
IN THE IOWA DISTRICT COURT IN AND FOR POLK COUNTY

KIRKWOOD INSTITUTE

Plaintiff,

vs.

**IOWA AUDITOR OF STATE ROB
SAND, JOHN MCCORMALLY, and
OFFICE OF THE AUDITOR OF STATE,**

Defendants.

Case No. **EQCE087052****RULING ON PLAINTIFF'S MOTION
TO RECONSIDER**

This matter came before the Court on November 30, 2022 for hearing on Plaintiff Kirkwood Institute's Motion to Reconsider. Attorney Alan Ostergren appeared on behalf of Plaintiff Kirkwood Institute (Plaintiff). Assistant Iowa Attorney General Caroline Barrett appeared on behalf of Defendants Iowa Auditor of State Rob Sand, John McCormally, and Office of the Auditor of State (collectively, Defendants). The hearing was reported. Having heard the arguments of counsel, having reviewed the court file, and being otherwise fully advised in the premises, the court now rules as follows.

The Court incorporates by reference all facts as stated in its ruling on cross motions for summary judgment, filed on September 6, 2022. Plaintiff moves the Court to reconsider said ruling. Said ruling denied Plaintiff's Motion for Summary Judgment and granted Defendant's Motion for Summary Judgment.

Plaintiff first requests the Court issue a ruling which holds the timing of Defendant's release of the eleventh email chain does not render Plaintiff's claim moot. Defendant established the email chain in question was initially not discovered due to its location in personal email correspondence. The Court finds no evidence establishing the delay was purposeful or the result

of any improper motive on the part of Defendants, but was simply the result of the late discovery of the information. The email chain was immediately produced once it was determined that it was responsive to plaintiff's request(s).

While it was delayed, said delay in the release of the email chain had nothing to do with the filing of the present action. Moreover, Iowa Code section 22.10 does not contain a time limit for compliance and the quote and case Plaintiff cites in support is not the holding of the case, but merely a footnote. *Horsfield Materials, Inc. v. City of Dyersville*, 834 N.W.2d 444, n. 6 (Iowa 2013). Footnote 6 in *Horsfield* contemplates an intentional refusal, which was not established here. *Id.* As the email chain in question has been produced, and the summary judgment ruling was reached independent of the mootness argument, the Court finds it unnecessary to rule on mootness or compliance.

Regarding the applicability of Iowa Code sections 22.7 and 11.42, Plaintiff additionally moves the Court to provide details as to why the material, reviewed in-camera, was determined to be covered by statutory privilege. Disclosure of details of the information, including the basis on which the Court's ruling was reached, beyond what was already revealed/explained by defendants in their discovery responses and in paragraph 17 of defendant McCormally's affidavit in support of defendant's motion for summary judgment (appendix pages 21 – 24 and 85), would necessarily involve discussion of confidential and privileged information. This would frustrate the purpose of the court's in-camera review. Consequently, the Court declines to go into the details of the information revealed by its in-camera review other than to state the Court's ruling is fully supported by the facts and applicable Iowa law.

For all the foregoing reasons, Plaintiff's Motion to Reconsider must be and hereby is
DENIED.



State of Iowa Courts

Case Number
EQCE087052

Case Title
KIRKWOOD INSTITUTE V IOWA AUDITOR OF STATE ET
AL
OTHER ORDER

Type:

So Ordered

Robert B. Hanson, District Court Judge,
Fifth Judicial District of Iowa

Electronically signed on 2023-01-26 10:19:55