

**IN THE IOWA DISTRICT COURT FOR POLK COUNTY**

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<p><b>KIRKWOOD INSTITUTE, INC.,</b></p> <p><b>Plaintiff,</b></p> <p>v.</p> <p><b>IOWA AUDITOR OF STATE ROB SAND, JOHN MCCORMALLY, and OFFICE OF THE AUDITOR OF STATE,</b></p> <p><b>Defendants.</b></p>	<p><b>Case No. EQCE087052</b></p> <p><b>ANSWER</b></p>
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**COME NOW** the Defendants, Iowa Auditor of State Rob Sand, John McCormally, and the Office of Auditor of State (“Defendants”), by and through undersigned counsel, and submits the following for its answer to the Petition filed by the Plaintiff, Kirkwood Institute (“Plaintiff”):

1. Defendants admit that plaintiff is an Iowa nonprofit corporation and is a person for the purposes of Iowa Code chapter 22. The remainder of ¶ 1 is denied for lack of knowledge.
2. Admitted.
3. Admitted.
4. Admitted.
5. Defendants admit that on June 3, 2021, the Office of Auditor of State released a report on a special investigation of the “Step Up, Stop the Spread” media campaign announced by Governor Kim Reynolds aimed at slowing the spread of the COVID-19, finding that portions of this campaign violated Iowa Code section 68A.405A. The remainder of ¶ 5 is denied.
6. Denied for lack of knowledge.
7. Admitted.

8. Admitted.

9. Defendants admit that Defendant Sand has criticized unreasonably excessive charges imposed in open records requests when the charges total far greater than those assessed for this request. The remainder of ¶ 9 is denied for lack of knowledge.

10. Defendants deny any implication that the fee charged Plaintiff violates Iowa Code section 22.3 or was unreasonable or excessive. The remainder of ¶ 10 is admitted.

11. No responsive pleading is required to a quote of statute.

12. No responsive pleading is required to a quote of statute.

13. Defendants admit that the email excerpted in the petition was not included in the document production request but deny the implication it should have been included pursuant to Iowa Code chapter 22. The remainder of ¶ 13 is denied for lack of knowledge.

14. Defendants deny the email excerpted in the petition was withheld under Iowa Code chapter 22 because it was not a public record within the meaning of Iowa Code section 22.1(3). No responsive pleading is required to a quote of statute. The remainder of ¶ 14 is denied.

15. No responsive pleading is required to Plaintiff's paraphrase of Iowa Code section 22.10(2), but Defendants deny that any or all allegedly withheld records are government record subject to section 22.10(2) burden shifting. *See* Iowa Code § 22.10(2). To the extent that any further response is required, the remainder of ¶ 15 is denied.

16. Defendants deny that Iowa Code chapter 22 was violated and that the Plaintiff is entitled to the relief requested. To the extent any further response is required, the remainder of ¶ 16 is denied.

### **AFFIRMATIVE DEFENSES**

1. Defendants complied with Iowa Code chapter 22 when responding to Plaintiff's open records request.

2. Defendants have express obligations under Iowa Code section 11.42 "notwithstanding Chapter 22" to keep confidential certain information related to the initiation and investigation of audits or examinations, and wrongful disclosure is grounds for termination. These obligations prevented disclosure to Plaintiff of some government records responsive to his open records request.

3. Fees charged to Plaintiff were permissible under Iowa Code section 22.3(2).

4. If Defendants are found to have violated Iowa Code chapter 22, they should not be assessed damages because:

a. Defendants had good reason to believe and in good faith believed facts which, if true, would have indicated compliance with the requirements of Iowa Code chapter 22. Iowa Code § 22.10(3)(b)(2).

b. Defendants reasonably relied upon a decision of a court, a formal opinion of the Iowa Public Information Board, the Attorney General, or the attorney for the government body, given in writing, or as memorialized in the minutes of the meeting at which a formal oral opinion was given, or an advisory opinion of the Iowa public information board, the attorney general, or the attorney for the government body, given in writing. *Id.* § 22.10(3)(b)(3).

5. Defendants reserve the right to assert additional affirmative defenses and points of law.

WHEREFORE, Defendants request that Plaintiff's Petition be dismissed at Plaintiff's cost and the Court award whatever additional relief to Defendants that it believes to be just and equitable.

**THOMAS J. MILLER  
ATTORNEY GENERAL OF IOWA**

*/s/ Caroline Barrett* \_\_\_\_\_

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ATTORNEY FOR DEFENDANTS

All parties served electronically.

Proof of Service	
The undersigned certifies that the foregoing instrument was served upon each of the persons identified as receiving a copy by delivery in the following manner on November 3, 2021.	
<input type="checkbox"/> U.S. Mail	<input type="checkbox"/> Fax
<input type="checkbox"/> Hand Delivery	<input type="checkbox"/> Overnight Courier
<input type="checkbox"/> Federal Express	<input type="checkbox"/> Other
<input type="checkbox"/> E-mail	<input checked="" type="checkbox"/> EDMS
Signature: <i>/s/ Josie Bollman</i> _____	