IN THE IOWA DISTRICT COURT FOR POLK COUNTY

SUZETTE RASMUSSEN, Plaintiff, v. GOVERNOR KIM REYNOLDS and MICHAEL BOAL, Defendants.	Case Nos. CVCV062318 and CVCV062322 **BRIEF IN SUPPORT OF MOTION TO DISMISS**

Defendants Governor Kim Reynolds and Michael Boal file the following brief in support of their motion to dismiss under Iowa Rule of Civil Procedure 1.421.

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INTRODUCTION

Plaintiff Suzette Rasmussen made two similar open records requests to Governor Kim Reynolds on two consecutive days in March 2021. (Pet., Case No. CVCV062318, ¶ 15; Pet., Case No. CVCV062322, ¶ 15). A few months later in July, the Governor's Senior Legal Counsel, Michael Boal, emailed Rasmussen to clarify the email search she would like performed to locate records potentially responsive to her

requests. (Pet. ¶ 16).[1] Rasmussen responded the same day, confirming the search terms. (*Id.* ¶ 17). Less than a month later, when Rasmussen had not yet received any responsive records, she filed these two lawsuits.

She alleges that Governor Reynolds and Boal violated Iowa's open records laws—chapter 22 of the Iowa Code—by refusing to provide her records. (*Id.* ¶ 25). And she seeks injunctive and other relief to enforce compliance with chapter and obtain the requested records. (Pet. ¶¶ A–E).

But three weeks later, Boal provided Rasmussen records responsive to her request through counsel in this proceeding. *See* Exhibit A (Affidavit of Michael Boal and Records Response). Because Rasmussen has received all the requested records, these suits are now moot. No live dispute that will have any affect on Rasmussen remains for adjudication. These cases should be dismissed.

STANDARD FOR MOTIONS TO DISMISS

Rule 1.421 of the Iowa Rules of Civil Procedure authorizes a pre-answer motion to dismiss for "[f]ailure to state a claim upon which nay relief may be granted." Iowa R. Civ. P. 1.421(1)(f). Motions to dismiss test "the legal sufficiency of the challenged pleading." *Southard v. Visa U.S.A., Inc.*, 734 N.W.2d 192, 194 (Iowa 2007). A motion to dismiss "accept[s] as true the petition's well-pleaded factual allegations, but not its legal conclusions." *Shumate v. Drake Univ.*, 846 N.W.2d 503, 507 (Iowa 2014). A

[1] Rasmussen's two petitions are nearly identical in substance, except for each paragraph 15 alleging each open records request. (*See* Mtn. to Consolidate ¶ 5). Any cite to the Petition thus applies to either petition unless the case number is specified.

motion to dismiss must be granted "when the petition's allegations, taken as true, fail to state a claim upon which relief may be granted." *Id.*

Since "a court will generally decline to hear a case when, because of changed circumstances, the court's decision will no longer matter," *Homan v. Branstad*, 864 N.W.2d 321, 328 (Iowa 2015), a motion to dismiss is an appropriate method of alerting the court that a case is moot. *See, e.g.*, *Remer v. Bd. of Med. Examiners*, 576 N.W.2d 598, 599 (1998) (affirming denial of attorney fees in a judicial review proceeding after district court had granted the agency's motion to dismiss on mootness grounds); *Riley Drive Ent. I, Inc. v. Reynolds*, Polk County Case No. CVCV060630, at 7–11 (Iowa D. Ct. Nov. 16, 2020) (granting motion to dismiss on mootness and other grounds); *cf. Iowa Bankers Ass'n v. Iowa Credit Union Dep't*, 334 N.W.2d 439, 442 (Iowa 1983) (granting motion to dismiss portion of appeal as moot). This court may consider evidence outside the existing record when ruling on a motion to dismiss. *Cf. Clarke Cty. Reservoir Comm'n v. Robins*, 862 N.W.2d 166, 170 & n.3 (Iowa 2015) (considering evidence outside the record submitted with motion to dismiss appeal); *see also Wisconsin's Envtl. Decade, Inc. v. Pub. Serv. Cmm'n*, 255 N.W.2d 917, 924 (Wis. 1977).

ARGUMENT

"Courts exist to decide cases, not academic questions of law. For this reason, a court will generally decline to hear a case when, because of changed circumstances, the court's decision will no longer matter." *Homan*, 864 N.W.2d at 328. A case should be dismissed as moot "if it no longer presents a justiciable controversy because the issues involved are academic or nonexistent." *Id.* (cleaned up). Put another way, the

"test is whether an opinion would be of force and effect with regard to the underlying controversy." *Women Aware v. Reagen*, 331 N.W.2d 88, 92 (Iowa 1983).

A court may still choose to decide an otherwise moot case under the public-importance exception, when "matters of public importance are presented and the problem is likely to recur." *Homan*, 864 N.W.2d at 330 (cleaned up). Courts consider four factors in deciding whether to exercise discretion to decide a moot case under this exception:

> (1) The private or public nature of the issue; (2) the desirability of an authoritative adjudication to guide public officials in their future conduct; (3) the likelihood of the recurrence of the issue; and (4) the likelihood the issue will recur yet evade appellate review.

Id. (quoting *Maghee v. State*, 773 N.W. 228, 234 (Iowa 2009)).

But even so, the judiciary's "lawgiving function is carefully designed to be an appendage to [its] task of resolving disputes." *Wengert v. Branstad*, 474 N.W.2d 576, 578 (Iowa 1991). "When a dispute ends, the lawgiving function ordinarily vanishes" and a court "certainly should not go out of [its] way to answer a purely moot question because of its possible political significance." *Id.*

I. Rasmussen's open-record claim under chapter 22 is moot because she has now received the records she requested.

Rasmussen filed these suits when she had not received a response to her two back-to-back open-records requests to Governor Reynolds. (Pet. ¶ 25). Those records have now been provided. *See* Exhibit A (Affidavit of Michael Boal and Records Response). This resolves the controversy between the parties and any further opinion of the court would have no "force and effect with regard to the underlying

controversy." *Women Aware*, 331 N.W.2d at 92. The issues involved in Rasmussen's two filed petitions are now "nonexistent." *Homan*, 864 N.W.2d at 328.

The Iowa Court of Appeals has agreed that an open-records lawsuit becomes moot after the agency provides the records sought in the suit. *See Neer v. State*, No. 10-0966, 2011 WL 662725, at *1 (Iowa Ct. App. Feb. 23, 2011) ("Because the State released the records to Neer, we agree with the district court that this case became moot."). But because that case involved a dispute about the confidentiality of law enforcement investigative files after a criminal case is complete, the court also agreed to the exception to mootness applies because it was an important issue that was likely to reoccur and deciding the issue would help in future court proceedings. *Id.* at *2.

So too have courts from other jurisdictions agreed. *See Cabinet for Health & Fam. Servs. v. Courier-J., Inc.*, 493 S.W.3d 375, 382–83 (Ky. Ct. App. 2016) (recognizing that numerous federal and state courts recognize that once a party produced the records, the action for public records becomes moot); John Bourdeau, et al., 37A Am. Jur. 2d Freedom of Information Acts § 473 (Aug. 21, 2021 update) ("Once the records are produced in a case under the Federal Freedom of Information Act (FOIA) or a state counterpart, the substance of the controversy disappears and becomes moot since the disclosure the suit seeks has already been made.").

Because any alleged violation of chapter 22 has now been remedied, Rasmussen's cases are moot and should be dismissed.

II. Rasmussen's claim does not satisfy the requirements of the public-importance exception to the mootness doctrine.

These moot cases do not satisfy the requirements of the public-importance exception. *See Homan*, 864 N.W.2d at 330. While any claim under chapter 22 presents a public issue, these cases involve relatively routine open-record requests. Unlike the disputed confidentiality issue in *Neer v. State*, 2011 WL 662725, at *2, here, there are no novel issues about whether the records were public records subject to chapter 22 or subject to any confidentiality provisions where authoritative guidance could be useful in the future. As evidenced by the production of the records, *see* Exhibit A (Affidavit of Michael Boal and Records Response), Governor Reynolds and Boal agree that Rasmussen is entitled to the records, and they have been provided to her. While records requests certainly occur with frequency before governmental bodies, including the Governor's Office, it's unlikely that any issue with the production of these particular records will occur again.

CONCLUSION

Rasmussen's open-records claim against Governor Reynolds and Boal is moot because she has now received her requested records. Governor Reynolds and Boal respectfully request that the Court dismiss these cases.

Respectfully submitted,

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ATTORNEY FOR DEFENDANTS

PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties of record by delivery in the following manner on September 13, 2021:

- ☐ U.S. Mail
- ☐ Hand Delivery
- ☐ Federal Express
- ☒ EDMS
- ☐ FAX
- ☐ Overnight Courier
- ☐ Other

Signature: */s/ Samuel P. Langholz*