

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 OPPOSING MOTIONS
FOR SUMMARY JUDGMENT**

This matter came before the court on July 7, 2022, for hearing on the parties' opposing motions for summary judgment. Attorney Alan Ostergren appeared on behalf of Plaintiff, Kirkwood Institute (Kirkwood). Attorney Caroline Barrett appeared on behalf of Defendants, Rob Sand, John McCormally, and Office of Auditor of State (collectively, Defendants). The Court, having heard the arguments of counsel, reviewed the file, and being otherwise fully advised in the premises, finds as follows.

BACKGROUND FACTS AND PROCEEDINGS

On June 16, 2021, the Office of Auditor of State (Auditor's Office) received a public-records information request from Kirkwood. The request asked for the following:

- All emails sent to, sent from, or otherwise exchanged between any employee of the Auditor of State's office, including the Auditor, and the email address "desmoinesdem@bleedingheartland.com."
- All emails sent to, sent from, or otherwise exchanged between any employee of the Auditor of State's office, including the Auditor, that contain the phrase "desmoinesdem@bleedingheartland.com."

- All emails and text messages sent to, sent from, or otherwise exchanged between any employee of the Auditor of State's office, including the Auditor, that contain the word "Belin."
- All emails sent to, sent from, or otherwise exchanged between any employee of the Auditor of State's office, including the Auditor, and the email address "rjfoley@ap.org."
- All emails sent to, sent from, or otherwise exchanged between any employee of the Auditor of State's office, including the Auditor, that contain the phrase "rjfoley@ap.org."
- All emails sent to, sent from, or otherwise exchanged between any employee of the Auditor of State's office, including the Auditor, that contain the word "Foley."

The Auditor's Office identified several hundred pages of emails which would fall under Plaintiff's request. Out of these, the Auditor's Office identified nine email strings as being confidential under Iowa Code section 11.42 and one email string as confidential under Iowa Code section 22.7(18).

The Auditor's Office provided the emails to Plaintiff on July 6, 2021. The emails dated May 30, 2019, or later were provided with no charge. The emails before May 30, 2019, were provided at a charge of \$162.50. The Auditor's Office contacted Plaintiff and communicated the purpose for the charge was due to the extra difficulty and time required in retrieving the emails before May 30, 2019. Additionally, it was subsequently discovered that there was an email between Chief of Staff McCormally and Laura Belin in a personal account rather than the official email accounts. This full email thread was provided to Plaintiff as well.

Plaintiff brought this action in order to determine if the withheld information is subject to the protection Defendants are claiming pursuant to Iowa Code section 11.42 and section 22.7. Defendants provided the Court with the emails to review in-camera.

STANDARD OF REVIEW

Summary judgment is appropriate when the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits show there is no genuine issue of material fact

and the moving party is entitled to a judgment as a matter of law. Iowa R. Civ. P. 1.981(3); *Walderbach v. Archdiocese of Dubuque, Inc.*, 730 N.W.2d 198, 199 (Iowa 2007). A fact question arises if reasonable minds can differ on how the issue should be resolved. *Walderbach*, 730 N.W.2d at 199. No fact question arises if the only conflict concerns legal consequences flowing from undisputed facts. *Grinnell Mut. Reinsurance Co., v. Jungling*, 654 N.W.2d 530, 535 (Iowa 2002). A fact issue is considered material only when the dispute surrounding said issue concerns facts which might affect the outcome of the case. *Junkins v. Branstad*, 421 N.W.2d 130, 132 (Iowa 1988). “The requirement of a ‘genuine’ issue of fact means that the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Id.* The moving party has the burden to show the nonexistence of a material fact, and the evidence must be viewed in the light most favorable to the resisting party. *Smith v. Shagnasty’s, Inc.*, 688 N.W.2d 67, 71 (Iowa 2004). If the motion is properly supported, however, the resisting party “may not rest upon the mere allegations or denials in the pleadings” but “must set forth specific facts showing that there is a genuine issue for trial.” Iowa R. Civ. P. 1.981(5).

LAW AND ANALYSIS

The question before the Court is whether the emails Defendants withheld from Plaintiff’s request fall into the categories of confidentiality asserted by Defendants. Without discussing the contents of the emails, the Court briefly outlines the two statutes in question.

Iowa Code Section 22.7

Defendants allege one email is considered confidential under Iowa Code section 22.7(18). Section 22.7(18) reads:

The following public records shall be kept confidential, unless otherwise ordered by a court, by the lawful custodian of the records, or by another person duly authorized to release such information:

18. Communications not required by law, rule, procedure, or contract that are made to a government body or to any of its employees by identified persons outside of government, to the extent that the government body receiving those communications from such persons outside of government could reasonably believe that those persons would be discouraged from making them to that government body if they were available for general public examination. As used in this subsection, “persons outside of government” does not include persons or employees of persons who are communicating with respect to a consulting or contractual relationship with a government body or who are communicating with a government body with whom an arrangement for compensation exists. Notwithstanding this provision:

- a. The communication is a public record to the extent that the person outside of government making that communication consents to its treatment as a public record.
- b. Information contained in the communication is a public record to the extent that it can be disclosed without directly or indirectly indicating the identity of the person outside of government making it or enabling others to ascertain the identity of that person.
- c. Information contained in the communication is a public record to the extent that it indicates the date, time, specific location, and immediate facts and circumstances surrounding the occurrence of a crime or other illegal act, except to the extent that its disclosure would plainly and seriously jeopardize a continuing investigation or pose a clear and present danger to the safety of any person. In any action challenging the failure of the lawful custodian to disclose any particular information of the kind enumerated in this paragraph, the burden of proof is on the lawful custodian to demonstrate that the disclosure of that information would jeopardize such an investigation or would pose such a clear and present danger.

The statute clearly states what is meant by information contained in the public record. Having reviewed the email *in-camera*, the Court concludes it is information which must be kept confidential within the meaning of section 22.7(18) and, therefore, was properly withheld pursuant to section 22.7(18). As such, the Court concludes summary judgment in favor of Defendants is appropriate.

Iowa Code Section 11.42

The majority of the email threads (nine out of ten) were withheld as confidential under

Iowa Code section 11.42. That section reads in part:

1. Notwithstanding chapter 22, information received during the course of any audit or examination, including allegations of misconduct or noncompliance, and all audit or examination work papers shall be maintained as confidential.
2. Information maintained as confidential as provided by this section may be disclosed for any of the following reasons:
 - a. As necessary to complete the audit or examination.
 - b. To the extent the auditor is required by law to report the same or to testify in court.

The statute encompasses all of Chapter 22 and the listed information. After reviewing the emails in question, the Court finds the emails fall under the protection of section 11.42 as having been received during the course of an audit or examination. As a result, the Court concludes the emails were properly maintained as confidential and withheld and summary judgment in favor of Defendants is appropriate.

IT IS HEREBY ORDERED that Defendant's Motion for Summary Judgment is **GRANTED** and judgment is entered in favor of Defendants.

IT IS FURTHER ORDERED that Plaintiff's Motion for Summary Judgment is **DENIED**.

IT IS FURTHER ORDERED that Plaintiff's action is **DISMISSED** and that costs are taxed against Plaintiff.



State of Iowa Courts

Case Number
EQCE087052

Case Title
KIRKWOOD INSTITUTE V IOWA AUDITOR OF STATE ET
AL
Type: ORDER FOR JUDGMENT

So Ordered

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

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