



June 24, 2022

Administration

Phone 515-223-6220
1900 NW 114th Street
Clive, IA 50325-7077
Fax 515-457-3091

**Community
Development**

Phone 515-223-6221
1900 NW 114th Street
Clive, IA 50325-7077
Fax 515-457-3091

Parks & Recreation

Phone 515-223-5246
1900 NW 114th Street
Clive, IA 50325-7077
Fax 515-457-3092

Aquatic Center

Phone 515-440-0599

Public Library

Phone 515-453-2221
1900 NW 114th Street
Clive, IA 50325-7077
Fax 515-453-2246

Fire Administration

Phone 515-223-1595
8505 Harbach Boulevard
Clive, IA 50325-1029
Fax 515-223-6457

Police Administration

Phone 515-278-1312
8505 Harbach Boulevard
Clive, IA 50325-1029
Fax 515-278-6066

Public Works

Phone 515-223-6231
2123 NW 111th Street
Clive, IA 50325-6917
Fax 515-223-6013

www.cityofclive.com

Iowa Public Information Board
Wallace Building, Third Floor
502 East 9th Street
Des Moines, IA 50319

RE: Proposed Rule Changes

Dear IPIB Board Members,

Thank you for the opportunity to provide comments regarding the proposed rule changes related to open record requests. As the City Clerk and official custodian of records for the City of Clive, I am chiefly responsible for the application of Iowa Code Chapter 22 and therefore would be directly impacted by any changes thereto. In general, I am supportive of the spirit of the proposed changes and am a strong proponent of transparency in governance. However, it appears that there may be some unintended consequences of the proposed changes that would create an unreasonable burden and unachievable standards for local governments to meet.

1. Of primary concern is the expectation set out in **Section 11.2(1)(e): "A request received by other means, including social media"**. It appears that these proposed changes will create a requirement that a City will acknowledge receipt of a records request in writing, where contact information has been provided, within two business days after receipt by the lawful custodian, including requests received on social media. This is concerning because there is no realistic way a municipality or the municipality's custodian of records, can monitor all of the various means of communication on all social media platforms. In some cases, social media platforms have content going back many years and it is possible for the public to comment on any of that content at any time.

Further, it is concerning that some social media can garner hundreds of public comments to review, evaluate and determine if a record request is even being made. Under the proposed changes, it appears that someone could post a public comment on a YouTube video of a Clive Council meeting from 3 years ago and the City would be expected to somehow be aware of the comment and respond within 2 days if the comment happens to be a record request. This would be the case even if there were 500 public comments to weed through to find the one public comment that might be a record request. Also, there is no definition of what it

means to “receive” a record request on social media, e.g. does posting a record request in the public comments section of a news item on the City’s Facebook page constitute the City’s receipt of the comment/request? Nor is there a clear definition of what constitutes a public record request. For instance, if someone was publicly complaining about an elected official’s job performance on Facebook and said something like “I’d love to see his paycheck”, is that a record request?

There is neither a clear definition of what “contact information” is. Technically, if someone posts a comment on the City’s Facebook page, they may not give us a phone number or address, but by virtue of simply “posting” they would be providing a means for the City to respond by publicly responding to their post or by sending them a Facebook message. Would posting a record request to a City’s public Facebook page constitute provision of contact information simply because a means of response would exist? It is not clear if the proposed changes would set the expectation that cities would be required to correspond with a requestor on a public social media platform if no other means of contact are provided.

2. *Section 11.2(1)(a): “A verbal request, within two business days after a telephone call is received, a voicemail message is received, or oral request is made in person.” Iowa Code 22.3(1) provides “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.”* It is clear that there is an intention here of insuring that a governmental entity responds in a timely manner to any and all public records requests. Again, this is something I agree with in principal but believe that without clearly defined triggers that would dictate what is definitively a “public record request”, there will likely be a sharp influx of alleged open records violations due to the fact that it is not always clear that an individual is intending to make a public records request under Iowa Code. At a minimum, I believe that some kind of language that would create a reasonability component needs to be included. For example, “a reasonably perceivable records request”, “clearly stated public record request”, or “readily discernable public records request”. It would be unreasonable to put Records Custodians in a position where they are trying to determine whether something is truly a public records request and have the Custodian exposed to potentially violating open records law because they were unaware that someone was even requesting a record.
3. *Section 11.7(22): “Nothing in this rule regarding timely compliance with requests for copies of public records shall adversely affect the right to examine a public record without charge while the record is in the physical*

possession of the lawful custodian." This section appears to possibly be in conflict with, or at minimum, inconsistent with Iowa Code section 22.3(1), as amended effective July, 1, 2022 as well as Iowa Code section 22.3(2) as amended. This discrepancy/inconsistency will undoubtedly create confusion and possibly lead to unnecessary complaints of violations of open records laws by governmental entities being filed before IPB, or the Courts. It could also lead to confusion by governmental entities as they work to update our open records policies.

Thank you for your consideration of my comments and concerns; please let me know if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Matthew D. Graham', with a long horizontal flourish extending to the right.

Matthew D. Graham
City Clerk

cc: Clive Mayor and Council
Clive City Manager