

IN THE IOWA DISTRICT COURT FOR POLK COUNTY**SUZETTE RASMUSSEN,****Plaintiff,****v.****THE IOWA DEPARTMENT OF PUBLIC
HEALTH and SARAH EKSTRAND,****Defendants.****Case No. EQCE086910****RULING ON MOTION TO DISMISS**

On July 29, 2021, the Plaintiff, Suzette Rasmussen (“Rasmussen”) filed a Petition alleging violations of Iowa Code chapter 22, the Iowa Open Records Act (“the Act”) . On September 13, 2021, the Defendants, Iowa Department of Public Health (“IDPH”) and Sarah Ekstrand (“Ekstrand”) filed their Motion to Dismiss. On January 14, 2022, the Court held a contested hearing on the Motion to Dismiss. Assistant Iowa Attorney General Caroline Barrett argued on behalf of IDPH and Ekstrand. Attorney Gary Dickey argued on behalf of Rasmussen. Having considered the court file, filings of the parties, briefs and arguments of counsel, as well as the relevant case law and statutes, the court enters the following ruling.

I. BACKGROUND FACTS

Rasmussen’s Petition alleges that on March 11, 2021, she made an open records request pursuant to the Act to IDPH. Ekstrand responded on April 14, 2021, to inform Rasmussen that she anticipated fulfilling the request in approximately five days. On May 26, 2021, Ekstrand confirmed with Rasmussen that Rasmussen redefined the request. Rasmussen followed up with several emails to Ekstrand regarding the status of the response to the request, including emails on June 8, 2021 and July 14, 2021. On July 20, 2021, Ekstrand indicated the records were in final review and she anticipated being able to release them soon.

This suit was then filed on July 29, 2021, and served upon IDPH and Ekstrand on August 3, 2021. Ekstrand states in her affidavit, and Rasmussen acknowledges in her briefing, that Ekstrand and IDPH provided Rasmussen complete production of documents in response to her request on August 27, 2021.

II. LEGAL STANDARD

Iowa law makes clear that when reviewing a pre-answer motion to dismiss the court is to accept the facts alleged in a petition as true. *Hawkeye Foodservice Distribution, Inc. v. Iowa Educators Corp.*, 812 N.W.2d 600, 604 (Iowa 2012) (citing *McGill v. Fish*, 790 N.W.2d 113, 116 (Iowa 2010)). Granting a motion to dismiss is only proper “if the petition shows no right of recovery under any state of facts.” *Southard v. Visa U.S.A., Inc.*, 734 N.W.2d 192, 194 (Iowa 2007) (quoting *Comes v. Microsoft Corp.*, 646 N.W.2d 440, 442 (Iowa 2002)). A standing challenge is treated as a pre-answer jurisdictional challenge. Affidavits may be considered alongside the pleadings. *Citizens for Responsible Choices v. City of Shenandoah*, 686 N.W.2d 470, 473 (Iowa 2004).

III. MOOTNESS

IDPH and Ekstrand argue that the production of the requested documents on August 27, 2021, after Rasmussen’s Petition herein was filed, rendered the case moot. If this was true, then there would be no enforceable obligation to turn over public records until the responsible party or entity is sued. The Act did not intend to require citizens of this State to sue in order to obtain government records. A plain reading of all the remedies beyond compelling compliance that the Act affords, including statutory damages, attorney fees, prospective injunctive relief and removal from office, confirms that the Act’s intent was not to moot claims simply by providing the requested documents.

In *Horsfield Materials, Inc. v. City of Dyersville*, 834 N.W.2d 444 (Iowa 2013), the Iowa Supreme Court specifically held that a government entity’s delay in production can constitute a refusal to produce under the Act, even after the government has made the production. *Id.*, at 463. IDPH and Ekstrand note that the issue of mootness wasn’t before the court in *Horsfield*. That’s not true. The issue of mootness is always before the court. See *Bribriesco-Ledger v. Klipsch*, 957 N.W.2d 646, 649 (Iowa 2021) (“No party has raised mootness as a ground to prevent our consideration of this appeal but, as always, ‘an appellate court has responsibility *sua sponte* to police its own jurisdiction.’”) (quoting *Crowell v. State Pub. Def.*, 845 N.W.2d 676, 681 (Iowa 2014)).

“A case is moot if it no longer presents a justiciable controversy because the issues involved have become academic or nonexistent.” *Neer v. State*, 798 N.W.2d 349 (Table), No. 10-0966, 2011 WL 662725 at *1 (Iowa Ct. App. Feb. 23, 2011) (citing *Junkins v. Branstad*, 421 N.W.2d 130, 133 (Iowa 1988)). “The test is whether a judgment, if rendered would have any practical legal effect upon the existing controversy.” *Id.* (quoting *Junkins*, 421 N.W.2d at 133). In *Horsfield*, the Iowa Supreme Court, after finding that the City of Dyersville violated the Act when it did not produce the public records requested in January 2010 until April 2010, remanded the case to the district court for further proceedings. *Horsfield*, 834 N.W.2d at 463. Obviously, then, it was the *Horsfield* Court’s opinion that there remained a justiciable controversy even after the records had been produced.

IV. STANDING

IDPH and Ekstrand argue that Rasmussen’s claims must be dismissed to the extent that she seeks the remedies of injunctive relief, statutory damages or the removal of Ekstrand from office, because she lacks standing to obtain those remedies. Standing means that a party has a “sufficient

stake in an otherwise justiciable controversy to obtain judicial resolution of that controversy.” *Birkhofer ex rel. Johannsen v. Brammeier*, 610 N.W.2d 844, 847 (Iowa 2000) (quoting Black’s Law Dictionary 1405 (6th ed. 1990)). To establish standing a plaintiff must (1) have a specific personal or legal interest in the litigation and (2) be injuriously affected. *Id.* The two requirements are separate, independent elements that must be satisfied to confer jurisdiction. *Hawkeye Bancorporation v. Iowa College Aid Comm’n*, 360 N.W.2d 798, 801 (Iowa 1985).

Here, the Act provides that “[a]ny aggrieved person ... 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.” *Iowa Code* §22.10(1) (2021). An aggrieved person is a plaintiff “who 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.” *Iowa Code* §22.10(2) (2021). Rasmussen has alleged in her Petition that IDPH and Ekstrand are subject to the requirements of chapter 22; that she requested government records from IDPH and Ekstrand; and that IDPH and Ekstrand refused to make those government records available for examination and copying by her. Rasmussen has therefore met the first requirement for standing: she has a specific personal or legal interest in the litigation.

Rasmussen, who has a specific personal or legal interest in the litigation as an aggrieved person under the Act, is also injuriously affected if she can prove that IDPH and Ekstrand violated the Act. One need not look beyond the definition of “aggrieved” to see that this requirement of standing is met. “Aggrieved” means: 1) troubled or distressed in spirit; 2a) suffering from an infringement or denial of legal rights 2b) showing or expressing grief, injury, or offense.

“Aggrieved.” *Merriam-Webster.com Dictionary, Merriam-Webster, <https://www.merriam-webster.com/dictionary/aggrieved>. Accessed 27 Jan. 2022.*

IDPH and Ekstrand argue that because Rasmussen has not pled that she plans to submit future requests for records, she lacks standing to seek prospective relief. If, in a suit brought by an aggrieved person, the court finds by a preponderance of the evidence that a lawful custodian has violated any provision of the Act, then the remedy of a prospective injunction is available to the court. *Iowa Code* §22.10(3)(a) (2021). The issue of whether such an injunction is appropriate in a given case one for court to decide after having heard the evidence.

IDPH and Ekstrand also argue that statutory damages provided for in the Act are not available to a private person because they would be paid to the government entity at issue (the State or local government). If an aggrieved person proves a violation of the Act, statutory damages are mandated without distinction as to whether the plaintiff is a private person or not. *Iowa Code* §22.10(3)(b) (2021).

Finally, IDPH and Ekstrand argue that Rasmussen lacks standing to remove Ekstrand from office because Ekstrand is not a state officer. Once again, if an aggrieved person proves a violation of the Act, then removal of the person violating the Act from office is required if that person has engaged in a prior violation of the Act for which damages were assessed against the person during the person’s term. *Iowa Code* §22.10(3)(d) (2021). Whether Ekstrand is such a person has nothing to do with Rasmussen’s standing, and is a factual determination to be made by the court.

V. FAILURE TO ALLEGE A RIGHT OF RECOVERY

IDPH and Ekstrand urge that Rasmussen does not a right of recovery pursuant to the Act under any state of facts. The argument appears to be based on the same reasoning as their mootness argument: that, because the records have now been turned over, there has been no violation of the

Act as a matter of law. As stated above, under *Horsfield*, some “substantial” delays in producing records may be a “refusal” under the statute. *Horsfield*, 834 N.W.2d at 463, n.6. The delay in this case of 169 days is longer than the 71-day delay that the *Horsfield* Court found was not substantial compliance with the Act. Of course here, just as the Court observed in *Horsfield*, the defendants could give plausible reasons as to the delay to demonstrate they complied with the Act. *Id.* at 462-463; *Iowa Code* §22.10(2) (2021). This is a factual issue not appropriate for a motion to dismiss.

VI. ORDER

For the reasons stated above,

IT IS ORDERED that Defendants’ Motion to Dismiss is hereby **DENIED**.



State of Iowa Courts

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Case Title
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PUBLIC HEALTH ET AL
OTHER ORDER

Type:

So Ordered

Joseph Seidlin, District Court Judge
Fifth Judicial District of Iowa

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