
Iowa sunshine laws

Erika Eckley, Iowa Public Information Board

DISCLAIMER

This presentation is not intended to serve as legal advice. You should consult with your own attorney about specific situations you encounter. The research conducted and views expressed in this presentation are not an official opinion or position of the Iowa Attorney General's Office. Certain materials contained in this presentation are included under the fair use copyright exemption of 17 U.S.C. 107.

Iowa Public Information Board

Enacted in 2013, the Iowa Public Information Board provides

***an official, efficient and free legal resource for
citizens and government officials***

To ask questions about Iowa open meetings and records laws,
and to address complaints about alleged violations of the laws.

The board is also one of the few such agencies in the nation with
the authority to not only advise but to enforce the state sunshine
laws.



Iowa Public Information Board

- Has no jurisdiction over the judicial or legislative branches, or over the governor and governor's office.
- Limited to addressing issues involving Chapters 21 and 22 of the Iowa Code.
- Complaints must be made within 60 days of the alleged violation.
- Declaratory orders issued by the board, determining the applicability of the open meetings or records law to specific fact situations, have the force of law.

Iowa Public Information Board

- Any person can bring a complaint before the board or can bring an action in state district court.
- A final board order is subject to judicial review.

IPIB Staff



Erika Eckley
Executive Director
Erika.Eckley@iowa.gov

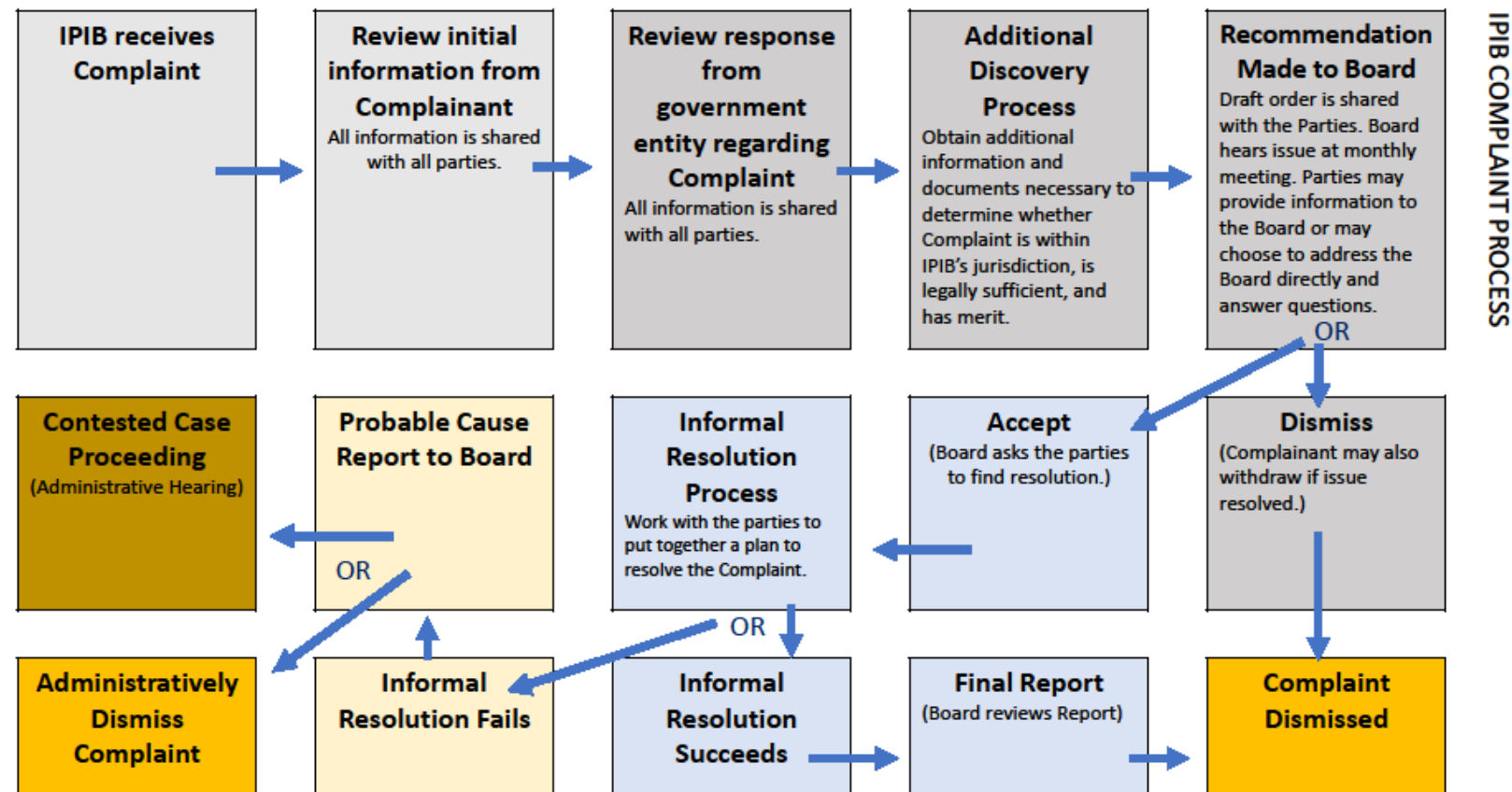


Daniel Strawhun
Staff Attorney
Daniel.strawhun@iowa.gov



Brett Toresdahl
Deputy Director
brett.toresdahl@iowa.gov

Process Flow of a Complaint



Open meetings 101

History

“Ambiguity in the construction or application of this chapter should be resolved in favor of openness.”

Iowa Code Section 21.1

Defining a Government Body

Governmental Bodies are:

- Boards, Councils and Commissions created by law or appointed by other governing bodies
- Bodies created by the Board of Regents or a president of a university
- Advisory boards, advisory commissions, and task forces created by state or local governments to develop and make recommendations on public policy
- Non-profit corporations (other than a fair) who are supported with property tax revenue and licensed to conduct pari-mutual betting
- Non-profit corporations licensed to conduct gambling games pursuant to chapter 99F
- Governing bodies of drainage or levee districts
- Advisory boards, advisory commissions, advisory committees, task forces created through 28E agreements or by statute or executive order of state or subdivision to develop and make recommendations on public policy

Does the definition apply to task forces, or subcommittees?

- If membership includes a quorum of the main body, the group is likely to be covered by the law.
- “Advisory bodies created by school boards and county boards of supervisors and other governmental agencies by executive order to develop and make recommendations on public policy issues” are subject to the provisions of the open meetings law. 1993 Iowa Op. Att’y Gen. 59 (1993).
- The Iowa Supreme Court has said that policy-making “is more than recommending or advising what should be done. Policy-making is deciding with authority a course of action.” If they are acting within scope of duty to develop and make recommendations *Mason v. Vision Iowa Bd.*, 700 N.W.2d 349 (Iowa 2005).
- Deliberation occurs- “If the members of the governmental body engage in any discussion that focuses at all concretely on matters over which they exercise judgment or discretion.” *Hutchison v. Shull*, 878 N.W.2d 221, 231 fn. 1 (Iowa 2016).

Best Practices

- While some ad hoc committees, advisory board or task forces may not be required to be open, they are often encouraged to do so as a matter of good public policy.
- Allowing the public to observe the deliberations will add to the “buy in” necessary to enact any decision or recommendation made by the group.

Defining a Meeting

“...a gathering in person or by electronic means, formal or informal, of a majority of the members of a governmental body where there is deliberation or action upon any matter within the scope of the governmental body’s policy-making duties.”

1. A formal or informal gathering of members of a governmental body;
2. In such numbers so as to constitute a majority;
3. During which deliberation or actions occurs; and
4. Such deliberation or action is within the scope of the governmental body’s “policy-making duties.”

1981 Iowa Op. Att’y Gen. 162 (1981).

Policy-Making duties

Policy-making is more than recommending or advising what should be done.

Advisory groups are subject to the open meetings requirement when they deliberate or act within the scope of their duty to develop and make recommendation on public policy issues.

Mason v. Vision Iowa Bd., 700 N.W.2d 349, 354-55 (Iowa 2005).

Preparing For a Meeting

Meetings must –

- Be preceded by a public notice of at least 24 hours giving the date, time, place and a tentative agenda.
- Notice of the meeting must be sent to any news organization requesting it.
- The notice must be posted in a prominent place accessible to the public at the government office. If no office is available, notice should be prominently placed where the meeting will be held.
 - Posting on the inside of a glass door into the governmental building, posting on a website or community calendar, or at the post office are all ways to promote transparency in government.

What needs to be included in the agenda?

Barebones agenda information such as “approval of old minutes, old business, new business” would not be sufficient, nor would using the same agenda for meeting after meeting.

- The tentative agenda can be subject to change under certain circumstances.
- The law allows discussion and action on emergency items,
 - **but if action can reasonably be deferred to a later meeting, it should be.**
- The information on the agenda must be reasonably sufficient to alert interested people as to the subject matter to be considered.
- The agenda must specifically state any issues the board intends to discuss in open or in closed sessions.

KCOB/KLVN, Inc. v. Jasper Cty. Bd. Of Sup'rs, 473 N.W.2d 171, 174-75 (Iowa 1991).

Can members get together socially?

Yes, BUT they cannot discuss business.

- A gathering becomes a “meeting” when a quorum of officials engage in discussion on matters over which they exercise judgment.
 - Deliberation occurs- “If the members of the governmental body engage in any discussion that focuses at all concretely on matters over which they exercise judgment or discretion.” *Hutchison v. Shull*, 878 N.W.2d 221, 231 fn. 1 (Iowa 2016).
- The purpose of the law is to allow citizens to see how their officials arrive at a decision. Citizens need to see the discussion and hear the opinions.
- Even retreats are public meetings if a quorum is present and policy is discussed.

Best Practice- if the members will all be gathering together, just prepare a notice of the event. The agenda can include that it is a social event and that no business will be conducted.

Can members e-mail each other concerning governmental business?

- Every situation is fact specific, and it is easy to send an e-mail to all members just to share relevant information on a topic without the intent to avoid the Open Meetings Law.
- However, if members want to share an opinion or debate policy, they should save that discussion for the open session.
- Emails are public records.

Best Practice- if some information, such as an agenda, is shared with the members, sending as a BCC to the members helps prevent any inadvertent discussion through “reply all”.

Minutes

Minutes should show, at a minimum:

- the date, time and place of the meeting,
- the members present, and
- the action taken at any meeting
 - All votes must be recorded
 - **Votes by each member must be noted individually but a unanimous vote can be so noted as long as all present vote.**

Minutes become public record as soon as they are complete and must be published as required by law, in the appropriate newspaper. Although not a substitute to publishing, minutes can also be made available online.

Advisory Opinion- 23AO:00

Minutes are the public record of a governmental body's activities and decisions. Their usage should be to document the official actions of a governmental body. This means they should contain the legally required information as well as enough information in context to ensure understanding of the actions and topics covered by the Board or Council. Minutes should not include partial commentary or editorial additions. Including these items in minutes causes unnecessary issues ...

<https://ipib.iowa.gov/23ao0007-editing-meeting-minutes-publishing>

Do members of the public have the right to speak at an open meeting?

While most bodies have a time noted on their agendas for public comment, members of the public have no right to participate in the discussion of an item unless they are on the agenda.

Comments made do not have to be placed in the minutes. Minutes only need to include the actions taken and other information required in Iowa Code chapter 21.

Closed Sessions

Closed sessions may be held **only** by the vote in open session of **two-thirds** of the members of the body or all members present and only after citing one of the following reasons

- To review or discuss a record which is required or authorized by state or federal law to be kept confidential or as a condition to retain federal funding.
- To discuss application for a patent.
- To discuss strategy with counsel on matters that are currently or may imminently be in litigation.
 - ***Note- counsel must be identified and must be present in some capacity.***
- To discuss contents of a licensing examination, initiate disciplinary investigation or proceeding if the body is involved with licensing or examining.

Closed Sessions

- To conduct a hearing or discuss whether to conduct a hearing to suspend or expel a student unless the student and/or parent wants the meeting to remain open.
- To discuss the decision to be rendered in a contested case.
- To avoid disclosure of specific law enforcement matters which if disclosed would enable law violators to avoid detection or facilitate disregard of requirements imposed by law.
- To evaluate the professional competency of an individual whose appointment, hiring, performance, or discharge is being considered.
The individual must request a closed session.
- To discuss the purchase or sale of real estate. The minutes and audio recording of the closed session shall be made available when the transaction is dropped or completed. (j) [this section may require an entity to retain the closed session records longer than as required in 21.5]

Closed Sessions

- To discuss records concerning security procedures and emergency preparedness for the protection of government employees, visitors, people under the care and protection of the government and its property.
- To discuss patient care quality and process improvement initiatives in a meeting of a public hospital that if disclosed might harm the hospital's competitive position.

Other sections of the Iowa Code may permit a government agency to close a meeting OR exempt meetings from the requirements of the open meetings law. (For example, Iowa Code § 279.15 exempts some meetings and records involving the termination of a teacher.)

Procedure During Closed Session

- No additional topics can be discussed.
 - The purpose and topics for the closed meeting must be the same
 - Recent district court case- Dewitt School Board
- The session must be recorded and “detailed minutes” must be taken. These records must be retained for at least one year and are not public record.
- Members who would have otherwise had access to the closed session may get access to the closed session recording and minutes.
- **Final action must happen in open session.**
- Nothing in Iowa Code 21 requires a governmental body to hold a closed session to discuss or act upon any matter.

Exempt sessions

A meeting of a governmental body to discuss strategy in matters relating to employment conditions of employees of the governmental body who are not covered by a collective bargaining agreement under chapter 20 is exempt from this chapter. For the purpose of this section, “employment conditions” mean areas included in the scope of negotiations listed in section 20.9:

- wages,
- hours,
- vacations,
- insurance,
- holidays,
- Leaves of absence,
- Shift differentials,
- Overtime compensation,
- Supplemental pay,
- seniority,
- Transfer procedures,
- Job classifications,
- Health and safety matters,
- Evaluation procedures,
- Procedures for staff reduction,
- in-service training,
- grievance procedures for resolving any questions arising under the agreement, and
- Other matters mutually agreed upon

Open records 101

Definitions

- All governmental bodies, officials and employees are covered by Chapter 22- public records.
- “Record” includes:
 - documents, tape or other information stored or preserved in any medium of or belonging to a governmental body
 - including electronic communication such as e-mails, websites, or texts
 - all records relating to the investment of public funds
- Each body must designate a “lawful custodian” and publicly announce who holds that responsibility.

Best Practices

- Do not use texting or other informal means to conduct government body business.
- Put in place a retention policy and follow it.
- Keep your public and personal information separate-
 - Different phones for email or do not download work emails to personal devices.

Advisory Opinion- 23AO:0005

Email Requests, Generally

Electronic requests sent through email to the records custodian should include the specific request within the body of the email. There is no reason a request needs to be sent in an attachment or through a link. The email request provides written notice of the request and also includes the date and time when it was sent, so there is a documented record of the request. Including links or attachments to email increases the risk that the message may be automatically routed to a “spam” folder or quarantine filters to address cyber security and phishing concerns. Requesters should provide the request in a format that enables the government entity to receive and respond to the request.

Government entities should request the sender resubmit the request in the body of the email if requests are received that have attachments or other extraneous information. Like all requests, government entities should provide acknowledgement of the request and responses regarding the records and fees.

Request Portals and online forms

Providing a portal or online request form is an appropriate and safe way to allow for electronic requests to be submitted. It will be important that the portal or form system provide requesters a copy of their request including when and to whom it was submitted. Acknowledgment of the request and other appropriate follow up information and documents should be provided as well. If a records request is such that fees are charged, communication about how the fees can be paid, including whether they can be handled through the portal, should be clearly communicated.

Supervision and Fees

- Requests do not have to be made in person and can be made in writing, by telephone or by electronic means.
- Examination and copying is to be done under the supervision of the record custodian; the custodian should not relinquish control of the records. (1982 Op. Att'y. Gen. 76)
- The custodian must
 - adopt reasonable rules to safeguard the records.
 - provide a suitable place for the work or move to a separate location, if necessary.
 - provide a reasonable number of copies.

Supervision and Fees

- The custodian may charge a reasonable fee for the services of the custodian and for the copies.
- Fees should be based on the actual costs directly attributable to examination or copies of records.
- Fulfillment may be made contingent upon pre-payment of a fee
- Estimated expenses must be communicated to the requestor.
- Fees cannot exceed the actual cost of providing the service and cannot include the costs of ordinary administrative office expenses, such as insurance, depreciation, etc.
- Iowa Code requires that the custodian make reasonable effort to provide the record at no cost other than actual copying costs for a record taking less than thirty minutes to produce.

How much time does a custodian have to respond to a record request?

- Most requests are routine and are to be handled immediately or as soon as practically possible.
- A good faith delay is allowed to determine whether the record in question is a public record or confidential. (Section 22.8(4))
 - A reasonable delay for this purpose ordinarily should not exceed 10 business days and cannot exceed 20 calendar days.
- Record custodians should communicate with requesters to ensure that the correct records are released in as timely a manner as possible and any issues are discussed.

Belin v. Reynolds, 989 N.W.2d 166 (Iowa 2023).

- Chapter 22 enforcement action claiming violation for failing to produce records or to produce them in a timely manner
- Court held that extensive delay- on its own- can establish an implicit refusal to provide records under Chapter 22.
- Relevant inquiries may include
 - How promptly the requests and follow up inquiries were acknowledged
 - Assurances of an intent to provide the records
 - Explanations about why records not immediately available
 - Producing records on a rolling basis as available
 - Updates provided to requester
 - Information provided about when to expect records
- *Horsfield* “substantial compliance” standard not adopted by the court

Fees- Legal Review

- "Costs for legal services should only be utilized for the redaction or review of legally protected confidential information." Iowa Code 22.3 (eff. 7/1/22).
- A lawful custodian should not charge a requester for legal services used to determine whether the records requested contain confidential information.
- The lawful custodian should only charge the requester for the time an attorney spends actually redacting or reviewing confidential information.

See 23AO:0002, March 3, 2023 Costs for legal services

What about records held on databases?

Software used to run a database is confidential, but the records contained on a database can be nonconfidential or a combination.

Records cannot be withheld because they contain both non-confidential and confidential material. Government entities need to ensure examination of a public record is possible and need to find a way to remove or redact confidential material from records if applicable. (Section 22.3A(2))

Who has the right to examine public records?

- Anyone can examine, photograph or copy a public record without charge while the public record is in the physical possession of the custodian.
- The governmental body cannot prevent examination of the records by contracting with a nongovernmental entity to create, hold, or store those records. (Section 22.2 (6))
- Governmental bodies can control the terms and conditions of the examination of non-confidential records stored within geographic computer databases. Bodies must establish reasonable rates for the examination of these records. (Section 22.2(3)(a)).
- If it's a non-confidential public document for one person, it is a non-confidential public document for everyone!

Must a request be by an identifiable individual?

Although “person” is not defined in Iowa Code chapter 22, Iowa Code section 4.1(20) defines “person” to mean “individual, corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.” There are many examples of records requests filed by media groups or organizations that are considered valid and enforceable record requests.

A requestor of public records can remain anonymous and does not need to provide a contact name. There just needs to be enough information to provide the information sought.

Confidential Records

- Section 22.7 includes a list of records that are confidential under the open records law.
- Additional laws may also contain provisions on confidentiality.
- The most common confidential records are-
 - Medical records.
 - Trade secrets protected by law. (Trade secrets are defined in Iowa Code Chapter 550),
 - The work product of an attorney related to litigation by or against a public body.
 - Note- there must be litigation.
 - Attorney-client privilege is different and should be invoked if it applies.

Confidential Records, cont.

- Peace officers' investigative reports, except for date, time, specific location, and immediate facts and circumstances surrounding a crime or incident.
- A crisis intervention report generated by a law enforcement agency regarding a person experiencing a mental health crisis, substance-related disorder crisis, or housing crisis.
- Appraisal information concerning the sale or purchase of property for public purposes prior to announcement of the project.
- Information that if released would cause the loss of federal funding
- Information regarding homeland security.

Confidential Personnel Records

- Certain personal information held in confidential personnel records of government employees is confidential such as
 - age, race, sex, address
 - Social Security,
 - home telephone numbers,
 - reason for sick leave. (This does not include the dates and times of use of sick or vacation leave.) 22.7(11) and (32)
- The following information in personnel records **is public** under 22.7(11):
 - employee's name,
 - compensation (anything of value given to an employee, including pay, benefits, vacation, severance payments and retirement benefits, including any written agreement about terms of employment
 - employment dates and positions held,
 - educational background and previous employment
 - whether the individual resigned in lieu of termination, was discharged, or was demoted as the result of a disciplinary action, and the documented reasons and rationale

Persons Outside Gov't

- Persons outside government
- Communication not required by law or rule
- If the lawful custodian could reasonably determine that the person would be dissuaded from reporting if made public
 - 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.
 - 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.*
 - 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.

Settlement Records

- When a government entity is involved in a legal dispute, the entity must prepare a summary after the dispute is resolved that indicates the identity of the parties involved, the nature of the dispute and the terms of the settlement.
- The summary and the settlement agreement are public records. (Section 22.13)

“Draft” Records

- Custodians can withhold “tentative, preliminary, draft, speculative, or research material, prior to its completion for the purpose for which it is intended.”
- This exception does not apply to public records that are actually submitted for use by government bodies or that are used in the formulation, recommendation, adoption of government policy or action. Section 22.7(65).
- Notes taken to create minutes are a public record.

Release of Confidential Records

The public records law allows the release of confidential information when “ordered by a court, by the lawful custodian of the records, or by another person duly authorized to release such information...”

Vaccarro v. Polk County, 983 N.W.2d 54 (Iowa 2022).

- Plaintiff's daughter was killed in a motor vehicle collision. Plaintiff settled her civil suit against the driver of the vehicle without seeking discovery of the police investigation file.
- Plaintiff filed a civil enforcement action under Iowa Code chapter 22 to obtain the complete police investigation file.
- District court ordered release as part of discovery in that suit.
- Supreme Court overturned, stating that the records themselves were the subject of the suit and should not be released before determining whether they were exempt from disclosure under section 22.7(5).

Penalties

- The law provides for civil lawsuits.
- A court can issue an injunction ordering a government body to comply, assess damages between \$100 and \$500, order payment of costs and attorney fees, and remove repeat violators from office. If a member of a governmental body knowingly participated in a violation, damages increase to \$1,000-\$2,500. (Section 22.10(3)(b))
- Ignorance of the law is not a defense, but damages will not be assessed against officials who
 - voted against the violation,
 - refused to participate in the violation,
 - engaged in efforts to resist the violation, or
 - relied upon a formal opinion of the attorney general, the advice of an attorney provided in writing or memorialized in a meeting or the Iowa Public Information Board. (Section 22.10(3)(b))

Suggested Iowa Resources

- Iowa Public Information Board www.ipib.iowa.gov; IPIB@iowa.gov or 515-725-1781.
- The attorney for the government body or government association
- Office of the Iowa Attorney General: 515-281-5165 or www.iowaAttorneyGeneral.gov . The Attorney General's website also includes copies of the office's "Sunshine Advisories" on open meetings and records issues, and outlines of Chapters 21 and 22 with applicable case and AG's opinion citations.

Suggested Iowa Resources

- Iowa League of Cities: 515-244-7282 or www.iowaleague.org
- Iowa State Association of Counties: 515-244-7181 or www.iowacounties.org
- Iowa Association of School Boards: 1-800-795-4272 or www.ia-sb.org
- Iowa Judicial Branch: www.iowacourts.gov
- Iowa Newspaper Association (INA): 515-244-2145 www.inanews.com
-