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July 11, 2022

Hannah Fordyce
Iowa Public Information Board
Wallace State Office Building
Des Moines, IA 50319

VIA EMAIL, hannah.fordyce@iowa.gov

RE: Proposed rulemaking ARC #6360C

To the Iowa Public Information Board:

The Iowa Freedom of Information Council, a 40+-year-old nonprofit, nonpartisan education and advocacy organization that works to improve citizen engagement in their state and local governments, makes the following comments for your consideration as part of this rulemaking process.

We believe some of the language you seek to incorporate into 497—11.4(22) and 497—11.6(22) represents an expansion of the justifiable reasons for the lawful custodian of a government record to delay filling a request for public documents.

Specifically, while Iowa Code section 22.8 spells out the permissible reasons the lawful custodian may delay filling a request for records, your inclusion of the word “including” in the phrase, “may engage in a good-faith reasonable delay, including for the purposes of,” leads to the conclusion that there are more than the four reasons enumerated in the statute.

In addition, the fourth paragraph in 497—11.6(22) suggests that there are other ambiguous reasons, which you call “unforeseen circumstances,” that could “reasonably interfere” with the lawful custodian’s ability to make records available in a more timely manner.

The inclusion of this paragraph in the proposed rules represents a clear expansion of the reasons government officials may delay making records available. Such an expansion of the legal justifications for such a delay needs to be made by the Iowa General Assembly through an amendment to Chapter 22, instead of by an administrative rule written by the Iowa Public Information Board.



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The General Assembly has had ample opportunity since the Iowa Supreme Court decided *Horsfield Materials Inc. v. City of Dyersville* in 2013 to add more factors that can affect how quickly a request for records is filled. But the General Assembly has declined to act — so it would be inappropriate for the Iowa Public Information Board to add this catch-all “unforeseen circumstances” phrase to the permissible justifications for delaying release of records.

We encourage the Iowa Public Information Board to consider the Council’s comments and make these minor revisions to your proposed administrative rules.

Respectfully,

A handwritten signature in black ink that reads "Randy Evans". The signature is written in a cursive style with a large, looping initial "R" and a long, sweeping tail.

Randy Evans
Executive Director

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