s ability to permit the examination of a public record and the copying of a public record in either written or electronic form. If it is necessary to separate a public record from data processing software in order to permit the examination or copying of the public record, the government body shall bear the cost of separation of the public record from the data processing software. The electronic public record shall be made available in a format useable with commonly available data processing or database management software. The cost chargeable to a person receiving a public record separated from data processing software under this subsection shall not be in excess of the charge under this chapter unless the person receiving the public record requests that the public record be specially processed. A government body may establish payment rates and procedures required to provide access to data processing software, regardless of whether the data processing software is separated from or combined with a public record. Proceeds from payments may be considered repayment receipts, as defined in section 8.2. The payment amount shall be calculated as follows:

a. The amount charged for access to a public record shall be not more than that required to recover direct publication costs, including but not limited to editing, compilation, and media production costs, incurred by the government body in developing the data processing software and preparing the data processing software for transfer to the person. The amount shall be in addition to any other fee required to be paid under this chapter for the examination and copying of a public record. If a person accesses a public record stored in an electronic format that does not require formatting, editing, or compiling to access the public record, the charge for providing the accessed public record shall not exceed the reasonable cost of accessing that public record. The government body shall, if requested, provide documentation which explains and justifies the amount charged. This paragraph shall not apply to any publication for which a price has been established pursuant to another section, including section 2A.5.

b. If access to the data processing software is provided to a person for a purpose other than provided in paragraph “a”, the amount may be established according to the discretion of the government body, and may be based upon competitive market considerations as determined by the government body.

Iowa Code § 22.3A(2)

2. Is software and/or file metadata public?

See § 22.3A(2), *supra*.

I. How are fees for electronic records assessed?

See § 22.3A(2)(a) and (b), *supra*.

J. Money-making schemes.

Depends on the purpose for the request. See § 22.3A(2)(b), *supra*.

IV. RECORD CATEGORIES — OPEN OR CLOSED

A. Autopsy reports.

A state medical examiner is created by Iowa Code § 691.5. A county medical examiner is created by Iowa Code § 331.801. Neither chapter 691 nor chapter 331 includes a provision governing accessibility to the examiner’s report.

1. § 331.802 requires a county medical examiner to prepare a record of findings for submission to the state medical examiner and the county attorney. If the decedent is a child under the age of two, a copy of the findings is available to the child’s parent, guardian or custodian, upon request.

2. § 691.6 requires the state medical examiner to keep complete records, but is silent as to the confidentiality of those records.
3. The reports generated by medical examiners are probably subject to the provisions of chapter 22 governing availability of investigative reports.

Peace officers' investigative reports, 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. Iowa Code § 22.7(5).

B. Administrative enforcement records (e.g., worker safety and health inspections, or accident investigations)

Private investigators: "1. All complaint files, investigation files, other investigation reports, and other investigative information in the possession of the department or its employees or agents which relate to licensee discipline are privileged and confidential except that they are subject to discovery, subpoena, or other means of legal compulsion for their release to a person other than the licensee, and are admissible in evidence in a judicial or administrative proceeding other than a proceeding involving licensee discipline. In addition, investigative information in the possession of the department's employees or agents which relates to licensee discipline may be disclosed to the appropriate licensing authority in another state, the District of Columbia, or a territory or country in which the licensee is licensed or has applied for a license. If the investigative information in the possession of the department indicates a crime has been committed, the information shall be reported to the proper law enforcement agency. A final written decision and finding of fact of the department in a disciplinary proceeding is a public record.

Pursuant to section 17A.19, subsection 6, the department, upon an appeal by the licensee of the decision by the department shall transmit the entire record of the contested case to the reviewing court.

Notwithstanding section 17A.19, subsection 6, if a waiver of privilege has been involuntary and evidence has been received at a disciplinary hearing, the court shall order withheld the identity of the individual whose privilege was waived.

2. Lists of employees of a licensed agency and their personal histories shall be held as confidential. However, the lists of the names of the licensed agencies, their owners, corporate officers and directors shall be held as public records. The commissioner may confirm that a specific individual is an employee of a licensed agency upon request and may make lists of licensed agencies' employees available to law enforcement agencies.

Iowa Code § 80A.17

OSHA Inspections: "Notwithstanding any provisions of this chapter, all information reported to or otherwise obtained by the commissioner or the commissioner's representative in connection with any inspection or proceeding under this chapter which contains or might reveal a trade secret shall be considered confidential, except that such information may be disclosed to other officers or employees concerned with carrying out this chapter or when relevant to any proceeding under this chapter. In any such proceeding the commissioner, the appeal board, or the court shall issue such orders as may be appropriate to protect the confidentiality of trade secrets." Iowa Code § 88.12

C. Bank records.

1. "An examiner shall not disclose to any person, other than the superintendent, deputy superintendent, and the person examined, the name of any shareholder, member, partner, owner of, or borrower from, or disclose the nature of the collateral for any loan by any state bank or persons subject to chapters 533A, 533B, 536, and 536A, or any

affiliate of any state bank or of any such persons, or any other information relating to the business of any state bank or of any such persons, or any affiliate of any state bank or of any such persons, except when ordered to do so by a court of competent jurisdiction and then only in those instances referred to in subsections 1, 2, and 3 of § 524.215 (relating primarily to decisions by and review of decisions by the superintendent). Iowa Code § 524.212. See also 75 Op. Att'y Gen. 370, 371 (January 4, 1974) (Superintendent may respond to subpoena in proceeding in which FDIC is party).

a. "All records of the department of banking shall be public records subject to the provisions of chapter 22 [open records law], except that all papers, documents, reports, reports of examinations and other writings relating specifically to the supervision and regulation of any state bank or other person by the superintendent pursuant to the laws of this state shall not be public records and shall not be open for examination or copying by the public or for examination or publication by the news media. The superintendent, deputy superintendent, assistants or examiners shall not be subpoenaed in any cause or proceeding to give testimony concerning information relating specifically to the supervision and regulation of any state bank or other person by the superintendent pursuant to the laws of this state, nor shall the records of the banking division which relate specifically to the supervision and regulation of any such state bank or other such person be offered in evidence in any court or subject to subpoena by any party except, where relevant:

- (1) In such actions or proceedings as are brought by the superintendent;
- (2) In any matter in which an interested and proper party seeks review of a decision of the superintendent;
- (3) In any action or proceeding which arises out of the criminal provisions of the laws of this state or the United States;
- (4) In any action brought as a shareholders derivative suit against a state bank; or
- (5) In any action brought to recover monies or to recover upon an indemnity bond for embezzlement, misappropriation or misuse of state bank funds."

Iowa Code § 524.215.

2. Department of Revenue and Finance

a. No bank may be required to divulge to the director information about the property of a person when that information was obtained as a part of a business transaction with the bank, in the ordinary course of bank business, and the information was necessary and proper to the discharge of the duty of the bank. Iowa Code § 421.17(7).

b. It is unlawful for the director or others to divulge information concerning the business affairs, income, etc., of any person examined pursuant to Chapter 422 (*Property Relief Act*). Iowa Code § 422.72(1).

Disclosure that a named individual has filed a return is not prohibited. 76 Op. Att'y Gen. 679 (July 27, 1976).

c. See also Iowa Code § 422.20 (applying to present and former state employees); and 81 Op. Att'y Gen. 302, 305 (November 25, 1981) (purpose of confidentiality "to promote accurate and complete reporting of information to the agency by insuring to the taxpayer that the agency will not disclose any secrets. (Citation)").

D. Budgets.

Governor's recommendations are considered confidential until made public by the governor. Iowa Code § 8.35A(2)

E. Business records, financial data, trade secrets.

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

(1) “The custodian of such a record (computer program and data base), however, is required to keep it confidential if the record is a trade secret recognized and protected by law.” *Brown v. Iowa Legislative Council*, 490 N.W.2d 551, 552 (Iowa 1992).

(2) “Business information may also fall within the definition of a trade secret, including such matters as maintenance of data on customer lists and needs, source of supplies, confidential costs, price data and figures.” *US West Communications Inc. v. Office of Consumer Advocate*, 498 N.W.2d 711, 714 (Iowa 1993).

(3) “A trade secret is a process or device for continuous use in the operation of a business.” *Basic Chemicals Inc. v. Benson*, 251 N.W.2d 220, 226 (Iowa 1977).

(4) Information concerning pre-arranged funeral plans which must be filed with the county attorney in the county where the plan is located pursuant to Iowa Code Chapter 523A is not protected as a trade secret. 83 Op. Att’y Gen. 70, 71 (July 18, 1983).

F. Contracts, proposals and bids.

Reports evaluated and recommendations prepared by the state which concern bids (for the purchase of real or personal property as set forth in Iowa Code § 22.7(7)) are closed until accepted. 79 Op. Att’y Gen. 19, 21 (March 9, 1979).

G. Collective bargaining records.

1. Pre-negotiation materials developed to affect an employer’s bargaining position are confidential. 76 Op. Att’y Gen. 514, 519 (March 18, 1976).

2. Negotiating sessions, strategy meetings, mediation and deliberation of arbitrators are *exempt*. Iowa Code § 20.17(3).

a. Bargaining sessions, however, are open to the public; and the terms of a proposed agreement must be made public. Iowa Code § 20.17(4).

H. Coroners reports.

A state medical examiner is created by Iowa Code § 691.5. A county medical examiner is created by Iowa Code § 331.801. Neither chapter 691 nor chapter 331 includes a provision governing accessibility to the examiner’s report. *See also* § 331.802 and § 691.6.

I. Economic development records.

Confidential. Iowa Code § 22.7(8)

J. Election records.

Available from the State Commissioner of Elections. Iowa Code § 47.7.

1. Voter registration records.

May only be used for voter registration purposes. Iowa Code § 48A.11(4)(b)

2. Voting results.

Available from the State Commissioner of Elections. Iowa Code § 47.7.

K. Gun permits.

There is no specific statutory provision covering gun permits, and there are no reported cases. However, there are also no statutory provisions in § 22.7 providing for confidentiality. Under a prior statute governing issuance of permits, the Sheriff had no duty to maintain weapon permit justification forms or to make them available for copying under Iowa Code § 22.2 of the open records law, nor was he pro-

hibited from returning application forms to applicants after the applications had been considered; although sheriffs carry out the duties of issuing and revoking firearm permits under Iowa Code § 331.653, the duty to keep such records is assigned to the commissioner of public safety by Iowa Code § 724.23. *Clark v. Banks*, 515 N.W.2d 5, 1994 Iowa Sup. LEXIS 85 (Iowa 1994).

L. Hospital reports.

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 § 236A.1 (Confidential Communications — Counselors and Victims). 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).

a. “Outpatient,” as used in § 22.7(2), means one who is “treated at a clinic or dispensary connected with a hospital who is not a hospital inmate. (Citation).” *Head v. Colloton*, 331 N.W.2d 870, 874 (Iowa 1983).

b. The identity of a potential bone marrow donor is a hospital record of the condition, diagnosis, care or treatment of a patient or former patient within the meaning of this section. *Head*, 331 N.W.2d at 876.

c. But, documents filed in the office of the governor which pertain to the involuntary sterilization of a county home resident were public and not confidential hospital records within the meaning of the exemption because they were not maintained by the governor as hospital or physician records. *Howard v. Des Moines Register & Tribune Co.*, 284 N.W.2d 289, 300 (Iowa 1979).

d. Records pertaining to medical services, including the identity of doctors, nurses and hospitals receiving public funds for services performed, the number and kind of services performed, and statistical information about patients (so long as identity is not revealed) are not excluded from public examination. 78 Op. Att’y Gen. 677, 678 - 679 (Sept. 20, 1978).

e. Iowa Code Chapter 135 give university hospitals discretion to deny public disclosure of the infection data summaries. *Burton v. University of Iowa Hospitals & Clinics*, 566 N.W.2d 182, 189 (Iowa 1997).

M. Personnel records.

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 any 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 in return for labor or services rendered by an official, officer, or employee plus the value of benefits 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 positions the individual holds or has held with the government body.

(4) The educational institutions attended by the individual, includ-

ing any diplomas and degrees earned, and the names of the individual's previous employers, positions previously held, and 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) (as amended in 2011 by Ia. SF 289)

NOTES re decisions construing § 22.7(11) prior to its amendment include the following, which may or may not be helpful in construing the current provision:

(1) This section applies only to *personal* information in *confidential* personnel records. *City of Dubuque v. Telegraph Herald Inc.*, 297 N.W.2d 523, 526 (Iowa 1980). In determining whether information sought is personal information protected by right of privacy, balance public interest served by disclosure and private interest in protecting against invasion of privacy. *Id.* at 526-527. Applications for appointive city officer were *not* protected by this section. *Id.* at 527. *But see Iowa Code § 22.7(18).*

(2) Ordinarily, information which includes one's name, address, employer, education, training and experience is not considered "personal." 81 Op. Att'y Gen. 3, 5 (January 19, 1981).

(3) Adjudicator decisions concerning termination of teacher contracts are protected by this section. 79 Op. Att'y Gen. 115, 118 (April 27, 1991).

(4) Lists of state employees participating in deferred compensation plans are public records, but extent of individual participation in plans is personal and confidential. 74 Op. Att'y Gen. 430, 433 (February 27, 1974).

(5) This subsection has also been construed to make *settlement agreements* between public bodies and employees public records. *Des Moines Independent Community School Dist. Public Records v. Des Moines Register & Tribune Co.*, 487 N.W.2d 666, 669 Iowa (1992) ("[T]he outstanding characteristic of the settlement agreement was the fact that public funds were being paid to settle a private dispute. We think the document was of the type the legislature designated for disclosure.")

(a) *see also Iowa Code § 22.13* ("A written summary of the terms of settlement, including amounts of payments made to or through a claimant, or other disposition of any claim for damages made against a governmental body or against an employee, officer, or agent of a governmental body, by an insurer pursuant to a contract of *liability insurance* issued to the governmental body, shall be filed with the governmental body and shall be a public record.") (emphasis supplied).

(6) Decision to enjoin the city from releasing city employees' addresses, birth dates and gender affirmed. *Clymer v. City of Cedar Rapids*, 601 N.W.2d 42, 48 (Iowa 1999).

(7) Compensation allocated to and used by individual public employees, whether for salary, sick leave or vacation, is a matter of legitimate concern to the public. So long as the information disclosed does not reveal personal medical conditions or professional evaluations, the public has the right to examine it. *Clymer v. City of Cedar Rapids*, 601 N.W.2d 42, 48 (Iowa 1999).

1. Salary.

Public information

2. Disciplinary records.

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.

4. Personally identifying information.

Confidential

5. Expense reports.

Not unless they come within the definition of "compensation."

N. Police records.

See generally, § 22.7(5) and discussion, *supra*.

1. Accident reports.

See generally, § 22.7(5) and discussion, *supra*.

2. Police blotter.

See generally, § 22.7(5) and discussion, *supra*.

3. 911 tapes.

See generally, § 22.7(5) and discussion, *supra*.

4. Investigatory records.

See generally, § 22.7(5) and discussion, *supra*.

a. Rules for active investigations.

See generally, § 22.7(5) and discussion, *supra*.

b. Rules for closed investigations.

See generally, § 22.7(5) and discussion, *supra*.

5. Arrest records.

See generally, § 22.7(5) and discussion, *supra*.

6. Compilations of criminal histories.

See generally, § 22.7(5) and discussion, *supra*.

7. Victims.

See generally, § 22.7(5) and discussion, *supra*.

8. Confessions.

See generally, § 22.7(5) and discussion, *supra*.

9. Confidential informants.

See generally, § 22.7(5) and discussion, *supra*.

10. Police techniques.

See generally, § 22.7(5) and discussion, *supra*.

11. Mug shots.

See generally, § 22.7(5) and discussion, *supra*.

12. Sex offender records.

See generally, § 22.7(5) and discussion, *supra*.

See also, Iowa Code § 692A.121, which provides:

1. The department shall maintain an internet site for the public and others to access relevant information about sex offenders. The internet site, at a minimum, shall be searchable by name, county, city, zip code, and geographic radius.

2. The department shall provide updated or corrected relevant information within five business days of the information being updated or corrected, from the sex offender registry to the following:

a. A criminal or juvenile justice agency, an agency of the state, a sex offender registry of another jurisdiction, or the

federal government.

b. The general public through the sex offender registry internet site.

(1) The following relevant information about a sex offender shall be disclosed on the internet site:

(a) The date of birth.

(b) The name, nickname, aliases, including ethnic or tribal names.

(c) Photographs.

(d) The physical description, including scars, marks, or tattoos.

(e) The residence.

(f) The statutory citation and text of the offense committed that requires registration under this chapter.

(g) A specific reference indicating whether a particular sex offender is subject to residency restrictions pursuant to section 692A.114.

(h) A specific reference indicating whether a particular sex offender is subject to exclusion zone restrictions pursuant to section 692A.113.

(2) The following relevant information shall not be disclosed on the internet site:

(a) The relevant information about a sex offender who was under twenty years of age at the time the offender committed a violation of section 709.4, subsection 2, paragraph “c”, subparagraph (4).

(b) The employer name, address, or location where a sex offender acts as an employee in any form of employment.

(c) The address and name of any school where a student required to be on the registry attends.

(d) The real name of a sex offender protected under 18 U.S.C. § 3521.

(e) The statutory citation and text of the offense committed for an incest conviction in violation of section 726.2, however, the citation and text of an incest conviction shall be disclosed on the internet site as a conviction of section 709.4 or 709.8.

(f) Any other relevant information not described in subparagraph (1).

c. The general public through any other means, at the discretion of the department, any relevant information that is available on the internet site.

3. A criminal or juvenile justice agency may provide relevant information from the sex offender registry to the following:

a. A criminal or juvenile justice agency, an agency of the state, or a sex offender registry of another jurisdiction, or the federal government.

b. The general public, any information available to the general public in subsection 2, including public and private agencies, organizations, public places, child care facilities, religious and youth organizations, neighbors, neighborhood associations, community meetings, and employers. The relevant information available to the general public may be distributed to the public through printed materials, visual or audio press releases, radio communications, or through a criminal or juvenile justice agency’s internet site.

4. When a sex offender moves into a school district or moves within a school district, the county sheriff of the county of the offender’s new residence shall provide relevant information that is available to the general public in subsection 2 to the administrative office of the school district in which the person required to register resides, and shall also provide relevant information to any nonpublic school near the offender’s residence.

5. a. A member of the public may contact a county sheriff’s office to request relevant information from the registry regarding a specific sex offender. A person making a request for relevant information may make the request by telephone, in writing, or in person, and the request shall include the name of the person and at least one of the following identifiers pertaining to the sex offender about whom the information is sought:

(1) The date of birth of the person.

(2) The social security number of the person.

(3) The address of the person.

(4) Internet identifiers.

(5) Telephone numbers, including any landline or wireless numbers.

b. The relevant information made available to the general public pursuant to this subsection shall include all the relevant information provided to the general public on the internet site pursuant to subsection 2, and the following additional relevant information:

(1) Educational institutions attended as a student, including the name and address of such institution.

(2) Employment information including the name and address of employer.

(3) Temporary lodging information, including the dates when residing at the temporary lodging.

(4) Vehicle information.

c. A county sheriff or police department shall not charge a fee relating to a request for relevant information.

6. A county sheriff shall also provide to a person upon request access to a list of all registrants in that county.

7. The following relevant information shall not be provided to the general public:

a. The identity of the victim.

b. Arrests not resulting in a conviction.

c. Passport and immigration documents.

d. A government issued driver’s license or identification card.

e. DNA information.

f. Fingerprints.

g. Palm prints.

h. Professional licensing information.

i. Social security number.

j. Real name protected under 18 U.S.C. § 3521.

8. Notwithstanding sections 232.147 through 232.151, records concerning convictions which are committed by a minor may be released in the same manner as records of convictions of adults.

9. A person may contact the department or a county sheriff’s office

to verify if a particular internet identifier or telephone number is one that has been included in a registration by a sex offender.

10. The department shall include links to sex offender safety information, educational resources pertaining to the prevention of sexual assaults, and the national sex offender registry.

11. The department shall include on the sex offender registry internet site instructions and any applicable forms necessary for a person seeking correction of information that the person contends is erroneous.

12. When the department receives and approves registration data, such data shall be made available on the sex offender registry internet site within five business days.

13. The department shall maintain an automated electronic mail notification system, which shall be available by free subscription to any person, to provide notice of addition, deletion, or changes to any sex offender registration, relevant information within a postal zip code or, if selected by a subscriber, a geographic radius or, if selected by a subscriber, specific to a sex offender.

14. Sex offender registry records are confidential records not subject to examination and copying by a member of the public and shall only be released as provided in this section.

13. Emergency medical services records.

Confidential. Iowa Code § 22.7(2)

O. Prison, parole and probation reports.

1. "The following information regarding individuals receiving services from the department or from the judicial district departments of correctional services under chapter 905 is confidential and shall not be disseminated by the department to the public:

- a. home street address of the individual receiving services or that individual's family;
- b. department evaluations;
- c. medical, psychiatric or psychological information;
- d. names of associates or accomplices;
- e. name of employer;
- f. Social Security number;
- g. prior criminal history including information on offenses where no conviction occurred;
- h. family and personal history;
- i. financial information;
- j. information from disciplinary reports and investigations other than that identified in subsection 1, paragraph 1;
- k. investigations by the department or other agencies which are contained in the individual's file;
- l. department committee records which include any information identified in paragraphs a through k. A record containing information which is both public and confidential which is reasonably segregable shall not be confidential after deletion of the confidential information;
- m. presentence investigations as provided under chapter 901;
- n. pretrial information that is not otherwise available in public court proceedings; and
- o. correspondence directed to department officers or staff from an individual's family, victims, or employers of a personal or confidential nature. If the custodian of the record determines that the

correspondence is confidential, in any proceeding under chapter 22 the burden of proof shall be on the person seeking release of the correspondence, and the writer of the correspondence shall be notified of the proceeding."

Iowa Code § 246.602(2).

2. *See also*, 76 Op. Att'y Gen. 415 (January 21, 1976) (Board of parole subject to open meetings law).

P. Public utility records.

There is no specific statutory provision covering public utility records, *per se*, and there are no reported cases.

Q. Real estate appraisals, negotiations.

Appraisals, negotiations and transactional details are confidential until after the execution of the contract for purchase or sale. Iowa Code § 22.7(7)

1. Appraisals.

Appraisals, negotiations and transactional details are confidential until after the execution of the contract for purchase or sale. Iowa Code § 22.7(7)

2. Negotiations.

Appraisals, negotiations and transactional details are confidential until after the execution of the contract for purchase or sale. Iowa Code § 22.7(7)

3. Transactions.

Appraisals, negotiations and transactional details are confidential until after the execution of the contract for purchase or sale. Iowa Code § 22.7(7)

4. Deeds, liens, foreclosures, title history.

Public information available in the office of the County Recorder

5. Zoning records.

Public information available from the local zoning office

R. School and university records.

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).

1. Athletic records.

Governed by Iowa Code § 22.7(1), *supra*.

2. Trustee records.

Governed by Iowa Code § 22.7(1), *supra*.

3. Student records.

Governed by Iowa Code § 22.7(1), *supra*.

S. Vital statistics.

The following vital statistics in the possession of a county registrar or state archivist may be inspected and copied (if the records are at least seventy-five years old):

- (1) a record of birth if, that birth did not occur out of wedlock;
- (2) a record of marriage;
- (3) a record of divorce, dissolution or annulment; and
- (4) a record of death, if that death was not a fetal death.

Iowa Code § 144.43.

1. Birth certificates.

Iowa Code § 144.43.

2. Marriage & divorce.

Iowa Code § 144.43.

3. Death certificates.

Iowa Code § 144.43.

4. Infectious disease and health epidemics.

Reports of infectious diseases prepared pursuant to chapter 139 are confidential. Iowa Code § 139.2.

V. PROCEDURE FOR OBTAINING RECORDS

A. How to start.

1. Who receives a request?

The lawful custodian or authorized deputy. Iowa Code § 22.3.

“Each government body shall delegate to particular officials or employees of that government body the responsibility for implementing the requirements of this chapter and shall publicly announce the particular officials or employees to whom responsibility for implementing the requirements of this chapter has been delegated. “Lawful custodian” does not mean an automated data processing unit of a public body if the data processing unit holds the records solely as the agent of another public body, nor does it mean a unit which holds the records of other public bodies solely for storage.” Iowa Code § 22.1(2).

2. Does the law cover oral requests?

The lawful custodian is permitted to promulgate reasonable rules, to include such things as a written request.

a. Arrangements to inspect & copy.

“The rights of persons under this chapter may be exercised at any time during the customary office hours of the lawful custodian of the records. However, if the lawful custodian does not have customary office hours of at least thirty hours per week, such right may be exercised at any time from nine o’clock a.m. to noon and from one o’clock p.m. to four o’clock p.m. Monday through Friday, excluding legal holidays, unless the person exercising such right and the lawful custodian agree on a different time.” Iowa Code § 22.4.

b. If an oral request is denied:

(1). How does the requester memorialize the refusal?

Ask for a written refusal, with reasons.

(2). Do subsequent steps need to be in writing?

Document subsequent efforts to secure records.

3. Contents of a written request.

a. Description of the records.

Include a specific description of the records.

b. Need to address fee issues.

Offer to advance fees and inquire regarding likely cost.

c. Plea for quick response.

Explain why your plea for quick response is different from all such pleas.

d. Can the request be for future records?

It is unlikely that the custodian will agree to continue the search as additional documents are filed in the future — another request will be necessary.

e. Other.

State agencies are required to define information policies. They must adopt rules which provide the following:

(a) “the nature and extent of the personally identifiable information collected by the agency, the legal authority for the collection of that information and a description of the means of storage;

(b) 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 shall indicate whether the records contain personally identifiable information;

(c) the procedure for providing the public with access to public records;

(d) the procedures 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;

(e) the procedures by which the subject of a confidential record may have a copy of that record released to a named third party;

(f) the procedures by which the agency shall notify persons supplying information requested by the agency of the use that will be made of the information, which persons outside of the agency might routinely be provided this information, which parts of the information requested are required and which are optional and the consequences of failing to provide the information requested; and

(g) whether a data processing system matches, collates or permits the comparison of personally identifiable information in one record system with personally identifiable information in another record system.”

Iowa Code § 22.11(1).

B. How long to wait.

“A reasonable delay for this purpose [i.e. to determine whether a confidential record is available for inspection and copying] should not exceed twenty calendar days and ordinarily should not exceed ten business days.” Iowa Code § 22.8(4)(d).

C. Administrative appeal.

1. Time limit.

The time limit for seeking judicial review of agency action is thirty days. Iowa Code § 17A.19(3). In the alternative, a party may seek rehearing before the agency pursuant to Iowa Code § 17A.16(2). the application for rehearing must be filed within twenty days of the agency’s final decision. Judicial review of a refusal to allow rehearing must be sought within thirty days of the date on which the application is de-

nied or deemed denied. Iowa Code § 17A.19(3).

2. To whom is an appeal directed?

Application for rehearing is directed to the agency whose final decision is challenged. Iowa Code § 17A.16.

Petition for judicial review is directed to the Iowa District Court for Polk County, or the county in which petitioner resides or has its principal place of business. Iowa Code § 17A.19(2).

Action is filed by the party seeking to enforce the provision of chapter 17A or retained counsel for that party. If the agency is the party seeking judicial review, it is typically represented by the Iowa Attorney General.

Issues on appeal under chapter 17A are limited to whether “substantial rights of the petitioner have been prejudiced because the agency action is: (a) in violation of constitutional or statutory provisions; (b) in excess of the statutory authority of the agency; (c) in violation of an agency rule; (d) made upon unlawful procedure; (e) affected by other error of law; (f) in a contested case, unsupported by substantial evidence in the record made before the agency when that record is viewed as a whole; or (g) unreasonable, arbitrary or capricious or characterized by an abuse of discretion or a clearly unwarranted exercise of discretion.”

Iowa Code § 17A.19(8).

3. Fee issues.

Issues involving damages, injunctive relief, costs and fees heard at same time as claim of denial.

4. Contents of appeal letter.

“The petition for review shall name the agency as respondent and shall contain a concise statement of: (a) the nature of the agency action which is the subject of the petition; (b) the particular agency action appealed from; (c) the facts on which venue is based; (d) the grounds on which relief is sought; and (e) the relief sought.” Iowa Code § 17A.19(4).

5. Waiting for a response.

Consult the local court administrator for an estimate of the likely hearing date.

6. Subsequent remedies.

If the district court remands the matter to the agency for further proceedings, (*see Iowa Code § 17A.19(8)*), the matter will proceed according to agency procedure and the order of the court. Otherwise, no subsequent administrative remedies exist.

D. Court action.

1. Who may sue?

“Any aggrieved person, any taxpayer to or citizen of the state of Iowa, or the attorney general or any county attorney may seek judicial enforcement.” Iowa Code § 22.10(1).

2. Priority.

Records actions are *not* afforded docket priority.

3. Pro se.

Proceeding *pro se* is possible, but not advisable. There are numerous procedural pitfalls; the issues are relatively technical; and the party whose records one seeks to review will always be represented by counsel.

4. Issues the court will address:

Whether defendant is subject to the requirements of chapter 22;

Whether the records in question are government records;

Whether defendant refused to make the records available; and

Whether defendant has demonstrated compliance with the requirements of chapter 22.

Iowa Code § 22.10(2) and (3).

5. Pleading format.

Pleading format is governed by the Iowa Rules of Civil Procedure. *See e.g., I.R.Civ.P. 69 and 78 - 79.*

6. Time limit for filing suit.

The statute contains no limitations period. No Iowa case discussing limitation of actions in this context has been found. The applicable statute of limitations may be the five year period for “all other actions not otherwise provided for” which can be found in Iowa Code § 614.1(4).

7. What court.

[D]istrict court for the county in which the lawful custodian has its principal place of business. Iowa Code § 22.10(1).

8. Judicial remedies available.

1. The rights and remedies provided by this section are in addition to any rights and remedies provided by section 17A.19. Any aggrieved person, any taxpayer to or citizen of the state of Iowa, or the attorney general or any county attorney, may seek judicial enforcement of the requirements of this chapter in an action brought against the lawful custodian and any other persons who would be appropriate defendants under the circumstances. Suits to enforce this chapter shall be brought in the district court for the county in which the lawful custodian has its principal place of business.

2. Once a party seeking judicial enforcement of this chapter demonstrates to the court that the defendant is subject to the requirements of this chapter, that the records in question are government records, and that the defendant refused to make those government records available for examination and copying by the plaintiff, the burden of going forward shall be on the defendant to demonstrate compliance with the requirements of this chapter.

3. Upon a finding by a preponderance of the evidence that a lawful custodian has violated any provision of this chapter, a court:

a. Shall issue an injunction punishable by civil contempt ordering the offending lawful custodian and other appropriate persons to comply with the requirements of this chapter in the case before it and, if appropriate, may order the lawful custodian and other appropriate persons to refrain for one year from any future violations of this chapter.

b. Shall assess the persons who participated in its violation damages in the amount of not more than five hundred dollars and not less than one hundred dollars. However, if a person knowingly participated in such a violation, damages shall be in the amount of not more than two thousand five hundred dollars and not less than one thousand dollars. These damages shall be paid by the court imposing them to the state of Iowa if the body in question is a state government body, or to the local government involved if the body in question is a local government body. A person found to have violated this chapter shall not be assessed such damages if that person proves that the person did any of the following:

(1) Voted against the action violating this chapter, refused to participate in the action violating this chapter, or engaged in reasonable efforts under the circumstances to resist or prevent the action in violation of this chapter.

(2) Had good reason to believe and in good faith believed facts which, if true, would have indicated compliance with

the requirements of this chapter.

(3) Reasonably relied upon a decision of a court, a formal opinion of the attorney general, or the attorney for the government body, given in writing, or as memorialized in the minutes of the meeting at which a formal oral opinion was given, or an advisory opinion of the attorney general or the attorney for the government body, given in writing.

c. Shall order the payment of all costs and reasonable attorney fees, including appellate attorney fees, to any plaintiff successfully establishing a violation of this chapter in the action brought under this section. The costs and fees shall be paid by the particular persons who were assessed damages under paragraph “b” of this subsection. If no such persons exist because they have a lawful defense under that paragraph to the imposition of such damages, the costs and fees shall be paid to the successful plaintiff from the budget of the offending government body or its parent.

d. Shall issue an order removing a person from office if that person has engaged in a prior violation of this chapter for which damages were assessed against the person during the person’s term.

4. Ignorance of the legal requirements of this chapter is not a defense to an enforcement proceeding brought under this section. A lawful custodian or its designee in doubt about the legality of allowing the examination or copying or refusing to allow the examination or copying of a government record is authorized to bring suit at the expense of that government body in the district court of the county of the lawful custodian’s principal place of business, or to seek an opinion of the attorney general or the attorney for the lawful custodian, to ascertain the legality of any such action.

Iowa Code § 22.10.

9. Litigation expenses.

a. Attorney fees.

Costs and fees shall be assessed

b. Court and litigation costs.

Costs and fees shall be assessed

10. Fines.

Damages assessed in amounts that vary depending upon whether the violation was knowing.

12. Settlement, pros and cons.

Usually advisable but rarely a realistic option. There is little room for bargaining if the only acceptable resolution is allowing one to inspect and copy the records which the government refuses to produce.

E. Appealing initial court decisions.

1. Appeal routes.

Appeal is taken by filing a notice with the clerk of court where judgment was entered. *I.R.App.P. 6(a)*.

2. Time limits for filing appeals.

Appeal must be taken within thirty days of entry of judgment. *I.R.App.P. 5(a)*.

3. Contact of interested amici.

Iowa Freedom of Information Council, 118 Meredith Hall, Drake University, Des Moines, Iowa 50311.

The Reporters Committee for Freedom of the Press often files *amicus* briefs in cases involving significant media law issues before a state’s highest court.

F. Addressing government suits against disclosure.

There is no apparent case law on this topic.

Open Meetings

I. STATUTE — BASIC APPLICATION.

A. Who may attend?

All members of the public. Iowa Code § 21.2(3)..

B. What governments are subject to the law?

The statute applies to governments expressly created by the Iowa statutes or by executive order; the governing bodies of political subdivisions and tax supported districts in the state; multimembered bodies created by the boards of governing bodies subject to the act; multimembered bodies created by university presidents and the board of regents to manage intercollegiate athletics; advisory boards created by the governor or the general assembly; non-profit corporations supported by property tax revenue which are licensed to conduct wagering; and non-profit corporations licensed to conduct gambling. Iowa Code § 21.2(1)(a)-(g).

Note: Only members of the governmental body conducting the meeting are subject to the provisions of the open meetings act. *Barrett v. Lode*, 603 N.W.2d 766, 768 (Iowa 1999).

Chapter 21 clearly reaches only those meetings at which the governmental body deliberates or acts in a “policy-making” role. A negotiating committee that has only an advisory function, and no policy-making duties, is not required to hold meetings that are open to the public. *Mason v. Vision Iowa Bd.*, 700 N.W.2d 349 (Iowa 2005) (negotiating committee of Vision Iowa Board, a board created by the legislature to assist local communities with development of tourism opportunities, not required to hold public meetings).

1. State.

The statute applies. While state government is created, not by statute, but by constitutional provision (Iowa Const. Arts. III, IV and V), the state has never sought to argue that it is exempt from compliance.

2. County.

County governments are statutory creatures. *See generally, Iowa Code Chapter 331* (County Home Rule Implementation). Accordingly, they are subject to the open meetings law.

3. Local or municipal.

Municipal governments are also statutory creatures. *See generally, Iowa Code Chapter 372* (organization of city government). Accordingly, they are subject to the open meetings law.

C. What bodies are covered by the law?

1. Executive branch agencies.

“Governmental” bodies are covered by the statute. Iowa Code § 21.3. See also, Iowa Code § 21.2(1).

a. What officials are covered?

Executive branch agencies are expressly created by statute. *See e.g., Iowa Code Chapter 86* (Industrial Commission) and *96* (Job Service). Accordingly, they are covered by the statute.

No statutory provision limits the particular executives, e.g. governor, mayors, etc., to which chapter 21 applies.

b. Are certain executive functions covered?

No statutory provision limits application to specified executive functions such as serving on city council, voting to break a tie, or exercising a veto.

c. Are only certain agencies subject to the act?

No statutory provision limits coverage to certain agencies.

2. Legislative bodies.

The Iowa legislature is a *constitutional* creation, not a statutory creation. Iowa Const. Art. IV. The statute covers only governing bodies created by statute or executive order, and those bodies specifically enumerated in § 21.2.

3. Courts.

The courts, like the legislature, are created by the constitution. Iowa Const. Art. V. The judiciary is not, therefore, included within the definition of governmental bodies. As a general rule, however, court proceedings are open to the public.

4. Nongovernmental bodies receiving public funds or benefits.

The statute has no application to non-governmental bodies or groups.

5. Nongovernmental groups whose members include governmental officials.

The statute has no application to non-governmental bodies or groups.

6. Multi-state or regional bodies.

Not addressed.

7. Advisory boards and commissions, quasi-governmental entities.

a. Only those advisory groups statutorily specified by the legislature are required to hold public meetings. *Mason v. Vision Iowa Bd.*, 700 N.W.2d 349, 356 (Iowa 2005) The Act applies to “governmental bodies.” Governmental bodies include:

(1) A board, council, commission or other governing body expressly created by the statutes of this state or by executive order.

(2) A board, council, commission, or other governing body of a political subdivision or tax-supported district in this state.

(3) A multimembered body formally and directly created by one or more boards, councils, commissions, or other governing bodies subject to paragraphs “a” and “b” of this subsection.

(4) Those multimembered bodies to which the state board of regents or a president of a university has delegated the responsibility for the management and control of the intercollegiate athletic programs at the state universities.

(5) An advisory board, advisory commission, or task force created by the governor or the general assembly to develop and make recommendations on public policy issues.

(6) An advisory board, advisory commission, advisory committee, task force, or other body created by statute or executive order of this state or created by an executive order of a political subdivision of this state to develop and make recommendations on public policy issues.

b. *Hettinga v. Dallas County Board of Adjustment*, 375 N.W.2d 293, 295 (Iowa App. 1985) (“The Dallas County Board of Adjustment is certainly a ‘governmental body’ within the definition of section 22.2(1)(b).”).

Wedergren v. Board of Directors, 307 N.W.2d 12 (Iowa 1981) (School board).

8. Other bodies to which governmental or public functions are delegated.

(1) A nonprofit corporation other than a county or district fair or agricultural society, 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 a nonprofit corporation which is a successor to the nonprofit corporation which

built the facility.

(2) A nonprofit corporation licensed to conduct gambling games pursuant to chapter 99F.

But see 79 Op. Att’y Gen. 148, 153 (May 4, 1979) (Peer Review Committee of Board of Engineering Examiners is not a governmental body because there is no delegation of governmental authority).

9. Appointed as well as elected bodies.

No statutory distinction is made between elected and appointed officials.

D. What constitutes a meeting subject to the law.

1. Number that must be present.

“Meeting means a gathering in person or by electronic means, formal or informal, of a *majority* of the members of a governmental body where there is deliberation or action upon any matter within the scope of the governmental body’s policy-making duties. Meetings shall not include a gathering of members of a governmental body for purely ministerial or social purposes when there is not discussion of policy or no intent to avoid the purposes of this chapter.” Iowa Code § 21.2(2) (emphasis added).

Attendance of a majority of members is necessary; otherwise, there is no meeting. *Id.* 79 Op. Att’y Gen. 164, 165 (May 16, 1979).

a. Must a minimum number be present to constitute a “meeting”?

Yes

b. What effect does absence of a quorum have?

Without a quorum, there is no meeting as defined by the statute

2. Nature of business subject to the law.

a. “Information gathering” and “fact-finding” sessions.

Business must be “within the scope of the governmental body’s policy-making duties.” Iowa Code § 21.2(2).

“[P]urely ministerial” functions are excluded “when there is no discussion of policy or intent to avoid the purpose [of the statute].” *Id.*

A ministerial act is one which does not involve an exercise of discretion or judgment. 79 Op. Att’y Gen. 164, 166 (May 16, 1979).

“[G]athering for ‘purely ministerial’ purposes may include a situation in which members of a governmental body gather simply to receive information.” 82 Op. Att’y Gen. 423, 426 (May 25, 1982).

“Activities of a governmental body’s individual members to secure information to be reported and acted upon at an open meeting ordinarily do not violate sunshine statutes.” *Telegraph Herald Inc. v. City of Dubuque*, 297 N.W.2d 529, 534 (Iowa 1980).

b. Deliberations toward decisions.

The statute covers “deliberation *or* action” of public bodies. Iowa Code § 21.2(2)(emphasis added). Deliberation connotes discussion and evaluation. 79 Op. Att’y Gen. 164, 166 (May 16, 1979).

“The statute only applies to a gathering of a majority of the members of a governmental body. *Wedergren v. Board of Directors*, 307 N.W.2d 12, 18 (Iowa 1981). Activities of a governmental body’s individual members to secure information to be reported and acted upon at an open meeting ordinarily do not violate the statute. *Telegraph Herald Inc. v. City of Dubuque*, 297 N.W.2d 529, 534 (Iowa 1980).” *Gavin v. City of Cascade*, 500 N.W.2d 729, 732 (Iowa App. 1993).

3. Electronic meetings.

a. Conference calls and video/Internet conferencing.

Meetings are “in person or by electronic means.”

b. E-mail.

Not unless the system would permit “a gathering.”

c. Text messages.

Not unless the system would permit “a gathering.”

d. Instant messaging.

Not unless the system would permit “a gathering.”

e. Social media and online discussion boards.

Not unless the system would permit “a gathering.”

E. Categories of meetings subject to the law.

1. Regular meetings.

a. Definition.

The statute does not distinguish between regular and other types of meetings. It applies to gatherings “in person or by electronic means, formal or informal.” Iowa Code § 21.2(2).

b. Notice.

1. Except as provided in subsection 3, a governmental body shall give notice of the time, date, and place of each meeting including a reconvened meeting of the governmental body, and the tentative agenda of the meeting, in a manner reasonably calculated to apprise the public of that information. Reasonable notice shall include advising the news media who have filed a request for notice with the governmental body and posting the notice on a bulletin board or other prominent place which is easily accessible to the public and clearly designated for that purpose at the principal office of the body holding the meeting, or if no such office exists, at the building in which the meeting is to be held.

2. a. Notice conforming with all of the requirements of subsection 1 of this section shall be given at least twenty-four hours prior to the commencement of any meeting of a governmental body unless for good cause such notice is impossible or impractical, in which case as much notice as is reasonably possible shall be given. Each meeting shall be held at a place reasonably accessible to the public, and at a time reasonably convenient to the public, unless for good cause such a place or time is impossible or impractical. Special access to the meeting may be granted to persons with disabilities.

b. When it is necessary to hold a meeting on less than twenty-four hours’ notice, or at a place that is not reasonably accessible to the public, or at a time that is not reasonably convenient to the public, the nature of the good cause justifying that departure from the normal requirements shall be stated in the minutes.

3. Subsection 1 does not apply to any of the following:

a. A meeting reconvened within four hours of the start of its recess, where an announcement of

the time, date, and place of the reconvened meeting is made at the original meeting in open session and recorded in the minutes of the meeting and there is no change in the agenda.

b. A meeting held by a formally constituted subunit of a parent governmental body during a lawful meeting of the parent governmental body or during a recess in that meeting of up to four hours, or a meeting of that subunit immediately following the meeting of the parent governmental body, if the meeting of that subunit is publicly announced in open session at the parent meeting and the subject of the meeting reasonably coincides with the subjects discussed or acted upon by the parent governmental body.

4. If another section of the Code requires a manner of giving specific notice of a meeting, hearing, or an intent to take action by a governmental body, compliance with that section shall constitute compliance with the notice requirements of this section.

Iowa Code § 21.4

(1). Time limit for giving notice.

24 hours

(2). To whom notice is given.

(a) the public; (b) news media who have filed a request for notice with the governmental body. Iowa Code § 21.4(1).

(3). Where posted.

“[O]n a bulletin board or other prominent place which is easily accessible to the public and clearly designated for that purpose at the principal office of the body holding the meeting, or if not such office exists, at the building in which the meeting is to be held.” Iowa Code § 21.4(1).

(4). Public agenda items required.

(a) Notice must include a “tentative agenda.” *Id.*

(b) While this tentative agenda may be amended, it may not be amended within twenty-four hours of the meeting, absent good cause. 79 Op. Att’y Gen. 269, 270 (July 6, 1979).

“[A] proper construction of the notice provision in section 21.4 allows discussion and action on emergency items that are first ascertained at a meeting for which proper notice was given.” *KCOB/KLVN v. Jasper County Bd. of Supervisors*, 473 N.W.2d 171, 174 (Iowa 1991).

(c) The issue, in determining the adequacy of notice, is: “whether the notice sufficiently apprised the public and gave full opportunity for public knowledge and participation.” *KCOB/KLVN v. Jasper County Bd. of Supervisors*, 473 N.W.2d 171, 173 (Iowa 1991).

(5). Other information required in notice.

(a) time of meeting; (b) date of meeting; (c) place of meeting. Iowa Code § 21.4(1).

Sufficiency of notice in agenda. “The adequacy of a notice is determined by what the words in the agenda would mean to a typical citizen or member of the press.” *Vandaele v. Board of Educ. ex rel. Wapsie Valley Community School Dist.*, 2002 WL 575666, p. 3 (Iowa App. 2002, unpublished).

(6). Penalties and remedies for failure to give adequate notice.

Although the wording in the enforcement section of the statute emphasizes enforcement against illegally closed sessions, it specifically

provides that a court may act when it finds “that a governmental body has violated any provision of this chapter.” Iowa Code § 21.6(3). However, in order for a court action to be brought, the party seeking judicial enforcement must first show that the governmental body is subject to the open meetings law and that it “has held a closed session.” Iowa Code § 21.6(2). In addition, the court has held that “even though notice is an important tool utilized to accomplish openness, it is not the primary purpose of chapter 21.” *KCOB/KLVN v. Jasper County Bd. of Supervisors*, 473 N.W.2d 171, 173 (Iowa 1991).

c. Minutes.

“Each governmental body shall keep minutes of all its meetings showing the date, time and place, the members present, and the action taken at each meeting. The minutes shall show the results of each vote taken and the vote of each member present shall be made public at the open session. The minutes shall be public records open to public inspection.” Iowa Code § 21.3. Members of the public are entitled to examine and copy minutes of open meetings. 79 Op. Att’y Gen. 88, 94 (April 20, 1979).

Note: Municipal Hospital Board *not* required to publish its minutes in local newspaper. *Op. Att’y Gen. (March 5, 1993)*.

(1). Information required.

Date, time and place, the members present, and the action taken at each meeting; the results of each vote taken and the vote of each member present

(2). Are minutes public record?

Yes

2. Special or emergency meetings.

a. Definition.

There is no provision in the statute for a special or emergency meeting as such. However, meetings on less than twenty-four hours notice are clearly contemplated by the statute. *See Iowa Code § 21.4(2)*

b. Notice requirements.

(1). Time limit for giving notice.

“[A]s much notice as is reasonably possible shall be given.” Iowa Code § 21.4(2).

(2). To whom notice is given.

There are no requirements separate from those imposed upon “regular” meetings.

(3). Where posted.

There are no requirements separate from those imposed upon “regular” meetings.

(4). Public agenda items required.

There are no requirements separate from those imposed upon “regular” meetings.

(5). Other information required in notice.

None.

(6). Penalties and remedies for failure to give adequate notice.

Although the wording in the enforcement section of the statute emphasizes enforcement against illegally closed sessions, it specifically provides that a court may act when it finds “that a governmental body has violated any provision of this chapter.” Iowa Code § 21.6(3). However, in order for a court action to be brought, the party seeking judicial enforcement must first show that the governmental body is subject to the open meetings law and that it “has held a closed session.” Iowa Code § 21.6(2). In addition, the court has held that “even

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(1). Information required.

Date, time and place, the members present, and the action taken at each meeting; the results of each vote taken and the vote of each member present

(2). Are minutes a public record?

Yes

3. Closed meetings or executive sessions.

a. Definition.

“[A] meeting, as defined in Sec. 28A.2(2) [now Sec. 21.2(2)], to which any member of the public is denied access by a governmental body.” 79 Op. Att’y Gen. 430, 432 (Oct. 2, 1979).

b. Notice requirements.

No additional notice requirements are imposed, simply because the governmental body intends to hold a closed session.

(1). Time limit for giving notice.

24 hours

(2). To whom notice is given.

(a) the public; (b) news media who have filed a request for notice with the governmental body. Iowa Code § 21.4(1).

(3). Where posted.

“[O]n a bulletin board or other prominent place which is easily accessible to the public and clearly designated for that purpose at the principal office of the body holding the meeting, or if not such office exists, at the building in which the meeting is to be held.” Iowa Code § 21.4(1).

(4). Public agenda items required.

No

c. Minutes.

(1). Information required.

The vote of each member on the question of holding a closed session and the reason for holding the closed session by reference to a specific statutory provision must be entered in the minutes. Iowa Code § 21.5(2).

(2). Are minutes a public record?

“The detailed minutes and tape recording of a closed session shall be sealed and shall not be public records open to public inspection.” Iowa Code § 21.5(4). *But see Iowa Code § 21.5(1)(j)* (“The minutes and the tape recording of a session closed under this paragraph shall be available for public examination when the transaction discussed [a real estate purchase] is completed.”).

Sealed records of closed session available only in enforcement action, or in discovery after trial court weighs the statute providing for

sealed records against the discovery rule allowing an adverse party access to information. *Fettkether v. City of Readlyn*, 595 N.W.2d 807, 815 (Iowa App. 1999). *See also, Tausz v. Clarion-Goldfield Community School Dist.*, 569 N.W.2d 125, 127 (Iowa 1997) (“A special need for relevant evidence by a party engaged in litigation with the public agency and seeking discovery under Iowa Rule of Civil Procedure 122(a) may be accommodated by court-ordered disclosure to that party of relevant portions of the otherwise confidential record.”).

d. Requirement to meet in public before closing meeting.

“The vote of each member on the question of holding the closed session . . . shall be announced publicly at the open session.” Iowa Code § 21.5(2).

See Barrett v. Lode, 603 N.W.2d 766, 771 (Iowa, 1999) (suggesting to a reporter that a session was about to be closed in order to force him to leave may violate the act).

e. Requirement to state statutory authority for closing meetings before closure.

“[T]he reason for holding the closed session by reference to a specific exemption under this section [§ 21.5(2)] shall be announced publicly at the open session.” Iowa Code § 21.5(2).

f. Tape recording requirements.

“A governmental body shall . . . tape record all of the closed session.” Iowa Code § 21.5(4).

F. Recording/broadcast of meetings.

Sound and photographic recordings are allowed. “The public may use cameras or recording devices at any open session.” Public bodies may make rules to keep meetings “orderly, and free from interference.” Iowa Code § 21.7.

G. Are there sanctions for noncompliance?

For violations of the open meetings law, each member of a governmental body may be fined between \$100 and \$500. Iowa Code Ann. § 21.6(3)(a). A member can establish his innocence by showing he voted against a closed meeting, had good reason to believe the closure was in compliance with the law, or relied on an official opinion from a court, the state Attorney General or the body’s attorney. Iowa Code Ann. § 21.6(3)(a). The offending members may also be forced to pay attorney’s fees to a party who successfully challenges the closure. Iowa Code Ann. § 21.6(3)(b). If an official has previously violated the open meetings law and required to pay damages, that official will be removed from his position. Iowa Code Ann. § 21.6(3)(d). Action taken in a closed meeting may be voided by a court. Iowa Code Ann. § 21.6(3)(c).

II. EXEMPTIONS AND OTHER LEGAL LIMITATIONS

A. Exemptions in the open meetings statute.

1. Character of exemptions.

a. General or specific.

The exemptions are *specific*; and public interest is not a statutory factor which governmental bodies must consider in determining whether a closed session would be appropriate.

b. Mandatory or discretionary closure.

“Nothing in this section requires a governmental body to hold a closed session to discuss or act upon any matter.” Iowa Code § 21.5(5).

2. Description of each exemption.

1. A governmental body may hold a closed session only by affirmative public vote of either two-thirds of the members of the body or all of the members present at the meeting. A governmental body may

hold a closed session only to the extent a closed session is necessary for any of the following reasons:

a. To review or discuss records which are 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 possession or continued receipt of federal funds.

b. To discuss application for letters patent.

c. To discuss strategy with counsel in matters that are presently in litigation or where litigation is imminent where its disclosure would be likely to prejudice or disadvantage the position of the governmental body in that litigation.

d. To discuss the contents of a licensing examination or whether to initiate licensee disciplinary investigations or proceedings if the governmental body is a licensing or examining board.

e. To discuss whether to conduct a hearing or to conduct hearings to suspend or expel a student, unless an open session is requested by the student or a parent or guardian of the student if the student is a minor.

f. To discuss the decision to be rendered in a contested case conducted according to the provisions of chapter 17A.

g. To avoid disclosure of specific law enforcement matters, such as current or proposed investigations, inspection or auditing techniques or schedules, which if disclosed would enable law violators to avoid detection.

h. To avoid disclosure of specific law enforcement matters, such as allowable tolerances or criteria for the selection, prosecution, or settlement of cases, which if disclosed would facilitate disregard of requirements imposed by law.

i. To evaluate the professional competency of an individual whose appointment, hiring, performance, or discharge is being considered when necessary to prevent needless and irreparable injury to that individual's reputation and that individual requests a closed session.

j. To discuss the purchase or sale of particular real estate only where premature disclosure could be reasonably expected to increase the price the governmental body would have to pay for that property or reduce the price the governmental body would receive for that property. The minutes and the audio recording of a session closed under this paragraph shall be available for public examination when the transaction discussed is completed.

k. To discuss information contained in records in the custody of a governmental body that are confidential records pursuant to section 22.7, subsection 50.

l. To discuss patient care quality and process improvement initiatives in a meeting of a public hospital or to discuss marketing and pricing strategies or similar proprietary information in a meeting of a public hospital, where public disclosure of such information would harm such a hospital's competitive position when no public purpose would be served by public disclosure. The minutes and the audio recording of a closed session under this paragraph shall be available for public inspection when the public disclosure would no longer harm the hospital's competitive position. For purposes of this paragraph, "public hospital" means the same as defined in section 249J.3. This paragraph does not apply to the information required to be disclosed pursuant to section 347.13, subsection 11, or to any discussions relating to terms or conditions of employment, including but not limited to compensation of an officer or employee or group of officers or employees.

2. The vote of each member on the question of holding the closed session and the reason for holding the closed session by reference to a specific exemption under this section shall be announced publicly at the open session and entered in the minutes. A governmental body shall not discuss any business during a closed session which does not directly relate to the specific reason announced as justification for the closed session.

3. Final action by any governmental body on any matter shall be taken in an open session unless some other provision of the Code expressly permits such actions to be taken in closed session.

4. A governmental body shall keep detailed minutes of all discussion, persons present, and action occurring at a closed session, and shall also audio record all of the closed session. The detailed minutes and audio recording of a closed session shall be sealed and shall not be public records open to public inspection. However, upon order of the court in an action to enforce this chapter, the detailed minutes and audio recording shall be unsealed and examined by the court in camera. The court shall then determine what part, if any, of the minutes should be disclosed to the party seeking enforcement of this chapter for use in that enforcement proceeding. In determining whether any portion of the minutes or recording shall be disclosed to such a party for this purpose, the court shall weigh the prejudicial effects to the public interest of the disclosure of any portion of the minutes or recording in question, against its probative value as evidence in an enforcement proceeding. After such a determination, the court may permit inspection and use of all or portions of the detailed minutes and audio recording by the party seeking enforcement of this chapter. A governmental body shall keep the detailed minutes and audio recording of any closed session for a period of at least one year from the date of that meeting, except as otherwise required by law.

5. Nothing in this section requires a governmental body to hold a closed session to discuss or act upon any matter.

Iowa Code § 21.5

B. Any other statutory requirements for closed or open meetings.

There are no other Iowa statutes which deal solely with the public nature of meetings involving governmental bodies. Instead, individual chapters of the code contain individual provisions specific to those chapters.

C. Court mandated opening, closing.

No decision creating new, non-statutory exemptions has been found. Court decisions concerning the propriety of closing specific meetings are discussed throughout the materials.

III. MEETING CATEGORIES — OPEN OR CLOSED.

A. Adjudications by administrative bodies.

Oral proceedings in contested cases are open to the public. Iowa Code § 17A.12(7).

All final orders, decisions and opinions are available for public inspection, except to the extent necessary to prevent clearly unwarranted invasion of personal privacy or trade secrets. Iowa Code § 17A.3(1)(d).

1. Deliberations closed, but not fact-finding.

Under Iowa Code § 21.15(1)(f), the Davenport Civil Rights Commission acted lawfully when it conducted closed meetings to deliberate the employee's harassment claim. *Botsko v. Davenport Civ. Rights Comm'n*, 774 N.W.2d 841 (Iowa 2009).

B. Budget sessions.

The open meetings statute does not address budget sessions, *per se*. If the other criteria of the statute are satisfied, *e.g.*, majority, deliberation, *etc.*, it would appear that the statute requires the meeting to be open.

State government. Upon receipt of the tentative budget, the governor must make provision for public hearings. Iowa Code § 8.26.

Local government. Public hearing after estimates filed with clerk. Iowa Code § 24.9.

C. Business and industry relations.

No Iowa statutes governing open meetings between governmental bodies and private business have been found. However, to the extent such meetings would involve sensitive business information, the meetings would probably be closed to the public under Iowa Code Sec. 21.5(1)(a). Cf. Iowa Code § 22.7(8) (Records and information about industrial prospects with whom state is in negotiations confidential).

D. Federal programs.

No Iowa statutes governing open meetings, and discussing participation in federal programs, have been found. It should be noted that meetings to discuss records required or authorized by federal law to be kept confidential are not open to the public. Iowa Code § 21.5(1)(a).

E. Financial data of public bodies.

The open meetings statute does not address the discussion of financial data, *per se*. If the other criteria of the statute are satisfied, *e.g.*, majority, deliberation, *etc.*, it would appear that the statute requires the meeting to be open.

F. Financial data, trade secrets or proprietary data of private corporations and individuals.

The financial data, trade secrets and proprietary data of private corporations and individuals are confidential. Iowa Code §§ 22.7(3), (6) and (8). Meetings to discuss records which are confidential need not be held in public. Iowa Code § 21.5(1)(a).

G. Gifts, trusts and honorary degrees.

No provision of the open meetings statute exempts discussion of gifts, trusts and honorary degrees from public attendance. Iowa Code Sec. 68B.11 (as amended by H.F. 2466, effective January 1, 1993) requires the preparation of disclosure reports.

H. Grand jury testimony by public employees.

Grand Jury proceedings are confidential. *I.R.Cr.P. 13(d)*.

I. Licensing examinations.

While no Iowa statute governing the open/closed nature of licensing examination sessions has been found, it is unlikely that members of the public would be allowed to attend. Most such examinations are confidential. *See e.g., Iowa Code §§ 114.32 (engineers), 135E.17 (nursing home administrators), and 118.27 (architects)*; meetings to discuss confidential records need not be held in public. Iowa Code § 21.5(1)(a).

J. Litigation; pending litigation or other attorney-client privileges.

Certain strategy discussions of public bodies involving litigation can be closed.

1. No Iowa statutes governing the question of whether members of the public may attend proceedings outside the courtroom, *e.g.* depositions, in actions between or involving governmental bodies have been found. As a general rule, protective orders are available to protect parties from annoyance, embarrassment, oppression, and undue burden and expense. Under appropriate circumstances, the order may provide that the proceeding be conducted with no person present who is not designated by the court. *I.R.Civ.P. 123(e)*.

2. As a general rule, judicial proceedings are subject to request for expanded media coverage; *i.e.* "broadcasting, televising, electronic recording or photographs." *Rules of Procedure for Expanded Media Coverage 1-2 (West 1988)*.

A request for expanded media coverage will be denied

(1) when the court finds coverage would materially interfere with their right to a fair trial;

(2) upon showing of good cause by witness;

(3) in sexual abuse cases during the testimony of a victim/witness;

(4) if the victim/witness in any forcible felony objects;

(5) where police informants and undercover agents are involved;

(6) in proceedings made private by other provisions of Iowa law;

(7) when the proceedings involves juvenile, dissolution, adoption, child custody or trade secret questions; and

(8) during jury selection.

Rules of Procedure for Expanded Media Coverage 2(b), (c), (d) and (e) (West 1988).

K. Negotiations and collective bargaining of public employees.

1. Any sessions regarding collective bargaining.

Negotiating sessions, strategy meetings, and mediation and deliberation process of arbitrators are closed to the public. Iowa Code § 20.17(3).

2. Only those between the public employees and the public body.

The initial and second bargaining sessions, however, and arbitration hearings, are open to the public.

L. Parole board meetings, or meetings involving parole board decisions.

Corrections information is confidential. Iowa Code § 246.602(2). Meetings to discuss records which are confidential need not be held in public. Iowa Code § 21.5(1)(a). *But see* 76 Op. Att'y Gen. 415 (January 21, 1976) (Board of Parole subject to chapter 28A — now chapter 21).

M. Patients; discussions on individual patients.

Hospital records, including patient and former patient information, are confidential. Iowa Code § 22.7(2). Meetings to discuss records which are confidential need not be held in public. Iowa Code § 21.5(1)(a).

N. Personnel matters.

1. Interviews for public employment.

Dependent upon whether closed session necessary to prevent needless and irreparable injury to reputation and individual request for closed session. Iowa Code § 21.5(1)(i).

2. Disciplinary matters, performance or ethics of public employees.

Dependent upon whether closed session necessary to prevent needless and irreparable injury to reputation and individual request for closed session. Iowa Code § 21.5(1)(i).

3. Dismissal; considering dismissal of public employees.

Dependent upon whether closed session necessary to prevent needless and irreparable injury to reputation and individual request for closed session. Iowa Code § 21.5(1)(i).

O. Real estate negotiations.

Only where premature disclosure could be reasonably expected to increase the price the governmental body would have to pay for that property or reduce the price the governmental body would receive for that property. Iowa Code § 21.5(1)(j).

P. Security, national and/or state, of buildings, personnel or other.

Information concerning procedures used to control disturbances at adult correctional facilities is confidential. Iowa Code § 22.7(15). Meetings to discuss records which are confidential need not be held in public. Iowa Code § 21.5(1)(a). No other Iowa statutes governing open meetings on the subject of security have been found.

Q. Students; discussions on individual students.

Confidential: a. when concerning suspension or expulsion, Iowa Code § 21.5(1)(e); b. to the extent necessary to receive federal funds, Iowa Code § 21.5(1)(a); 20 U.S.C. Sec. 1232g.

In hearing regarding appeal of student suspension, student right to request open session under § 21.5(1)(e) is paramount, regardless of fact that teacher's aide who was disciplined for the same incident requested closed session under § 21.5(1)(i). *Schumacher v. Lisbon School Bd.*, 582 N.W.2d 183, 185-186 (Ia 1998).

IV. PROCEDURE FOR ASSERTING RIGHT OF ACCESS

A. When to challenge.

1. Does the law provide expedited procedure for reviewing request to attend upcoming meetings?

No procedure exists for expediting review of challenge to upcoming meeting.

2. When barred from attending.

Not specified.

3. To set aside decision.

Suit under chapter 21 must be brought within six months of alleged violation if complainant seeks to void action taken. Iowa Code § 21.6(3)(c).

4. For ruling on future meetings.

Not specified.

5. Other.

An administrative action must be commenced within thirty days of the agency's final decision in a contested case. Iowa Code § 17A.19(3).

B. How to start.

1. Where to ask for ruling.

No docket priority is afforded this type of action, whether brought in the form of a direct challenge under chapter 21, or as an action seeking judicial review under chapter 17A.

a. Administrative forum.

Only if seeking "judicial review" pursuant to chapter 17A, the Iowa Administrative Procedures Act.

Judicial review of agency action is available pursuant to Iowa Code § 17A.19. Any suit brought pursuant to chapter 17A must be brought in the district court in Polk County or in the district court in the county where petitioner resides or has its principal place of business. Iowa Code § 17A.19(2).

A chapter 17A action must address the following: "the petition for review shall name the agency as respondent and shall contain a concise statement of: (1) the nature of the agency action which is the subject of the petition; (2) the particular agency action appealed from; (3) the facts on which venue is based; (4) the grounds on which relief is sought; and (e) the relief."

b. State attorney general.

The state attorney general (or a county attorney) may seek judicial

enforcement in a chapter 21 proceeding. Iowa Code § 21.6(1). Any suit brought pursuant to chapter 21 must be brought "in the district court for the county in which the governmental body has its principal place of business." Iowa Code § 21.6(1).

c. Court.

In the district court for the county in which the governmental body has its principal place of business. Iowa Code § 21.6(1).

2. Applicable time limits.

Within 6 months of seeking to void the challenged action.

3. Contents of request for ruling.

a. A chapter 21 action must allege "the body in question is subject to the requirements of this chapter and has held a closed session." See Iowa Code § 21.6(2). In addition, the petition must contain "a demand for judgment for the type of relief to which one deems one's self entitled." *I.R.Civ.P. 69(a)*.

b. "This section changes the burden of going forward with the evidence rather than shifting the burden of proof from plaintiffs to defendants. *KCOB/KLVN Inc. v. Jasper County Bd. of Supervisors*, 473 N.W.2d 171, 177 (Iowa 1991). A plaintiff must show substantive proof of a secret meeting rather than mere speculation in order to shift the burden of going forward. *Id.*" *Gavin v. City of Cascade*, 500 N.W.2d 729, 731-732 (Iowa App. 1993).

4. How long should you wait for a response?

Consult local court administrator for time lines.

5. Are subsequent or concurrent measures (formal or informal) available?

Not specified.

C. Court review of administrative decision.

1. Who may sue?

a. Open Meetings Act: "Any aggrieved person, taxpayer to, or citizen of, the state of Iowa, or the attorney general or county attorney . . ." Iowa Code § 21.6(1).

b. Administrative Procedures Act: "A person or party who was exhausted all adequate administrative remedies and who is aggrieved or adversely affected." Iowa Code § 17A.19(1).

2. Will the court give priority to the pleading?

No docket priority.

3. Pro se possibility, advisability.

Proceeding *pro se* is permissible but not advisable. There are numerous procedural pitfalls in an action seeking judicial review; the issues are relatively technical; and the party whose meeting one seeks to open will always be represented by counsel.

4. What issues will the court address?

Chapter 21: If a plaintiff demonstrates that the governmental body in question is subject to the requirements of chapter 21 and that a closed session was held, the issue will be whether the action was in compliance with the statute.

Chapter 17A: The issue in a chapter 17A proceeding will be whether substantial rights of the petitioner have been prejudiced because the agency action is: (a) in violation of constitutional or statutory provisions; (b) in excess of the statutory authority of the agency; (c) in violation of an agency rule; (d) made upon unlawful procedure; (e) affected by other error of law; (f) in a contested case, unsupported by substantial evidence in the record made before the agency when that record is viewed as a whole; or (g) unreasonable, arbitrary or capricious or characterized by an abuse of discretion or a clearly unwarranted exer-

cise of discretion.

a. Open the meeting.

Not an available option.

b. Invalidate the decision.

If challenged within 6 months.

c. Order future meetings open.

Iowa Code § 21.6(3)(e) provides for mandatory injunction prohibiting violation of the Act for a period of 1 year.

5. Pleading format.

Pleading format is governed by the Iowa Rules of Civil Procedure. See e.g. I.R.Civ.P. 69 and 78 - 79.

6. Time limit for filing suit.

Six months if seeking to void challenged action.

7. What court.

In the district court for the county in which the governmental body has its principal place of business. Iowa Code § 21.6(1).

8. Judicial remedies available.

Review of actions to enforce the open meetings statute are ordinary actions at law. *Schumacher v. Lisbon Sch. Bd.*, 582 N.W.2d 183, 185 (Iowa 1998).

The trial court's findings are binding if supported by substantial evidence. *Telegraph Herald Inc. v. City of Dubuque*, 297 N.W.2d 529, 533 (Iowa 1980); *Gavin v. City of Cascade*, 500 N.W.2d 729, 731 (Iowa App.1993).

Iowa Code § 21.6 provides:

1. The remedies provided by this section against state governmental bodies shall be in addition to those provided by section 17A.19. Any aggrieved person, taxpayer to, or citizen of, the state of Iowa, or the attorney general or county attorney, may seek judicial enforcement of the requirements of this chapter. Suits to enforce this chapter shall be brought in the district court for the county in which the governmental body has its principal place of business.

2. Once a party seeking judicial enforcement of this chapter demonstrates to the court that the body in question is subject to the requirements of this chapter and has held a closed session, the burden of going forward shall be on the body and its members to demonstrate compliance with the requirements of this chapter.

3. Upon a finding by a preponderance of the evidence that a governmental body has violated any provision of this chapter, a court:

a. Shall assess each member of the governmental body who participated in its violation damages in the amount of not more than five hundred dollars and not less than one hundred dollars. However, if a member of a governmental body knowingly participated in such a violation, damages shall be in the amount of not more than two thousand five hundred dollars and not less than one thousand dollars. These damages shall be paid by the court imposing it to the state of Iowa, if the body in question is a state governmental body, or to the local government involved if the body in question is a local governmental body. A member of a governmental body found to have violated this chapter shall not be assessed such damages if that member proves that the member did any of the following:

(1) Voted against the closed session.

(2) Had good reason to believe and in good faith believed facts which, if true, would have indicated compliance with all the requirements of this chapter.

(3) Reasonably relied upon a decision of a court, a formal opinion of

the attorney general, or the attorney for the governmental body, given in writing, or as memorialized in the minutes of the meeting at which a formal oral opinion was given, or an advisory opinion of the attorney general or the attorney for the governmental body, given in writing .

b. Shall order the payment of all costs and reasonable attorney fees in the trial and appellate courts to any party successfully establishing a violation of this chapter. The costs and fees shall be paid by those members of the governmental body who are assessed damages under paragraph "a". If no such members exist because they have a lawful defense under that paragraph to the imposition of such damages, the costs and fees shall be paid to the successful party from the budget of the offending governmental body or its parent.

c. Shall void any action taken in violation of this chapter, if the suit for enforcement of this chapter is brought within six months of the violation and the court finds under the facts of the particular case that the public interest in the enforcement of the policy of this chapter outweighs the public interest in sustaining the validity of the action taken in the closed session. This paragraph shall not apply to an action taken regarding the issuance of bonds or other evidence of indebtedness of a governmental body if a public hearing, election or public sale has been held regarding the bonds or evidence of indebtedness.

d. Shall issue an order removing a member of a governmental body from office if that member has engaged in a prior violation of this chapter for which damages were assessed against the member during the member's term.

e. May issue a mandatory injunction punishable by civil contempt ordering the members of the offending governmental body to refrain for one year from any future violations of this chapter.

4. Ignorance of the legal requirements of this chapter shall be no defense to an enforcement proceeding brought under this section. A governmental body which is in doubt about the legality of closing a particular meeting is authorized to bring suit at the expense of that governmental body in the district court of the county of the governmental body's principal place of business to ascertain the propriety of any such action, or seek a formal opinion of the attorney general or an attorney for the governmental body.

Evidence of gross negligence, bad faith and malice is relevant in deciding whether to impose damage award and tax costs. *Wells v. Dallas County Board of Adjustment*, 475 N.W.2d 680, 683 (Iowa 1991).

Chapter 17A

"The court may affirm the agency action or remand to the agency for further proceedings. The court shall reverse, modify, or grant any other appropriate relief from the agency action, equitable or legal and including declaratory relief, if substantial rights of the petitioner have been prejudiced because the agency action is: (a) in violation of constitutional or statutory provisions; (b) in excess of the statutory authority of the agency; (c) in violation of an agency rule; (d) made upon unlawful procedure; (e) affected by other error of law; (f) in a contested case, unsupported by substantial evidence in the record made before the agency when that record is viewed as a whole; or (g) unreasonable, arbitrary or capricious or characterized by an abuse of discretion or a clearly unwarranted exercise of discretion." Iowa Code Sec. 17A.19(8) (1991).

City resident challenged a city council decision to create a city manager position because the decision was allegedly made during a closed door session, but the ordinance that created the position was read three times in open sessions before it was passed. Moreover, the resident failed to bring suit to enforce the meetings law within six months of the closed meeting as required by Iowa Code § 21.6; further, the district court could only void a closed meeting action if the public interest involved in enforcing the policy outweighed the interest in sustaining the validity of the action. *Adele v. City of Pleasant Hill*, 2008 Iowa App. LEXIS 426 (2008).

9. Availability of court costs and attorneys' fees.

Costs and reasonable attorney fees to one establishing violation paid by members assessed damages pursuant to § 21.6(3)(b), or if no such members exist, by the governing body.

Board members who are knowledgeable about the provisions of the Open Meetings Law cannot be said to have reasonably relied on the advice of counsel when they make no effort to follow the simple procedures set forth in § 21.5 for closing meeting. *Grell v. City of Corakville Bldg. Appeals Bd.*, 1999 WL 1255744 (Iowa App., Dec. 27, 1999).

D. Appealing initial court decisions.

1. Appeal routes.

Appeal is taken by filing a notice with the clerk of court where judgment was entered. *I.R.App.P. 6(a)*.

2. Time limits for filing appeals.

Appeal must be taken within thirty days of entry of judgment. *I.R.App.P. 5(a)*.

3. Contact of interested amici.

Iowa Freedom of Information Council, 118 Meredith Hall, Drake University, Des Moines, Iowa 50311.

The Reporters Committee for Freedom of the Press often files *amicus* briefs in cases involving significant media law issues before a state's highest court.

V. ASSERTING A RIGHT TO COMMENT.

Prior to making certain final decisions and final approvals on proposed charters, Iowa statutes require public comment in some cases. See e.g. Iowa Code § 331.235(2) and § 457B.1.

However, generally, the Open Meetings Act does not require the government to allow any individual or group to be heard on the subject being considered. 1985 WL 549176 (Iowa A.G.). See also, *Dobrovolny v. Reinhardt*, 173 N.W.2d 837, 840-41 (Iowa 1970).

Statute

Open Records

Title I. State Sovereignty and Management

Subtitle 9. Restraints on Government

Chapter 22. Examination of Public Records (Open Records)

22.1. Definitions

1. The term "government body" means 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 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; the governing body of a drainage or levee district as provided in chapter 468, including a board as defined in section 468.3, regardless of how the district is organized; 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 this chapter.

2. The term "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. Each government body shall delegate to particular officials or employees of that government body the responsibility for implementing the requirements of this chapter and shall publicly announce the particular officials or employees to whom responsibility for implementing the requirements of this chapter has been delegated. "Lawful custodian" does not mean an automated data processing unit of a public body if the data processing unit holds the records solely as the agent of another public body, nor does it mean a unit which holds the records of other public bodies solely for storage.

3. a. As used in this chapter, "public records" 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.

b. "Public records" also 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.

22.2. Right to examine public records—exceptions

As used in this chapter:

1. "Governmental body" means:

a. A board, council, commission, or other governing body expressly created by the statutes of this state or by executive order.

b. A board, council, commission, or other governing body of a political subdivision or tax-supported district in this state.

c. A multimembered body formally and directly created by one or more boards, councils, commissions, or other governing bodies subject to paragraphs "a" and "b" of this subsection.

d. Those multimembered bodies to which the state board of regents or a president of a university has delegated the responsibility for the management and control of the intercollegiate athletic programs at the state universities.

e. An advisory board, advisory commission, or task force created by the governor or the general assembly to develop and make recommendations on public policy issues.

f. A nonprofit corporation other than a fair conducting a fair event as pro-

vided 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 a nonprofit corporation which is a successor to the nonprofit corporation which built the facility.

g. A nonprofit corporation licensed to conduct gambling games pursuant to chapter 99F.

h. An advisory board, advisory commission, advisory committee, task force, or other body created by statute or executive order of this state or created by an executive order of a political subdivision of this state to develop and make recommendations on public policy issues.

i. The governing body of a drainage or levee district as provided in chapter 468, including a board as defined in section 468.3, regardless of how the district is organized.

j. An advisory board, advisory commission, advisory committee, task force, or other body created by an entity organized under chapter 28E, or by the administrator or joint board specified in a chapter 28E agreement, to develop and make recommendations on public policy issues.

2. “Meeting” means a gathering in person or by electronic means, formal or informal, of a majority of the members of a governmental body where there is deliberation or action upon any matter within the scope of the governmental body’s policy-making duties. Meetings shall not include a gathering of members of a governmental body for purely ministerial or social purposes when there is no discussion of policy or no intent to avoid the purposes of this chapter.

3. “Open session” means a meeting to which all members of the public have access.

22.3. Supervision—fees

1. The examination and copying of public records shall be done under the supervision of the lawful custodian of the records or the custodian’s authorized designee. The lawful custodian shall not require the physical presence of a person requesting or receiving a copy of a public record and shall fulfill requests for a copy of a public record received in writing, by telephone, or by electronic means. Fulfillment of a request for a copy of a public record may be contingent upon receipt of payment of expenses to be incurred in fulfilling the request and such estimated expenses shall be communicated to the requester upon receipt of the request. The lawful custodian may adopt and enforce reasonable rules regarding the examination and copying of the records and the protection of the records against damage or disorganization. The lawful custodian shall provide a suitable place for the examination and copying of the records, but if it is impracticable to do the examination and copying of the records in the office of the lawful custodian, the person desiring to examine or copy shall pay any necessary expenses of providing a place for the examination and copying.

2. All expenses of the examination and copying shall be paid by the person desiring to examine or copy. The lawful custodian may charge a reasonable fee for the services of the lawful custodian or the custodian’s authorized designee in supervising the examination and copying of the records. If copy equipment is available at the office of the lawful custodian of any public records, the lawful custodian shall provide any person a reasonable number of copies of any public record in the custody of the office upon the payment of a fee. The fee for the copying service as determined by the lawful custodian 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.

22.3A. Access to data processing software

1. As used in this section:

a. “Access” means the instruction of, communication with, storage of data in, or retrieval of data from a computer.

b. “Computer” means an electronic device which performs logical, arithmetical, and memory functions by manipulations of electronic or magnetic impulses, and includes all input, output, processing, storage, and communication facilities which are connected or related to the computer including a computer network. As used in this paragraph, “computer” includes any central processing unit, front-end processing unit, miniprocessor, or microprocessor, and related peripheral equipment such as data storage devices, document scanners, data entry terminal controllers, and data terminal equipment and systems for com-

puter networks.

c. “Computer network” means a set of related, remotely connected devices and communication facilities including two or more computers with capability to transmit data among them through communication facilities.

d. “Data” means a representation of information, knowledge, facts, concepts, or instructions that has been prepared or is being prepared in a formalized manner and has been processed, or is intended to be processed, in a computer. Data may be stored in any form, including but not limited to a printout, magnetic storage media, disk, compact disc, punched card, or as memory of a computer.

e. “Data processing software” means an ordered set of instructions or statements that, when executed by a computer, causes the computer to process data, and includes any program or set of programs, procedures, or routines used to employ and control capabilities of computer hardware. As used in this paragraph “data processing software” includes but is not limited to an operating system, compiler, assembler, utility, library resource, maintenance routine, application, computer networking program, or the associated documentation.

2. 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. A government body shall not acquire any electronic data processing system for the storage, manipulation, or retrieval of public records that would impair the government body’s ability to permit the examination of a public record and the copying of a public record in either written or electronic form. If it is necessary to separate a public record from data processing software in order to permit the examination or copying of the public record, the government body shall bear the cost of separation of the public record from the data processing software. The electronic public record shall be made available in a format useable with commonly available data processing or database management software. The cost chargeable to a person receiving a public record separated from data processing software under this subsection shall not be in excess of the charge under this chapter unless the person receiving the public record requests that the public record be specially processed. A government body may establish payment rates and procedures required to provide access to data processing software, regardless of whether the data processing software is separated from or combined with a public record. Proceeds from payments may be considered repayment receipts, as defined in section 8.2. The payment amount shall be calculated as follows:

a. The amount charged for access to a public record shall be not more than that required to recover direct publication costs, including but not limited to editing, compilation, and media production costs, incurred by the government body in developing the data processing software and preparing the data processing software for transfer to the person. The amount shall be in addition to any other fee required to be paid under this chapter for the examination and copying of a public record. If a person accesses a public record stored in an electronic format that does not require formatting, editing, or compiling to access the public record, the charge for providing the accessed public record shall not exceed the reasonable cost of accessing that public record. The government body shall, if requested, provide documentation which explains and justifies the amount charged. This paragraph shall not apply to any publication for which a price has been established pursuant to another section, including section 2A.5.

b. If access to the data processing software is provided to a person for a purpose other than provided in paragraph “a”, the amount may be established according to the discretion of the government body, and may be based upon competitive market considerations as determined by the government body.

3. A government body is granted and may apply for and receive any legal protection necessary to secure a right to or an interest in data processing software developed by the government body, including but not limited to federal copyright, patent, and trademark protections, and any trade secret protection available under chapter 550. The government body may enter into agreements for the sale or distribution of its data processing software, including marketing and licensing agreements. The government body may impose conditions upon the use of the data processing software that is otherwise consistent with state and federal law.

22.4. Hours when available

The rights of persons under this chapter may be exercised at any time during the customary office hours of the lawful custodian of the records. However, if the lawful custodian does not have customary office hours of at least thirty

hours per week, such right may be exercised at any time from 9:00 a.m. to noon and from 1:00 p.m. to 4:00 p.m. Monday through Friday, excluding legal holidays, unless the person exercising such right and the lawful custodian agree on a different time.

22.5. Enforcement of rights

The provisions of this chapter and all rights of persons under this chapter may be enforced by mandamus or injunction, whether or not any other remedy is also available. In the alternative, rights under this chapter also may be enforced by an action for judicial review according to the provisions of the Iowa administrative procedure Act, chapter 17A, if the records involved are records of an “agency” as defined in that Act.

22.6. Penalty

Repealed

22.7. Confidential records

The following public records shall be kept confidential, unless otherwise ordered by a court, by the lawful custodian of the records, or by another person duly authorized to release such 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.

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 and providers concerning the maternal and child health program including but not limited to the statewide child immunization information system, while maintaining an individual’s confidentiality.

3. Trade secrets which are recognized and protected as such by law.

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.

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.

6. Reports to governmental agencies which, if released, would give advantage to competitors and serve no public purpose.

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 .

8. Iowa department of economic development information on an industrial prospect with which the department is currently negotiating.

9. Criminal identification files of law enforcement agencies. However, records of current and prior arrests and criminal history data shall be public records.

10. Stricken. Ia. SF 289

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 any 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 in return for labor or services rendered by an official, officer, or employee plus the value of benefits 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 positions the individual holds or has held with the government 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 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.

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.

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.

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.

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.

16. Information in a report to the Iowa department of public health, to a local board of health, or to a local health department, which identifies a person infected with a reportable disease.

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.

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 of 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 any 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.

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.

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 historic preservation officer pertaining to access, disclosure, and use of archaeological site records.

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.

22. Reports or recommendations of the Iowa insurance guaranty association filed or made pursuant to section 515B.10, subsection 1, paragraph "a", subparagraph (2).

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.

24. Stricken. Ia. SF 240

25. Financial information, which if released would give advantage to competitors or 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.

26. Applications, investigation reports, and case records of persons applying for county general assistance pursuant to section 252.25.

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.

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.

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.

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.

31. Memoranda, work products, and case files of a mediator and all other

confidential communications in the possession of a mediator, as provided in chapters 86 and 216. Information in these confidential communications is subject to disclosure only as provided in sections 86.44 and 216.15B, notwithstanding any other contrary provision of this chapter.

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.

33. Data processing software, as defined in section 22.3A, which is developed by a government body.

34. A record required under the Iowa financial transaction reporting Act listed in section 529.2, subsection 9.

35. Records of the Iowa department of public health pertaining to participants in the gambling treatment program except as otherwise provided in this chapter.

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.

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 governing body. However, confidentiality of mediation communications resulting from mediation conducted pursuant to chapter 216 shall be governed by chapter 216.

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.

b. Records which if disclosed might jeopardize the security of an electronic transaction pursuant to chapter 554D.

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.

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 IowaAccess network or directly to a lawful custodian. However, such record may be released with the express written consent of the person requesting the record.

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.

42. Information obtained by the commissioner of insurance in the course of an investigation as provided in section 523C.23.

43. Information obtained by the commissioner of insurance pursuant to section 502.607.

44. Information provided to the court and state public defender pursuant to section 13B.4, subsection 5; section 814.11, subsection 7; or section 815.10, subsection 5.

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.

46. Military personnel records recorded by the county recorder pursuant to section 331.608.

47. A report regarding interest held in agricultural land required to be filed pursuant to chapter 10B.

48. Sex offender registry records under chapter 692A, except as provided in section 692A.121.

49. Confidential information, as defined in section 86.45, subsection 1, filed with the workers' compensation commissioner.

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.

a. 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.

b. 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.

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.

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.

53. Information obtained and prepared by the commissioner of insurance pursuant to section 507.14.

54. Information obtained and prepared by the commissioner of insurance pursuant to section 507E.5.

55. An intelligence assessment and intelligence data under chapter 692, except as provided in section 692.8A.

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 Iowa department of economic development.

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.

58. Information filed with the commissioner of insurance pursuant to sections 523A.204 and 523A.502A.

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.

60. Stricken. Ia. HF 590

61. 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.

62. Records of the department on aging pertaining to clients served by the office of substitute decision maker.

63. Records of the department on aging pertaining to clients served by the elder abuse prevention initiative.

64. Information obtained by the superintendent of credit unions in connection with a complaint response process as provided in section 533.501, subsection 3.

65. Information obtained by the commissioner of insurance in the course of an examination of a cemetery as provided in section 523I.213A, subsection 7.

22.8. Injunction to restrain examination

1. The district court may grant an injunction restraining the examination, including copying, of a specific public record or a narrowly drawn class of public records. A hearing shall be held on a request for injunction upon reasonable notice as determined by the court to persons requesting access to the record which is the subject of the request for injunction. It shall be the duty of the lawful custodian and any other person seeking an injunction to ensure compliance with the notice requirement. Such an injunction may be issued only if the petition supported by affidavit shows and if the court finds both of the following:

- a. That the examination would clearly not be in the public interest.
- b. That the examination would substantially and irreparably injure any person or persons.

2. An injunction shall be subject to the rules of civil procedure except that the court in its discretion may waive bond.

3. In actions brought under this section the district court shall take into account the policy of this chapter 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. A court may issue an injunction restraining examination of a public record or a narrowly drawn class of such records, only if the person seeking the injunction demonstrates by clear and convincing evidence that this section authorizes its issuance. An injunction restraining the examination of a narrowly drawn class of public records may be issued only if such an injunction would be justified under this section for every member within the class of records involved if each of those members were considered separately.

4. Good-faith, reasonable delay by a lawful custodian in permitting the examination and copying of a government record is not a violation of this chapter 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 such an injunction or should seek such an injunction.
- c. To determine whether the government record in question is a public record, or 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.
- e. Actions for injunctions under this section may be brought by the lawful custodian of a government record, or by another government body or person who would be aggrieved or adversely affected by the examination or copying of such a record.
- f. The rights and remedies provided by this section are in addition to any rights and remedies provided by section 17A.19..

22.9. Denial of federal funds—rules

If it is determined that any provision of this chapter would cause the denial of funds, services or essential information from the United States government which would otherwise definitely be available to an agency of this state, such provision shall be suspended as to such agency, but only to the extent necessary to prevent denial of such funds, services, or essential information.

An agency within the meaning of section 17A.2, subsection 1, shall adopt as a rule, in each situation where this section is believed applicable, its determination identifying those particular provisions of this chapter that must be waived in the circumstances to prevent the denial of federal funds, services, or information.

22.10. Civil enforcement

1. The rights and remedies provided by this section are in addition to any rights and remedies provided by section 17A.19. Any aggrieved person, any taxpayer to or citizen of the state of Iowa, or the attorney general or any county attorney, may seek judicial enforcement of the requirements of this chapter in an action brought against the lawful custodian and any other persons who would be appropriate defendants under the circumstances. Suits to enforce this

chapter shall be brought in the district court for the county in which the lawful custodian has its principal place of business.

2. Once a party seeking judicial enforcement of this chapter demonstrates to the court that the defendant is subject to the requirements of this chapter, that the records in question are government records, and that the defendant refused to make those government records available for examination and copying by the plaintiff, the burden of going forward shall be on the defendant to demonstrate compliance with the requirements of this chapter.

3. Upon a finding by a preponderance of the evidence that a lawful custodian has violated any provision of this chapter, a court:

a. Shall issue an injunction punishable by civil contempt ordering the offending lawful custodian and other appropriate persons to comply with the requirements of this chapter in the case before it and, if appropriate, may order the lawful custodian and other appropriate persons to refrain for one year from any future violations of this chapter.

b. Shall assess the persons who participated in its violation damages in the amount of not more than five hundred dollars and not less than one hundred dollars. However, if a person knowingly participated in such a violation, damages shall be in the amount of not more than two thousand five hundred dollars and not less than one thousand dollars. These damages shall be paid by the court imposing them to the state of Iowa if the body in question is a state government body, or to the local government involved if the body in question is a local government body. A person found to have violated this chapter shall not be assessed such damages if that person proves that the person either voted did any of the following:

(1) Voted against the action violating this chapter, refused to participate in the action violating this chapter, or engaged in reasonable efforts under the circumstances to resist or prevent the action in violation of this chapter.

(2) Had good reason to believe and in good faith believed facts which, if true, would have indicated compliance with the requirements of this chapter .

(3) Reasonably relied upon a decision of a court, a formal opinion of the attorney general , or the attorney for the government body, given in writing, or as memorialized in the minutes of the meeting at which a formal oral opinion was given, or an advisory opinion of the attorney general or the attorney for the government body, given in writing.

c. Shall order the payment of all costs and reasonable attorney fees, including appellate attorney fees, to any plaintiff successfully establishing a violation of this chapter in the action brought under this section. The costs and fees shall be paid by the particular persons who were assessed damages under paragraph “b” of this subsection. If no such persons exist because they have a lawful defense under that paragraph to the imposition of such damages, the costs and fees shall be paid to the successful plaintiff from the budget of the offending government body or its parent.

d. Shall issue an order removing a person from office if that person has engaged in a prior violation of this chapter for which damages were assessed against the person during the person’s term.

4. Ignorance of the legal requirements of this chapter is not a defense to an enforcement proceeding brought under this section. A lawful custodian or its designee in doubt about the legality of allowing the examination or copying or refusing to allow the examination or copying of a government record is authorized to bring suit at the expense of that government body in the district court of the county of the lawful custodian’s principal place of business, or to seek an opinion of the attorney general or the attorney for the lawful custodian, to ascertain the legality of any such action.

5. Stricken. Ia. SF 289

22.11. Fair information practices

This section may be cited as the “Iowa Fair Information Practices Act”. It is the intent of this section to require that the information policies of state agencies are clearly defined and subject to public review and comment.

1. Each state agency as defined in chapter 17A shall adopt rules which provide the following:

a. The nature and extent of the personally identifiable information collected by the agency, the legal authority for the collection of that information, and a description of the means of storage.

b. A description of which of its records are public records, which are confi-

dential records, and which are partially public and partially confidential records and the legal authority for the confidentiality of the records. The description shall indicate whether the records contain personally identifiable information.

c. The procedure for providing the public with access to public records.

d. The procedures 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.

e. The procedures by which the subject of a confidential record may have a copy of that record released to a named third party.

f. The procedures by which the agency shall notify persons supplying information requested by the agency of the use that will be made of the information, which persons outside of the agency might routinely be provided this information, which parts of the information requested are required and which are optional and the consequences of failing to provide the information requested.

g. Whether a data processing system matches, collates, or permits the comparison of personally identifiable information in one record system with personally identifiable information in another record system.

2. A state agency shall not use any personally identifiable information after July 1, 1988, unless it is in a record system described by the rules required by this section.

22.12. Political subdivisions

A political subdivision or public body which is not a state agency as defined in chapter 17A is not required to adopt policies to implement section 22.11. However, if a public body chooses to adopt policies to implement section 22.11 the policies must be adopted by the elected governing body of the political subdivision of which the public body is a part. The elected governing body must give reasonable notice, make the proposed policy available for public inspection and allow full opportunity for the public to comment before adopting the policy. If the public body is established pursuant to an agreement under chapter 28E, the policy must be adopted by a majority of the public agencies party to the agreement. These policies shall be kept in the office of the county auditor if adopted by the board of supervisors, the city clerk if adopted by a city, and the chief administrative officer of the public body if adopted by some other elected governing body.

22.13. Settlements—governmental bodies

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.

22.14. Public funds investment records in custody of third parties

1. The records of investment transactions made by or on behalf of a public body are public records and are the property of the public body whether in the custody of the public body or in the custody of a fiduciary or other third party.

2. If such records of public investment transactions are in the custody of a fiduciary or other third party, the public body shall obtain from the fiduciary or other third party records requested pursuant to section 22.2.

3. If a fiduciary or other third party with custody of public investment transactions records fails to produce public records within a reasonable period of time as requested by the public body, the public body shall make no new investments with or through the fiduciary or other third party and shall not renew existing investments upon their maturity with or through the fiduciary or other third party. The fiduciary or other third party shall be liable for the penalties imposed under statute, common law, or contract due to the acts or omissions of the fiduciary or other third party.

Open Meetings

Title I. State Sovereignty and Management

Subtitle 9. Restraints on Government

Chapter 21. Official Meetings Open to Public (Open Meetings)

21.1. Intent—declaration of policy

This 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.

21.2. Definitions

As used in this chapter:

1. “Governmental body” means:

a. A board, council, commission, or other governing body expressly created by the statutes of this state or by executive order.

b. A board, council, commission, or other governing body of a political subdivision or tax-supported district in this state.

c. A multimembered body formally and directly created by one or more boards, councils, commissions, or other governing bodies subject to paragraphs “a” and “b” of this subsection.

d. Those multimembered bodies to which the state board of regents or a president of a university has delegated the responsibility for the management and control of the intercollegiate athletic programs at the state universities.

e. An advisory board, advisory commission, or task force created by the governor or the general assembly to develop and make recommendations on public policy issues.

f. A 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 a nonprofit corporation which is a successor to the nonprofit corporation which built the facility.

g. A nonprofit corporation licensed to conduct gambling games pursuant to chapter 99F.

h. An advisory board, advisory commission, advisory committee, task force, or other body created by statute or executive order of this state or created by an executive order of a political subdivision of this state to develop and make recommendations on public policy issues.

i. The governing body of a drainage or levee district as provided in chapter 468, including a board as defined in section 468.3, regardless of how the district is organized.

j. An advisory board, advisory commission, advisory committee, task force, or other body created by an entity organized under chapter 28E, or by the administrator or joint board specified in a chapter 28E agreement, to develop and make recommendations on public policy issues.

2. “Meeting” means a gathering in person or by electronic means, formal or informal, of a majority of the members of a governmental body where there is deliberation or action upon any matter within the scope of the governmental body’s policy-making duties. Meetings shall not include a gathering of members of a governmental body for purely ministerial or social purposes when there is no discussion of policy or no intent to avoid the purposes of this chapter.

3. “Open session” means a meeting to which all members of the public have access.

21.3. Meetings of governmental bodies

Meetings of governmental bodies shall be preceded by public notice as provided in section 21.4 and shall be held in open session unless closed sessions are expressly permitted by law. Except as provided in section 21.5, all actions and discussions at meetings of governmental bodies, whether formal or informal, shall be conducted and executed in open session.

Each governmental body shall keep minutes of all its meetings showing the date, time and place, the members present, and the action taken at each meeting. The minutes shall show the results of each vote taken and information sufficient to indicate the vote of each member present. The vote of each member present shall be made public at the open session.

The minutes shall be public records open to public inspection.

21.4. Public notice

1. A governmental body, except township trustees, shall give notice of the time, date, and place of each meeting, and its tentative agenda, in a manner reasonably calculated to apprise the public of that information. Reasonable notice shall include advising the news media who have filed a request for notice with the governmental body and posting the notice on a bulletin board or other prominent place which is easily accessible to the public and clearly designated for that purpose at the principal office of the body holding the meeting, or if no such office exists, at the building in which the meeting is to be held.

2. a. Notice conforming with all of the requirements of subsection 1 of this section shall be given at least twenty-four hours prior to the commencement of any meeting of a governmental body unless for good cause such notice is impossible or impractical, in which case as much notice as is reasonably possible shall be given. Each meeting shall be held at a place reasonably accessible to the public, and at a time reasonably convenient to the public, unless for good cause such a place or time is impossible or impractical. Special access to the meeting may be granted to persons with disabilities.

b. When it is necessary to hold a meeting on less than twenty-four hours' notice, or at a place that is not reasonably accessible to the public, or at a time that is not reasonably convenient to the public, the nature of the good cause justifying that departure from the normal requirements shall be stated in the minutes.

3. A formally constituted subunit of a parent governmental body may conduct a meeting without notice as required by this section during a lawful meeting of the parent governmental body, a recess in that meeting, or immediately following that meeting, if the meeting of the subunit is publicly announced at the parent meeting and the subject of the meeting reasonably coincides with the subjects discussed or acted upon by the parent governmental body.

4. If another section of the Code requires a manner of giving specific notice of a meeting, hearing, or an intent to take action by a governmental body, compliance with that section shall constitute compliance with the notice requirements of this section.

21.5. Closed session

1. A governmental body may hold a closed session only by affirmative public vote of either two-thirds of the members of the body or all of the members present at the meeting. A governmental body may hold a closed session only to the extent a closed session is necessary for any of the following reasons:

a. To review or discuss records which are 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 possession or continued receipt of federal funds.

b. To discuss application for letters patent.

c. To discuss strategy with counsel in matters that are presently in litigation or where litigation is imminent where its disclosure would be likely to prejudice or disadvantage the position of the governmental body in that litigation.

d. To discuss the contents of a licensing examination or whether to initiate licensee disciplinary investigations or proceedings if the governmental body is a licensing or examining board.

e. To discuss whether to conduct a hearing or to conduct hearings to suspend or expel a student, unless an open session is requested by the student or a parent or guardian of the student if the student is a minor.

f. To discuss the decision to be rendered in a contested case conducted according to the provisions of chapter 17A.

g. To avoid disclosure of specific law enforcement matters, such as current or proposed investigations, inspection or auditing techniques or schedules, which if disclosed would enable law violators to avoid detection.

h. To avoid disclosure of specific law enforcement matters, such as allowable tolerances or criteria for the selection, prosecution, or settlement of cases, which if disclosed would facilitate disregard of requirements imposed by law.

i. To evaluate the professional competency of an individual whose appointment, hiring, performance, or discharge is being considered when necessary to prevent needless and irreparable injury to that individual's reputation and that individual requests a closed session.

j. To discuss the purchase of particular real estate only where premature disclosure could be reasonably expected to increase the price the governmental body would have to pay for that property. The minutes and the tape recording of a session closed under this paragraph shall be available for public examination when the transaction discussed is completed.

k. To discuss information contained in records in the custody of a governmental body that are confidential records pursuant to section 22.7, subsection 50.

1. To discuss patient care quality and process improvement initiatives in a meeting of a public hospital or to discuss marketing and pricing strategies or similar proprietary information in a meeting of a public hospital, where public disclosure of such information would harm such a hospital's competitive position when no public purpose would be served by public disclosure. The minutes and the audio recording of a closed session under this paragraph shall be available for public inspection when the public disclosure would no longer harm the hospital's competitive position. For purposes of this paragraph, "public hospital" means the same as defined in section 249J.3. This paragraph does not apply to the information required to be disclosed pursuant to section 347.13, subsection 11, or to any discussions relating to terms or conditions of employment, including but not limited to compensation of an officer or employee or group of officers or employees.

2. The vote of each member on the question of holding the closed session and the reason for holding the closed session by reference to a specific exemption under this section shall be announced publicly at the open session and entered in the minutes. A governmental body shall not discuss any business during a closed session which does not directly relate to the specific reason announced as justification for the closed session.

3. Final action by any governmental body on any matter shall be taken in an open session unless some other provision of the Code expressly permits such actions to be taken in closed session.

4. A governmental body shall keep detailed minutes of all discussion, persons present, and action occurring at a closed session, and shall also tape record all of the closed session. The detailed minutes and tape recording of a closed session shall be sealed and shall not be public records open to public inspection. However, upon order of the court in an action to enforce this chapter, the detailed minutes and tape recording shall be unsealed and examined by the court in camera. The court shall then determine what part, if any, of the minutes should be disclosed to the party seeking enforcement of this chapter for use in that enforcement proceeding. In determining whether any portion of the minutes or recording shall be disclosed to such a party for this purpose, the court shall weigh the prejudicial effects to the public interest of the disclosure of any portion of the minutes or recording in question, against its probative value as evidence in an enforcement proceeding. After such a determination, the court may permit inspection and use of all or portions of the detailed minutes and tape recording by the party seeking enforcement of this chapter. A governmental body shall keep the detailed minutes and tape recording of any closed session for a period of at least one year from the date of that meeting.

5. Nothing in this section requires a governmental body to hold a closed session to discuss or act upon any matter.

21.6. Enforcement

1. The remedies provided by this section against state governmental bodies shall be in addition to those provided by section 17A.19. Any aggrieved person, taxpayer to, or citizen of, the state of Iowa, or the attorney general or county attorney, may seek judicial enforcement of the requirements of this chapter. Suits to enforce this chapter shall be brought in the district court for the county in which the governmental body has its principal place of business.

2. Once a party seeking judicial enforcement of this chapter demonstrates to the court that the body in question is subject to the requirements of this chapter and has held a closed session, the burden of going forward shall be on the body and its members to demonstrate compliance with the requirements of this chapter.

3. Upon a finding by a preponderance of the evidence that a governmental body has violated any provision of this chapter, a court:

a. Shall assess each member of the governmental body who participated in its violation damages in the amount of not more than five hundred dollars nor less than one hundred dollars. These damages shall be paid by the court imposing it to the state of Iowa, if the body in question is a state governmental body, or to the local government involved if the body in question is a local governmental body. A member of a governmental body found to have violated this chapter shall not be assessed such damages if that member proves that the member did any of the following:

- (1) Voted against the closed session.
- (2) Had good reason to believe and in good faith believed facts which, if true, would have indicated compliance with all the requirements of this chapter.
- (3) Reasonably relied upon a decision of a court or a formal opinion of the attorney general or the attorney for the governmental body.

b. Shall order the payment of all costs and reasonable attorney fees in the trial and appellate courts to any party successfully establishing a violation of this chapter. The costs and fees shall be paid by those members of the governmental body who are assessed damages under paragraph “a”. If no such members exist because they have a lawful defense under that paragraph to the imposition of such damages, the costs and fees shall be paid to the successful party from the budget of the offending governmental body or its parent.

c. Shall void any action taken in violation of this chapter, if the suit for enforcement of this chapter is brought within six months of the violation and the court finds under the facts of the particular case that the public interest in the enforcement of the policy of this chapter outweighs the public interest in sustaining the validity of the action taken in the closed session. This paragraph shall not apply to an action taken regarding the issuance of bonds or other evidence of indebtedness of a governmental body if a public hearing, election or public sale has been held regarding the bonds or evidence of indebtedness.

d. Shall issue an order removing a member of a governmental body from office if that member has engaged in a prior violation of this chapter for which damages were assessed against the member during the member’s term.

e. May issue a mandatory injunction punishable by civil contempt ordering the members of the offending governmental body to refrain for one year from any future violations of this chapter.

4. Ignorance of the legal requirements of this chapter shall be no defense to an enforcement proceeding brought under this section. A governmental body which is in doubt about the legality of closing a particular meeting is authorized to bring suit at the expense of that governmental body in the district court of the county of the governmental body’s principal place of business to ascertain the propriety of any such action, or seek a formal opinion of the attorney general or an attorney for the governmental body.

21.7. *Rules of conduct at meetings*

The public may use cameras or recording devices at any open session. Nothing in this chapter shall prevent a governmental body from making and enforcing reasonable rules for the conduct of its meetings to assure those meetings are orderly, and free from interference or interruption by spectators.

21.8. *Electronic meetings*

1. A governmental body may conduct a meeting by electronic means only in circumstances where such a meeting in person is impossible or impractical and only if the governmental body complies with all of the following:

- a. The governmental body provides public access to the conversation of the meeting to the extent reasonably possible.
- b. The governmental body complies with section 21.4. For the purpose of this paragraph, the place of the meeting is the place from which the communication originates or where public access is provided to the conversation.
- c. Minutes are kept of the meeting. The minutes shall include a statement explaining why a meeting in person was impossible or impractical.

2. A meeting conducted in compliance with this section shall not be considered in violation of this chapter.

3. A meeting by electronic means may be conducted without complying with paragraph “a” of subsection 1 if conducted in accordance with all of the requirements for a closed session contained in section 21.5.

21.9. *Employment conditions discussed*

A meeting of a governmental body to discuss strategy in matters relating to employment conditions of employees of the governmental body who are not covered by a collective bargaining agreement under chapter 20 is exempt from this chapter. For the purpose of this section, “employment conditions” mean areas included in the scope of negotiations listed in section 20.9.

21.10. *Information to be provided*

The authority which appoints members of governmental bodies shall provide the members with information about this chapter and chapter 22. The appropriate commissioner of elections shall provide that information to members of elected governmental bodies.

21.11. *Applicability to nonprofit corporations*

This chapter applies to nonprofit corporations which are defined as governmental bodies subject to section 21.2, subsection 1, paragraph “f”, only when the meetings conducted by the nonprofit corporations relate to the conduct of pari-mutuel racing and wagering pursuant to chapter 99D.

