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IPIB AO 2018-0008

April 19, 2018

SUBJECT: Definition of “documented reasons and rationale” as it pertains to release of information from personnel records in Iowa Code section 22.7(11)(a)(5).

Erin Jordan
The Gazette
201 S. Clinton St., Suite 200
Iowa City, Iowa 52240

Dear Ms. Jordan:

This opinion is in response to your letter of March 12, 2018, requesting an opinion from the Iowa Public Information Board (IPIB) pursuant to Iowa Code section 23.6 and rule 497—1.2. We note at the outset that IPIB’s jurisdiction is limited to the application of Iowa Code chapters 21, 22, and 23, and rules in Iowa Administrative Code chapter 497. Advice in a Board opinion, if followed, constitutes a defense to a subsequent complaint based on the same facts and circumstances.

FACTUAL STATEMENT: In February 2017, Iowa Code section 22.7(11)(a) was amended to include a new subsection (5) which provides that certain information relating to officials, officers, and employees of government bodies shall be public records:

“(5) The fact that the individual resigned in lieu of termination, was discharged, or was demoted as the result of a disciplinary action, and the documented reasons and rationale for the resignation in lieu of termination, the discharge, or the demotion. For the purposes of this subparagraph, “*demoted*” and “*demotion*” mean a change of an employee from a position in a given classification to a position in a classification having a lower pay grade.”

Since the amendment became effective in July 2017, you have requested this information from several government bodies and received various responses. One response listed terms such as “discharged/performance” and “discharged/work rules”. Another listed more descriptive phrases such as “repeated raising of voice and yelling at supervisor, use of profane language, refusal to follow work directives” and “forging administrator’s signature on a government form”. Yet another government body provided a link to a news report that gave extensive details of a criminal conviction for animal cruelty.

Due to these variations in responses, you have requested that the IPIB issue an advisory opinion defining what “documented reasons and rationale” should mean in the context of this statute.

Board Members

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

QUESTIONS:

1. Does this language just pertain to disciplinary actions after February 16, 2017, or is it retroactive to previous discipline? (This question was withdrawn on March 16, 2018.)
2. What is included in the “documented reasons and rationale” for the forced resignation, discharge, or demotion?

OPINION:

Prior to the February 2017 amendment of Iowa Code section 22.7(11)(a)(5), government bodies were precluded by law from releasing information concerning the termination, discharge, or demotion of government employees, as well as resignations in lieu of termination. While a lawful custodian could release this information under Section 22.7 (“... 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....”), many government bodies were reluctant to release such information, fearing other legal sanctions that could occur with such release.

Section 22.7(11)(a) outlines the specific information that should be released from a personnel record. This information includes name and compensation (including any written agreement), dates employed, positions held, educational institutions attended, and the new information quoted above.

The Legislature also added two additional new sections to chapter 22 in 2017. Section 22.13A governs the release of personnel settlement agreements for state employees. Section 22.15 requires that a government body notify the employee in writing prior to taking any disciplinary action against an employee that such information may become a public record. These sections could impact the interpretation of Iowa Code section 22.7(11)(a)(5).

There has been no judicial interpretation of this new section. The IPIB has not issued a formal or informal opinion on this issue.

The Iowa Freedom of Information Council submitted a comment for this advisory opinion joining the request for guidance. The Council wrote:

The Iowa FOI Council believes the clear meaning of the term “documented reasons and rationale” requires government entities to provide more than a generic four- or five-word statement to explain why an employee’s resignation in lieu of termination was requested or why the employee was discharged or demoted as part of disciplinary action....It is through the release of memorandums to the employee about his/her job performance, or the notifications, correspondence or other communications with the employee, that the residents of a government entity will more fully understand why an employee’s resignation in lieu of termination was sought or why administrators chose to discharge or demote the employee and in what way or ways each employee’s job performance or job-related actions were failing to meet the standards and expectations the government entity has for its staff.

Equally important for the government body is to ensure that documents within the employee’s file that should remain confidential are not inadvertently released. Rather than releasing memorandums or correspondence within the personnel file, it may be more appropriate for the government body to draft a document that provides the information required to be released in Section 22.7(11)(a). This document could be provided to the employee at the time of the termination, discharge, demotion, or resignation and also contain the notification required by Iowa Code section 22.15. The employee could file for injunctive relief under Iowa Code section 22.8 or could choose to not contest the record release.

When there is no judicial interpretation of a statute, the word or phrase should be given its common meaning or definition. When used as a verb, “document” means to assemble the facts, substantiate, support, verify, demonstrate, justify, or validate, among other definitions. Therefore, a one word description of “work rules” or

“performance” would not be sufficiently documented. A more descriptive phrase, such as “forged an employer’s signature on a government form” is better, but could be improved.

The employer should draft the documentation in such a way that the employee knows the reason for the disciplinary action and the public knows whether it was a resignation in lieu of termination, discharge, or demotion. This information could then be released in fulfillment of Iowa law while still protecting confidential information contained within the personnel file such as statements made by co-workers or other confidential records under Iowa Code section 22.7.

Pursuant to Iowa Administrative Rule 497-1.3(3), a person who has received a board opinion may, within 30 days after the issuance of the opinion, request modification or reconsideration of the opinion. A request for modification or reconsideration shall be deemed denied unless the board acts upon the request within 60 days of receipt of the request. The IPIB may take up modification or reconsideration of an advisory opinion on its own motion within 30 days after the issuance of an opinion.

Pursuant to Iowa Administrative Rule 497-1.3(5), a person who has received a board opinion or advice may petition for a declaratory order pursuant to Iowa Code section 17A.9. The IPIB may refuse to issue a declaratory order to a person who has previously received a board opinion on the same question, unless the requestor demonstrates a significant change in circumstances from those in the board opinion.

BY DIRECTION AND VOTE OF THE BOARD

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

Submitted by: Margaret E. Johnson, Executive Director

ISSUED ON: _____