



## Iowa County Attorneys Association

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Hoover State Office Building ♦ 2<sup>nd</sup> Floor ♦ Des Moines, Iowa 50319

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July 8, 2022

Iowa Public Information Board  
502 E. 9<sup>th</sup> Street  
Des Moines, Iowa 50319

RE: Timely compliance rule

Dear Iowa Public Information Board:

We are writing today to express our concerns regarding Iowa Public Information Board's proposed Administrative Rule 497- Chapter 11.

Our first concern is that the rules as drafted exceed the statutory authority granted to the Iowa Public Information Board by the legislature in Chapter 22 of the Iowa Code. In order to effectuate rulemaking pursuant to Iowa Code Sections 17A.23(3) and (4), an agency "shall have only that authority or discretion delegated to or conferred upon the agency by law and shall not expand or enlarge its authority or discretion beyond the powers delegated to or conferred upon the agency".

Proposed Rule 11.2(1) requiring a two day acknowledgement by the governmental entity is concerning because an acknowledgment of any kind (much less two days) is not provided for anywhere in Iowa Code Chapter 22. If this rule is implemented, complaints by complainants to the Iowa Public Information Board will be subject to such 2 day requirement under the rules. However, persons who immediately file in District Court, will have no such claim of a 2 day requirement violation because there is absolutely nothing about this in Iowa Code Chapter 22. This sets two different legal standards and is another reason that exceeding statutory authority is so problematic.

Our second concern with this section is that a two day acknowledgement requirement is overly burdensome and unworkable for many governmental entities, particularly counties. Counties are made up of many different offices who receive information in many different ways. If an open records request is emailed to a clerk in the auditor's office, for example, and that clerk happens to be on vacation and doesn't get back until the two days have expired, a violation of the rules will have occurred. Other examples include a county attorney in a murder trial who must prioritize that trial over an open records request or an auditor during election time who must prioritize the election over the open records request and may need more than two days to acknowledge the request.

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*Jessica A. Reynolds, Executive Director*



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Our third concern is that section 11.6(22) “factors affecting timely compliance” exceeds the statutory authority vested in the Iowa Public Information Board as Iowa Code Section 22 already specifically addresses reasonable delay. Further, this rule does not take into consideration the extremely large open records requests that counties receive that are intermingled that may require extensive attorney review and may implicate a variety of confidential exceptions. A large set of records requested could dramatically effect response time.

We respectfully request that you do not pass these rules. They exceed the statutory authority granted to the Iowa Public Information Board and will result in many practical issues for counties working diligently to answer these requests.

Thank you for the opportunity to review and comment on these proposed rules.

Sincerely,

*/s/ Jessica A. Reynolds*

Jessica A. Reynolds

ICAA Executive Director

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*Jessica A. Reynolds, Executive Director*