

Iowa Public Records Law

Iowa Code – Chapter 22

By Randy Evans (10/2020)

The Iowa public records law --- it's Chapter 22 of the Iowa Code --- is the tool that provides you with access to all manner of state and local government records. What follows is guide to help you put Chapter 22 to work for you. If you have questions about how to obtain what you are seeking or how to appeal if you have been turned down, the Iowa Freedom of Information Council is here to help you. Send your questions to IowaFOICouncil@gmail.com. There is no charge for the council's services.

THE LAW'S PHILOSOPHY: The concept behind the public records law is simple: All documents belonging to a government entity are available for public inspection or copying unless there is a specific provision in Iowa law -- or a court precedent --- that makes these documents confidential.

IMPORTANT FOOTNOTES TO THIS STATEMENT OF PURPOSE: First, the definition of "records" goes well beyond what you might initially think of as a record. The law covers printed documents, computer files, correspondence, emails, spreadsheets, reports, invoices, checking account materials, PowerPoint presentations, salary and benefit information for government workers, video recordings, etc.

Second, the public records law contains 70+ exemptions from public access to records, and other sections of the Iowa Code treat certain other records as confidential, too (such as government employees' evaluations by their boss). But section 22.7 of the law says the "lawful custodian" of the records can choose to release records that are considered confidential. That means, for example, that the lawful custodian of police records that otherwise would be confidential can choose to make these documents available to you. You just need to be persuasive by emphasizing the benefit to the general public from release of these otherwise confidential documents.

HOW TO MAKE A REQUEST: You can submit a request for public records in a variety of ways --- in person, by email, in a snail mail letter, by phone. If you anticipate the government might resist your request, or if your request is complicated, put it in an email or a Postal Service letter. That way, you have a written record of what exactly you requested and when you requested it.

BE PREPARED FOR RESISTENCE: Even if you and the government agency agree that what you are seeking is a public record and isn't confidential, don't be surprised if the lawful custodian quotes you a high cost for retrieving the documents you seek. The law allows --- but it does not require -- the agency to recover its "actual cost" for locating the documents you want and making copies of the records.

The "actual cost" means the salary of the employee who pulls the documents from the files and runs the copying machine. The Iowa Attorney General's Office has told government officials (*"Sunshine Advisory" dated April 1, 2005*) that the person given the task of fulfilling your records request should be the lowest-paid employee who is qualified to do the work. That means the police department cannot charge you for the police chief's time making photocopies, because there are other employees who are paid significantly less who are qualified to make copies.

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WAYS TO REDUCE YOUR COSTS: There are two ways you can hold your costs down. First, Section 22.2(1) of the public records law says you have the right to examine a public record without charge while the record is in the possession of the lawful custodian. Second, you can use your cellphone camera to photograph the document while it is in the possession of the custodian. You do not have to have the government make a photocopy for you. And the government cannot charge you for copies you make with your own cellphone camera.

WHAT ABOUT POLICE RECORDS? This is one of the most contentious parts of the public records law, and section 22.7(5) is the most frequently litigated part of the statute. The section states that peace officers' "investigative reports" and specific parts of the officers' electronic mail are confidential. But here is an important qualifying phrase: "However, the date, time, specific location, and immediate facts and circumstances surrounding a crime or incident shall not be kept confidential under this section, except in those unusual circumstances where disclosure would plainly and seriously jeopardize an investigation or pose a clear and present danger to the safety of an individual."

The Iowa FOI Council believes a citizen who has an interaction with police that is recorded on a body camera or an in-car dash camera has a solid legal basis for requesting copies of such records, especially after an criminal investigation is concluded and after any internal investigation of the officer's actions has been finished. But submit your request right away, and ask that the video be preserved while any criminal or internal investigations are underway.

The Iowa Supreme Court has issued two important decisions that spell out the need for law enforcement to balance their interests in keeping investigative files confidential against the interests the public has in transparency and accountability when the actions of law officers are called into question, either for implicit bias or other inappropriate conduct. Two Iowa Supreme Court cases that spell out this balancing test are *Mitchell v. Cedar Rapids*, 926 N.W.2d 222 (Iowa 2019) and *Burlington Hawk Eye v. Jackson*, 521 N.W.2d 750 (Iowa 1994).

WHAT ABOUT PERSONNEL RECORDS? This is another area that often is controversial. You are entitled under Section 22.7(11) to receive certain specific information that is part of a government employee's personnel file. This includes the person's name, compensation, his/her benefits (including vacation, holiday and sick leave, retirement benefits, any severance payments, and any deferred compensation). A government also must release the date the person was hired, the positions he/she has held while employed by the government entity, and other resume-type information, including educational institutions the person attended, diplomas or degrees the person earned, the names of the person's previous employers, the positions the employee previously held, and dates of the previous employment.

Section 22.7(11)(a)(5) also requires a government employer to make public "the documented reasons and rationale" for an employee's demotion, for his/her resignation in lieu of termination, or for the person's termination. In this context, the law says "demotion" means moving an employee to a lower pay grade.

WHAT TO DO IF YOUR REQUEST IS TURNED DOWN? Basically, you have two avenues of appeal. You can hire a lawyer and fight in district court to win the release of the records you want. Typically, however, this will cost you significantly, although if you prevail in court, you can win a court order requiring the government to reimburse some or all of your legal expenses. Your other option is to file a complaint with the Iowa Public Information Board, which has the authority to direct the government body to provide you with the records you were

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seeking. It is not necessary to hire a lawyer to pursue an IPIB complaint, and there is no cost to have your complaint heard by the IPIB. But be warned: Government bodies typically will have a lawyer representing them when your case is heard by the IPIB.

You can file an IPIB complaint online using the form linked to at www.IPIB.iowa.gov. You must file your complaint no more than 60 days after the government entity turns down your request for documents. Pay close attention to the calendar, because if you file your complaint even one day after the 60-day deadline, the IPIB probably will dismiss your case. If you decide to take your case to the IPIB, reach out to the Iowa FOI Council for advice on how to frame your complaint. The email address is iowaFOICouncil@gmail.com.