Iowa Attorney General Sunshine Advisories

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General Information

Open Meetings? Public Records? (January 1, 2005)

Who informs public officials about Sunshine Laws?

People who are appointed or elected to public office assume a big responsibility to act in accordance with Iowa laws governing open meetings and public records. These "sunshine laws" grant the public specific rights of access -- and impose specific duties on public officials. But who assures that public officials are knowledgeable about these laws so that they may carry out their duties? Are officials on their own to learn the applicable provisions of law? On whose shoulders does the obligation fall to provide public officials with information?

Iowa statutes charge certain individuals with the obligation to provide information about "sunshine laws" to public officials:

Appointing Authorities: Under Iowa law, the authority who appoints members of a governmental body has the duty to provide the members with information about the Open Meetings Law and the Public Records Law. (Iowa Code sec. 21.10.) For example, the Governor, the General Assembly, and county boards of supervisors have the duty to provide information to members of agencies, boards or commissions whom they appoint.

Commissioner of Elections: The appropriate commissioner of elections has the duty to provide information to members of elected governmental bodies. Iowa Code sec. 21.10. The Secretary of State is the appropriate "commissioner of elections" for state governmental bodies. (Iowa Code sec. 47.1.) The county auditor is the appropriate "commissioner of elections" for other governmental bodies. (Iowa Code sec. 47.2.)

Iowa Public Information Board (IPIB): The Iowa Public Information Board's duties includes providing training opportunities to governmental bodies and people subject to the requirements of Iowa Code Chapters 21 and 22.

Remember: Public officials must be knowledgeable about the Open Meetings Law and the Public Records Law in order to carry out their duties. The law imposes an obligation to "provide information" to these public officials.

Remedies and Enforcement

What is the Cost for Noncompliance? (December 1, 2003)

Individual officials can be penalized for violating Iowa's sunshine laws, costs can be costly to a governmental body.

Compliance with Iowa's Open Meetings Law and Public Records Law is serious business. The Iowa Public Information Board (IPIB) can assess damages, void action taken in violation of the open meetings law, and require a government body or official to take any appropriate remedial action. The board does not have the authority to unilaterally remove a person from office, but it may file an action to remove someone under Chapters 21 or 22, which include "two strikes and you're out" provisions that direct the court to order the removal of an official upon his or her second violation during a term.

A court can assess monetary damages against officials who violate the laws. Citizens who go to court and successfully enforce violations of the laws will recover costs and attorney fees. Who pays the damages assessed and the costs and attorney fees awarded when violations are established in court? Where does the money go?

The statutes allocate monetary costs for violating either the Open Meetings Law or the Public Records Law according to the following principles:

- Monetary damages against individuals. Each member of a governmental body who is found to have participated in a violation (and has no defense) will be assessed a penalty of $100 to $500 or between $1,000 and
  $2,500 if the violation was knowing. This money is paid to state government if the violation is by state officials, and to local government if the violation is by local officials.
- Attorney fees awarded to citizens. Citizens who bring successful enforcement actions in court will be awarded the costs of the litigation and reasonable attorney fees for the trial and any appeal. Litigation costs and attorney fees are paid by any officials who are assessed damages; if no one is assessed damages, costs and attorney fees are paid from the budget of the governmental body.

Remember: compliance is serious business. Iowa's sunshine laws can impose significant penalties for violations.

"But My Lawyer Said This Was Legal!" (August 1, 2004)

Can legal advice shield sunshine violators?

Public officials who violate Iowa's Open Meetings or Public Records Laws are subject to paying monetary damages up to $2,500, as well as attorney fees and court costs. But what if a public official acted in reliance on advice of counsel? Reasonable reliance on legal advice may be a defense to individual liability, but governmental bodies remain subject to injunctive relief and attorney fees and costs.

The following principles address when individual public officials who reasonably rely on legal advice may defend against claims for monetary damages, attorney fees and costs:

- Whose legal advice counts? Public officials may rely on a decision of a court, or a formal or advisory opinion of the Iowa Public Information Board, the Attorney General, or the attorney for the government body. Iowa Code sec. 21.6(3)(a)(3), 22.10(3)(b). Advice from a personal acquaintance who is a lawyer would not constitute a legal defense to monetary damages or attorney fees and costs.
- Must legal advice be in writing? The decision, opinion, or advice must either be in writing or memorialized in the minutes of the meeting at which the governmental body's lawyer gave a formal oral opinion.
- Who pays attorney fees and costs? When a violation is proven, all public officials who "reasonably relied" on legal advice (within the scope of the statutes) are shielded from liability for monetary damages, attorney fees and costs. Iowa Code sec. 21.6(3)(a)(3), 22.10(3)(b). If no public officials remain on whom liability can be imposed, attorney fees and costs are paid "from the budget of the offending governmental body or its parent."Iowa Code sec. 21.6(3)(b), 22.10(3)(c).

Remember: reliance on legal advice is a narrow defense to assessment of monetary damages against individual public officials, or payment of attorney fees and costs by them. But, if a violation is proven, governmental bodies remain accountable.

Two Strikes and You're Out! (June 1, 2005)

Courts can remove public officials from office on the second violation of sunshine laws
Courts in Iowa can oust an official from office for violating "sunshine laws." (See Iowa Code sec. 21.6(3)(d) and 22.10(3)(d)). In fact, courts "shall" remove from office any public official on the second violation for which monetary damages are assessed.

In summary, penalties for violating sunshine laws the second time include the following:

- **Removal from Office:** Upon finding that a government body has violated the Open Meetings Law, or that a lawful custodian has violated the Public Records Law, a court shall remove the person from office if that person has engaged in one prior violation for which damages were assessed during the person's term. Iowa Code secs. 21.6(3)(d), 22.10(3)(d).
- **Injunction and Civil Contempt:** Upon finding that a government body has violated the Open Meetings Law, or upon finding that a lawful custodian has violated the Public Records Law, a court may issue an injunction punishable by civil contempt ordering members to refrain from future violations for one year. Iowa Code secs. 21.6(3)(e) and 22.10(3)(a). If a second violation occurs while the injunction is in place, the official could be held in civil contempt. This can mean additional damages, or even jail time. See Iowa Code sec. 665.4.
- **Remember:** Persons who are elected or appointed to serve Iowans have a duty to comply with Iowa's sunshine laws. Responsible public officials don't "strike out!"

Can Members of the Public Sue to Enforce Iowa's Sunshine Laws? (May 1, 2006)

Yes - the law arms the public with remedies.

Iowa's Open Meetings and Public Records laws (Iowa Code ch. 21 and 22) are truly the "People's Laws" - meaning that by statute a broad range of people are granted authority to go to court or to file complaints with the Iowa Public Information Board to seek enforcement of Iowa's "Sunshine Laws."

Members of the public can take steps to enforce Iowa's Sunshine Laws when they have a good faith basis to believe the law has been violated, and if they are one or more of the following:

1. A citizen of the state of Iowa.
2. A person who pays taxes of any type to the state of Iowa.
3. A person individually aggrieved by a violation of Iowa's Sunshine Laws, such as a person wrongfully denied access to a public record or an open meeting.

People who retain legal counsel to sue a governmental body under Iowa's Open Meetings laws, or sue the lawful custodian of a public record under Iowa's Public Records laws, are entitled to an award of costs and attorney fees if they are successful in establishing a violation of the law. (Iowa Code sec. 21.6(3)(b) and 22.10(3)(c)).

Depending on the circumstances of the violation, a court could also issue an injunction to require compliance with the law in the future, void action taken wrongfully in a closed session, assess damages against the violator, or remove a second-time offender from office. (See Iowa Code sec. 21.6 and 22.10).

The Iowa Public Information Board has many of the same powers, including requiring future compliance and remedial action, imposing damages, and voiding action taken wrongfully in closed session. (See Iowa Code sec. 23.10).

Remember: Sunshine Laws can be enforced upon complaint to the Iowa Public Information Board or in court by all citizens of Iowa, all persons who pay taxes to Iowa, and all other persons who are harmed by government's failure to comply with the law. In every sense of the word, Sunshine Laws are the "People's Laws."

Open Meetings Laws

Agendas and Advance Notice

Advance Agendas for Public Meetings (March 1, 2002)

Agendas are the public's invitation to watch government at work.

Agendas for public meetings play a vital role in the ability of citizens to watch the decision-making process that affects public affairs at every level of government in Iowa. Clear and effective agendas are a matter of good policy, because they keep citizens informed and help public officials be better prepared for meetings. Good agendas also are a matter of law -- Iowa's Open Meetings Law.

Here are some basic principles for advance agendas for public meetings:

- Tentative agendas must be posted in a prominent place at least 24 hours in advance of the meeting, except in case of a bona fide emergency. (Iowa Code section 21.4.) For example, tentative agendas may be posted at an accessible bulletin board designated for that purpose at the office and provided to news media who have filed a request for notice.
- Agendas must provide notice sufficient to inform the public of the specific actions to be taken and matters to be discussed at the meeting. (An agenda that merely states "Approve minutes, old business, new business" does not provide reasonable notice to the public.) Notice also must include the time, date and place of meetings.
- The precise detail needed to communicate effectively will depend on the situation, including whether the public is familiar with an issue. The less the public knows about an issue, the more detail is needed in the tentative agenda.

For example, an agenda listing "mid-semester review of administrative performance" probably is sufficient to inform the public that personnel issues will be discussed, but it would not be sufficient to alert the public about a general discussion of administrative issues.

Officials and citizens alike should remember: Meeting agendas are the public's invitation to watch government in action. So, agendas should take care to describe the specific actions to be taken and matters to be discussed in public meetings.

Agendas for Meetings -- Stamp it, Mail it! Are public officials required to mail agendas in advance of meetings? Who pays for copies and postage? (February 1, 2005)

Iowa law requires governmental bodies (except township trustees) to provide advance notice of the time, date, and place of each meeting -- and the tentative agenda. (See Sunshine Advisory, "Advance Agendas for Public Meetings." pg. 9) Such information is crucial for anyone who wants to follow the work of government. But how does the public actually receive this information in advance of the meeting? Is the governmental body required to mail copies of the notice and tentative agenda? Who pays for copies and postage?

- News Media: Iowa law permits news media to file requests with governmental bodies to receive the notice and tentative agenda for all meetings. The governmental body must pay all expenses related to making copies and mailing the notice and tentative agenda to the news media that have filed a request. Iowa Code sec. 21.4(1). (If no request is filed, there is no obligation to mail the notice and the tentative agenda.)
- General Public: Iowa law does not entitle members of the general public to file requests to receive the notice and tentative agenda by mail. As a result, governmental bodies may, but are not required to, impose charges for the actual costs of making copies and mailing notices and tentative agendas to the general public. Iowa Code sec. 22.3.
- Alternate Sources: Members of the general public who do not receive copies by mail may rely on the notices and tentative agendas posted at the principal office of the governmental body or, if no office exists, at the building where the meeting will be held. Iowa Code sec. 21.4(1). Of course, the governmental body also may choose to post the information on the Internet -- or to e-mail the information to persons who have provided e-mail addresses.

Remember: The Open Meetings Law sets forth only minimum requirements. Public officials can go beyond minimum measures at little additional expense, for example, by posting the notice and the tentative agenda for a meeting on the Internet, or by e-mailing the notice and tentative agenda to those who have provided e-mail addresses.

Handling New Ideas at Public Meetings; Only emergencies trump notice and agenda requirements (October 1, 2006)

Governmental bodies generally must give notice at least 24 hours prior to a meeting, and must include the tentative agenda. (Iowa Open Meetings Law, IA. Code sec. 21.4.) The public relies on the tentative agenda to know what matters will be discussed at the meeting. (See Advance Agendas for Public Meetings (March 1, 2002) pg. 9)

But, what if a new idea comes up in the course of discussion while the meeting is underway? How much room does the law allow for expanded discussion when a tentative agenda has been issued?

Unless an emergency requires immediate action, only matters included on the tentative agenda may be discussed at a meeting. (See March 2004 Advisory, Emergency Meetings: Can Good Cause Justify Less Notice? pg. 29)

Governmental bodies should apply these two rules of thumb to determine what discussion or action is permitted under the scope of items on a tentative agenda:

- Ordinary Meaning: Words in the tentative agenda should be measured by the meaning to a "typical citizen" or member of the news media. Do the words convey what topics will be discussed at the meeting?
- Sufficient Detail: The sufficiency of the detail on the tentative agenda should be viewed in the context of surrounding events. Did the agenda give the public a full opportunity to participate? Factors in assessing the opportunity for participation may include whether the topic had been on a previous agenda and whether the meeting was widely publicized.

Remember: Spirited discussion may trigger exciting new ideas. But public bodies must be sure that the tentative agenda provides reasonable notice to the public in ordinary terms and in sufficient detail. Rarely, and only if a real emergency exists, should a body discuss and vote on a matter not included on the tentative agenda.

Notice for Meetings of Governmental Bodies: What if more than one law requires notice? (February 1, 2007)

A basic tenet of Iowa's Open Meetings Law is that a governmental body must provide advance notice of the time, date and place of each meeting, plus a tentative agenda. (Iowa Code sec. 21.4.) But, in a few instances, a second statute also may require specific advance notice of a meeting. How do public bodies avoid the confusion of two notices? What notice should be sent?

The Open Meetings Law says that if a second statute "requires specific notice of a meeting, hearing, or intent to take action," then compliance with the second statute constitutes compliance with the notice requirements of the Open Meetings Law. (Iowa Code sec. 21.4(4).)

Here are practical guidelines for officials about handling notice requirements:

- Assume the notice requirements of the Open Meetings Law apply: In the absence of another specific statute, notice complying with section 21.4 (1) must be posted for the public and distributed to media who have requested it – including time, date and place and tentative agenda.
- Compare the notice requirements of other applicable statutes: A statute may require specific notice. For example, a county board of supervisors acting on county zoning must give notice of the time and place of a hearing, publish it as required by law, and include more information about the location of the affected area. (Iowa Code sec. 335.6.) If specific notice applies, compliance with the specific statute constitutes compliance with the Open Meetings Law.
- Consider posting and distributing notices as provided by the Open Meetings Law: Even if the law requires just one notice to issue, posting and distributing the notice additionally under the Open Meetings Law can avoid confusion and give the public consistent access to notices.

Remember: Notice of meetings under the Open Meetings Law is essential. When another statute requires notice in a specific manner that differs from section 21.4(1), public officials should consider steps to avoid confusion and assure notices reach the public.

Closed Sessions

Closed Governmental Meetings – Know the Nuts and Bolts for Closed Sessions (July 1, 2002)

Closed sessions are serious business: the public is asked to leave so that a council, board, commission or other governmental body can hold discussions behind closed doors. Iowa's Open Meetings Law, Iowa Code Ch. 21, spells out very specific rules. Here are steps government bodies must take for a meeting to be closed:

- **Check the statute**. Open meetings only can be closed for 12 specific reasons set out in the law, such as discussion of pending litigation or certain personnel issues. If none of the law's reasons apply, the session may not be closed.
- **Announce the reason**. The governmental body must publicly announce the reason for closing the meeting and record the reason in the minutes.
- **Take a vote**. Closing requires an affirmative vote of two-thirds of the members, or all members present. For example, a five-member body needs either 4 votes to close (two-thirds of all the members) or 3 votes (if only three are present and three is a quorum.)
- **Keep records**. The governmental body must keep detailed minutes and must tape-record the closed session. Detailed minutes must record who is present, all discussion, and any action taken. The minutes and tape are sealed and only can be opened under a court order.
- **Stay focused**. A closed session is authorized only to the extent necessary for the reason cited. There must not be discussion of other matters.
- **Return to open session for final action**. Final action only can be taken in open session. For any final decision, a motion and vote must be done in open session.

Be vigilant about "what goes on behind closed doors."

Recording What Goes on Behind Closed Doors (April 1, 2003)

It is very serious business when a governmental body goes into closed session and asks the public to leave. The body must vote to close the meeting and only can do so for certain reasons. But closed meetings must be documented. How are they documented -- and when can the public have access to the information?

Public officials must document closed sessions and make a complete record:

- Government bodies must keep detailed minutes of all discussion, persons present, and actions occurring at a closed session, and must tape-record the entire closed session.
- The minutes and tape must be sealed and maintained for at least one year.

Minutes and tape of a closed session are not open for public inspection. However, the law provides situations in which minutes and tape recordings can be accessed:

- Members of the government body who were present at the closed session (or who were absent but lawfully could have been present) are entitled to access the tape and minutes.
- A court may permit inspection of minutes and tape by a party bringing an enforcement action for violation of the Open Meetings Law (IA Code Ch. 21.) The court must weigh the prejudicial effects to the public interest against the probative value of evidence in the action.

Remember, discussions in closed session are recorded for a purpose: Minutes and tapes may reveal later if the session was closed improperly, or if officials strayed into discussion of matters that should have been considered in open session. This could happen if a court ordered all or part of the closed session minutes and tape be disclosed to a party bringing an enforcement action. The law is designed to protect the public interest and assure that nothing improper goes on behind closed doors.

Closed Sessions: Who's Left Inside When the Doors Close? (October 1, 2003)

Government bodies often conduct open meetings that include a closed session. Closed sessions are lawful, but just who is allowed to remain when the doors close? Are only members of the government body permitted in the room? Can they meet privately with their attorney? Is it necessary to close the session at all if no members of the public are present? Can the government body just ask the public to step out of the room so the members can talk in private?

Here are basic principles on who may attend closed sessions:

- **Closed sessions may include only people who are necessary to the matter under consideration.** Government bodies may meet privately with legal counsel to discuss litigation that is pending or imminent, if disclosure would likely prejudice or disadvantage the body. Other individuals, including government staff, may be included in a closed session discussion as needed -- for example, to present confidential investigative records to the body.
- **The public may not be asked to leave an open session.** Iowa's Open Meetings Law does not allow public officials to simply ask members of the public to step outside during an open session. Government bodies may close meetings as provided in the law (Sec. 21.5), but when a body is in open session, it is never appropriate for the body to ask citizens to leave or for the body to take a break so that a quorum of the body can talk in private.
- **Open sessions remain open -- even when no one else is in the room.** Unless a government body goes through the proper steps to close a session, the meeting remains open, and the confidentiality that attaches to closed session materials does not apply (Sec. 21.5.) This means that materials for the closed session, such as agenda packets, minutes or tape recordings, will be open records subject to examination and copying.

Remember: clearing the room for a closed session only may be done within the law. The public cannot be excluded from an open session in order to facilitate a private discussion among members of a governmental body. Until the session actually closes, the public stays.

Closed-Session Agendas: Is an agenda required for a closed session? (July 1, 2004)

Meeting agendas posted in advance are the public's invitation to watch government in action. The public would have no way to decide whether to attend a meeting in the absence of an advance, descriptive agenda that lists the topics to be discussed in open session. But how does the agenda requirement apply to closed sessions, when the public cannot attend? Does the advance agenda really need to describe the topics to be discussed in closed session? If the public cannot attend a closed session, what is the point of the agenda?

Iowa law does not exempt a governmental body from agenda requirements for closed sessions. Posting agendas for closed sessions gives the public an opportunity to:

- **Check on why the session is closed**. Only a few topics can justify a closed session. Iowa Code sec. 21.5(1)(a-l). The public has an interest in examining the agenda to be sure that the reason for closing the session is among the reasons authorized by law.
- **Watch for the vote to close a session**. Governmental bodies cannot go into closed session without an affirmative vote of two-thirds of the members of the body, or an affirmative vote of all members present at the meeting. Iowa Code sec. 21.5(1). The public is entitled to hold accountable those members who vote to close a session and assess whether they have complied with the law.
- **Watch for final action in open session**. Even when a closed session is authorized by law, any final action must be taken in open session in full view of the public. Iowa Code sec. 21.5(3). The public needs to know what topic is under consideration in closed session in order to decide whether to remain at the meeting site and await a possible vote of the governmental body as the "final action" on that topic.

In sum, closed session topics must be disclosed on the agenda in advance to give the public an opportunity to assess the reason for a closed session, hold accountable the members who vote to close a session, and decide whether to await a vote as final action.

Are Closed Sessions Confidential? Yes, but tapes and minutes may be released. (November 1, 2004)

Iowa's Open Meetings Law defines limited grounds for government bodies to hold closed sessions of government meetings. (Iowa Code sec. 21.5(1).) The law also requires a government body to maintain sealed tape recordings and minutes of closed sessions for at least one year.

Does the public ever have access to these tapes and minutes? What reasons could justify release of sealed tapes and minutes, and what procedures must be followed?

A court order is needed to release closed session tapes and minutes. The following principles govern the reasons and the process under which such sealed records may be released:

- **Pending Litigation:** Generally, a person may access closed session tapes and minutes only in a court case brought to enforce the Open Meetings Law. A person who sues alleging violations of the Open Meetings Law may request access to the minutes and tapes as evidence. (Iowa Code sec. 21.5(4).) Courts have also allowed access to litigants involved in contract disputes with government bodies.
- **Court Inspection:** A judge will usually review the records personally to determine whether to allow access at all and, if so, how much of the records to release. The release of the records is to the litigants only -- the records do not become available to the public as open records. (Iowa Code sec. 21.5(4).)
- **Balancing Test:** A court decision to release sealed tapes and minutes is based on weighing the prejudicial effects to the public interest of the disclosure against the probative value of the records as evidence in the pending litigation. (Iowa Code sec. 21.5(4).) Courts do not allow parties in litigation to engage in "fishing expeditions" into sealed records.

In sum: Sealed tapes and minutes of closed sessions may be released by a court and admitted into evidence to hold government officials accountable. Government officials are not guaranteed confidentiality when they hold closed sessions under the Open Meetings Law.

Handling Government Personnel Matters: Can governmental bodies close a session to discuss hiring, performance evaluations, or discipline? (November 1, 2005)

Governmental bodies and their employees, like their private sector counterparts, often wish to consider hiring decisions, performance evaluations, and disciplinary matters in confidence. But does Iowa's Open Meetings Law allow a closed session to discuss personnel matters confidentially when the employer is a governmental body?

How does the law balance the desire for confidentiality with the need for public accountability? Confidentiality is possible -- but only if certain conditions are met.

A closed session may be held to evaluate the professional competency of an individual only under the following terms and conditions contained in Iowa Code sec. 21.5(1)(i):

- Limited Purpose: The closed session must be limited to appointment, hiring, performance or discharge of an individual. Not every personnel matter will fit within these topics.

- Needless and Irreparable Injury: The closed session must be necessary to prevent needless and irreparable injury to the reputation of the individual whose appointment, hiring, performance or discharge is under consideration.
- Request for Closed Session: The closed session must be requested by the individual whose appointment, hiring, performance or discharge is at issue. No request, no closed session!

In summary, although governmental bodies facing serious personnel decisions may wish to discuss the matters confidentially, public accountability requires strict compliance with the Open Meetings Law. The reasons for closing a session are limited, the necessity for closing the session must turn on preventing needless and irreparable injury to an individual's reputation, and the individual at issue must request a closed session.

Can Public Bodies Negotiate in Private for the Purchase of Real Estate? How does Iowa's Open Meetings law operate when public bodies are purchasing real estate? (April 1, 2006)

When private parties negotiate a real estate transaction, they do not generally "show their cards" to the other side at every step of the way. What about public bodies subject to Iowa's Open Meetings law (Iowa Code ch. 21), such as a city council or county board of supervisors? Are they required to negotiate the purchase of real estate in full public view?

Public bodies subject to Iowa's Open Meetings law must fully disclose to the public how they spend public funds to purchase real estate, but, for a brief period of time, they may keep some negotiations private -- under very limited circumstances. (See Iowa Code sec. 21.5(1)(j)).

A public body may vote in open session to go into a closed session in connection with the purchase of real estate if both of the following are true:

- The body will go into closed session to discuss the purchase of particular real estate and not to generally discuss whether or when to purchase real estate.
- The body reasonably expects that premature disclosure of the discussion could increase the price the body would have to pay for that particular property.

In addition, as soon as the real estate transaction discussed in closed session is completed, all minutes and tapes of the closed session must be disclosed to the public.

Remember: Public bodies may conduct some real estate purchase negotiations privately, but only under very limited circumstances - and they must disclose all details when real estate transactions are completed.

Closed Sessions for Governmental Bodies, Motions to close a meeting, and any final action, must be open. (September 1, 2006)

Iowa's Open Meetings Law allows governmental bodies to hold discussions in closed session, but only for purposes narrowly defined by the law. See Iowa Code sec. 21.5(2)(a)-(l). How does the Open Meetings law balance public accountability with a need for confidentiality?

What about the motion to go into closed session? And what about any final action that is taken? Should a motion and final action occur in open session? In short, there are **three steps** for handling closed sessions: **Start** with a motion in open session, **close** only for directly-related discussion, and **conclude** with any final action in open session.

Governmental bodies in Iowa should follow these three steps to move from open session into closed session, and to return to open session for any final action:

- **Motion to Close**: A governmental body may close a session only by vote of either 2/3 of all members, or all members present. The session may close only for one of 12 statutory reasons. Iowa Code sec. 21.5 (1)(a)-(l). The vote must be recorded in open session minutes, must show the vote of each member present, and must reference a specific statutory exemption for a closed session. Iowa Code sec. 21.(2).
- **Directly-Related Discussion**: A governmental body "shall not discuss any business during a closed session that does not directly relate to the specific reason announced" for the closed session. Iowa Code sec. 21.5(2).
- **Final Action**: Final action, if any, must be taken in open session, unless some other statute permits final action to be taken in closed session. Iowa Code sec. 21.5(3).

Remember, there are three steps for closed sessions: *Start* with a motion in open session. *Close* only for directly-related discussion. *Conclude* with final action (if any) in open session.

Minutes

Minutes of Public Meetings – Minutes Should be Accurate, Complete, and Accessible (May 1, 2002)

Accurate minutes of public meetings are a key tool for conducting the public's business in an open and accountable fashion. Minutes are a vital organizational tool for any government body, and they are a crucial way for citizens to review or examine public action taken on their behalf.

Minutes create a permanent record -- accessible upon request -- of who met, when they met, what they decided, and by what votes. Iowa's Open Meetings Law (Ch. 21 of the Iowa Code) spells out the basic requirements for minutes.

Here are some key principles of Iowa law for minutes of public meetings:

Minutes of an open session shall always include:

- The date, time and place of a meeting, and which members were present.
- Actions taken - with sufficient information to reflect the members' votes (no secret ballots.)

If a closed session is held, minutes and decisions in open session shall include:

- The reason for holding a closed session, with a reference to the specific legal basis.
- The roll call vote of each member on the question of whether to go into closed session.
- Final action on any matter discussed in closed session (no final votes in closed session.)

If applicable, open session minutes shall also reflect:

- If the meeting was held on less than 24 hours notice, an explanation of why it was impossible or impractical to provide more notice.
- If the meeting was held at a time or place not reasonably accessible to the public, an explanation of why it was impossible or impractical to meet at an accessible time or place.
- If the meeting was held electronically (by telephone, for example), an explanation of why it was impossible or impractical to hold the meeting in person.

Public Access to Open Meetings

Lights! Cameras! Action! -- Public Access to Open Meetings (December 1, 2001)

Did you know that any member of the public has the right to take photographs or make tape recordings at any open session of a governmental meeting?

Public officials are occasionally surprised to learn that members of the public have the right to use cameras or recording devices during the open session of a governmental meeting.

Members of the public, on the other hand, are occasionally surprised to learn that while they have the right to observe and record a meeting, they do not have the right to actively participate.

Consider the following tips when planning or attending a governmental meeting:

When faced with the challenge of managing a well-attended meeting, public officials should **appreciate public attendance** -- that people care enough to come and watch government in action. Public officials are entitled to adopt **reasonable rules of conduct** to assure that the meeting is orderly and is not interrupted by spectators.

Public officials must permit the use of cameras or recording devices - the public has the right to use them, but members of the public should also be respectful; a meeting is serious business, not just a photo opportunity.

Members of the public who wish to address the government body should **notify public officials in advance**, so time for public comment on agenda items can be scheduled in the meeting at the discretion of the public officials.

While not required, public officials should consider routinely adding to the agenda a **structured time for public comment**. Allowing reasonable public participation gives Iowans a unique opportunity to connect with their government.

Working together, public officials and citizens can foster open and effective government meetings. Embrace public access to open meetings and smile for the camera!

Quorum and Voting

Counting Heads at a Public Meeting: How Many Officials are Needed for a Quorum? (July 1, 2003)

Iowa law requires a "quorum" to be present before official action can be taken by a governmental body, such as a board, commission or council. **But, how many officials must be present to make up a quorum?**

A "quorum" is the number of members entitled to vote who must be present in order for business to be transacted legally. The number is set by law, but different public bodies have different quorum requirements.

Here are some rules of thumb for counting a quorum:

- State boards, commissions and councils: The Iowa Administrative Procedure Act requires no less than two-thirds of the eligible voting members be present to constitute a quorum, unless a specific statute sets a different quorum requirement. (Iowa Code §17A.2(1)) Some statutes lower the requirement to a simple majority of voting members.
- County, city or school governmental bodies: A quorum is a majority of the number of members fixed by statute. (See Iowa Code sections 331.302(13), 363.6, and 279.4.)

Keep in mind that a "quorum" only relates to how many voting members must be present to conduct business. Different public bodies have different rules on how many of the members present must vote for a particular action for the body to take official action. A majority vote of those present and voting (not counting, for example, those who don't vote because of a conflict of interest) will commonly, but not always, be sufficient.

Quorum and voting requirements can be confusing, but it is imperative that all public officials know what is required for their own boards, commissions or councils before they vote at a public meeting. If there is a question about quorum requirements, public officials or citizens should ask the lawyer who represents the public body.

"All in Favor, Say Aye . . ." Governmental bodies should conduct votes in a manner that ensures the public is informed and officials are accountable. (September 1, 2003)

When governmental bodies meet, final action on any issue always must be taken in open session. But how accountable are the individual members of these bodies for the votes they cast? Can a citizen who attends a meeting identify which members voted, and how they voted? How does Iowa's Open Meetings Law help provide accountability to the public for votes in open session?

Here are principles that should be followed to assure accountability to the public for the vote of each member of a governmental body on each issue:

- *Never use secret ballots.* The vote of each member must always be cast in public. This is true even when the vote constitutes the final action on a matter considered in closed session.
- *Always take a roll call vote to go into closed session.* Roll call votes are required (Iowa Code sec. 21.5(2)) to go into closed session and may be useful in other situations.
- *Be careful about using voice votes* – "all in favor say aye, all opposed say nay." Iowa law says "the vote of each member present shall be made public at the open session," in addition to being recorded in minutes. (Iowa Code sec. 21.3.) With voice votes it may be hard for observers to tell who voted, or how they voted. The Attorney General's Office advises governmental bodies to avoid confusion. First, the chair should clarify who voted when the result is announced, or if some members remained silent. Second, use a voice vote only if a vote is unanimous. Unless a voice vote is unanimous, the public may not be able to determine who was speaking and how each member voted. If in doubt, take a roll call vote.

Remember: the public is entitled to know how each member of a governmental body votes at a public session. The minutes of a meeting will reflect the vote later -- but minutes are no substitute for providing accountability during the open meeting.

Rules of Conduct

Rules of Conduct for Open Meetings: Tips to Strengthen Citizen Participation (January 8, 2003)

Under Iowa's Open Meetings Law, citizens have the legal right to attend, observe, listen, use cameras, and use recording devices at open sessions of all meetings conducted by a governmental body (Iowa Code Ch. 21). On the other hand, the Open Meetings law does not give citizens a right to speak.

Here are some tips on how citizens and public bodies can work together to keep citizens informed about government business, and help them communicate effectively with public officials.

Public bodies must post agendas in advance at their principal office or the building where the meeting will be held. Many public bodies also take advantage of the electronic age to post agendas on the Internet. We applaud such outreach and encourage public bodies to use the Internet to communicate effectively with the public.

Citizens may request copies of agenda materials before an open meeting. Agenda materials usually are finalized several days before a meeting. The Public Records Law enables citizens to request copies of agenda materials for open sessions in advance of a meeting. Public bodies should consider creating sufficient agenda packages so that copies can be made available to citizens promptly upon request.

Although the Open Meetings Law does not entitle citizens to speak at a meeting, citizens may request the opportunity to address the body at a meeting. (Some agencies also have specific statutes or rules that provide for citizen input.) Public bodies can facilitate citizen participation by allocating time for public comment structured by reasonable rules of conduct, such as advance deadlines for requesting an opportunity to speak, and reasonable time limits for oral comments. We encourage public bodies to facilitate these citizen requests.

Public bodies should look beyond minimum legal requirements to foster meaningful public participation in open meetings. Citizens should offer their views to public officials under reasonable rules of conduct. By working together, public bodies and citizens can improve communication--and ultimately improve government decision making.

What is an Open Meeting?

When is a Gathering an Open Meeting? (2/02)

"But, we were just having breakfast . . ."

How does Iowa law define an "open meeting?" Are breakfast gatherings of a quorum of a governmental body at a local café "meetings" subject to Iowa's Open Meetings Law?

Most Iowans who serve on city councils, school boards, state licensing boards, or other governmental bodies know that meetings require prior public notice so citizens can see what's on the agenda and attend if they wish. This is a basic "sunshine" open-government principle of Iowa law. But, in order to comply with the law, every one needs to know what constitutes a "meeting."

Iowa's Open Meetings Law says a governmental body "meets" when there is:

- **any gathering** in person or by telephone conference call or other electronic means, whether formally noticed or informally occurring,
- **of a majority of the members**,
- **at which there is any deliberation or action** upon any matter within the scope of the governmental body's policy-making duties. (Iowa Code, Chapter 21.2)
-

A governmental body "meeting" does not include a purely ministerial or social gathering at which there is no discussion of policy or intent to avoid the Open Meetings Law, even if a quorum is present. For example:

- A quorum of a school board gathering for breakfast at the local café, would be a meeting IF members discuss or take action on school business.
- A quorum of a school board gathering for breakfast at the local café would not be a meeting IF members only chat about the Hawks, Cyclones or Panthers, or other matters that are not within the scope of the board's business.

Remember the basic rule: a quorum of a governmental body may gather informally, IF the conversation is social and discussion of business is saved for scheduled meetings.

Open Meetings - Specific Types of Meetings

Advisory Bodies and Committees

Are Advisory Bodies Subject to Iowa's Open Meetings Law? (March 1, 2003)

Governmental bodies often use advisory committees or task forces to provide them with advice or input before they make decisions on complex matters. Government officials and members of the public alike often wonder: Is an advisory body subject to Iowa's Open Meetings Law if it has no decision-making authority?

The answer is not always simple. Some advisory bodies are not technically governmental bodies at all. But, many advisory bodies are required to comply with all laws governing open meetings - such as providing prior notice, and public access to observe the meeting.

Here are examples of advisory bodies that are subject to Iowa's Open Meetings Law:

- An advisory board, commission or task force created by the Governor or the Legislature to develop and make recommendations on public policy issues.
- Any advisory body expressly created by statute, executive order, formal resolution or ordinance of a political subdivision (e.g., a city council, school board, or county board of supervisors) to develop and make recommendations on public policy issues.
- A multi-membered body formally and directly created by a state board, council, or commission that itself is subject to the Open Meetings Law -- if the multi-membered body's advice or recommendations are tantamount to decision making. (Example: some advisory bodies narrow the range of options for final decision by a governmental body.)

The Open Meetings Law is designed to shine light on deliberation and discussion, not just on final decisions. When important steps in deliberation or discussion will take place before an advisory body that is not covered by the Open Meetings Law, advisory bodies should consider whether to follow the Open Meetings Law voluntarily and allow the public to attend and observe.

When Can Committees Gather in Private? Decision-Making Authority is a Key! (July 1, 2005)

Governmental bodies often form committees as a means to carry out their statutory duties. Committees may carry some tasks to completion -- or they may take recommendations back to the full body. If the Open Meetings Law applies, committees cannot gather to deliberate or act in private, unless there are grounds to close a session. (See the Sunshine Advisory -- "Are Advisory Bodies Subject to Iowa's Open Meetings Law?")

How can you tell if the Open Meetings Law applies to committees?

Some committees may gather to deliberate or act without providing notice or a tentative agenda and without allowing public access, but only under limited circumstances.

- Committees that make recommendations, but otherwise lack decision-making authority, are not subject to the Open Meetings Law (with narrow exceptions as explained below.)
- Certain advisory committees are subject to the Open Meetings Law because they are specifically included by statute, even though they lack decision-making authority. See Iowa Code sec. 21.2(1)(e)(advisory bodies created by the governor or by the general assembly are subject to the Open Meetings Law), and Iowa Code sec. 21.2(1)(h)(advisory bodies created by statute or by executive order are subject to the Open Meetings Law).
- Any committee that consists of a quorum of the full governmental body also triggers application of the Open Meetings Law, because a quorum of the governmental body has decision-making authority to act for the full body.

Public officials should tread carefully when creating committees authorized to gather outside the public eye. Committees can serve a useful purpose, but governmental bodies should carefully consider whether a committee must comply with the Open Meetings Law

Electronic Meetings

Public Access to Electronic Meetings (September 1, 2002)

Iowa law requires access to meetings by telephone or fiber optics.

Government bodies may conduct meetings electronically -- by telephone or video-conference, for example -- when an in-person meeting is impossible or impractical. However, using technology to conduct a meeting does not alter the public's basic right of access to observe or listen to a public meeting. Public bodies may not use a teleconference to avoid the requirements of Iowa's Open Meetings Law (Iowa Code Ch. 21.)

Here are some basic principles to assure public access to electronic meetings:

- **Electronic meetings are only allowed when an in-person meeting is "impossible" or "impractical."** The minutes of the meeting must include a statement explaining why an in-person meeting was impossible or impractical.
- **Public bodies must provide the same advance notice and tentative agenda for electronic meetings as for in-person meetings.** For purposes of posting notice and a tentative agenda, the "place of the meeting" is where the communication originates or where the public will have access to the conversation.
- **The public must have access to all conversations held in open session during the electronic meeting.** For instance, some public bodies provide a speaker phone at the location where in-person meetings are commonly held. Other public bodies may permit members of the public to call a special number to listen to a conference call meeting.
- **Public bodies may go into closed session during an electronic meeting, IF they meet all requirements for going into closed session.** When an electronic meeting is closed, public access to the conversation is terminated.

Officials and citizens alike should be familiar with the rules for holding electronic meetings in order to assure sustained and meaningful citizen access to public meetings.

Can One Member of a Governmental Body Participate in a Meeting Electronically? Iowa's Open Meetings Law allows for individual electronic participation. (July 1, 2006)

Iowa's Open Meetings Law allows for individual electronic participation.

Iowa's Open Meetings Law authorizes governmental bodies to conduct "electronic meetings" of the full body, but only if meeting in person is "impossible or impractical," and only if the public has access to hear the meeting. (Iowa Code sec. 21.8 - See Sunshine Advisory September 2002.)

What if only one member of the body wants to participate electronically? Is that permissible?

A single member may participate electronically. The statute governing "electronic meetings" does not apply when less than a quorum participates electronically, but nothing in the law prohibits a single member from participating this way. The governmental body should assure that any member participating electronically is audible and is accountable to the public for all discussion and votes.

When an individual member of a governmental body seeks to participate in a meeting electronically, the following points should be considered:

- **Parliamentary procedure:** The parliamentary rules of the governmental body should be consulted to determine if they permit individual members to participate electronically.
- **Discussion:** Any member participating electronically should be connected by speaker phone or other device, so that the public can hear any discussion by that member. If the session is closed under Iowa Code section 21.5, the tape recording of the closed session must pick up the discussion by any member who is participating electronically. Iowa Code sec. 21.5(4).
- **Voting and minutes:** The vote of any member participating electronically must be made public at the open session, and the minutes must include information sufficient to indicate the vote of each member participating electronically. Iowa Code sec. 21.3. (The vote of the member should be audible to the public through a speaker connection.)

In summary: Electronic participation of an individual member does not violate the Open Meetings Law, but the member remains accountable for all discussion and votes.

Emergency Meetings

Emergency Meetings: Can Good Cause Justify Less Notice? (March 1, 2004)

What if a government body has to conduct an emergency meeting and doesn't have time for the normal 24-hour advance public notice?

Government bodies usually must give notice and provide a tentative agenda 24 hours in advance of a meeting (Iowa Open Meetings Law, IA.Code Ch. 21.) The notice requirement goes right to the heart of open government. Why? The public has a right to know when a government body will meet, and what's on the agenda, in order to decide whether to attend and observe an open session. So, what happens in an emergency where action must be taken quickly? How does the law balance the public's need for notice and the government's need to act quickly?

These basic principles apply to emergency meetings:

- **The general rule: 24-hour notice is required.** Government bodies must give the time, date, place and tentative agenda of each meeting. Notice must be posted on a bulletin board or other prominent place accessible to the public at the principal office of the government body (or at the building where the meeting will be held, if there is no principal office.)
- **The exception: Less notice may be given only if, for good cause, 24-hour notice is impossible or impractical.** Whether an emergency makes 24-hour notice impossible or impractical depends upon the facts. Officials should ask whether action can reasonably be deferred to a later time that allows for 24-hour notice. Is faster action really necessary?
- **The bottom line: Give as much notice as reasonably possible.** If 24-hour notice is impossible or impractical, give notice as soon as possible. The facts will determine what's reasonably possible -- but a government body should never meet without any notice at all.

Remember: The Iowa Open Meetings Law requires adequate notice to keep the public informed. In the rare circumstance when a government body must act quickly, officials should give as much notice as is reasonably possible.

Hearings

Can governmental bodies hold hearings in closed session? (December 1, 2006)

Yes, sometimes -- but only if expressly authorized by statute.

The work of governmental bodies is broad and varied. Sometimes, they conduct hearings – and that may bring up "open meetings" questions. When a quorum of a governmental body holds a hearing, the body is "meeting" under Iowa's Open Meetings Law (Iowa Code ch. 21). How does the Open Meetings Law apply to hearings? Can a governmental body conduct a hearing in closed session? What about deliberations? Can a governmental body decide a case behind closed doors?

Like all meetings, hearings can be conducted in closed session only when expressly authorized by statute.

Here are some closed-session guidelines to apply when a governmental body is conducting a hearing or conducting deliberations on the outcome of a hearing:

- Iowa Code Ch. 21 provides only limited authority to close a hearing: Chapter 21 itself authorizes a closed session only for hearings to suspend or expel a student, unless an open session is requested by the student, or a parent, or guardian. See Iowa Code sec. 21.5(1)(e). Chapter 21 authorizes a closed session otherwise only to discuss a decision to be rendered in a contested case, a type of hearing conducted only by state agencies. See Iowa Code sec. 17A.2(5), 21.5(1)(f).
- Check other statutes for specific authority to close a hearing: Other statutes may allow a governmental body to close a hearing. For example, most professional licensing boards can hold disciplinary hearings against licensees in closed session if requested by the licensee. See Iowa Code sec. 272C.6(1). Or, a school board can conduct a "private hearing" on the termination of a teacher's or administrator's contract, if the teacher or administrator requests a hearing in writing. See Iowa Code sec. 279.15.

Remember: Governmental bodies subject to Iowa's Open Meetings Law must hold hearings and deliberations in open session, unless a closed hearing or closed session is authorized under an express provision of law – either in Chapter 21 or in another statute.

Meeting after the Meeting

Is There a Meeting After the Meeting? Are there notice requirements for subcommittees of public bodies? (May 1, 2004)

Governmental bodies such as county boards, school boards and city councils often conduct business in subcommittees, task forces or advisory committees composed of members of the full governmental body**. They often do so on the same day and in the same place as the full governmental body. Do the same notice and agenda requirements apply to such committee meetings? How can the public keep informed about these committees?**

Committees that are "formally-constituted subunits" of a governmental body may meet without any additional notice under the following circumstances:

- Public Announcement. No additional notice is required for a meeting of the subunit under the Open Meetings Law if the meeting of the subunit is announced at the meeting of the governmental body, and if the subunit meets during the meeting of the governmental body, during a recess in the meeting of a governmental body, or immediately following the meeting of the governmental body. Iowa Code sec. 21.4(3). The key is to assure the announcement reaches the public who attended the meeting of the full governmental body.
- Limited Subject Matter. The subject of the meeting of the subunit must "reasonably coincide" with the subjects "discussed or acted upon" by the governmental body. Iowa Code sec. 21.4(3). The key is to assure that the subjects for the meeting of the subunit are covered in the notice and tentative agenda for the meeting of the full governmental body.

Note: A meeting of a "subunit" on a different day or on a different subject would fall under the usual notice requirements of Iowa's Open Meetings Law. (Click here for related Sunshine Advisory: “Are Advisory Bodies Subject to Iowa’s Open Meetings Law?”)

In summary: Using committees to carry out government business is efficient, but openness is the goal. Governmental bodies may use committees that meet without further notice, but only when reasonable steps are taken to alert the public to the meeting, and only if the subjects are limited to those covered by the agenda for the full governmental body.

Non-Profit Gaming

The Open Meetings Law Applies to Nonprofits Licensed to Conduct Pari-Mutuel Wagering or Gambling Games (January 1, 2006)

The Open Meetings Law applies to "governmental" bodies as defined by statute. Generally, nonprofit corporations are not "governmental" bodies; however, nonprofit corporations licensed to conduct pari-mutuel wagering or gambling games are defined as "governmental" bodies and, as a result, must comply with the Open Meetings Law. This means, for example, the public is entitled to notice and a tentative agenda, a meeting must be held at a place reasonably convenient to the public, and the public is entitled to attend.

"Governmental" bodies include nonprofit corporations that have the following characteristics under Iowa Code sec. 21.2:

- **Property Tax Revenue & Gambling Licenses:** The law applies to nonprofit corporations "whose facilities or indebtedness are supported in whole or in part with property tax revenue" and who are "licensed to conduct pari-mutuel wagering" under Iowa Code Chapter 99D. (But a "fair" conducting a "fair event" is specifically excluded. Iowa Code sec. 21.2(1)(f).) The law applies to these nonprofit corporations only when meetings "relate to the conduct of pari-mutuel racing and wagering." Iowa Code sec. 21.11.
- **Successor Corporations:** The law applies to a nonprofit corporation which is the successor to a nonprofit corporation that built a gambling facility. Iowa Code sec. 21.2(1)(f).
- **Gambling Games:** The law applies to nonprofit corporations "licensed to conduct gambling games" under Iowa Code Chapter 99F. Iowa Code sec. 21.2(1)(g).

In summary: The Open Meetings Law assures that the public has access to meetings of "governmental" bodies, which include nonprofits licensed to conduct pari-mutuel wagering or gambling games in casinos at racetracks or on riverboats. Other nonprofits, of course, may opt to follow the Open Meetings Law even if compliance is not required by law.

Retreats and Working Sessions

Retreats and “Working Sessions” are Open Meetings (11/02)

Public bodies occasionally schedule retreats or "working sessions" separate from regularly-scheduled meetings in order to discuss policy issues or examine new ideas. These events can help a public body to focus its mission. But **retreats and working sessions are covered by Iowa's Open Meetings Law** and cannot be held in private unless grounds exist to close the session.

Here are some legal guidelines for holding retreats or working sessions (Iowa Code Ch. 21):

- **Discussions of policy issues -- even when no votes are taken -- are covered by the Open Meetings Law.** A key purpose of Iowa's Open Meetings Law is to open the deliberative process to the public as well as votes. A meeting is covered if a quorum of the public body deliberates on matters within the scope of the body's policy-making duties.
- **Retreats and working sessions should be held at a location accessible to the public.** All meetings, including retreats and working sessions, must be held at a place reasonably accessible to the public. The public body may select a more casual location than is generally used for regularly-scheduled meetings, as long as the public has reasonable access.
- **Agenda materials should be provided to members of the public, unless confidential.** Copies of agenda materials should be provided to members of the public upon request -- just like agenda materials for any regularly-scheduled meeting. Documents may be withheld only if confidential under a specific provision of law.
- **Agendas may include a social break, such as lunch or dinner, in connection with retreats or working sessions.** As long as the social break is truly just social and not a continuation of deliberation on policy matters, the social break is not part of the meeting subject to the Open Meetings Law.

Officials and citizens alike should be familiar with the rules for holding retreats or working sessions to assure public access to the policy deliberations that often are the heart and soul of sound government.

Open Records Laws

Charging for Public Records

Personally Examining Records – Giving a "Free Peek" (November 1, 2001 updated December 1 2014)

Do you know what obligations public offices have when a citizen asks to see a public record? Personal examination of records is just one of the ways citizens may have access to public records.

When a person visits a public office and asks to see a public record, several principles apply:

- Every person has the right to personally examine public records at the physical location where the records are kept, unless a specific provision of law requires confidentiality or provides grounds to withhold the record from public scrutiny.
- The office cannot charge a person to personally examine a public record while it is in the office's physical possession, unless a specific provision of law grants the office the right to charge a fee. The office may charge a person the actual cost for retrieving the record and for making any copies of the record that are requested -- but not for personally examining the record.
- The right to personally examine public records does not extend to certain computer data bases or data processing software. Public offices are not required to provide direct access to their computers.

Understanding the right of every person to come to an office and personally examine public records helps assure that access to public records is provided in compliance with the law -- and helps forge a good relationship between public offices and the citizens they serve.

Charges Under the Public Records Law: Impose Only Actual Costs! (April 1, 2005)

Iowa's Public Records Law entitles people to examine and copy open records in the hands of governmental bodies. This imposes costs on governmental bodies ranging from a minor expense of making copies to a more significant expense of assigning office personnel to supervise the process. The law strikes a balance between public access and the burden on government by authorizing governmental bodies to charge the requester for the costs of retrieving, copying and supervising the records. How should a governmental body determine the amount to be charged?

The following principles apply when officials charge for access to open records:

- **Free Examination:** The governmental body cannot charge the requester a fee simply for examining an open record. Iowa Code sec. 22.2(1). Charges are limited to the costs of retrieving records, making copies of records, or supervising records.
- **Actual Costs for Copies:** The cost imposed for providing a copy of an open record "shall not exceed the cost of providing the service." Iowa Code sec. 22.3. Officials must determine how much the copy really costs excluding ordinary expenses of the office like a computer system's depreciation, copy machine maintenance, overhead, electricity, and insurance.
- **Reasonable Fees for Work:** "All expenses of the work" in providing access to records shall be paid by the requester and may include a "reasonable fee" for supervision. Iowa Code sec. 22.3. Expenses and fees may include time spent retrieving, copying and supervising the records. Expenses and fees for office personnel should be based on the hourly wage of the staff providing the service multiplied by the hours actually spent, and must exclude employment benefits like health insurance.

Remember: Government officials must provide open records for examination and copying at actual cost. Officials should not impose charges for access to open records that exceed the actual cost of providing the service. To keep costs down, officials should assign lower-paid staff as appropriate to retrieve, copy or supervise records.

Estimating Costs for Public Record Requests (November 1, 2016)

"Just how much is this going to cost?"

Governmental bodies are allowed to charge for copies of public records. Charges may include the costs of retrieving, making copies, or supervising records, but should not exceed the cost of providing the service and should not include expenses like computer depreciation, copy machine maintenance, overhead, or electricity. (See Sunshine Advisory, "Charges Under the Public Records Law: Impose Only Actual Costs!") Still, expenses can mount up. Is the governmental body left holding the bag - and the requester left empty handed - if expenses total more than the requester can pay? How can governmental bodies and requesters avoid an ugly surprise when the expenses are totaled up?

Governmental bodies may require payment for records in advance, but if payment in advance is required, expenses must be estimated for the requester. (See Iowa Code sec. 22.3.)

When dealing with "estimated expenses", follow these guidelines:

- **Timing**: Estimated expenses should be provided to the requester "upon receipt of the request". (Iowa Code sec. 22.3.) Time to respond to any public records request is very limited and the estimate must be provided to the requester right away.
- **Reasonable threshold**: Governmental bodies should set a reasonable threshold for requiring payment in advance. A reasonable threshold, for example, might be if copies will exceed 100 pages, or if the request will take more than three hours to compile.
- **Component parts**: Breaking estimates of expenses into component parts will allow requesters to pare down the request if the expenses are too high. If the volume of copies is high, the requester might opt to narrow the scope of the request. If the charge for the copying service is high, the requester might opt to copy the records personally.

Remember: Requiring payment for public records in advance and providing estimated expenses should **facilitate** access to public records. Governmental bodies and requesters should work together to keep costs from becoming a barrier to access.

Confidential Public Records

“Confidential” Public Records (June 1, 2002)

The phrase "confidential public records" sounds contradictory. How could a public record be confidential? The answer: Under Iowa law, public records can be open, confidential, or both **Iowa law generally favors unrestricted access to public records to assure accountable and open government with strong participation by citizens.** However, by law, some public records must remain confidential, and other public records may remain confidential in the discretion of the lawful custodian.

Examples of how public records can be open, confidential or both:

- Some public records are classified as confidential by specific state or federal laws, such as tax returns, college transcripts or grand jury transcripts.
- Some records can be open or kept confidential at the discretion of the lawful custodians under Iowa's Public Records Law -- for example, certain information in personnel records.
- Some public records are confidential at one point and open at another time. Example: Arrest warrants are confidential before they are served, but open to the public after they are served.
- Sometimes, a single document contains a mixture of open and confidential information. Law enforcement investigative reports may contain information which is open for anyone to know (such as the date and location of a crime) and also contain confidential investigative information. In such situations, public officials must devise a way to provide access to the open information, while shielding the confidential information.

One rule of thumb always applies: A public record is open for examination by the public unless a specific law requires or allows the government body to keep it confidential.

Which Records are Confidential? (January 1, 2004)

Most public records are available for examination and copying -- but some are confidential under law. Where are the laws on confidentiality found?

At first it sounds contradictory, but some "public records" in Iowa are confidential by law and are not available for public examination and copying. (Example: your income tax return.) Government offices maintain many types of public records. Some are open for public examination and copying, some must be kept confidential under the law, and some may be kept confidential in the discretion of the lawful custodian. How do you know whether public records are open or confidential?

Openness is the rule, and confidentiality is the exception. Here are the three types of exceptions that make public records confidential under Iowa law and court decisions:

- **Discretionary exceptions under Chapter 22**. Iowa section 22.7 currently lists several dozen categories of records which "shall be kept confidential, unless otherwise ordered" by the lawful custodian, or by others authorized to release information. Many of these records commonly are kept confidential, but could be released in the discretion of public officials or employees.
- **Mandatory exceptions under other statutes**. In addition to the list in Iowa Code section 22.7, other statutes outside Chapter 22 may mandate that records be kept confidential -- for example, income tax return information under section 422.20, or pre-sentence investigative reports under section 901.4.
- **Privilege or professional duty to maintain confidentiality**. Still other records may be confidential under a "privilege" or professional confidence recognized by the courts -- for example, attorney-client privilege.

Remember: Openness is the rule and confidentiality is the exception. Public officials and employees may keep records confidential only if authorized by law. If access is refused, people may ask for an explanation, and officials would be well-advised to explain the legal authority that makes a public record confidential.

Should a record be withheld from the public if it contains confidential information? (August 1, 2006)

No, officials usually can black out confidential information and release the rest.
Public records often include both open and confidential information. For example, a Social Security number may be confidential, but appear on a record that is otherwise open for examination and copying. Can public officials deny access to the record simply because it includes some confidential information? How should public officials handle requests for access to such records?

Generally, if only some information is confidential under law, public officials should black out confidential information and provide access to the rest of the record. Public officials may deny access to the entire record only if the entire record is confidential under law. Officials should check the applicable laws to see whether an entire record is confidential.

Officials should consider these points if records contain some confidential information:

- When confidential information appears in a public record, officials should black out confidential information before producing a copy for the requester. (Best practice: make a copy of the original record, black out confidential information on the copy, and provide the requester a copy of the blacked-out version in order to maintain the integrity of the original record.)

If both open and confidential information is being collected in a record, public officials should consider whether the confidential information can be collected on a separate page that can be separated and withheld when the record is produced for examination and copying.

Whenever confidential information is blacked out or withheld, the requester should be told that confidential information has not been produced and should be told the reason why.

Bottom line: Public officials have a duty to provide access to public records and should handle confidential information responsibly. Officials should black out or remove confidential information, if possible, and inform the requester.

Electronic Public Records

Public Access to Electronic Records (October 1, 2002)

From the largest government agency to the smallest school board, public bodies in Iowa increasingly are creating and storing public records electronically. How does this new technology affect public access to records? How should the public body charge for copies of electronic records? What if an electronic record contains both public and confidential information?

Here are legal guidelines to assure proper public access to electronic records:

- **Iowa's Public Records Law applies to records stored or preserved in any form, including electronic records.** (Iowa Code Ch. 22.) The public's right to examine and copy records applies whether a record is on paper or stored in a computer. However, access to a record does not include access to the computer on which the record is stored.
- **The public may request copies of electronic records in electronic form.** The public may choose to receive an electronic or paper copy of an electronic record. Electronic copies must be provided in a format usable with commonly available data processing or data base management software.
- **Copies of electronic records generally must be produced at a cost not exceeding the reasonable cost of reproducing and transmitting the record.** If a person requests a record that requires special processing to produce (such as a compilation of records that requires special programming), a public body can charge the cost of the special processing.
- **If electronic records contain some information that is open to the public and some that is confidential, the public body must devise a way to make the public information accessible, while shielding the confidential information.** When public bodies are purchasing or designing software, they should do advance planning to accommodate ready public access to electronic records.

Officials and citizens alike should be familiar with the rules for providing electronic records in order to assure efficient, open access to public records.

Logging on: How Do You Apply the Public Records Law in a Computer Age? (September 1, 2004)

Must government bodies provide access to data processing software when public records are maintained on computers?

In this computer age, more and more public records are contained in data processing software. The public is entitled to copy public records. But can the public access the data processing software that contains the public records? How does the Public Records Law balance

the public right of access to public records with the government interest in protecting data processing software? What can be charged for access to the software?

Keep these principles in mind:

- **Discretionary Access:** A government body "may provide, restrict, or prohibit access to data processing software developed by the government body. . . ." Iowa Code sec. 22.3A(2). The Public Records Law allows - but does not require - a government body to provide access to data processing software developed by the government body.
- **Additional Charges:** A government body may recover direct publication costs, including "editing, compilation, and media production costs" incurred in developing the software and transferring the software to another person. Iowa Code sec. 22.3A(2)(a). This charge is in addition to charges for the public records.
- **Written Justification:** On request, the government body shall "provide documentation which explains and justifies the amount charged." Iowa Code sec. 22.3A(2)(a).

In summary: Data processing software developed by government bodies and the public records the software contains are treated differently under the Public Records Law. The public can always copy open records, but may not be able to access the software, or may pay additional charges to do so.

Paper Files? Electronic Files? Tapes? (December 1, 2004)

Public records are stored in many formats!

Modern government offices conduct business that generates records in many forms, including paper and electronic files, CDs, floppy disks, 911 voice tapes, and video tape recordings. How does Iowa's Public Records Law apply to various formats in which government bodies store information? How does government take advantage of the benefits of modern technology, and still assure the public's right of access under the Public Records Law?

Here are principles regarding public access to public records in various forms:

- **Scope:** Iowa's Public Records Law applies to all records "preserved in any medium." Iowa Code sec. 22.1(3). Government cannot deny the public access to a record simply because it is stored in a format that makes access difficult or challenging. (Example: See Sunshine Advisory on access to information in data processing software -- "Logging on: How Do You Apply the Public Records Law in a Computer Age?")
- **Uniform Application:** The Public Records Law must be applied uniformly, regardless of the format in which a record is stored. Iowa law generally gives people the right to examine and copy public records, but it recognizes numerous exceptions for records that must or may be kept confidential. Uniform application of any exceptions to disclosure may require a government body to transcribe or edit information. For example, a 911 audio tape included in a peace officer's investigative report may need to

be transcribed or edited in order to disclose only the date, time, specific location, and immediate facts and circumstances surrounding a crime. See Iowa Code sec. 22.7(5).

- **Copy Fees:** Government bodies may charge the public the actual cost of examination and copying. Iowa Code sec. 22.3. So, decisions about the format in which public records are stored should include consideration of reasonable costs of providing access to the public.

Remember: Modern technology makes storage of information in various forms efficient for government - but the public's right of access to information must be assured.

Can a Person "Examine" and "Copy" Electronic Data? (October 1, 2005)

Yes -- Electronic Data is a Public Record!

Many public records are stored on paper, and the public can easily examine and copy paper documents. But more and more public records are stored as data in a computer. Can the public "examine" and "copy" electronic data? How do public officials provide access to the data stored in computers? Must public officials maintain the software necessary to retrieve electronic data?

Iowa law specifically defines a "public record" to include electronic information stored in a computer. Iowa Code sec. 22.1(3).

Here are guidelines on the public's right to access information stored in a computer:

- **If electronic data is an open record, public officials must provide access**. Public officials must make accessible any information stored in a computer that would be open for examination and copying if the information were stored on paper.
- **If the public requests electronic data that is open, public officials must have computer software available to retrieve the data**. As long as all data is accessible, if specialized programming is required to assemble data in response to a specific request, public officials can charge the reasonable, actual cost of the specialized programming.
- **If electronic data commingles open and confidential information, computer software must be able to separate open from confidential information**. If government software cannot retrieve open information without revealing confidential information, public officials must find a way -- at their expense -- to provide access to the open information, even if new software is needed.

Remember: The public is entitled to "examine" and "copy" electronic data that would be an open record if stored on paper. Public officials should plan for public access to electronic data when designing software -- before the data is entered!

Enjoining Production

Releasing Public Records: Can courts block the release of an open record? (October 1, 2004)

Generally, government officials must decide whether a public record is open or confidential and then release the record if it is an "open record." But are there any circumstances under which an open record cannot be released? Can the facts ever justify a court order restraining government officials from releasing an open record and restraining the public from examining and copying an open record? In fact, such injunctions are rare -- and they must meet strict statutory criteria.

A court may issue an injunction under Iowa Code section 22.8 to restrain the examination and copying of a specific open record or a narrow class of records in these circumstances:

- Hearing: The court must hold a hearing on the request for an injunction. A request may come from the government body, or from a third party who has an interest in the record. For example, an applicant for a government job might seek an injunction to keep a resume confidential if the government body intended to exercise its discretion to release the record.
- Reasonable Notice: Reasonable notice of the hearing must be provided to the persons requesting access to the record. It is the duty of the lawful custodian of the record to ensure compliance with the notice requirement.
- Injunction: The court may issue an injunction if the court finds BOTH of the following elements by clear and convincing evidence
    (1) that public examination would clearly not be in the public interest, and
    (2) that public examination would substantially and irreparably injure any person or person

In practice, courts very rarely restrain the public from examining public records which are not otherwise confidential under federal or state law, and will not do so simply because release of a record may cause a public official or others inconvenience or embarrassment.

“Golden Rules”

Golden Rules for Public Records Requests (August 1, 2002)

Here are "Golden Rules" to help public officials respond to requests for access to public records -- and to explain the legal rights of persons requesting access:

Rule 1: The reason a requester wants the record is irrelevant. (So, officials should not ask.)

Records which are open to public examination must be produced no matter what the reason for the request. The public can examine and copy a record just because it's there!

Rule 2: The identity of the requester usually is irrelevant. (Officials should not ask for identification, unless there is a lawful reason to do so.)

Members of the public usually should not be required to identify themselves in order to get access to public records. However, if a record is only open to certain people for limited purposes (for example, motor vehicle accident records), then the lawful custodian may need to ask for additional information to assure the record is only provided to those entitled to see it.

Rule 3: Public records may not be withheld without legal authority.
Iowa's public policy is simple: Every person has the right to examine and copy public records, and officials' failure to provide access to public records can result in civil penalties. Before access to a record is denied, public officials must have a valid legal reason for denying access to the record. Public officials may consult with their legal counsel if necessary.

Iowa Code Ch. 22 spells out the rights and obligations of getting and giving access to public records. Officials managing public records should follow the Golden Rules: Don't ask irrelevant questions, and don't deny access without legal authority.

Lawful Custodians and Contact Persons

Public Records Contact Persons: Helping Iowans with access to public records (January 1, 2002)

When you last visited a government office, did the office have a public records contact -- a person (or persons) who is responsible for receiving and responding to public records requests?

Public records contacts are required by law. All government bodies in Iowa are required to (1) delegate to particular officials or employees the responsibility for implementing Iowa's Public Record laws, and (2) publicly announce to whom requests for public records should be directed.

Let's face it. It is not possible for every employee to be familiar with every public record maintained by a public office, especially in today's complex world of large, multi-divisional government offices, electronic records, and confidential record requirements that can be confusing.

Public records contacts make sense. Placing the responsibility of managing public records requests in the hands of one or more designated public records contacts. . .

- Facilitates prompt and lawful response to public records requests
- Provides a point person in a public office to whom other employees can turn
- Assures consistent responses and preserves resources
- Enables certain employees to develop expertise, which they can use to design strategies for organizing public records for optimal access
- Simplifies for the public the process of seeking public records
- Better protects the integrity of records which must be keep confidential

Public records contacts provide a golden opportunity for successfully managing public records requests - it's not just the law, it's good common sense.

Who's in charge of deciding access to public records? (January 1, 2007)

The "lawful custodian" holds the key to examination and copying.

As the lawful custodian of public records, a government body is obligated to decide whether a record should be confidential or should be released for examination and copying. See Iowa Code sec. 22.3, 22.7. Each government body, in turn, must delegate to particular officials or employees responsibility for implementing Iowa's Public Records Law and must announce those persons to whom responsibility has been delegated. Iowa Code sec. 22.1(2). See Sunshine Advisory, "Public Records Contact Persons -- Helping Iowans with Access to Public Records." But the question remains: Over which records does a person have delegated authority? Does this include all records in the possession of a body? Owned by the body? What if one body is storing records for another?

The following questions define the scope of a lawful custodian's authority over public records:

- **Who possesses or owns the records?** Generally, the government body in physical possession of a public record is the "lawful custodian" of the record. When public records are in the possession of a person outside government, the lawful custodian of the records is the government body that owns the records. For example, a city that rents a storage facility for city records remains the lawful custodian of the public records. Iowa Code sec. 22.1(2).

- **Do the records relate to public funds?** The government body responsible for public funds is always the lawful custodian of public records relating to investment of those funds, no matter who has physical custody of the records. Iowa Code sec. 22.1(2).

- **Is one governmental body storing records for another?** A government body that stores public records for other government bodies is not the lawful custodian of stored records. A state agency remains the lawful custodian of the agency's records, even if the records are electronically stored by the data processing unit of another state agency or transferred for long-term storage.

Remember: Persons who are delegated responsibility for complying with the Public Records Law have authority over many records, including records possessed or owned by the government body, records related to public funds, and records stored in rented facilities.

Record Retention and Safeguarding Records

Safeguarding Public Records (April 1, 2002)

Public officials need to facilitate access AND protect records.

The public has a right to personally examine public records at a government office, and to receive a copy at a reasonable cost (not to exceed actual cost) -- but the lawful custodian of government records has a corresponding duty to preserve the integrity of public records for the benefit of all Iowans. **To ensure access and security, the law directs public officials to:**

- **Provide a suitable place for the public to examine and copy public records at the office where the records are maintained.**
- **Supervise examination and copying of public records, and adopt reasonable rules to guard against damage or disorganization.**
- **Make a reasonable number of copies if copy equipment is available, or supervise copying at a separate location** if it is impractical to make copies at the location where the records are kept.
- **Charge reasonable fees for copying and supervising, not exceeding the actual cost.** Any fees should be posted and applied uniformly.
- **Retain control of public records.** Persons may not simply remove public records from a government office to examine or copy them at a remote location.

The public's right of access to public records -- and the government's obligation to preserve them -- are flip sides of the same coin. The Iowa Public Records law spells out requirements to guarantee access to records, and to preserve them for all.

Toss, Delete or Save? (February 1, 2004)

When should public bodies retain records?

Public officials at all levels of government in Iowa face the daily task of deciding which records they need to save and store, and which records they can toss, delete or shred. With the expanding use of e-mail and other forms of electronic records, the issue is more complex than ever of what records governmental officials should retain. **What paper or electronic records can public officials toss or delete? What records should public officials preserve?**

Record retention policies for most state agencies are guided by the State Records Commission, a state agency specially formed to help agencies manage, archive and preserve their records. The Commission publishes a Records Management Manual for state agencies that establishes retention policies for different types of records. State law does not specify retention policies for counties, cities or other local governmental bodies; however, the Commission can provide advice and counsel.

Guidelines for public officials on whether to toss, delete or save a record:

- **Decide how best to classify the record**. For example: Is the record an agency's official policy statement on matters of historical significance -- or just a message to return a telephone call? The former should be archived permanently, but the latter has only fleeting importance.
- **Don't be swayed based on the form of the record**. For example, if an agency's official policy statement on matters of historical significance is contained in e-mail, it should be subject to the same treatment and preserved as if it were created as a paper record.
- **Dispose of a record only as authorized**. State law prohibits records from being "mutilated, destroyed, transferred, removed, or otherwise damaged or disposed of . . . except as provided by law or by rule." (Iowa Code sec. 305.13) Compliance assures that archived records are accessible to the public.

Sound records management policies are critical to good government. Public officials should assure that all employees are familiar with record retention policies to preserve important records for future generations.

Time for Spring Cleaning? (April 1, 2004)

How long must officials keep public records?

Public officials often feel like "pack rats," filling nooks and crannies -- or cyberspace -- with mountains of public records they preserve for the benefit of public bodies and the general public. Are public officials ever allowed to "clean house" and weed out old records?

The simple answer is yes -- public officials can destroy some (but not all) types of public records after a certain length of time. However, no records in the custody, control, or possession of state officials can be destroyed unless authorized by law or by rule (see Iowa Code sec. 305.13.) The timing of permissible destruction of records can vary dramatically. Local, state and federal laws, rules and ordinances all may play a role in determining when a particular record may be destroyed.

Here are examples illustrating how various laws apply to different records:

- **Closed-session tapes and minutes must be kept at least a year.** Iowa Code sec. 21.5(4).
- **Employment applications must be retained at least two years** from the date the position is filled, under federal law (29 CFR sec. 1602.31) -- and possibly longer for state agencies covered by the State's Records Manual, or in the event of an allegation of discrimination.
- **Some original court files must be retained for at least 40 years** after the case is finally disposed of, unless properly reproduced. Iowa Code sec. 602.8103(3), (4).
- **City records relating to real property transactions must be kept permanently**, including ordinances, resolutions, minutes of council proceedings, and other records and documents generated by real estate transactions. Iowa Code sec. 372.13(5)(b).

Public officials have a duty to preserve public records unless specifically authorized by law or rule to destroy particular records. Any doubt should be resolved in favor of retention until legal advice can be obtained.

Requesting Public Records

Requests for Public Records: Must Citizens Show up in Person? (November 23, 2003)

Citizens often request public records over the telephone, or by mail, email or fax. But, surprisingly, Iowa's Public Records Law does not address such telephone or written requests. The law says citizens have the right to come to a government office during customary office hours and ask to examine and copy a public record (Iowa Code Ch. 22). Should public officials honor requests that are not presented in person? Can a public official require a request be put into writing?

Guidelines for citizens and officials on requests for public records:

- **Check rules and policies.** Most state agencies have adopted rules authorizing telephone or written requests for public records, and many cities and counties have similar policies. Exercising discretion to honor such requests often will conserve resources for both the government body and the requester.
- **Use written requests for clarity.** Putting a request in writing can help facilitate a response by the government body. A written list of the records being sought may assist the governmental body in retrieving the records and may improve the accuracy of the response. But a governmental body may not require that a request must be put into writing.
- **Requesters should not be required to identify themselves.** Government offices may develop forms to be submitted in writing or filled out over the telephone, but forms should not force requesters to identify themselves or explain why they want to examine or copy public records. Public officials should not require requesters to supply any additional information, unless it is needed to send the records by mail, or to comply with laws limiting access to certain records (such as student academic records or medical records.)

When used with common sense, telephone or written requests can facilitate access to public records and help both government and the public. The wise exercise of discretion to honor requests made by telephone, or written requests submitted by mail, e-mail, or fax, is a sensible and practical means of providing access to public records.

Iowans Can Request Public Records by Telephone, Letter, Fax, or E-mail (May 1, 2005)

Iowans have a right to request copies of public records by contacting governmental bodies by letter, telephone, or electronic means such as "fax" or e-mail. Many state and local agencies and public bodies have adopted rules and policies to honor requests in various forms.

All governmental bodies should prepare to respond to requests in various forms:

- Develop policies to handle requests made in writing, by telephone and by electronic means. Who will keep track of the requests? Who will assure that the records are retrieved, copied and delivered timely? Public officials should designate and train staff appropriately.
- Decide on advance payment for providing records. The lawful custodian is expressly authorized to require payment of expenses incurred in advance of providing the records. If advance payment is required, an estimate of the expenses shall be communicated on receipt of the request.
- Review policies on expenses to be sure only actual expenses are included. Public officials may collect only those expenses directly attributable to supervising examination and making and providing copies. Charges may not include ordinary expenses or costs, such as employment benefits of office workers who supervise records, or depreciation, maintenance, electricity, or insurance associated with the administration of the office of the lawful custodian.

Responding to requests for public records received in writing or by telephone or by electronic means has always been good public policy -- and it's the law.

Timing of Production

When Are Public Records Available for Examination and Copying? (August 1, 2003)

The public can drop in at government offices at any time.

Government offices usually are busy places, especially in tight budget times when officials may face increasing responsibilities with decreasing resources. But Iowa's Public Records Law confers citizens with rights that may be exercised at any time. Does this mean that access to public records must be provided immediately on request? What if the lawful custodian is unsure whether a public record is open or confidential and can't reach legal counsel? How does the law balance the right of public access with the need to keep certain records confidential or consult legal counsel?

The Public Records Law provides that people may exercise their rights under Ch. 22 "at any time during the customary office hours of the lawful custodian." (Iowa Code Sec. 22.4.) Here are some principles for applying the law and providing timely access to records:

- No appointment is necessary. Citizens can exercise their rights under the Public Records Law at any time during customary office hours without advance notice. If the government office does not have customary office hours of at least thirty hours per week, the law imposes a right of access from 9 a.m. to noon and 1 to 4 p.m. Of course, a citizen and the government office may agree on a different time.
- There is time to resolve legal issues. The fact that the rights under Chapter 22 can be exercised at any time does not mean the records must be produced immediately. For example, a good-faith, reasonable delay does not violate the law if the purpose is to determine whether the record requested is confidential. (See the statute for other reasons that might cause a good-faith, reasonable delay. Iowa Code Sec. 22.8(4).) But the time to resolve legal issues is limited. A good-faith, reasonable delay shall not exceed twenty calendar days and should not exceed ten business days. Iowa Code Sec. 22.8(4)(d).

In summary: The public is entitled to drop in at any time and request access to public records. Government officials should consult with legal counsel when necessary, but should act quickly and keep an eye on the calendar.

Getting Access to Public Records: What is a Good Faith, Reasonable Delay? (August 1, 2005)

Governmental bodies that administer the Public Records Law often must make significant decisions about legal issues when responding to public records requests. Requesters may be asked to agree to wait for access to public records, especially if the request is very large. Without agreement, how long can government take to make decisions before permitting examination and copying -- or denying the request?

A delay in permitting examination and copying of public records is never justified simply for the convenience of the governmental body, but delay will not violate the law if it is in good faith, reasonable and for one of the reasons for delay set out by statute:

To seek an injunction under Iowa Code section 22.8. Even if the records are not confidential, there may be reasons to obtain an injunction if the evidence shows that "examination would clearly not be in the public interest" and would "substantially and irreparably injure any person or persons." Iowa Code sec. 22.8(1)(a)-(b). Time may be required to go into court and seek an order prohibiting release.

To determine whether the lawful custodian is entitled to, or should, seek an injunction. Before going into court, the lawful custodian may need time to evaluate whether the evidence would support an injunction. This decision very likely would involve consultation with legal counsel.

To determine whether the record is a public record, or is a confidential record. Application of the laws shielding records as confidential can be complex. Some records may contain both open and confidential information. The confidential information may have to be blacked out. Time may be needed to sort out the application of the law and prepare records for release.

To determine whether a confidential record should be made available to the requester. Some records are available to certain people, but kept confidential from others. See, e.g.,Iowa Code 321.271 (accident reports available to identified persons). Time may be needed to determine whether the requester is a person entitled to access to the record under the law. A reasonable delay for this purpose shall not exceed 20 calendar days and ordinarily should not exceed 10 business days.

Remember: Time is of the essence in responding to public records requests. In order to assure compliance with the statute, any delay should be for a reason authorized by law. If timely compliance is not possible, government officials should talk with the requester. Once the legal decision is made, records should be provided as promptly as is reasonably feasible.

The Copier Broke Down! Now What? (September 1, 2005)

Public officials must furnish copies - even when the copier breaks down!

Government bodies in Iowa range from large, well-equipped offices with dozens of employees, to small boards or councils with one or two staff members. Some offices may be equipped so modestly that they operate with only one copy machine. So, what happens if the copy machine breaks down -- and then someone requests a public record? Can public officials simply tell requesters: "Sorry, the copier broke down"? Large, small, or in-between, all government bodies have a duty to furnish the public a reasonable number of copies of public records.

The duty to provide a reasonable number of copies of public records continues even after the copier breaks down. Here are guidelines to keep in mind when faced with broken copy equipment:

Collaborative arrangements. Government offices may share copiers or "borrow" copy equipment from other offices as long as they charge the public only the actual cost of furnishing copies.

Commercial copy centers. Government offices may use commercial copy centers to make copies of public records for the requester, but special precautions may be necessary to protect confidential information if the records, like medical records or tax records, are not open for everyone to examine.

Preservation of originals. Public officials must protect records from being damaged or disorganized. So officials should either personally make the copies or personally supervise the copying process -- original public records should never be relinquished. Iowa Code sec. 22.3. (See Sunshine Advisory, Safeguarding Public Records (April 1, 2002) pg. 47).

Remember: Government bodies maintain public records for all the people of Iowa and must act responsibly to make them available for examination and copying -- even when the copier breaks down!

Public Records - Specific Types of Records

“911” Audio Tapes

Can the Public Obtain Copies of "9-1-1" Audio Tapes? (February 1, 2006)

Yes - audio tapes are just a different form of public record.

Iowans dial "9-1-1" every day to report a crime or accident or call for medical assistance. Are audio tapes of 911 calls public records? Public records do include "all records, documents, tape, or other information, stored or preserved in any medium." Iowa Code sec. 22.1(3). What if a 911 call includes confidential information? Can an audio tape be edited prior to release?

Generally, audio tapes of 911 calls are public records and must be released by the lawful custodian, unless a specific provision of law makes all or part of the tape confidential. The following guidelines apply to release of audio tapes, including those which contain confidential information:

- **Open Records:** Audio tapes of 911 calls which do not include confidential information are open records and must be released on request. Iowa Code sec. 22.1(3).
- **Confidential Information:** Most audio tapes of 911 calls about a crime or incident should be treated as peace officers' investigative reports that may be kept confidential; however, the "date, time, specific location, and immediate facts and circumstances" must be released, except under unusual circumstances (see below.)
- **Unusual Circumstances:** When release of information in a 911 audio tape "would plainly and seriously jeopardize an investigation or pose a clear and present danger" to a person's safety, the "date, time, specific location, and immediate facts and circumstances" about a crime or incident should be kept confidential. Iowa Code sec. 22.7(5).

Remember: Audio tapes of 911 calls are just a different form of public record and must be released, unless confidential under law. When a crime or incident is involved, the public has a right to certain information in a 911 tape -- except under unusual circumstances.

Autopsy Reports

Deaths in a Community Can Raise Alarm But Does the Public Have Access to Autopsy Reports? (December 1, 2005)

A death in a community may be a matter of real public concern -- for example, people may wonder if the death resulted from a crime -- and sometimes people may wish to see autopsy reports. Are autopsy reports confidential? How is privacy protected for the family of the decedent? What can government officials release?

Iowa's Public Records Law (Iowa Code Ch. 22) weighs and balances the need for information, privacy interests, and legitimate law enforcement concerns. When a death occurs, the availability of an autopsy report under the Public Records Law depends primarily on the identity of the requester.

Iowa law provides this guidance for release of autopsy reports under Code sec. 22.7(41):

- **Law Enforcement:** Law enforcement agencies have the greatest access to medical information. Medical examiner records and reports, including autopsy reports, shall be released on request to a law enforcement agency that is investigating the death.
- **Immediate Next of Kin:** The decedent's immediate next of kin has conditional access to autopsy reports which shall be released on request, unless disclosure "would jeopardize an investigation or pose a clear and present danger to the public safety or the safety of an individual."
- **General Public:** The general public has no access to autopsy reports. However, information regarding the cause and manner of death is open and shall be released to the public, unless, like autopsy reports, disclosure of this information "would jeopardize an investigation or pose a clear and present danger to the public safety or the safety of an individual."

'Remember: Iowa's Public Records Law balances various interests in providing access to records about a death. Law enforcement has the greatest access to records. Release of autopsy reports to immediate next of kin and release of the cause and manner of death to the general public hinge on whether disclosure "would jeopardize an investigation or pose a clear and present danger to the public safety or the safety of an individual."

Citizen Letters

Contacting Government Bodies: Are Citizens' Letters Confidential? (December 1, 2002)

What does Iowa law say about how government bodies should treat letters and e-mail messages from citizens? When citizens write to pose questions, voice concerns, express opinions, or lodge complaints, is their message confidential - or is it a public record available to others upon request?

Specific laws make some letters confidential. (For example, complaints about physicians to the Board of Medical Examiners are confidential by law.) But what if no specific statute applies? Here are the basic principles of Iowa law that govern letters from the public:

Many citizen letters are considered open records. In fact, such letters must be available for examination and copying by others, if any of the following are true: (1) the person making the communication consents to disclosure; or (2) information in the communication can be disclosed without identifying the person who sent it; or, (3) information in the communication discloses facts surrounding a crime or illegal act, unless the disclosure would jeopardize an investigation or pose a danger to others. (Iowa Code section 22.7 (18).)

In some cases, citizen letters may be kept confidential. A public agency in Iowa may have discretion to keep communications from the public confidential, if all of the following are true: (1) the communication comes from a person outside of government; and (2) the communication is voluntary and not required by any law, rule or procedure; and (3) the government body could reasonably believe the public would be discouraged from communicating if the communications were available for public examination and copying.

Citizens who write to government bodies should be aware that their letters could be open for examination and copying by others. If confidentiality is important, citizens would be wise to say so in their letters. Government bodies can make better decisions about disclosing letters from the public if citizens communicate clearly about confidentiality.

Emergency Response Plans

Emergency Response Plans: What Information is Open to the Public? (April 1, 2007)

State and local emergency management agencies are required by Iowa law to develop disaster emergency plans. Cities and schools also prepare emergency response and evacuation plans. How can we tell if our community is prepared? Are the plans open to the public? Can government officials limit access to sensitive security procedures or preparedness information?

Providing public access to emergency planning information requires a careful balancing of the public's right to know and the need to protect people and property.

- **Custodians have discretion:** A governmental body may maintain emergency preparedness information as confidential, if the body first makes a finding that releasing the information would create a risk to employees, visitors, persons, or property, or would significantly increase vulnerability. Iowa Code sec. 22.7(50).

- **Policies may vary:** Information may be kept confidential under section 22.7(50) only if the governmental body has adopted a rule or policy identifying the specific records or class of records which it deems confidential under the statute. Because the potential risks flowing from disclosure of specific types of emergency planning information will vary, policies also will vary among local emergency management agencies. Releasing a school's evacuation plan would raise different considerations, for instance, than releasing blueprints of a nuclear power plant.

- **Other restrictions:** There are several other provisions of state and federal law requiring state agencies and local commissions to maintain confidentiality of some planning documents and background information. For example, critical asset protection information compiled by the state homeland security and emergency management division can be shared with local officials only if they maintain it as confidential. Iowa Code sec. 22.7(45)

Remember: Iowa law balances the public's interest in knowing about emergency response plans with government's duty to protect people and property. Iowa law permits some information to be designated as confidential.

Library Records

Are Your Library Records Confidential? (June 1, 2006)

A criminal or juvenile justice agency can obtain access to library records if investigating a person suspected of committing a crime.

Iowans use their public libraries every day to check out books or request information. Public libraries maintain records about their patrons, of course - they need to track which patrons have borrowed which books. Can law enforcement have access to these records to find out who has checked out certain books or requested certain information? Does Iowa law protect a library patron's privacy?

Iowa Code sec. 22.7(13) puts very specific limits on whether and when law enforcement agencies may obtain library patron information.

Under Iowa law, "records of a library which, by themselves or when examined with other public records, would reveal the identity of the library patron checking out or requesting an item, or other information from a library" shall be released for purposes of a criminal investigation only when all three of the following circumstances apply:

- **Authorized Agencies**. The records shall be released to a "criminal or juvenile justice agency." Iowa Code sec. 22.7(13).
- **Pending Investigation**. The records shall be released "only pursuant to an investigation of a particular person or organization suspected of committing a known crime." Iowa Code sec. 22.7(13).
- **Court Order.** The records shall be released "only upon a judicial determination that a rational connection exists between the requested release of information and a legitimate end and that the need for the information is cogent and compelling." Iowa Code sec. 22.7(13).

Remember: Iowa's Public Records Law balances the need for criminal investigative information and the privacy of library patrons by defining specific criteria for providing law enforcement agencies with access to library records.

Peace Officer Emails and Phone Records

Are E-Mails and Telephone Billing Records of Peace Officers in Law Enforcement Agencies Confidential? (May 1, 2007)

Maybe, if they are related to investigative reports -- but only until the time to file criminal charges expires.

The Public Records Law allows "investigative reports" of peace officers to be confidential – but the "date, time, specific location and immediate facts and circumstances surrounding a crime or incident shall not be kept confidential," except in limited circumstances. Iowa Code sec. 22.7(5). What about e-mails and telephone billing records of law enforcement agencies – can the public have access to these records if they relate to an ongoing investigation? The law allows some parts of these records to be kept confidential, but only for a limited time.

Here are the principles that govern access to e-mail and telephone billing records of law enforcement agencies that relate to an ongoing investigation:

● **Investigative Reports**: The law allows peace officers' investigative reports to be kept confidential, but makes the "date, time, specific location and immediate facts and circumstances surrounding a crime or incident" public unless "disclosure would plainly and seriously jeopardize an investigation or pose a clear and present danger to the safety of an individual." Iowa Code sec. 22.7(5).
● **E-Mail and Telephone Billing Records**: The same confidentiality and exceptions apply to e-mail and telephone billing records of law enforcement agencies if information is included in these records as part of an ongoing investigation. The "date, time, specific location and immediate facts and circumstances" shall not be kept confidential, unless the exceptions to disclosure apply for plain and serious jeopardy or clear and present danger.
● **Time Limitation on Confidentiality**: Confidentiality for e-mail and telephone billing records extends only until the statute of limitation expires for the crime under investigation.

Remember: E-mail and telephone billing records related to an ongoing investigation in a law enforcement agency are treated like peace officers' investigative reports, but confidentiality of e-mail and telephone billing records extends only until the time to file charges expires.

Personal Information

Who Has Access to Personal Information Citizens Provide to State Agencies? (June 1, 2003)

Citizens routinely supply state agencies with personal information -- for example, when they apply for a license to drive or hunt, renew a professional license, or file a claim for unemployment compensation. The information may well include a person's name, home address, home phone number, social security number, or birth date.

Who has access to this information? There is no single answer. Public access to personally-identifiable information collected by a state agency will vary depending on the type of information and the purpose for which the information is collected. However, one thing is always true: **Citizens always have the right to know who has access before they supply personal information.**

Before a state agency can use personal information about Iowa citizens, the agency is required by law (Iowa Code section 22.11) to adopt rules telling citizens:

- The types of personally-identifiable information the agency collects.
- The agency's legal authority to collect personally-identifiable information.
- How the agency stores the information, who has access to the information, how mistakes can be corrected, and what the agency uses the information for.
-

Other public bodies, including cities and counties, are not required by Iowa's Public Records Law to adopt such policies, but they may do so voluntarily.

If a state agency requests information you consider private, find out if the information must be supplied and, if so, if it will be kept confidential. If the information is public, you might ask if you can substitute a business address for a home address, for example. In this electronic age of expanded public access to public records, officials and citizens need to be especially sensitive to government policies on collecting and using personal information.

Personnel Records

Access to Personnel Records of Public Employees: What's Open? What's Not? (February 1, 2003)

The public has an interest in information about employees who conduct the public's business, and more information is available about public employees than about private workers. Various questions might come up: What are public employees paid? Where do they live? Are they doing a good job? Just how much is the public entitled to know?

State law requires public employers to disclose certain personnel information, but it also sets limits on public access to personnel records of public employees. Iowa law balances the goal of public accountability with the privacy and security interests of public employees.

Here are some guidelines for applying Iowa's Public Records Law (Iowa Code ch. 22) and providing responsible access to information about government employees:

- Records of payments to government employees are always public, including wages, reimbursed travel, or a cash payment in settlement of an employment dispute.
- Employment dates and an employee's current or former positions.
- Any educational institutions the employee attended, including diplomas and degrees.
- An employee's previous employers, positions held, and dates of previous employment.
- Information about an employee's promotion or pay increase is public, but performance evaluations or disciplinary records may be kept confidential.
- An employee's individual vacation and sick leave record is open to the public. The public can have access to records that show the number of days employees use for vacation or sick leave, but the medical reason for an employee's sick leave may be kept confidential.
- A public employee's name and business address is public. But government bodies may keep confidential an employee's home address, gender, and birth date.
- The fact that the individual was discharged as the result of a final disciplinary action after all applicable contractual, legal, and statutory remedies have been exhausted.

Public personnel officers need to be familiar with the rules on releasing personnel records. This will assure proper public access to public information, while protecting the appropriate confidentiality of employees' personal information.

Resumes and Applications

So, You Want to Work for the Government . . . ? (May 1, 2003)

Are resumes and application letters public records?

Government bodies advertise vacancies and accept resumes, just like other employers. What is the public record status of resumes and applications? Would applicants be discouraged from seeking a government job if their resumes were subject to disclosure as public records? (Some prefer no disclosure.) Is the public entitled to examine and copy resumes during the hiring process?

Some resumes may be kept confidential -- but others may not. Iowa law provides basic principles to decide if resumes may or may not be kept confidential (Iowa Code sec. 22.7 [18]). Resumes may be kept confidential if all of the following are true:

- The resume comes from a person outside of government. Resumes submitted by a person already employed in government do not qualify for confidentiality.
- The resume is submitted voluntarily and is not required by any law, rule or procedure. (This element is easily satisfied, because ordinarily no one is required to apply for a job.)
- The government employer could reasonably believe the applicant would be discouraged from submitting a resume if it were available for public examination and copying. If, based on experience or other evidence, the government employer could reasonably believe the pool of applicants will be reduced if the resumes are public records, the resumes may qualify for confidentiality.

All three of these criteria must be met in order to keep resumes confidential.
However, if the applicant consents to disclosure, the resume must be disclosed as a public record. Therefore, remember: it is important to know the applicant's preference about disclosure. Government employers should ask about confidentiality, and applicants should make their preference known.

Settlement Agreements

No Secret Settlements (June 1, 2004)

The public is entitled to know when a government body settles litigation. In government, settlements are not secret.

Private parties occasionally agree to keep the terms confidential when they settle a lawsuit. If the settlement is confidential, citizens cannot find out from public records what, if anything, was paid to settle the case. But is confidentiality permitted when a governmental body settles litigation?

A governmental settlement document, including a summary of the settlement agreement, is a public record open for examination and copying, unless the settlement document is made confidential under a specific provision of law.

When a governmental body reaches a final, binding, written settlement agreement that resolves a legal dispute claiming monetary damages, equitable relief, or a violation of a rule or statute, the governmental body shall, upon request and to the extent allowed under applicable law, prepare a brief summary of the resolution of the dispute. The summary must include the following information:

- The identity of the parties involved
- The nature of the dispute
- The terms of the settlement, including any payments made by or on behalf of the government body
- Any actions to be taken by the government body

A government body is not required to prepare a summary if the settlement agreement includes the information required to be included in the summary.

A few provisions of law address public disclosure of these documents in different contexts:

- **State Agency Actions:** All final orders, decisions and opinions must be available for public inspection with identifying details deleted only as authorized by law to prevent an unwarranted invasion of personal privacy or disclosure of trade secrets. Iowa Code sec.17A.3(1)(e).
- **Professional Disciplinary Actions:** A final written decision by a professional licensing board in a disciplinary proceeding against a licensed professional is a public record. Iowa Code sec. 272C.6(4).

Remember: Governmental bodies are accountable for litigation settlements whether in court or in matters pending before the governmental bodies themselves. Public disclosure is the rule, and confidentiality is the exception.