IOWA MUNICIPAL MANAGEMENT INSTITUTE
MARCH 20, 2015

TOP 5 THINGS CITY MANAGERS/ADMINISTRATORS SHOULD KNOW ABOUT MUNICIPAL LAW[1]

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I. Internal Investigations: Pitfalls and Strategies (Amy L. Reasner)

A. Why should you care about Internal Investigations?

1. As you know, if a company is put on notice of harassment, discrimination or retaliation or fraudulent or criminal conduct and then fails to investigate and remedy any illegal behavior, the company could be sued. If the plaintiff is successful, the company could be ordered to pay hundreds of thousands of dollars in damages and attorneys' fees, depending on the type of claim.
2. Aside from litigation risk, there is also the injury to your employees' morale and productivity (the employees you spent time and money on when you hired, trained and developed their skill set and who have fostered your customer relationships), as well as negative publicity.

B. The Investigation Process (for Employment/HR Complaints)

1. Intake Process
   a. Immediately open an investigation file – don't wait, time is of the essence!
   b. Immediately 'freeze and seize.'
   c. Immediately determine if there needs to be a suspension during investigation due to safety or other concerns (i.e., serious

[1] This information is provided as a general outline to recent developments in state and federal municipal law. It is not intended to be an exhaustive outline of all topics that a City Manager/Administrator should be aware of nor is it intended to provide legal advice in lieu of advice provided by a licensed attorney. Those reading this document are encouraged to contact an attorney before acting on any of the information provided herein.

allegations of harassment including touching or high potential for retaliation).

2. Analysis and Investigation Plan
   a. Review complaint.
   b. Can Employee Relations or Human Resources handle this or do we need a "special investigator"? Internal or external? (i.e., conflict of interest, high ranking official, single incident v. pattern, minor or major problem, simple v. complex, clear v. ambiguous facts or he said, she said.)
   c. Do we need more than one investigator? (i.e., large number of witnesses or fact intensive, have the second person analyze credibility.)
   d. Whoever is assigned to the case then ultimately needs to review policies or procedures or ethics rules which are applicable to the case.
   e. Create list of relevant witnesses/interviewees.
3. Investigation
   a. Interviewer needs to create a pre-interview checklist of questions to be asked/issues on which they should follow up.
   b. Perform interviews, data collection/review.
   c. Interviews: interview the complainant first, if possible.
   d. Make credibility assessments.
   e. Draft preliminary report, including an interview chronology, credibility assessments and apply policies/procedures and ethics rules, and/or local, state and federal law. **If within the scope of your investigation**, make recommendations.
   f. Review preliminary conclusions/recommendations with manager or contact person.
   g. Finalize report.
   h. Someone must be designated to follow up with complainant and accused regarding conclusions. Can be in the form of a confirmation letter or email. If an in-person meeting, document it.
4. Interviewing
   a. Corporate "Miranda" to the execs (and make a record of that!). See Rules of Professional Conduct - Responsibility; see *Upjohn v. United Sates*, 449 US 383 (1981), provided framework to identify when employee communications with corporate counsel qualify as protected attorney-client exchange.
      i. *Upjohn* held that each case must be evaluated on its own facts to determine whether application of attorney-client privilege would further the underlying purpose of the privilege, which is to encourage candid communications between client and counsel for the purpose of rendering legal advice. Specifically, the court emphasized that the privilege applies when ***"[t]he***

communications concerned matters within the scope of the employees' corporate duties, and the employees themselves were sufficiently aware that they were being questioned in order that the corporation could obtain legal advice." *Id. at 394.*

ii. Unionized employers: Don't forget the *Weingarten* rights! Under the NLRA and case law by the United States Supreme Court, an employee may demand that a co-worker or representative accompany them to an investigative meeting that they may reasonably believe will result in a disciplinary action. Failure to honor these rights is a violation of an employee's Section 7 rights. This does not apply to nonunionized employers. *See IBM Corp.*, 341 NLRB 1288 (2004).

iii. PERB relies on NLRB law. See also *Teamsters Local 238/Muscatine Co.*, Case No. 8744 (12/2014).

b. Introduction – purpose of interview; neutral fact finder; note-taking by the investigator; report prepared and submitted to decision-maker; information may be shared as a result; may need to re-contact or re-interview you; no reprisal or retaliation against anyone who participates in this investigation; will be responded to promptly and remedially!

c. Do not promise confidentiality—you cannot. Tell the interviewee that the people who may learn about their statements are on a "need to know basis."

d. The investigator should ask the interviewees not to discuss their interview with anyone during the pendency of the investigation. Inform them that this permits the investigator the opportunity to interview everyone and hear what *they* know—not what they heard from other witnesses.

e. **LISTEN!!**

f. **BE PATIENT!**

g. **ASK** non-leading questions.

h. **CONFIRM**.

i. **WATCH!**!

j. **TAKE NOTES WITH THE DATE AND TIME YOU STARTED AND THE TIME YOU CONCLUDED**.

k. **DO NOT ENGAGE EMOTIONALLY—BIAS!**

l. **GET THEIR OPINION.**

i. What makes them think this is a violation of company policy or the law?

ii. Who do they think you should interview?

iii. What is the best possible outcome here?

m. **CONCLUDE.**

i. What did you forget to ask?

ii. Call if you remember anything.
iii. Remind them to respect the process for now.
iv. Remind them that they should report to you, the GC's office, the City/County Attorney, Employee Relations or HR any retaliation against them for their participation in the investigation. Likewise, they must not retaliate against someone else who they think participated in the investigation.

5. Follow Through
   a. Follow your leads—who else should you interview?
   b. Review necessary paperwork – policies/procedures/rules? Other complaints of a similar nature by the complainant or against the accused? Previous discipline that will factor into your decision/recommendations?
6. Preliminary Report
   a. Summarize complaint.
   b. Identify parties.
   c. Chronology of process/interviews (dates/times).
   d. Summarize statements/interviews: note credibility factors (choice of words, physical conduct, inconsistent or wrong information, corroboration or lack thereof, history/pattern, timing).
   e. Findings of Fact/Conclusions
   f. Make recommendations (if within the scope of your investigation.)
7. Discuss Preliminary Report/Recommendations
8. Finalize Report.
9. Closure.

C. Insulating Your Investigation from a Successful Challenge/ Addressing Retaliation

1. Top Ten Mistakes to Avoid When Investigating Internal Employment Complaints
   a. Lack of training for employees/supervisors/HR regarding discrimination, harassment, retaliation and complaint process.
   b. Inaction – ignoring the complaint.
   c. Untimeliness – failing to act promptly.
   d. Poor investigation – taking bad notes and/or keeping inadequate records or comingling investigations.
   e. Inadequate investigation – failing to investigate thoroughly and completely, drawing unsubstantiated conclusions.
   f. Disregarding the evidence.
   g. Failing to diffuse an immediate crisis – letting problems escalate.
   h. Poor (or no) remedial action – failing to take all reasonable and necessary steps to ensure that the problem does not happen again.
   i. No follow up – failing to ensure closure with all interested parties.
   j. Making recommendations and then failing to follow them.
   k. Preserve your file—don't create an adverse inference!

2. Retaliation
    a. EEOC charge statistics show retaliation claims under all statutes governed by the EEOC were 37,955, up almost 67% from a decade ago.
    b. Retaliation is defined by the federal civil rights act as "It shall be an unlawful employment practice for an employer to discriminate against any employees or applicants for employment *** because he/she has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter." See 42 U.S.C. § 2000e-3(a). Iowa's Civil Rights Act is similar, see Iowa Code § 216.11(2).
    c. As long as a plaintiff had a reasonable, good faith belief that there were grounds for a claim of discrimination or harassment under Title VII or the ICRA, the success or failure of a retaliation claim is analytically divorced from the merits of the underlying discrimination or harassment claim.

II. Can I say that? Defamation by elected officials—recent verdicts and settlements in Iowa (Wilford H. Stone)

A. Did I defame somebody?

1. False statement made to a third party.
2. Defamation per se? integrity: embezzlement; incompetent at their job; cheated on spouse or on taxes; drug use; STD; etc.
3. Defamation by implication/innuendo/insinuation – *Stevens v Iowa Newspapers et al* (Iowa 2007)

B. Do I need to worry about defamation?

1. Damages: loss of reputation; loss of income; emotional distress. No punitive damages against City.
2. *City of Cedar Rapids* (2014): $140,000 in damages re "tirade" about pier built homes without frost free foundations – suggested no proper permits; house fire due to improper piping; general poor business issues.
3. *City of Remsen* 2014 cases: $140,000 settlement – theft of money.
4. *City of Mingo* (2013) (clerk sued City for statements to insurance company for suspected theft of City money and falsification of records)
5. Council meetings
6. Closed sessions
7. City employees
8. Social media; i.e., Facebook

C. Do I have any legal defenses to defamation?

1. The truth?

2. Substantially true? *Holcomp v Nefzeger* (Iowa Ct. App. 2013) – letter to the editor re Lake Delhi and sewer leakage into the beach – "substantially true."
3. Opinion protected by the First Amendment? *Craig v. City of Cedar Rapids* (Iowa Ct. App. 2012) – email re "Thank you for your help in dealing with this blivet" found to be opinion and, therefore, protected speech.
4. Qualified privilege for statement in performance of official duties and published on the proper occasion, in the proper manner and to proper parties.
5. "An employer may be liable for the defamatory conduct of its employees when the defamer, at the time he uttered the words complained of, was acting within the scope of his employment, and in the actual performance of his duties touching the subject matter of the negotiations or transaction." *Craig v. City of Cedar Rapids,* 2012 Iowa App. LEXIS 1050, at *26–27 (Iowa Ct. App. 2012) (summary judgment granted for employer).
6. Who was defamed? Public figure? Higher burden of proof. City Clerk of Mingo.
7. No actual malice—no knowledge that it was false or with reckless disregard – clear and convincing burden of plaintiff.
8. Slander per se—falsity, malice and injury is presumed – jury instructed on multiple counts so jury can "pick and choose."

D. Best practices

1. Am I insured?
2. Be professional and aware of what you are saying.
3. Only say what you can prove.
4. Keep the statement about matters of public concern and not a factual statement about someone.

III. <u>You'll Finish When? Construction Law Update (Brett S. Nitzschke)</u>

A. BID AND QUOTE THRESHOLDS FOR IOWA CITIES

Iowa Code Section 26.2(1) – Estimated total cost of a public improvement/estimated total cost.

The estimated total cost to the city to construct a public improvement, including cost of labor, materials, equipment and supplies, but excluding the cost of architectural, landscape architectural or engineering design services and inspection.

Threshold	Horizontal Infrastructure	Vertical Infrastructure

	Cities		Cities	
	≤ 50,000 population	**> 50,000 population**	**< 50,000 population**	**≥ 50,000 population**
Competitive bid	$50,000	$72,000	$135,000	$135,000
Competitive quote	N/A	N/A	$55,000	$75,000

http://www.iowadot.gov/local_systems/publications/bid_limits.htm

Iowa Code Section 26.3 – a city shall have an engineer, a landscape architect or an architect prepare plans and specifications and calculate the estimated total cost of a proposed public improvement.

B. AWARD OF CONSTRUCTION CONTRACTS

Iowa Code Section 26.9

1. The contract for the public improvement must be awarded to the lowest responsive, responsible bidder.

2. Contracts relating to public utilities or extensions or improvements of public utilities may be awarded by the city as it deems to be in the best interests of the city.

3. Cities can provide, in the award of a contract for a public improvement, an enhancement of payments upon early completion of the public improvement if: (1) the availability of the enhancement payments is included in the notice to bidders; (2) the enhancement payments are competitively neutral to potential bidders; (3) the enhancement payments are considered as a separate item in the public hearing on the award of contract; and (4) the total value of the enhancement payments does not exceed ten percent of the value of the contract.

C. LOWEST RESPONSIVE, RESPONSIBLE BIDDER

1. A city is not locked in to having to enter into a contract with the entity that provides the lowest bid. The courts have given broad power to cities to determine the lowest responsive, responsible bidder.

2. General Rule – Courts are reluctant to interfere with a local government's determination of who is the lowest responsible bidder, absent proof that the determination is fraudulent, arbitrary, in bad faith or an abuse of discretion. See *Istari Construction, Inc. v. City of Muscatine*, 330 N.W.2d 798 (Iowa 1983); *Menke v. Board of Education*, 211 N.W.2d 601 (Iowa 1973). The courts' reluctance to

interfere with a local government's determination under the circumstances is founded on the theory that "public officers in awarding contracts for the construction of public works . . . perform not merely ministerial duties, but duties of a judicial and discretionary nature . . . ." 64 Am.Jur.2d Public Works and Contracts § 64 (1972). In the absence of fraud or a palpable abuse of that discretion, courts ordinarily will not interfere with a city's decision as to the details of entering into a contract, or the acceptance of bids therefor, so long as they conform to the requirements of controlling constitutional or statutory provisions, ordinances, or other governing legislative requirements. Id.; *Scheckel v. Jackson County, Iowa*, 467 N.W.2d 286 (Iowa App. 1991).

3. The lowest dollar bid is but a single factor in the determination. Responsibility may embrace factors other than the low dollar figure, including such considerations as the business judgment of the bidder and the bidder's record for reliability in performance. *Menke v. Board of Education*, 211 N.W.2d 601 (Iowa 1973); see also *Dickinson Co., Inc. v. City of Des Moines, Iowa*, 347 N.W.2d 436 (Iowa App. 1984).

4. If a city were to decide to award a project to a bidder other than the low dollar bidder, the city should document in detail its concerns about the low bidder and the basis for those concerns, including details about the low bidder's performance on other projects. A city also should document the facts that support the reliability and responsibility of the bidder that was awarded the project. This provides evidence that the city's decision was not arbitrary or fraudulent, made in bad faith or the product of an abuse of discretion if its decision were challenged.

5. A city can use questionnaires completed by bidders and conduct reference checks on bidders after bids are opened and prior to the award of a contract to determine which of the entities submitting a bid is the lowest responsive, responsible bidder.

D. CHANGES IN THE WORK

Changes in the work are typically accomplished after execution of the contract by (1) change order, (2) construction change directive, or (3) order for a minor change in the work.

Change Orders – A written instrument prepared by the architect and signed by the city, the contractor and the architect stating their agreement on: (1) the change in the work; (2) the amount of the adjustment, if any, in the contract sum; and (3) the extent of the adjustment, if any, in the contract time.

Construction Change Directives – A written order prepared by the architect and signed by the city and architect directing a change in the work prior to agreement on an adjustment, if any, in the contract sum or contract time or both. Construction change directives typically are used in the absence of total agreement on the terms of a change order.

Minor Change in the Work – The architect has authority to order minor changes in the work that do not involve an adjustment in the contract sum or an extension of the contract time. Such changes are made by a written order signed by the architect and the written order is binding on the city and the contractor.

E. PROJECT COMPLETION

Substantial Completion – The stage in the progress of the work when the work or a designated portion of the work is sufficiently complete in accordance with the contract documents so the city can occupy or utilize the work for its intended use.

Final Completion – The final completion of a project requires the following: (1) receipt of the contractor's written notice that the work is ready for final inspection and acceptance; (2) receipt of a final application for payment; (3) a finding by the architect after an inspection of the work that the work is acceptable under the contract documents and the contract; and (4) issuance by the architect of a final certificate for payment.

F. LIQUIDATED DAMAGES

1. Liquidated damages clauses in construction contracts are a means for a city to protect itself from construction delays.

2. A liquidated damages clause fixes the amount of damages to be paid by a contractor upon the delay by the contractor in completing a project on time.

3. A liquidated damages clause typically provides that for every day after a certain date (usually substantial completion) that the contractor goes over that date, the contractor will be charged a certain amount.

4. A liquidated damages clause enables a city to collect the agreed upon liquidated damages and avoid a potential lawsuit to try to recover damages related to a delay in a project.

5. A liquidated damages clause may be favorable where time is of the essence and the city runs the risk of incurring what otherwise may be a loss that is difficult to quantify (i.e., tracking lost revenue in a commercial setting).

6. Liquidated damages clauses generally are enforceable when the actual damages resulting from a delay cannot be easily determined at the time of entering into a contract and the amount designed as liquidated damages represents a reasonable estimate of the damages that may be incurred (and not a penalty which is generally unenforceable).

IV. Not in My Backyard: Zoning and Current Land Use Regulations (Steven C. Leidinger)

A. Variances

1. The General Assembly has tasked Zoning Boards of Adjustment ("ZBAs") with the authority to grant variances from a city's generally applicable zoning regulations. Iowa Code §414.12(3).
2. A variance is appropriate if it will avoid an undue or unnecessary hardship.

B. Legal Standard for Granting a Variance

1. Three Part Analysis:[2]
   a. The land in question cannot yield a reasonable return if used in accordance with generally applicable zoning regulations.
      i. The owner must be deprived of ALL beneficial use of the land.
         (1) This only occurs where the land is rendered unsuitable for any use permitted by the zoning.
            (a) It is not enough that a variance would permit the applicant to maintain a more profitable use.
   b. The hardship at issue is due to unique circumstances particular to the land itself; not general conditions of the locality; and not the owner's personal circumstances.
   c. Granting the variance requested will not alter the essential character of the locality.
2. The burden to prove all three elements is on applicant. *Deardorf v. Zoning Board of Adjustment*, 254 Iowa 380, 384 N.W.2d 78 (1962).
   a. Failure to prove even one of the elements results in a denial.

C. Scenarios for Discussion

1. Applicant owns a vacant pie shaped lot in a residential (R-1) district, but the lot is five (5) feet shy of the district's minimum frontage requirement; the applicant's building plans satisfy all other applicable zoning requirements.

[2] *Greenawalt v. Zoning Board of Adjustment of City of Davenport*, 345 N.W.2d 537,541-42 (Iowa 1984).

a. VARIANCE OR NO VARIANCE?

2. An aging couple on a fixed budget wants to construct an addition to their home to add a first floor bath and laundry room to enable them to stay in the home where they have lived for 50 years and raised their children, but the only economical feasible plan for them would result in a five (5) foot encroachment into the applicable front yard setback. There are several other options for them, but all are considerably more expensive.
   a. VARIANCE OR NO VARIANCE?

D. Consequence for an Improperly Granted Variance

1. Any person aggrieved by a decision of the ZBA may file a petition for Writ of Certiorari within thirty (30) days. Iowa Code §414.15.
   a. This process requires the ZBA to file a record of its proceedings. Iowa Code §414.16.
      i. The ZBA must be able to provide substantial evidence for its decision in order to prevail. *Bowman v. City of Des Moines Mun. Housing Agency*, 805 N.W.2d 790, 796 (Iowa 2011).
         (1) This means that reasonable minds must be able to accept the ZBA's evidence as adequate to reach the same conclusion. *Bontrager Auto Serv. v. Iowa City Bd. of Adjustment*, 748 N.W.2d 483, 495 (Iowa 2008).
         (2) Courts will typically defer to the ZBA's decision as long as that decision is open to a fair difference of opinion. *Ollenburg v. Bd. of Adjustment of Clear Lake*, 829 N.W.2d 589 (Iowa App. 2013).
2. How does a city best protect itself?
   a. ZBA should ALWAYS prepare detailed records of its proceedings, including, specifically, findings of fact.
      i. It may be helpful for a ZBA to record its proceedings. Not only will this assist in preparing minutes and findings of fact, but it would also constitute part of the record in the event of an appeal to the District Court.

E. Findings of Fact

1. A ZBA is legally required to make written findings of facts (important part of the record on appeal).
   a. The Supreme Court of Iowa has not mandated exactly what these findings of fact must include.
      i. But the findings must at least be sufficient to enable a reviewing court to determine with reasonable certainty the factual basis and legal principals supporting the ZBA's decision. *Citizens Against the Lewis and Clark (Mowe1y) Landfill v. Pottawattamie County Board of Adjustment*, 277 N.W.2d 921, 925 (Iowa 1979).
         (1) Insufficient findings of fact open the door to a court making its own determination as to the factual basis and legal

principals underlying the ZBA's decision and substituting its own judgment for that of the ZBA.

2. What should a ZBA's findings of facts include?
   a. There is no fixed formula; but we would recommend at least the following:
      i. Narrative description of the facts; list of parties present; summaries of arguments presented and ZBA discussion re same;
      ii. Findings as to each of three prongs of the required analysis;
      iii. Ultimate finding as to whether there exists an unnecessary hardship;
      iv. ZBA's decision on the application; and
      v. If granted, scope and extent of variance granted (minimum required).

F. Conclusion

1. Contrary to the current practice in many cities, the granting of a variance should be more of the exception than the rule. See, *Deardorf v. Board of Adjustment*, 118 N.W.2d 78, 81 (Iowa 1962) ("It is well recognized that the power to grant a variance should be exercised sparingly and with great caution or in exceptional instances only.").
2. Make sure that your ZBA is making detailed written findings of fact.

V. Hot Topics In Municipal Law

A. Discharge of Appointed Public Officials (Patrick J. O'Connell)

1. Removal of a city administrator, city clerk, or deputy city clerk who has been "appointed" under the City Code requires the City to observe certain due process rights which are not widely and consistently understood.
2. Apart from the rights public employees have to a due process hearing and union representation (if applicable), appointed officials have added rights which must be observed.
3. 372.15 REMOVAL OF APPOINTEES.
   Except as otherwise provided by state or city law, all persons appointed to city office [1] ***may be removed by the officer or body making the appointment***, but every such removal [2] ***shall be by written order***. [3] ***The order shall give the reasons***, be [4] ***filed in the office of the city clerk***, and [5] ***a copy shall be sent by certified mail to the person removed*** who, ***upon request filed with the clerk within thirty days of the date of mailing the copy,*** [6] ***shall be granted a public hearing before the council on all issues connected with the removal***. The hearing shall be held ***within thirty days of the date the request is filed***, unless the person removed requests a later date.
4. Most city codes reiterate this language verbatim.

5. An appointed official aggrieved by the City's failure to follow these procedures may file a petition for writ of certiorari challenging the actions of the City.
6. The primary remedies for violating Iowa Code § 372.15 are reinstatement of the appointed city official and repayment of all back pay and benefits. The due process required under § 372.15 can be carried out belatedly and the appointed official can then be dismissed, but this is costly and embarrassing.
7. Tips and Suggestions for Discharge of Appointed Officials: USE CAUTION.
    a. **C**onvince. Appointed officials will often waive the public hearing if you convince them of the negative ramifications of their misconduct being aired publically. This also avoids an embarrassing spectacle for the City. If the appointed official agrees to waive the hearing, get a *WRITTEN* waiver.
    b. **A**ttorney. If you are thinking of dismissing an appointed official, talk to your City Attorney or qualified outside counsel the instant the thought strikes you. Your decision not to consult counsel early in the process may cost the City.
    c. **U**niformity. Use pre-crafted rights advisement forms which satisfy the federal and state laws relative to public employees in Iowa. Public employees have a *property interest* in their jobs and cannot be treated like private sector employees. This ensures consistency and helps avoid mistakes.
    d. **T**horoughness. Be *thorough* in preparation of the written order and the certified letter. List ALL misconduct (including old misconduct which figures into the decision), including specific dates. Do not fear "piling on."
    e. **I**nvestigate. If misconduct or incompetence will be the basis for discharging an appointed official, investigate like a police officer, starting with material witnesses and interviewing the appointed official last. Collect all documentation before interviewing the appointed official.
    f. **O**pportunity. Give every opportunity to the appointed employee to answer the charges. Ask the "anything else you would like to add?" question multiple times, so the record reveals your efforts to be fair.
    g. **N**ever, never, never fail to *AUDIO RECORD* disciplinary counseling sessions, administrative interviews, Laudermill hearings and public hearings. It goes without saying documentation is critical. Do not limit yourself to written records. Use Audio! Have a witness present!

B. What Should I Do if I Receive a Public Records Request? (Holly A. Corkery)

1. Iowa Code Chapter 22 controls the public's access to records of a governmental body and states that "[e]very person shall have the right to examine and copy a public record and to publish or otherwise disseminate a public record or the information contained in a public record. Iowa Code § 22.2.
    a. The goal of Chapter 22 is it "allows public examination of government records to ensure the government's activities are more transparent to the public it represents." *American Civil Liberties Union Foundation of Iowa, Inc. v. Records Custodian, Atlantic Community School District*, 818 N.W.2d 231, 232 (Iowa 2012).
2. What are considered public records?
    a. Public records are "all records, documents, tape, or other information, stored or preserved in any medium, of or belonging to [a municipality]." Iowa Code § 22.1(2).
3. What should I do if I receive an open records request?
    a. Follow any polices or procedures your city may have in place regarding the request for review and/or copying of public records.
    b. Review the request to ensure you understand specifically what the requestor is seeking. If you do not, seek clarification from the requestor.
    c. Under Iowa law, there are sixty-seven types of confidential records that are exempt from an open records request. Review the request to ensure that it does not fall into one of these exemptions.
        i. Examples
            (1) Records which represent and constitute the work product of an attorney, which are related to litigation or claim made by or against a public body." Iowa Code § 22.7(4).
            (2) "Personal information in confidential personnel records of government bodies relating to identified or identifiable individuals who are officials, officers, or employees of the government bodies." Iowa Code § 22.7(11).
                (a) Except that the following information contained in personnel records are public records that can be released:
                    1) The name and compensation of the individual including any written agreement establishing compensation or any other terms of employment excluding any information otherwise excludable from public information pursuant to this section or any other applicable provision of law.
                    2) The dates the individual was employed by the government body.
                    3) The positions the individual holds or has held with the government body.

4) The educational institutions attended by the individual, including any diplomas and degrees earned, and the names of the individual's previous employers, positions previously held, and dates of previous employment.
5) The fact that the individual was discharged as the result of a final disciplinary action upon the exhaustion of all applicable contractual, legal, and statutory remedies. Iowa Code § 22.7(11)(a).

(3) Additionally, settlement agreements and summaries of written settlement agreements are public records, provided the settlement is "final, binding [and] written [and] resolves a legal dispute claiming monetary damages, equitable relief, or a violation of a rule or statute . . . ." Iowa Code § 22.13.

d. Timeliness
   i. The Code states that a "good-faith, reasonable delay by a lawful custodian in permitting the examination and copying of a government record is not a violation of this chapter if the purposes of the delay are any of the following: (a) To seek an injunction under [Iowa Code Section 22.8]; (b) To determine whether the lawful custodian is entitled to seek such an injunction or should seek such an injunction; (c) To determine whether the government record in question is a public record, or confidential record; (d) To determine whether a confidential record should be available for inspection and copying to the person requesting the right to do so. A reasonable delay for this purpose shall not exceed twenty calendar days and ordinarily should not exceed ten business days." Iowa Code § 22.8 (4)(a)-(d).
e. Calculate costs and request payment.
   i. Pursuant to Iowa Code Section 22.3(2) the custodian may charge a reasonable fee for "[a]ll expenses of the examination and copying," which cannot exceed the actual cost of copying.
   ii. "Actual costs shall include only those expenses directly attributable to supervising the examination of and making and providing copies of public records. Actual costs shall not include charges for ordinary expenses or costs such as employment benefits, depreciation, maintenance, electricity, or insurance associated with the administration of the office of the lawful custodian." Iowa Code § 22.3(2).
f. If you have questions or concerns about the request, contact legal counsel.