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Advisory Opinion 22AO:0004

DATE: August 18, 2022

SUBJECT: Timeliness of responding to record requests

RULING:

This opinion is in response to questions and complaints filed with the Iowa Public Information Board (IPIB) concerning initial delays in the acknowledgement of records requests by lawful custodians. Advisory opinions may be adopted by the board pursuant to Iowa Code section 23.6(3) and Rule 497-1.2(2): “[t]he board may on its own motion issue opinions without receiving a formal request.” We note at the outset that IPIB’s jurisdiction is limited to the application of Iowa Code chapters 21, 22, and 23, and rules in Iowa Administrative Code chapter 497. Advice in a Board opinion, if followed, constitutes a defense to a subsequent complaint based on the same facts and circumstances.

QUESTION POSED:

How much time does the government body have to produce a requested record?

OPINION:

Iowa Code chapter 22 is silent as to the time for response to a records request. The time to locate a record can vary considerably depending on the specificity of the request, the number of potentially responsive documents, the age of the documents, the location of the documents, and whether documents are stored electronically.

The large number of variable factors affecting response time makes it very difficult, and probably unwise, to establish any hard and fast objective standards. The statute was initially adopted almost fifty years ago. Today’s electronic records environment adds to the complexity of this issue.

The only specific response time standard established by the statute addresses a good-faith reasonable delay incurred in order to determine whether a confidential document should be released. Iowa Code subsection 22.8(4)(d) states that a reasonable, good-faith delay is not a violation of Chapter 22 if the purpose of the delay is:

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“d. To determine whether a confidential record should be available for inspection and copying to the person requesting the right to do so. A reasonable delay for this purpose shall not exceed twenty calendar days and ordinarily should not exceed ten business days.”

While the Code states a delay under Iowa Code subsection 22.8(4)(d) shall not exceed twenty calendar days, the Iowa Supreme Court does not view this as an absolute deadline:

“Based on our review of section 22.8(4)(d), we believe it is not intended to impose an absolute twenty-day deadline on a government entity to find and produce requested public records, no matter how voluminous the request. Rather, it imposes an outside deadline for the government entity to determine ‘whether a confidential record should be available for inspection and copying to the person requesting the right to do so.’ We do not think we should extrapolate section 22.8(4)(d)’s twenty-day deadline to other contexts, when the legislature chose not even to include that deadline in other portions of section 22.8(4).” *Horsfield Materials, Inc. v. City of Dyersville, 834 N.W.2d 444, 461 (Iowa 2013).*

Horsfield involved a record request first sent to the City of Dyersville in December 2019, requesting certain public records. In April 2010, the City produced 617 pages of records. The Iowa Supreme Court found that this delay was not reasonable and that the City had violated Iowa Code chapter 22.

The Court in *Horsfield* listed several considerations for determining if a delay is reasonable:

“Under this interpretation, practical considerations can enter into the time required for responding to an open records request, including ‘the size or nature of the request.’ But the records must be provided promptly, unless the size or nature of the request makes that infeasible,” *Horsfield Materials, Inc. v. City of Dyersville, 834 N.W.2d 444, 461 (Iowa 2013).*

The Iowa Uniform Rules on Agency Procedure, Fair Information Practices, were also referenced by the Court in *Horsfield*:

Access to an open record shall be provided promptly upon request unless the size or nature of the request makes prompt access infeasible. If the size or nature of the request for access to an open record requires time for compliance, the custodian shall comply with the request as soon as feasible. (See Uniform Rule X.3(4), Fair Information Practices. See also, IPIB administrative rule 497-7.3(4).)

According to an Iowa Attorney General Sunshine Advisory Opinion from August 2005, *“Delay is never justified simply for the convenience of the governmental body, but delay will not violate the law if it is in good faith or reasonable.”*

There is no reason why a lawful custodian cannot communicate with a record requester. Communication is essential to determine what specific records are requested. Based upon the various complaints that have been filed with the IPIB, such communication can easily

reduce disagreements over timeliness, review/redaction, fees, and completeness of the record release fulfillment.

A prompt initial acknowledgement from the lawful custodian is the best way to initiate this communication. Within the first few business days of receipt of the record request, the lawful custodian should contact the requester to acknowledge receipt of the request, provide information on possible fees, and provide a timeline for fulfillment of the record request.

The lawful custodian is expected to make additional contact in the event of a potential delay to discuss possible ways to complete the record request in a timely manner. Records should be released as they are available, unless the record requester has requested otherwise.

A government body is expected to prioritize the fulfillment of record requests by providing adequate resources, such as staff and equipment, to promptly compile and release public records. This may include the regular publication of records that are of public interest on websites.

BY DIRECTION AND VOTE OF THE BOARD:

Daniel Breitbarth
Joan Corbin
E.J. Giovannetti
Barry Lindahl
Joel McCrea
Monica McHugh
Julie Pottorff
Jackie Schmillen

SUBMITTED BY:

Margaret E. Johnson, Executive Director

ISSUED ON:

August 18, 2022

Pursuant to Iowa Administrative Rule 497-1.3(3), a person who has received a board opinion may, within 30 days after the issuance of the opinion, request modification or reconsideration of the opinion. A request for modification or reconsideration shall be deemed denied unless the board acts upon the request within 60 days of receipt of the request. The IPIB may take up modification or reconsideration of an advisory opinion on its own motion within 30 days after the issuance of an opinion.

Pursuant to Iowa Administrative Rule 497-1.3(5), a person who has received a board opinion or advice may petition for a declaratory order pursuant to Iowa Code section 17A.9. The IPIB may refuse to issue a declaratory order to a person who has previously received a board opinion on the same question, unless the requestor demonstrates a significant change in circumstances from those in the board opinion.

