IN THE IOWA DISTRICT COURT FOR POLK COUNTY

LAURA BELIN, BLEEDING HEARTLAND LLC, CLARK KAUFFMAN, IOWA CAPITAL DISPATCH, RANDY EVANS, and IOWA FREEDOM OF INFORMATION COUNCIL, **Plaintiffs,** **v.** **GOVERNOR KIM REYNOLDS, MICHAEL BOAL, PAT GARRETT, ALEX MURPHY, and OFFICE OF THE GOVERNOR OF THE STATE OF IOWA,** **Defendants.**	**Case No. CVCV062945** **RULING ON MOTION TO DISMISS**

On December 16, 2021, the Plaintiffs, Laura Belin, Bleeding Heartland LLC, Clark Kauffman, Iowa Capital Dispatch, Randy Evans, and Iowa Freedom of Information Council (collectively, "the Plaintiffs") filed a Petition alleging violations of Iowa Code chapter 22, the Iowa Open Records Act ("the Act"). On Janaury 27, 2022, the Defendants, Governor Kim Reynolds, Michael Boal, Pat Garrett, Alex Murphy, and Office of the Governor of the State of Iowa (collectively, "the Governor") filed their Motion to Dismiss. On March 25, 2022, the Court held a contested hearing on the Motion to Dismiss. Assistant Iowa Attorney General Sam Langholz argued on behalf of the Governor. Attorney Leah Patton argued on behalf of the Plaintiffs. 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

Plaintiffs' Petition alleges:

1. Plaintiffs Belin and Bleeding Heartland made numerous requests to obtain public records from the Governor under the Act from April 27, 2020, until June 16, 2021, on matters of public interest both related and unrelated to the COVID-19 pandemic *Pet*. ¶ 5); the Governor acknowledged receipt of a few the open records requests (*Id*. ¶ 6); however, the Governor did not provide Belin and Bleeding Heartland with the requested open records (*Id*. ¶ 7); Belin and Bleeding Heartland renewed their requests numerous times over many months (*Id*. ¶ 8); nevertheless, the Governor did not produce any records in response to the open records requests until after this litigation was filed, at which point it provided an incomplete response (*Id*. ¶ 9).

2. Plaintiffs Evans and the FOIC also submitted open records requests to the Governor from August 10 to August 27, 2021 (*Id*. ¶ 10); the Governor acknowledged receipt of the FOIC's open records requests (*Id*. ¶ 11); however, the Governor did not provide the FOIC with the requested open records even after they renewed their requests until after this litigation was filed, at which point it provided an incomplete response (*Id*. ¶ 12).

3. Plaintiffs Kauffman and Iowa Capital Dispatch submitted open records requests to the Governor from April 8 to November 3, 2021 (*Id*. ¶ 13); the Governor acknowledged receipt of these requests (*Id*. ¶ 14); however, the Governor did not provide Kauffman and Iowa Capital Dispatch with the requested open records except for a few documents (*Id*. ¶ 15); Kauffman and Iowa Capital Dispatch renewed their requests for the records that were not provided several times (*Id*. ¶ 16); nevertheless, the Governor did not produce the remaining responsive records until after this litigation was filed (*Id*. ¶ 17).

The Plaintiffs also allege that on January 3, 2022, eighteen days after the lawsuit was filed, the Governor provided partial records to Plaintiffs (Ex. A - Affidavit of Michael Boal and Records Response Cover Letters); however, the Governor redacted and withheld records responsive to the Plaintiffs' open records requests citing exemptions under Iowa Code sections 22.7(5), (18), and (50) (Ex. 1 - Email exchange with Sam Langholz dated February 3, 2022, and attached letters).

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

The Governor argues that its production of documents after the Plaintiffs' 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[1], 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. The Governor notes 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.

[1] The Plaintiffs do not seek removal of office as a remedy in this case.

IV. NONJUSTICIABLE POLITICAL QUESTION

The Governor argues that a determination as to whether the Governor timely complied with the Act is a nonjusticiable political question. "The political question doctrine excludes from judicial review those controversies which revolve around policy choices and value determinations constitutionally committed for resolution [to other branches of government]." *King v. State*, 818 N.W.2d 1, 16–17 (Iowa 2012). The political question doctrine mormally applies "when a matter is entrusted exclusively to the legislative branch, to the executive branch, or to both of them." *State ex rel. Dickey v. Beslar*, 954 N.W.2d 425 (Iowa 2021). In determining whether an issue should be considered a nonjusticiable political question, the Court considers the following factors:

> (1) a textually demonstrable constitutional commitment of the issue to a coordinate political department; (2) a lack of judicially discoverable and manageable standards for resolving the issue; (3) the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; (4) the impossibility of a court's undertaking independent resolution without expressing a lack of the respect due coordinate branches of government; (5) an unusual need for unquestioning adherence to a political decision already made; or (6) the potentiality of embarrassment from multifarious pronouncements by various departments on one question.

Iowa Citizens for Cmty. Improvement v. State, 962 N.W.2d 780, 794 (Iowa 2021), as amended (Aug. 26, 2021), reh'g denied (Aug. 26, 2021).

Here, the Governor focuses on factors (2), (3) and (4) above, arguing that the court cannot resolve or decide this matter due to a lack of judicially discoverable and manageable standards, the need to make an initial policy determination of a kind clearly for nonjudicial discretion, or without expressing a lack of the respect due the executive branch. The Governor's argument, however, presupposes that the court must make assumptions that it is not required to make for purposes of a motion to dismiss.

First, the Iowa legislature, by enacting Iowa Code Chapter 22, has already created a law and policy surrounding access to public records. That law did not exclusively entrust discretion regarding whether to allow examination of public records to the executive branch. Instead, the legislature required government bodies to provide examination of public records; included certain exceptions, defenses, and reasonableness considerations; and allowed aggrieved persons to seek judicial enforcement. The interpretation of statutes and consideration of defenses is the type of dispute within the judiciary's role to address. As the Supreme Court explained in *U.S. v. Nixon*, 418 U.S. 683 (1974), it is "the province and duty of the judicial department to say what the law is" and "[n]otwithstanding the deference each branch must accord the others," … judicial power cannot be "shared with the Executive Branch." 418 U.S. at 703-04.

Next, the Governor misinterprets the Iowa Supreme Court holding in *Horsfield* in taking the position that requiring the Governor to submit to the substantial compliance standard referenced by *Horsfield* necessarily creates judicially non-discoverable and unmanageable standards impossible to decide without getting into privileged policy determinations and executive discretion. The Court in *Horsfield* created no such standard. The Court in *Horsfield* specifically stated:

> we need not decide whether a substantial compliance standard applies to claimed violations of the Open Records Act. The district court followed such a standard and Horsfield does not argue on appeal for something different. In light of this concession, we will utilize substantial compliance here, assuming without deciding that it is the appropriate test.

Horsfield, 824 N.W.2d at 462. Further and regardless, as the *Horsfield* Court also pointed out, a substantial compliance test, if applied to the compliance inquiry under the Act, would not necessarily require delving into any privileged policy determinations or exclusive executive discretion. "Substantial compliance is a fact-specific inquiry depending on whether 'the purpose

of the statute is shown to have been served.'" *Id* (quoting *Brown v. John Deere Waterloo Tractor Works*, 423 N.W.2d 193, 194 (Iowa 1988)). It is not possible at this pre-answer and pre-discovery stage of the proceedings to know what evidence will be sufficient to prove or defend against the alleged violations. For instance, the inquiry in this case may only need to go so far as to determine the length of time between request and compliance; communication (or lack thereof) between the Governor and Plaintiffs concerning the requests; and whether documents required to be produced were produced. Until this litigation gets further down the road and into the discovery and summary judgment phases, determinations, especially blanket ones resulting in dismissal, as to what information is discoverable or privileged, are not appropriate.

V. EXECUTIVE PRIVILEGE

The Governor's argument that executive privilege prevents this court from considering Plaintiff's claims under the Act is a subset of its political question argument – that a fact-specific inquiry into whether the Governor substantially complied with the Act's requirements cannot take place without disclosure of protected information. Again, and for the same reasons set forth in section IV above, determinations, especially blanket ones resulting in dismissal, as to what information is discoverable or privileged, are not appropriate at this stage of the litigation.

VI. INJUNCTIVE OR MANDAMUS RELIEF

The Governor argues that Plaintiffs' request for mandamus and injunctive relief to obtain their previously requested records is moot because the records have been provided. The Plaintiff's dispute that all of the requested records have been provided. This is a fact question not appropriate for decision on a Motion to Dismiss.

The Governor also asserts that prospective injunctive relief is not available to the Plaintiffs because the Plaintiffs lack standing to assert the claim, and because the issue is moot. In support

of its argument, the Governor cites the court to general law regarding writs of mandamus and prospective injunctions, including that:

- "[m]andamus is only available to compel performance of a legal duty that has already been breached after compliance was demanded by the plaintiff." (Governor's Brief, p. 14)(citations omitted);

- "Mandamus generally is not granted on a speculation as to the possible occurrence of future events, to prevent or remedy a future injury, to take effect prospectively, or to compel future acts or to remedy an anticipated failure to discharge a duty." (*Id*) (citations omitted);

- "Mandamus generally is not granted on a speculation as to the possible occurrence of future events, to prevent or remedy a future injury, to take effect prospectively, or to compel future acts or to remedy an anticipated failure to discharge a duty." (*Id* at p. 15) (citations omitted); and

- "Unless damage to the plaintiff . . . is reasonably apprehended, [s]he has no ground on which to base an injunction." (*Id*) (citations omitted).

A. Standing

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). The Plaintiffs have alleged in thier Petition that the Governor is subject to the requirements of chapter 22; that they requested government records from the Governor; and that the Governor refused to make those government records available for examination and copying by them. The Plaintiffs have therefore met the first requirement for standing: they have a specific personal or legal interest in the litigation.

The Plaintiffs, who have a specific personal or legal interest in the litigation as aggrieved persons under the Act, are also injuriously affected if they can prove that the Governor 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.

The Governor argues that because the Plaintiffs have not pled that they plan to submit future requests for records, they lack 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. Dismissal based upon a lack of standing of the Plaintiffs' claims for mandamus or injunctive relief is not appropriate at this time.

B. Mootness.

The Governor's mootness argument again stems from the assertion that the requested records have already been produced. Again, the Plaintiffs dispute that all of the requested records have been provided. Again, whether or not the records have ultimately been provided does not foreclose the possibility of the court finding that a violation of the Act has occurred, triggering the remedies available under section 22.10(3). Dismissal based upon mootness of the Plaintiffs' claims for mandamus or injunctive relief is also not appropriate at this time.

VII. ORDER

For the reasons stated above,

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

State of Iowa Courts

Case Number	**Case Title**
CVCV062945	LAURA BELIN ET AL VS GOVERNOR KIM REYNOLDS ET AL
Type:	OTHER ORDER

So Ordered

Joseph Seidlin, District Court Judge
Fifth Judicial District of Iowa

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