

Open Records

Guidance on the Iowa Open Records Law, *Code of Iowa* Chapter 22 | 2023



Find additional information on Open Records online at www.iowaleague.org.

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The purpose of this publication is to provide general guidance on the Iowa Open Records Law, *Code of Iowa* Chapter 22. This law generally provides that every person has the right to examine and copy public records and to disseminate these records or the information contained therein. Cities often have questions about the applicability of this law to day-to-day city business. The information contained in this report is designed to be general in nature and does not constitute legal advice. If there are specific legal questions about open records requirements, the city should contact its city attorney. The Iowa Open Records Law favors accessibility to public records, so situations where the applicability of the law is unclear should be resolved on the side of openness.

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Public Records Generally

The Iowa Open Records Law applies to government bodies, including city, county and state government. “Government body” includes any branch, department, board, bureau, commission, council, committee, official or officer of the foregoing or any employee delegated the responsibility for implementing the requirements of the Iowa Open Records Law. [Code of Iowa 22.1(1)]. Government records in the possession of persons outside of a government body, including city board and commission members, remain government records, governed by the Iowa Open Records Law.

What are Public Records?

“Public Records” include all records, documents, tapes, or other information stored or preserved in any medium, of or belonging to the government body. They also include all records relating to the investment of public funds, such as investment policies, instructions, trading orders, or contracts, whether in the custody of the public body responsible for the public funds, a fiduciary or other third party. [Code of Iowa 22.1(3)]

Are email messages and other electronic communications public records?

The definition of public records is broad enough to encompass email messages and other electronic correspondence. Cities are encouraged to adopt their own records retention policies and to follow them consistently. If the message remains recoverable then the city would be obliged to provide it upon request, though the requester can be charged a reasonable fee for retrieval. Cities should also be cautious regarding email and other forms of interactive electronic communications in respect to open meetings law. [Code of Iowa 22.1(3)]

How long must public records be kept by a city?

There is no one rule which governs all types of records and situations. Some records are required to be retained permanently, while others may be subject to a shorter recommended retention schedule.

The Iowa League of Cities, the Iowa Municipal Finance Officers’ Association and the Office of the State Archivist have developed a Record Retention Manual for Iowa Cities. This manual, available on the League’s website (www.iowaleague.org), is intended to assist officials in the management of records created and received in the conduct of city business. The manual also provides model record retention schedules. However, the advice of legal counsel should be obtained when establishing a records retention system.

Right to Examine, Copy and Publish Public Records

Who has the right to examine, copy and publish public records?

Every person has the right to examine, copy and publish public records. The examination and copying must be done under the supervision of the custodian of the public records or a person authorized by the custodian. The custodian may adopt and enforce reasonable rules to protect the public records. The custodian must provide a place for this work in the custodian’s office unless this is impracticable. In this event the person desiring to examine or copy must pay the necessary expenses of providing a place for the examination and copying. [Code of Iowa 22.3(1)]

Who is the “lawful custodian” of records?

The “lawful custodian” means the government body currently in physical possession of the public record. Each government body must delegate to particular officials or employees the responsibility for implementing an open records policy. In many cities, the city clerk or an individual in the clerk’s office performs this function. In larger organizations, there may be an individual located in each department. The law requires the government body to publicly announce the particular officials or employees responsible for implementing the open records policy. [*Code of Iowa 22.1(2)*]

When may public records be examined or copied?

Public records may be examined or copied during the customary office hours of the custodian. If the custodian does not have customary office hours of at least 30 hours per week, the records may be examined or copied at any time from 9 a.m. to noon and from 1 p.m. to 4 p.m. Monday through Friday, excluding legal holidays, unless the custodian and the person seeking the records agree to a different time. This may be the case in very small cities where there are limited regular office hours. [*Code of Iowa 22.4*]

Can a person be required to sign their name or state why they are requesting a public record?

No. While it may be helpful to obtain additional information from those requesting records in order to fulfill an ambiguous request, a government body cannot deny access to records when such information is not provided.

Can a city charge a fee to examine public records?

No, the city may not charge a fee to examine a public record as long as the public record is in the physical possession of its custodian. The custodian may charge a reasonable fee for supervising the examination and copying of records. The lawful custodian may adopt and enforce reasonable rules regarding the examination and copying of the records and the protection of the records against damage or disorganization. [*Code of Iowa 22.3 and 22.3A*]

Can a city charge a fee to copy public records?

If the custodian has copying equipment available, the custodian may charge a fee for the cost of the copying. However, the cost is limited to the actual cost directly attributable to supervising the examination, copying and providing the records. Cities are specifically prohibited from including costs such as employee benefits, depreciation, maintenance, electricity or insurance. [*Code of Iowa 22.3*] For requests that take less than 30 minutes to product, only the cost of making copies can be charged.

Do requests have to be made in person?

No, requests may be made in writing, by telephone or electronic means. [*Code of Iowa 22.3*]

Can a public record be photographed?

Yes, as long as the public records remain in the physical possession of its custodian.

Are there exceptions to the right to examine and copy public records?

Yes. There are two exceptions to the right to examine and copy records involving databases and data processing software [*Code of Iowa 22.2*] and also categories of confidential records discussed below that may be protected.

Confidential Records

Certain public records shall be kept confidential unless otherwise ordered by a court, released by the lawful custodian of the records or by another person duly authorized to release them. The Open Records Law identifies specific records deemed to be confidential. The complete list can be found in Section 22.7 in the *Code of Iowa*. Several examples include:

1. Attorney work product that is related to litigation or claims made by or against a city. [*Code of Iowa* 22.7(4)]
2. Peace officers' investigative reports, subject to certain exceptions. [*Code of Iowa* 22.7(5)]
3. Appraisals or appraisal information concerning the purchase of real or personal property for public purposes, prior to public announcement of a project. [*Code of Iowa* 22.7(7)]
4. Personal information in confidential personnel records of government bodies relating to identified or identifiable individuals who are officials, officers or employees of the government bodies. However, the following information relating to such individuals contained in personnel records shall be public records:
 - Name and compensation, including any written agreement
 - Date the individual was employed by the government body
 - Positions the individual holds or has held
 - Educational institutions attended by the individual, including diplomas and degrees earned
 - Names of previous employers, positions held and dates of employment
 - Any final disciplinary action taken that resulted in discharge (including those that resigned in lieu of termination or were demoted) and the documented reasons for such decisions. [*Code of Iowa* 22.7(11)] Note: Prior to taking disciplinary action, the employer must notify the employee in writing that the information placed in the employee's personnel file as a result of the disciplinary action may become a public record. [*Code of Iowa* 22.15]
5. Library records that would reveal the identity of library patrons. [*Code of Iowa* 22.7(13)]
6. Records of owners of public bonds or obligations. [*Code of Iowa* 22.7(17)]
7. Communications not required by law, rule, procedure, or contract made to the city or its employees by persons outside of the city government to the extent it is reasonably believed that such persons would not make such communications if such communications were to become available to the public, with certain exceptions. [*Code of Iowa* 22.7(18)]
8. Examinations including but not limited to cognitive and psychological examinations for law enforcement officer candidates. [*Code of Iowa* 22.7(19)]
9. Data processing software developed by a government body. [*Code of Iowa* 22.7(33)]
10. Information concerning security procedures, cyber security, critical infrastructure or emergency preparedness information developed and maintained by a government body for the protection of governmental employees, visitors to the government body, persons in the care, custody or under the control of the government body, or property under the jurisdiction of the government body, if disclosure could reasonably be expected to jeopardize such employees, visitors, persons or property. [*Code of Iowa* 22.7(50)]
11. Information in a record that would permit a governmental body to hold a closed session in order to avoid public disclosure of that information, until final action is taken on the subject matter of that information. [*Code of Iowa* 22.7(60)]
12. Tentative, preliminary, draft, speculative or research materials prior to completion in a form submitted for use or used in the actual formulation, recommendation, adoption or execution of any official policy or action by a public official. [*Code of Iowa* 22.7(65)]

13. Information indicating how or whether a public employee voted in a collective bargaining related certification, retention and recertification, or decertification election. [*Code of Iowa 22.7(70)*]

Note: This is not an all-inclusive list; the confidential records exception contains numerous exclusions that are not covered here. Legal counsel must be consulted in regard to confidential public record questions.

Are settlements of legal disputes public records?

Yes. When a government body reaches a final, binding written settlement agreement of a legal dispute where monetary damages or equitable relief are sought, or a violation of a rule or statute is claimed, the settlement agreement is a public record. If requested, the governing body must also prepare a brief summary of the resolution of the dispute, indicating the identity of the parties involved, the nature of the dispute, and the terms of the settlement, including any payments made by or on behalf of the government body and any actions to be taken by the government body. However, the summary need not be prepared if the settlement agreement includes the information required to be included in the summary. Any summary is also a public record.

Are customer utility records open records?

Iowa Code Section 388.9A does allow a city to exempt private customer information of a city utility or enterprise that identifies a specific customer and any record of a customer account from examination and copying under Chapter 22. However, it is important to seek the advice of a city attorney on this issue as it depends on numerous factors.

Is a letter from a citizen to the city on a specific matter confidential?

Generally, these records are not considered confidential. However, some communications of this nature can be confidential under *Code of Iowa 22.7(18)*, which allows a communication to be confidential if it is not required by law, made by someone outside of government and if the disclosure would result in people being discouraged from making such communication if they were available for general public examination. Cities have used this section to protect the identity of those registering complaints with the city.

Are notes or policy drafts considered open public records?

Tentative, preliminary, draft, speculative or research material can remain confidential prior to its completion for the purpose for which it is intended and in a form prior to the form in which it is submitted for use or used in the actual formulation, recommendation, adoption or execution of any official policy or action by a public official authorized to make such decisions for the governmental body or the government body. This exception does not apply to public records that are actually submitted for use or are used in the formulation, recommendation, adoption or execution of any official policy or action of a governmental body or a government body by a public official authorized to adopt or execute official policy for the governmental body or the government body.

How much time does a city have to respond to a request to examine a public record?

Records are required to be made available at any time during the customary office hours of the lawful custodian of the records. The law does allow the custodian a good faith reasonable delay for the following reasons:

- To determine whether the custodian is entitled to seek an injunction preventing examination.
- To determine whether the record is a public record or a confidential record.
- To determine whether a confidential record should be available for inspection and copying. A reasonable delay for this particular purpose cannot exceed twenty calendar days and ordinarily should not exceed ten business days. [*Code of Iowa 22.8*]

What options are available if the government body and a person seeking records do not agree as to whether a public record is confidential under Iowa Law?

Disputes regarding public records can be received by the following entities:

District Court

The district court may grant an injunction to restrain examination or copying of public records after holding a hearing upon reasonable notice as determined by the court to the persons requesting access to the records. Before the court can grant the injunction, it must find that the examination would clearly not be in the public interest and that it would substantially and irreparably injure any person or persons. The court must take into consideration that it is the policy of the law that free and open examination of public records is generally in the public interest. [*Code of Iowa 22.8*]

Iowa Public Information Board (IPIB)

This board can receive complaints alleging open records violations. The office can seek resolution of such complaints through informal resolution. The board has the authority to formally investigate complaints and determine if there is probable cause to believe a violation has occurred. If probable cause has been found, the board also has the authority to prosecute the respondent in a contested case proceeding and impose penalties.

The Office of Ombudsman

This office serves as an independent agency to which citizens can air their grievances about state and local governments. The office can facilitate communications between citizens and government and can make recommendations to improve administrative practices and procedures.

Who may bring an action for such an injunction?

The lawful custodian of a government record, or another government body or person who would be aggrieved or adversely affected by the examination or copying of such a record.

[*Code of Iowa 22.8*]

Enforcement

Any aggrieved person, any taxpayer or citizen of the state of Iowa, the attorney general, any county attorney or the Iowa Public Information Board can bring an action to enforce the Iowa Open Records Law. Enforcement actions would be filed against the lawful custodian of the public record and any other persons who would be appropriate defendants.

What happens if a violation of the Iowa Open Records Law is substantiated?

The lawful records custodian and other appropriate persons will be ordered to comply with the Iowa Open Records Law by either a court or the Iowa Public Information Board (IPIB). Damages

can also be assessed against the persons who participated in violating the law. The amount of damages can range from \$100 to \$500 for those that simply participated in violating the law and can increase from \$1,000 to \$2,500 for knowing violations. A court can also order payment of costs, including attorney fees. A court can also order the removal of a person from office if the person has been assessed damages for a prior open records law violation. IPIB can seek the removal of a person from office through the initiation of a court action. In addition, IPIB can impose appropriate remedies calculated to declare, terminate or remediate any open records law.

Can a person charged with a violation of the Iowa Open Records Law claim they did not know the provisions of the law?

No. Ignorance of the law is not a defense.

Can the Iowa Open Records Law be enforced in other ways?

Yes. The law can be enforced not only by injunction but also by mandamus. Mandamus is a legal proceeding that seeks to require a governmental body to do what it is lawfully required to do. Rights under the Iowa Open Records Law may also be enforced by an action for judicial review according to the provisions of the Iowa Administrative Procedure Act. [*Code of Iowa* 22.5 and 22.10]

Iowa Fair Information Practices Act

This act requires that the information policies of state agencies are clearly defined and subject to public review and comment.

Are cities required to adopt the policies mandated by this act?

No. However, a city may choose to adopt such policies. If it does choose to adopt such policies, it must follow the procedure specified in *Code of Iowa* 22.12.

About the Iowa League of Cities

The Iowa League of Cities serves as the unified voice of cities, providing advocacy, training and guidance to strengthen Iowa's communities.

The League provides guidance.

Through membership services, research, publications, trainings and other collaborations, the League provides guidance and serves as the resource for member cities.

The League leads a grass roots advocacy effort for local government.

The League promotes excellent government, effective public policy and Home Rule among members as well as state and federal lawmakers.

The League keeps cities informed with a constantly updated slate of workshops and publications.

The League provides education and training for elected and appointed city officials through workshops, publications, the web and personal interactions.

- Monthly *Cityscape* magazine
- *League Weekly* e-newsletter
- Weekly *Legislative Link* during the state's legislative session
- Annual listing of New Laws related to cities after each legislative session
- Annual series of workshops on various topics
- Action Calls on immediate legislative concerns at the state or federal level
- Special Reports on topical issues
- Biennial Directory of League member cities

The League is a resource for insurance and investment needs.

Programs created by or sponsored by the League provide cost-effective quality services to cities. The League's affiliated programs offer health, workers' compensation, liability and casualty coverage as well as a prosperous, liquid asset investment program. Other programs assist cities in developing services to better serve their citizens.