



Laura Belin <laurarbelin@bleedingheartland.com>

public records request

Laura Belin <laurarbelin@bleedingheartland.com>

Mon, Aug 14, 2023 at 3:50 PM

To: Ben Smith <ben.smith@saccountyiowa.gov>

Cc: Sac County Attorney Office <saccoaty@saccountyiowa.gov>, Ken McClure <kmcclure@saccountyiowa.gov>

Dear Mr. Smith,

After doing some research, I respectfully ask you to reconsider your interpretation of Iowa Code Chapter 22.7(5), which does not reflect the applicable case law.

The Iowa Supreme Court held in *Hawk Eye v. Jackson* (1994) that the privilege cloaking communications in officers' investigative files "is qualified, not absolute." The unanimous decision went on to say:

Determining where the line falls between public harm and public good requires weighing the relative merits of the interests at stake. We have long recognized that confidentiality encourages persons to come forward with information, whether substantiated or not, that might be used to solve crimes and deter criminal activity. *Shanahan*, 356 N.W.2d at 529. Secrecy is especially vital where reports are based on confidential informants, persons indispensable to successful police work but who frequently fear intimidation and reprisal. *Id.* at 529-30. Furthermore, nondisclosure permits law enforcement officials the necessary privacy to discuss findings and theories about cases under investigation. *Id.* at 529.

<https://law.justia.com/cases/iowa/supreme-court/1994/93-666-0.html>

In the 2019 case known as *Mitchell v. Cedar Rapids* (attached), a unanimous Iowa Supreme Court (entirely different justices) stated, "We hold that *Hawk Eye* remains the controlling precedent for disputes over access to police investigative reports." In other words, a balancing test should determine whether investigative reports are exempt from disclosure. The justices noted that "the police investigation had been completed without any confidential informant or unidentified suspect," and the high level of public interest in police shootings.

In the *Vaccaro* case released last year (attached), a unanimous Iowa Supreme Court again stated, "We employ a case-specific balancing test to guard against the chilling effect public disclosure could have on police investigations."

In this case, the balancing test points toward disclosure of the materials I have requested, including camera footage from body cams, dashboard cams, and the booking area of the county jail. Public interest in the case is high, because it's rare for a sitting state legislator to be arrested.

Senator Dickey and his attorney have implied the incident was a big misunderstanding. The public deserves to know whether that is the case, or whether Senator Dickey's behavior warranted an arrest and misdemeanor charge.

The case does not involve any confidential informants and does not rest on members of the public coming forward with tips. Nor is it the kind of case where law enforcement would need "privacy to discuss findings and theories" about what happened on the country road. The incident unfolded in the plain view of several peace officers and numerous members of the public.

Thank you for your consideration.

Yours,

Laura

On Thu, Aug 3, 2023 at 12:14 PM Ben Smith <ben.smith@saccountyiowa.gov> wrote:

Ms. Belin,

Attached please find Sac County's response to your request for open records.

Ben

Ben Smith

Sac County Attorney

(712) 662-4791

ben.smith@saccountyiowa.gov

From: Ken McClure <kmccclure@saccountyiowa.gov>
Date: Thursday, July 27, 2023 at 4:03 PM
To: Ben Smith <ben.smith@saccountyiowa.gov>
Subject: Re: public records request

Thanks

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From: Ben Smith <ben.smith@saccountyiowa.gov>
Sent: Thursday, July 27, 2023 3:57:42 PM
To: Ken McClure <kmccclure@saccountyiowa.gov>
Subject: Re: public records request

I'll handle it

Ben Smith

Sac County Attorney