THE IOWA DISTRICT COURT
in and for
POLK COUNTY

POLLY CARVER-KIMM, Plaintiff v. KIM REYNOLDS, PAT GARRETT GERD CLABAUGH, SARAH REISETTER, SUSAN DIXON, and STATE OF IOWA, Defendants	NO. LACL148599 MEMORANDUM OF LAW IN SUPPORT OF MOTION TO INTERVENE

COMES NOW Iowa Freedom of Information Council, proposed Intervenor, and submits this Memorandum of Law in Support of Motion to Intervene.

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ATTORNEY FOR PROPOSED INTERVENOR

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ARGUMENT

I. THE DISTRICT COURT SHOULD ALLOW CARVER-KIMM TO STATE A CLAIM FOR WRONGFUL DISCHARGE BECAUSE SHE WAS TERMINATED IN VIOLATION OF PUBLIC POLICY.

According to the Second Amended Petition filed July 28, 2021, which must be treated as true for purposes of the motion to dismiss, Polly Carver-Kimm was the "Communications Director" for the Iowa Department of Public Health. (Second Amended Petition, P. 2, ¶ 5); Mormann v. Iowa Workforce Development, 913 N.W.2d 554 (Iowa 2018). In 2020, Carver-Kimm was terminated from her employment for having "made repeated efforts to comply with Iowa's Open Records law (Chapter 22) by producing documents and information to local and national media regarding the State of Iowa's response to the ongoing pandemic and other routine state matters." (Second Amended Petition, P. 8, ¶ 36).

The question in this case is: whether Iowa will recognize that its Open Records Act is a sufficiently important public policy such that if a public employee is terminated for *complying* with the Act, he or she may properly state a claim for wrongful discharge. The answer is "yes", such a person may state that claim because a looming threat of termination would adversely impact the free and open production of public records which is contrary to the preferred policy preference expressed by the legislature in Iowa code chapter 22. The motion to dismiss, therefore, should be denied.

A. IOWA CODE CHAPTER 22 SETS FORTH A CLEAR POLICY WHICH FAVORS FREE AND OPEN DISCLOSURE OF PUBLIC RECORDS.

"Sunlight is the best disinfectant." Buckley v. Valeo, 424 U.S. 1, 67 (1976) (First Amendment campaign finance case later superseded by statute). The sun shines in Iowa through its Open Meetings (Chapter 21) and Open Records (Chapter 22) laws. Those statutes "…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." Hutchison v. Shull, 878 N.W.2d 221, 232 (Iowa 2016). They "…open the doors of government to public scrutiny…" and "…prevent government from secreting its decision-making activities from the public, on whose behalf it is its duty to act." Iowa Film Production Services v. Iowa Dept. of Economic Development, 818 N.W.2d 207, 217 (Iowa 2012). Open records are so important that there is a *presumption* that public records are subject to disclosure. Mitchell v. City of Cedar Rapids, 926 N.W.2d 222, 229 (Iowa 2019). Anyone seeking to keep a public record secret has a duty to establish that an exception to the Open Records Act applies. Iowa Code § 22.7 (listing exceptions to the disclosure rule).

Even the Iowa Attorney General's office has recognized in its written opinions, which are entitled to "respectful consideration" by the court, that chapter 22 favors robust disclosure of public records. Op. Iowa Att'y Gen. No. 97-10-1(L) (October 22, 1997), 1997 WL 988716, at *3 ("Disclosure of public records is the general rule, with a presumption in favor of disclosure."); City of Clinton v. Sheridan, 530 N.W.2d 690 (Iowa 1995) (stating that while attorney general opinions are non-binding, they are entitled to respectful consideration by the court). The State's attorney general has also recognized that any exceptions to openness should be "construed narrowly" to achieve the purpose of openness. Op. Iowa Att'y Gen. No. 97-10-1(L) at *3. The State's top attorney has also agreed that chapter 22 creates a "strong

presumption" in favor of open records. Op. Iowa Att'y Gen. No. 98-4-4 (April 17, 1998), 1998 WL 289859, at *4. The State has also referred to the exceptions in Iowa Code section 22.7 as unambiguous, meaning clearly written. Id. (interpreting Iowa Code section 22.7(27) as unambiguous).

Since both the legislative and executive branches have already recognized that the clear policy of chapter 22 is to assure records are open to the public, the judicial branch should accept that undisputed policy goal as the goal in this case: if termination makes records less open, then it violates public policy; if termination makes records more open, then it is consistent with public policy. This is an easy test to apply.

1. Chapter 22 contains harsh sanctions and explicit remedies.

Iowa's open records statute is so important that the legislature chose to make it quasi-criminal in nature. One cannot be imprisoned for an open records violation; however, the court has discretion to impose a massive fine (called "damages" in chapter 22) for failure to produce records, up to $2,500.00 per knowing violation. Iowa Code § 22.10(3)(b). Many criminals are not even fined to that extent which certainly says something about the priority the legislature ascribes to open records. The records custodian may also be ordered to pay the other party's attorney fees and costs, something not available in every civil case. Iowa Code § 22.10(3)(c). What's more, a person can be permanently removed from office for having too many open records violations in one term; the same is not true for merely committing other civil infractions. Iowa Code § 22.10(3)(d). Even some criminal charges won't get someone "removed" from public office. Quite clearly, the legislature takes open records violations seriously.

The government also has remedies in chapter 22 shy of firing the records custodian. If the government objects to disclosure, then it has the option to petition for declaratory judgment

and seek to enjoin examination and copying. Iowa Code § 22.8. Then, the court will decide whether a record must be produced or not. There is *no option* in chapter 22 to fire the records custodian as a way to avoid production.

When viewed as a comprehensive statutory scheme, it is clear that Iowa has a very strong public policy in favor of open records. By presuming all records are open, and shifting the burden to the government to prove an exception applies, the legislature crystallized its preference for openness. The court should determine that chapter 22 is written clearly enough for the court to glean its purpose.

2. Chapter 22 affects public health, safety, general welfare, or morals.

The State contends that under Berry a public policy must concern health, safety, or welfare, otherwise, it does not trigger wrongful discharge tort protections. (Brief, P. 17) (citing Berry v. Liberty Holdings, Inc., 803 N.W.2d 106, 109 (Iowa 2011)). Assuming that the State's three variable list is exhaustive (which it is not) chapter 22 nonetheless concerns the production of all kinds of information which affects health, safety, and welfare. Publicly available information might include: student enrollment data, public health data generally, vaccination rates, hospitalization rates in a community, roadway safety and design data, marriage, birth, and death statistics, some police reports, audio recordings or video recordings, public budgets and income and expenditures, governmental employee salaries, contracts, and the like. The list of documents which affect health, safety, and welfare is endless; Chapter 22 is about more than just the paper things are printed on. To the extent the State contends the policy must concern health, safety, or welfare…chapter 22's policies do just that.

3. Chapter 22 does more than merely regulate the conduct of private parties.

The Court in the Berry decision explained that the more a claimed policy impacts the public at large, rather than just regulating private conduct, the more likely it is to be recognized by the court as the type of public policy which could support the wrongful discharge tort. Berry, 803 N.W.2d at 110-11. In Berry, the terminated worker claimed that Iowa code chapter 668, the Comparative Fault Act, could serve as the public policy underlying his wrongful discharge claim. Berry, 803 N.W.2d at 109. The Court determined that chapter 668, which merely balances fault between parties in a lawsuit, wasn't affected enough with the public's interest, and thus, wasn't the type of policy which would support the tort. Berry, 803 N.W.2d at 112.

In the case at issue, chapter 22 is different than chapter 668 because chapter 22 concerns public records custodians at all levels of government, and not just two parties in a private lawsuit with each other. Iowa Code § 22.1 (defining "public records" and "government body" broadly). It concerns the state, county, and local governments; it concerns county hospitals; it concerns public schools, colleges, and universities. And it impacts those entities regardless of whether anyone has filed a separate civil suit. In these ways, chapter 22 is much more affected with the public interest than chapter 668 in Berry.

Likewise, chapter 22 gives the right to *everyone* to request, examine, and copy records regardless of whether there is an underlying private civil claim on file or being evaluated. Iowa Code § 22.2 (granting the right to "examine and copy" and to "disseminate" records). Chapter 668, on the other hand, never applies to everyone all the time; Chapter 668 only applies to private parties is pending litigation; it doesn't affect the "public" one bit. This factor also favors chapter 22 being recognized as a public policy under Berry.

Another difference between Berry's review of chapter 668 verses the instant case is that Chapter 22 explicitly says the government "shall not prevent" examinations and copying whereas chapter 668 contains no such express prohibitory language. Iowa Code § 22.2. This "shall not prevent" language is unique; usually the Code just sets forth what the law *is*; the legislature rarely feels the need to remind the government, in writing, to not break the law, too. The fact that the legislature included an express reminder to the government to "not prevent' people from getting open records is a signal to the court that the legislature treats open records with seriousness. This court should, too.

Finally, chapter 22 sets forth a clear public policy *on its face*: The Act says: "…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." Iowa Code § 22.8(3) (emphasis added). This makes it pretty obvious what the public policy is, and that the legislature thinks the policy affects the public, and that public records production is in our best interest. Any common law to the contrary, the employment at will doctrine or otherwise, must take a back seat to the statute.

4. Teachout and Dorshkind Support Carver-Kimm.

Most similar to the Carver-Kimm case, and other employees like her who have affirmative job duties set by statute, Iowa has recognized a wrongful discharge claim for a teacher who reported abuse pursuant to a statute's requirement that she do so. Teachout v. Forest City Community School Dist., 584 N.W.2d 296 (Iowa 1998). Likewise, Iowa has applied the tort of wrongful discharge in a case where a care facility worker reported suspected fraud to her superiors. Dorshkind v. Oak Park Place of Dubuque II, LLC, 835 N.W.2d 293, 296 (Iowa

2013). The Court found that protecting vulnerable care facility residents and children were sufficiently compelling policies to justify the tort and moreover, the conduct at issue was required by statute; Teachout and Dorshkind were merely doing their jobs.

Applying Teachout and Dorschkind to the Carver-Kimm facts, the district court should find wrongful discharge protection exists because Carver-Kimm was *required* by statute, like Teachout and Dorshkind, to produce the documents requested. Like Teachout and Dorschkind were protected by the court for merely doing their jobs, so too should Carver-Kimm be protected because she, too, was merely doing her job.

5. The State's brief ignored important Berry factors.

At page seventeen of its brief, the State cites Berry v. Liberty Holdings, Inc. for the proposition that a public policy must relate to "health, safety, or welfare" in order to serve as the basis for a wrongful discharge claim. (Defendant's Brief, P. 17) (citing Berry, 803 N.W.2d at 110). However, the Court in Berry also held that the public policy analysis "generally captures the communal conscience and common sense" and includes not just "welfare", but "general welfare" and also includes a consideration of morals, too. Berry, 803 N.W.2d at 110. ("Though difficult to define, we have stated the concept of public policy 'generally captures the communal conscience and common sense of our state in matters of public health, safety, morals, and general welfare.'").

In this case, the documents Carver-Kimm produced touched on matters of public concern, conscience, and common sense (or lack thereof): abortion statistics and Coronavirus data. (Second Amended Petition, P. 6, ¶¶9, 26-28). Those data sets certainly affect health, safety, and welfare under even the State's limited reading of Berry. Also, according to the petition, the requests Carver-Kimm responded to were from "local and national media", making them more

affecting of the general welfare, and since abortion data was included, the documents affected the debate on "morals". Accordingly, the court should find that Chapter 22 goals clearly satisfy the Berry test at multiple levels including the levels left out of the State's brief.

6. The State's brief ignored the four public policy categories in Jasper.

At page seventeen and eighteen of its brief, the State lists five cases setting forth examples of when a public policy has supported a wrongful discharge claim, and when it has not. (Brief, P. 17-18). In one of the cases where the policy was found to be sufficient, Jasper v. H. Nizam, Inc. (Brief, P. 17), a case where a lady, Jasper, reported her daycare boss (H. Nizam) for violating the daycare worker to student ratio, the Supreme Court categorized the four types of policies which, generally, have been thought sufficient to support wrongful discharge claims. They are: 1) exercising a statutory right or privilege, 2) refusing to commit an unlawful act, 3) performing a statutory obligation, and 4) reporting statutory violations. Under Jasper, policies do not *have to* directly affect health, safety, and welfare; other public interests count, too.

Carver-Kimm's conduct in this case falls into either one, two, or three of the four Jasper categories: either she had a statutory right or privilege to produce the documents she produced, *or* she refused to commit an unlawful act when she properly complied with a records request (because not producing records would have been illegal), *or* she was merely performing a statutory obligation by producing records which were properly requested (which the statute required her to do). Either way, her conduct falls within the categories of activity protected by recognition of a wrongful discharge claim and so the public policy at issue need not satisfy the State's limited version of the Berry test: health, safety, and welfare. Carver-Kimm's conduct satisfies the Jasper test instead.

7. Chapter 22 advances the exercise of other rights.

Access to public records has constitutional import because access to information impacts how people exercise their other rights. For example, access to government emails might enable a newspaper publisher to write a front-page series of news stories about a state governor who is accused of touching female subordinates sexually. First Amendment free press. Access to abortion statistics might enable Catholic church members or the local women's lib group to pray for the protection of the unborn or march for the rights of women. First Amendment peaceful assembly and free exercise of religion. Access to the public budget and expenditures by a city might inspire citizens to elect other candidates or even run for office themselves. Voting and democracy. Access to government records can help people exercise their civil and criminal trial rights by providing useful evidence. Fourth Amendment (unreasonable search and seizure), Fifth Amendment (due process), Sixth Amendment (confrontation, speedy and public trial, and counsel), Seventh (civil trial by jury), and Fourteenth Amendment (incorporating rights). And finally, because everything sounds more official in Latin, as the old maxim goes: *ipsa scientia potestas est*; "knowledge is power". The Open Records Act should be elevated not only for the importance of records production *per se*, but also because of the other constitutional rights which access to records enables the rest of us to exercise.

Even if health, safety, and welfare are the only categories of public policy heretofore recognized by the court under Berry, like the State wrongly claims, then the district court should take this opportunity to expand the list, and as a matter of first impression, include policies and statutes which advance other constitutional rights. Chapter 22 is fundamental to the exercise of our other rights.

B. TERMINATION OF EMPLOYEES WHO PROPERLY PRODUCE PUBLIC RECORDS REQUESTED PURSUANT TO CHAPTER 22 WOULD CHILL FUTURE RECORDS PRODUCTION AND UNDERMINE THE LEGISLATURE'S POLICY GOAL.

Iowa recognizes that employees cannot be terminated in violation of "public policy". Fitzgerald v. Salsbury Chemical, Inc., 613 N.W.2d 275, 281 (Iowa 2000). In order to state a claim for wrongful discharge in violation of public policy, the employee must prove that the public policy would be "adversely impacted" if the termination were allowed. Id. at 282.

In order to determine that a termination would adversely impact public policy, it is not necessary that the statute at issue expressly prohibit terminating employees. Id. Rather, the court will examine statutes and policies which, directly or indirectly, would be thwarted if discharge were premised upon the conduct at issue. Id. at 281. Verbs the court has used to assess the type of adverse impact needed to be shown before wrongful termination protections are triggered are: "chill", "erode", "undermine", "impact", "jeopardize", and "discourage." Dorschkind v. Oak Park Place of Dubuque II, LLC, 835 N.W.2d 293, 301, 303, 306 (Iowa 2013). If terminating the employee would give rise to any of those verbs, then the employee is protected and may state a claim for wrongful discharge.

1. The threat of termination creates a catch-22 for records custodians.

Records custodians need wrongful discharge protection because otherwise, they would be put into a position where on one hand they could be fired for producing records, but on the other hand, if they do not produce the records, they could be punished under chapter 22 with hefty fines, legal fees, and possible removal from office, depending upon the nature of the violation. This is an impossible choice for records custodians. Records custodians should feel free to fully and fairly comply with chapter 22 requests for information without fear of reprisal, termination, discipline, or otherwise. Only by allowing them to do their jobs without fear can the public trust

that disclosures *actually* comply with the law, as opposed to being watered down to please a superior instead.

2. The catch-22 would increase open records litigation.

The natural consequence of records custodians being fearful of producing records is that they will produce less records. In turn, either the government is going to be racing to court excessively, seeking to enjoin examination on various grounds of confidentiality, bogging down the courts and delaying production for possibly years in some cases *or* members of the public will be required to file enforcement actions which, once again, consumes valuable court resources which would not otherwise need to be spent *if* records custodians were not afraid to do their jobs *ab initio*.

3. Dismissing Carver-Kimm's claim results in an unacceptable irony.

In the traditional termination context, people get fired for *not doing* their job, so it is obvious to see why the public policy exception to the employment at will doctrine would not apply to those people, because they were not doing their job anyway. But, in this case, the State seeks the court's blessing for the government to fire Carver-Kimm for *doing her job* which she is *required by statute* to do. That insanely novel position creates an irony: one's job is safe if one *doesn't do* the job, but the job will be lost if one actually *does* the job. Even the most silver-tongued and verbose among us will have a difficult time explaining that result. The only way to maintain sanity is to deny the State's motion to dismiss and allow Carver-Kimm to state her claim. Nothing else even makes sense.

C. *NO* STATE HAS SQUARELY REJECTED A CLAIM FOR WRONGFUL TERMINATION BASED UPON A RECORDS CUSTODIAN'S *COMPLIANCE* WITH THE OPEN RECORDS ACT.

The State falsely claims in its brief at page twenty-one that "courts in other states…have held their open records statutes cannot give rise to a wrongful-discharge claim." (Brief, P. 21). This claim is untrue and not supported in any of the three cases cited by the State for the proposition. In the three cases cited, in *not one of them* does the court hold that the Open Records Act of that state would *not* support a wrongful discharge claim. To the extent the State is reading that conclusion into those cases, it is an overreach; each case is clearly distinguishable on its facts.

1. The Ohio case does not apply because Watson was fired for abusing her authority, not for properly producing public records.

The State cites, at page twenty-one, an Ohio Court of Appeals unpublished slip copy opinion for the proposition that Ohio would not recognize open records as a sufficient public policy to state a claim for wrongful discharge. Watson v. Cuyahoga Metro. Hous. Auth., 2014 WL 1513455 (Ohio Ct. App. April 17, 2014). However, if one reads the opinion, the worker who released documents was not doing so *pursuant to* a lawful request from a member of the public; rather, she was abusing her position within the housing authority to search the housing authority's video surveillance system to help her own criminal son establish an alibi after he was accused of theft and drug-related crimes upon the housing authority's property. Watson v. Cuyahoga Metro. Hous. Auth., 2014 WL 1513455, *1 (Ohio Ct. App. April 17, 2014). Additionally, the court determined that the records Watson requested and retrieved for and from herself were not even public records at all, and rather, were confidential investigatory materials. Id. at *9, 10. Thus, Watson got fired for abusing her authority and releasing confidential documents to herself and for her son; she was not fired for *properly* fulfilling *someone else's*

standard open records request as a records custodian in the ordinary course. Watson does not apply because Carver-Kimm's and Watson's conduct is materially dissimilar.

2. The West Virginia case does not apply because Kiefer was fired for stealing the town police car, not for properly producing public records.

Likewise, the Kiefer opinion is factually different from the case at issue. (Brief, P. 21). There, Kiefer, the town cop, had taken the town's police cars and keys and hidden them behind his own house, trying to prevent the only other officer in town from actually going on duty. Kiefer v. Town of Ansted, West Virginia, 2016 WL 6312067, at *1 (W. Va. Oct. 28, 2016). Kiefer was fired for this. Kiefer v. Town of Ansted, West Virginia, 2016 WL 6312067, at *1 (W. Va. Oct. 28, 2016). Kiefer sued for wrongful discharge claiming that he was really fired for having previously *requested* records from the city. Kiefer v. Town of Ansted, West Virginia, 2016 WL 6312067, at *1 (W. Va. Oct. 28, 2016). Based upon Kiefer's status as a requester, and not a producer, Carver-Kimm and Kiefer are not similarly situated, so even if Kiefer held that *requesting* records was not clear or important public policy, it does not mean that producing records isn't such a policy.

Requester verses producer aside, there is a separate reason Kiefer lost his case: the record Kiefer put on at the summary judgment completely and utterly failed to offer *any* facts or legal authority in support of his attempt to identify a public policy. Kiefer v. Town of Ansted, West Virginia, 2016 WL 6312067, at *3 (W. Va. Oct. 28, 2016) ("…at the summary judgment stage, petitioner made a less than nominal effort to identify a substantial public policy recognized by state or federal constitution, statute, administrative regulation, or the common law."). As every lawyer and judge knows, argument alone is not sufficient to survive summary judgment.

The case at issue is different than Kiefer. Iowa's statute is clear and well-defined; Ohio's maybe wasn't. Kiefer was only requesting records for himself, whereas Carver-Kimm has to

respond to everyone in the public. Iowa's law restricts the government from "preventing" compliance with the Act; Ohio's statute didn't say that. Kiefer couldn't be fined or removed from office if he botched his records *request*; Carver-Kimm could be penalized and punished if she botched a *production*. Last, but not least, Carver-Kimm wasn't hiding government property behind her home like Kiefer; Carver-Kimm was just doing her job.

In sum, the State's claim that the Kiefer case stands for the proposition that open records acts aren't important enough public policies is a misread, and it fails to appreciate the record, or lack thereof, in Kiefer. The district court should distinguish and then disregard Kiefer.

3. The Oklahoma case does not apply because Shero was fired for not dismissing a lawsuit against a third party, not for properly producing public records.

Finally, the Shero v. Grand Savings Bank, 161 P.3d 298 (Ok. 2007) ruling cited by the State also does not apply. (Brief, P. 21). There, Shero was suing the City of Grove for an open records claim. Shero, 161 P.3d at 299. The City of Grove was a customer of the bank, and when the city pressured the bank to have Shero drop his claim against the city, the bank fired Shero after he refused to drop his claim. Shero, 161 P.3d at 299. While Shero did, in fact, *try to* rely upon the state's open records act to find a policy to support his wrongful discharge claim, his attempt failed because he was merely a private person *requesting* records from a *third-party*, the government; he was not a records custodian being fired for doing his job and producing records.

Importantly, the Oklahoma court in Shero said it would not find a sufficient policy in the open records act of that state *because* the act itself did not express protection against discharge for employees. Shero, 161 P.3d at 301 (noting that the act is "silent" about protecting employees). However, in Iowa, our Court has already held that Iowa *will recognize* a sufficient public policy *even if* the statute at issue does *not* contain employment protections expressly.

Fitzgerald v. Salsbury Chemical Inc., 613 N.W.2d at 283 (Iowa 2000) ("Some statutes articulate public policy by specifically prohibiting employers from discharging employees for engaging in certain conduct or other circumstances. Yet, we do not limit the public policy exception to specific statutes which mandate protection for employees.") Hence, *even if* the law in Oklahoma requires employee protections to be expressed in a statute before that policy can serve as the basis for a wrongful discharge tort, in Iowa, the law has no such requirement. Thus, Shero does not govern the result in this case.

Finally, and notably, the State does nothing in its motion or brief to try to liken Oklahoma's Open Records Act to Iowa's Open Records Act, so *even if* Oklahoma wouldn't recognize a claim under its own common law or state statute, it does not follow that Iowa would not recognize the claim either. Iowa often leads the nation in novel legal theories and protections, and someone always has to be first. As it is not the court's place or burden to advocate for the State, or to craft arguments for the State, or to compare statutes for the State, the district court should simply disregard Shero. The short shrift paid by the State to Shero is indicative of whether it actually governs the result in this case or not. It does not.

CONCLUSION

The district court should rule that an employee who is fired for *complying* with the requirements of the Iowa Open Records Act should be able to state a claim for wrongful discharge. Open and robust access to public records is not only an important public policy, but it is fundamental to a well-functioning democracy. Records that are available for inspection could touch upon nearly every important matter of public concern: health, safety, welfare, morals, and particularly in this case: abortion and the Coronavirus. To ensure the public has continued

access to those types of materials, and others, the Court should deny the State's motion to dismiss and allow Carver-Kimm's to state her claim.

If the district court fails to allow Carver-Kimm to state a claim for wrongful discharge, the court's ruling will chill future records production in the state at every level. No money-conscious employee is going to fully and in good faith honor records requests if his or her job is in jeopardy. Records custodians will either withhold totally, or partially, leaving the public less informed *unless* all parties on both sides of the issue want to flood the courthouse with open records cases. Recognizing the claim of wrongful discharge in cases where there has been *compliance* with chapter 22, on the other hand, makes it naturally more likely that records will be produced and litigation will not be necessary. Two birds with one stone.

Based upon the foregoing, the district court should grant IFOIC's motion to intervene. The district court should further deny Defendant's motion to dismiss.