The Iowa Public Information Board

In re the Matter of: Kyle Ocker, Complainant And Concerning: Indian Hills Community College, Respondent	Case Number: 18FC:0090 **Revised** Dismissal Order

COMES NOW Margaret E. Johnson, Executive Director for the Iowa Public Information Board (IPIB), and enters this **Revised** Dismissal Order.

Kyle Ocker filed complaint 18FC:0090 with the IPIB on October 3, 2018. He alleged that the Indian Hills Community College (IHCC) violated Iowa Code chapter 22.

On May 14, 2018, Mr. Ocker, on behalf of the Daily Iowegian, requested the details of the discharge of certain baseball coaches from the IHCC. The IHCC responded that same day that there were no discharges of the named baseball coaches and added that "baseball coaching assignments...expire at the end of the spring term and have not been renewed."

On May 15, 2018, the Daily Iowegian then requested copies of "contracts and current employment assignments." On May 16, 2018, IHCC provided copies of 'at-will' letters of employment.

On August 31, 2018, Mr. Ocker filed another record request for a copy of the teaching contract provided to one of the coaches. This was provided by IHCC.

Sometime after that date, the Daily Iowegian requested "explanations under 22.7(11)(a)(5)" since the coaches were not under contract and "thus seemed to be terminated." IHCC responded that the coaches were not terminated, citing Iowa Code section 279.19A (copy attached **as Exhibit A**).

In response to the complaint, counsel for IHCC stated that Iowa Code section 279.19A(1) specifically states that extracurricular coaching contracts "shall be for a single school year." Letters of employment are sent to prospective coaches each year. Once accepted by the candidate, the letter becomes the contract.

Counsel stated that because the contract or terms of employment automatically expire after one year, there has been no termination or demotion that would trigger the requirements of Iowa Code section 22.7(11)(a)(5):

The fact that the individual resigned in lieu of termination, was discharged, or was demoted as the result of a disciplinary action, and the documented reasons and rationale for the resignation

in lieu of termination, the discharge, or the demotion. For purposes of this subparagraph, "demoted" and "demotion" mean a change of an employee from a position in a given classification to a position in a classification having a lower pay grade.

IHCC counsel also noted that the IPIB does not have jurisdiction over complaints older than 60 days (Iowa Code section 23.7(1)), noting that as the original request was made and responded to in May 2018, more than 60 days before this complaint was filed.

Mr. Ocker responded that the subject of the complaint was the denial of records received on September 24, 2018, not the earlier record release he documented in his complaint. He stated that further investigation in August 2018 led to the August record requests for contracts.

He further noted that Iowa Code section 279.19A would not apply, as that section applies to "contracts" and the IHCC uses "letters of employment."

Counsel for the IHCC replied that the letters of employment used are considered contracts pursuant to Iowa Code section 279.19A. That section also outlines the procedure that must be followed to terminate or discharge a coach (subsection 7), additional proof that there were no terminations or discharges to report.

This complaint is possibly outside the jurisdiction of the IPIB because of timeliness. However, even if within the IPIB jurisdiction, there is insufficient evidence to support a violation of Iowa Code section 22.7(11)(a)(5). There is no requirement for "documented reasons and rationale" if there is no termination of employment. The employment agreements expired by law.

The Iowa Freedom of Information Council filed a position statement opposing dismissal on December 12, 2018. At the December 13, 2018, IPIB meeting, the complaint was continued to allow parties to provide additional comment in response. Counsel for the IHCC filed a brief in support of the dismissal order (Exhibit B).

As noted in the IHCC brief, there are no records in existence that are termination records as described in Iowa Code section 22.7(11)(a)(5). Therefore, there was no violation of Iowa Code chapter 22.

IT IS SO ORDERED: Formal complaint 18FC:0090 is dismissed as legally insufficient pursuant to Iowa Code section 23.8(2) and Iowa Administrative Rule 497-2.1(2)(b).

Pursuant to Iowa Administrative Rule 497-2.1(3), the IPIB may "delegate acceptance or dismissal of a complaint to the executive director, subject to review by the board." The IPIB will review this Order on **January 28, 2019.** Pursuant to IPIB rule 497-2.1(4), the parties will be notified in writing of its decision.

By the IPIB Executive Director

Margaret E. Johnson, J.D.

CERTIFICATE OF MAILING

This document was sent by electronic mail on the 22nd day of **January, 2019**, to:

Kyle Ocker
Kristy Latta, counsel for Indian Hills Community College

279.19A Extracurricular contracts.

1. School districts employing individuals to coach interscholastic athletic sports shall issue a separate extracurricular contract for each of these sports. An extracurricular contract offered under this section shall be separate from the contract issued under section 279.13. An extracurricular contract shall be in writing, and shall state the number of contract days for that sport, the annual compensation to be paid, and any other matters as may be mutually agreed upon. The contract shall be for a single school year.

2. *a.* If the school district offers an extracurricular contract for a sport for the subsequent school year to an employee who is currently performing under an extracurricular contract for that sport, and the employee does not wish to accept the extracurricular contract for the subsequent year, the employee may resign from the extracurricular contract within twenty-one days after it has been received.

b. If the provisions of an extracurricular contract executed under this section conflict with a collective bargaining agreement negotiated under chapter 20 and effective when the extracurricular contract is executed or renewed, the provisions of the collective bargaining agreement shall prevail.

3. The board of directors of a school district may require an employee who has resigned from an extracurricular contract to accept, as a condition of employment under section 279.13, the extracurricular contract for no longer than one additional school year if all the following conditions apply:

a. The employee has accepted a teaching contract issued by the board pursuant to section 279.13 for the subsequent school year.

b. The board of directors has made a good faith effort to fill the coaching position with a licensed or authorized replacement.

c. The position has not been filled by June 1 of the year in which the employee resigned the extracurricular contract.

4. As a condition of employment under section 279.13, the board of directors of a school district may require an employee who has been issued a teaching contract pursuant to section 279.13 to accept an extracurricular contract for which the employee is licensed, or may require as a condition of employment that an applicant for a teaching contract under section 279.13 accept an extracurricular contract if all of the following conditions apply:

a. The individual who held the coaching position during the year has not been issued a teaching contract by the board pursuant to section 279.13 for the subsequent school year, or has been terminated from the extracurricular contract.

b. The board of directors has made a good faith effort to fill the coaching position with a licensed or authorized replacement.

c. The position has not been filled by June 1 of the year in which the vacancy occurred for the interscholastic athletic sport.

5. *a.* Within seven days following June 1 of that year, the board shall notify the employee in writing if the board intends to require the employee to accept an extracurricular contract for the subsequent school year under subsection 3 or 4. If the employee believes that the board did not make a good faith effort to fill the position the employee may appeal the decision by notifying the board in writing within ten days after receiving the notification.

b. The appeal shall state why the employee believes that the board did not make a good faith effort to fill the position. If the parties are unable to informally resolve the dispute, the parties shall attempt to agree upon an alternative means of resolving the dispute.

c. If the dispute is not resolved by mutual agreement, either party may appeal to the district court.

6. Subsections 3, 4, and 5 do not apply if the terms of a collective bargaining agreement provide otherwise.

7. An extracurricular contract may be terminated prior to the expiration of that contract for any lawful reason following an informal, private hearing before the board of directors. The decision of the board to terminate an extracurricular contract shall be final.

8. *a.* A termination proceeding regarding an extracurricular contract shall not affect a contract issued pursuant to section 279.13.

b. A termination of a contract entered into pursuant to section 279.13, or a resignation

EXHIBIT-A

from that contract by the teacher, constitutes an automatic termination or resignation of the extracurricular contract in effect between the same teacher and the employing school board.

9. For the purposes of this section, *"good faith effort"* includes advertising for the position in an appropriate publication, interviewing applicants, and giving serious consideration to those licensed or authorized, and otherwise qualified, applicants who apply.

10. The licensure requirements of subsections 3, 4, and 9 shall not apply to community colleges.

84 Acts, ch 1296, §1; 85 Acts, ch 74, §1 – 3; 89 Acts, ch 265, §40; 90 Acts, ch 1182, §3, 7; 2002 Acts, ch 1047, §16, 20; 2010 Acts, ch 1069, §78; 2017 Acts, ch 2, §36, 48, 49

Referred to in §272.15, §273.22, §275.33, §279.13, §279.19B

For provisions relating to applicability of 2017 amendment to employment contracts of school employees under this chapter and collective bargaining agreements and procedures under chapter 20 before, on, or after February 17, 2017, see 2017 Acts, ch 2, §48, 49

Subsections 1, 2, 7, and 8 amended

BEFORE THE IOWA PUBLIC INFORMATION BOARD

Kyle Ocker, Complainant, v. Indian Hills Community College, Respondent.	Formal Complaint 18FC:0090 **Respondent's Brief in Support of Proposed Order of Executive Director To Dismiss Complaint as Legally Insufficient**

COMES NOW the Respondent Indian Hills Community College ("College"), pursuant to the request of the Iowa Public Information Board ("IPIB") for further review, and submits this brief in support of the IPIB Executive Director's proposed order to dismiss the above-referenced complaint of Kyle Ocker ("Complainant") as legally insufficient.

I. The complaint should be dismissed because it is legally insufficient.

The College restates and incorporates by reference its previous submissions to IPIB dated October 12, 2018, and October 31, 2018, and all related exhibits (attached), in support of dismissal of the complaint as legally insufficient.

II. It is procedural error for IPIB to rely on the submission by the Iowa Freedom of Information Council.

Any reliance by IPIB on the submission by the Iowa Freedom of Information Council, which is not a party to this case, is procedurally flawed.

IPIB's administrative rules state, "The board's review of a formal complaint for legal sufficiency is not a contested case proceeding and *shall be made solely on the facts alleged in the complaint and the results of the initial review conducted by the board's staff.*" 497 Iowa Admin. Code § 2.1(5) (emphasis added). This rule means that a determination of whether a given complaint will be accepted or dismissed is based on whether the complaint meets jurisdictional

EXHIBIT B

and other legal requirements to warrant further processing. Such determination does not involve acceptance of, much less reliance on, submissions by non-parties.

The rationale underlying this rule is illustrated in the instant case. The proposed order to dismiss the complaint was on the agenda and set to be reviewed by IPIB at its meeting on December 13, 2018. On December 12, at 10:01 p.m., Randy Evans of the Iowa Freedom of Information Council emailed a "position statement" regarding the proposed order and directed that it be "add[ed] . . . to the IPIB's case file" – a mere fifteen hours before the meeting. At the meeting, IPIB members expressed that because of the late submission by the Iowa Freedom of Information Council they had not had time to review the position statement. Accordingly, they voted to table the previously-scheduled action on the complaint in order to, as one Board member stated, "have a little more time to consider the written submission in deference to Randy."

This is erroneous. Both the Complainant and the Respondent, as the parties to this case, were requested by the IPIB Executive Director to submit information for review of the case and the proposed order. Both parties did so in accordance with the timelines allowed by the IPIB Executive Director, and the Executive Director communicated the proposed dismissal order to the parties nearly a week in advance of the IPIB meeting. The order is only applicable to the parties and has no direct effect on any other person. Then, at the literal eleventh hour, a non-party corporation with no standing or other authorization to do so submits a "position statement" causing IPIB to deviate from its prescribed process and table the order, when IPIB's own rule prohibits consideration of such peripheral material in determinations of dismissal.

Therefore, it is procedural error for IPIB to rely on the submission by the Iowa Freedom of Information Council.

III. Even if IPIB could procedurally rely on the submission by the Iowa Freedom of Information Council, to do so would be substantive error.

Any reliance by IPIB on the submission by the Iowa Freedom of Information Council is substantively flawed, for the reasons set forth below.

A. The submission by the Iowa Freedom of Information Council is legally incorrect.

The "position statement" of the Iowa Freedom of Information Council reflects a fundamental misunderstanding of the law applicable to community colleges. Contrary to the bald assertions otherwise in the position statement, Iowa Code Chapter 279 governs the College's relationship with its coaches. Iowa Code Chapter 260C, which pertains to community colleges, expressly incorporates Iowa Code Chapter 279 for application to community colleges. *See* Iowa Code § 260C.14(3) ("The board of directors of each community college shall . . . [h]ave the powers and duties with respect to community colleges . . . which are prescribed for boards of directors of local school districts by chapter 279 . . . .").

Turning to Iowa Code Chapter 279, the term of employment for a coach is limited to the current academic year. See Iowa Code § 279.19A(1) ("The contract shall be for a single school year."). Upon completion of the academic year, the coach's employment expires by operation of law – that is, under Chapter 279, no action by the college is needed for the employment to end. Prior to expiration of the academic year, a coach's employment may be terminated by affirmative action of the college, through its board of directors. *See* Iowa Code § 279.19A(7) ("An extracurricular contract [of a coach who is also a teacher] may be terminated prior to the expiration of that contract for any lawful reason following an informal, private hearing before the board of directors. The decision of the board to terminate an extracurricular contract shall be final."); Iowa Code § 279.19B(3) ("[A coach who is not also a teacher] serves at the pleasure of the board of directors."); Iowa Code § 279.19B(4) ("An individual employed as a coach of a

community college interscholastic athletic activity [who is not also a teacher] serves at the pleasure of the board of directors of the community college . . . ."). In other words, a coach at a community college has a predetermined period of employment – a single academic year – subject to earlier termination by the board. If there is no board action to terminate a coach's employment before the end of that period, then the coach's employment simply ends when the academic year ends.

The law in Iowa Code Chapter 279 is clear on this point. The Iowa Supreme Court has held that the College is bound by such law no matter what. *See Chehock v. Independent School Dist. of Marion*, 228 N.W. 585, 587 (Iowa 1930) (explaining that the employer-employee relationship under Chapter 279 "of necessity must be limited by, and burdened with, the statutory provisions under discussion"). In this case, the employment of the Coaches for the 2017-2018 academic year ended with the 2017-2018 academic year. No board action was taken to terminate the Coaches' employment prior to expiration of the 2017-2018 academic year, and the Coaches completed their work in the baseball season for which they were employed. Absent any "discharge" as a result of a "disciplinary action," Iowa Code Section 22.7(11)(a)(5) is not applicable.

Therefore, reliance by IPIB on the submission by the Iowa Freedom of Information Council is substantively flawed because it is legally inaccurate.

B. The submission by the Iowa Freedom of Information Council distracts from the real issue in this case.

In support of the "position statement" of the Iowa Freedom of Information Council, Mr. Evans made an oral argument before IPIB which was riddled with unsubstantiated allegations involving the Coaches, in an apparent attempt to stoke curiosity about them and persuade IPIB to require the College to disclose information. Remarking that "it is important to remember what

this case is all about," Mr. Evans emphasized the number of years the Coaches have been employed in relation to their departure from the College and delved into accusations of player mistreatment and illegal acts, in order to make this case about those issues. But this case is not about those issues – rather, it is about a request for personnel records under Iowa Code Section 22.7(11)(a)(5). This provision does not apply here, so there are no records responsive to this request.

The speculations and criticisms lobbed by Mr. Evans, both before IPIB and in his media editorials, appear to be intended to justify why compelling disclosure in this case would be in furtherance of the public interest. However, the Iowa Supreme Court has held that the degree of public interest involved is not a legal consideration when, as here, the statutory language already addresses the issue. *See ACLU v. Atlantic Comm. Sch. District*, 818 N.W.2d 231 (Iowa 2012). Mr. Evan's argument "creates a logical problem. Can it be that discipline in employee A's personnel file may be treated differently than the exact same discipline in employee B's file, based on the degree of public interest?" *See id.* The Iowa Supreme Court has rejected the notion that personnel information should be accorded a lesser level of protection because disclosure may "create something of a media frenzy." *Id.*

Therefore, reliance by IPIB on the submission by the Iowa Freedom of Information Council is substantively flawed because it distracts from the real issue in this case.

IV. The submission by the Iowa Freedom of Information Council demands IPIB make new law, not enforce existing law.

It is obvious from the "position statement" of the Iowa Freedom of Information Council that it dislikes how Iowa Code Section 22.7(11)(a)(5) does not require disclosure of documented

reasons and rationale for individuals who were not discharged from employment as a result of a disciplinary action.

However, like it or not, this is the law as it exists. On its face, Iowa Code Section 22.7(11)(a)(5) only applies when an individual "resigned in lieu of termination, was discharged, or was demoted as the result of a disciplinary action." It does not apply to all circumstances in which an individual's employment comes to an end. Under the plain language of the law, the Coaches could not have been "discharged" – let alone as the result of a "disciplinary action" – because they completed the baseball season in the 2017-2018 academic year for which they were employed. Therefore, Section 22.7(11)(a)(5) does not apply here. There are no records responsive to a request for records pursuant to this provision.

If the Iowa Legislature had wanted to make Iowa Code Section 22.7(11)(a)(5) applicable to instances in which employees complete their terms of employment and are not re-employed for another term, then it would have stated so in the statute. IPIB "cannot supply the omission by construction." *See Gabrielson v. Webster Cty.*, 210 N.W. 912, 913 (Iowa 1926). There may be policy arguments to expand the reach of the law as it exists, however, it is the function of the Iowa Legislature to consider such arguments. Time and again, the Iowa Supreme Court has held that it is not the role of an interpreting body, such as IPIB, to substitute its own judgment as to what the law should be and make new law. *See, e.g., Auen v. Alcoholic Beverages Div.*, 679 N.W.2d 586 (Iowa 2004) ("We determine legislative intent from the words chosen by the legislature, not what it should or might have said."); *ACLU v. Atlantic Comm. Sch. District*, 818 N.W.2d 231 (Iowa 2012) (explaining that statutory construction should not "undermine[] the categorical determination of the legislature and rewrite[] the statute").

Therefore, the appropriate role for IPIB is to enforce existing law, not make new law.

V. Conclusion

In light of the foregoing, the College respectfully requests that the complaint be dismissed as a matter of law.

/s/ Kristy M. Latta
Kristy M. Latta (AT0004519)
AHLERS & COONEY, P.C.
100 Court Avenue, Suite 600
Des Moines, Iowa 50309-2231
Telephone: 515/243-7611
Facsimile: 515/243-2149
E-mail: klatta@ahlerslaw.com
ATTORNEY FOR RESPONDENT

Original filed with IPIB via email.

01552314-1\10609-000\

AHLERS COONEY
ATTORNEYS

Ahlers & Cooney, P.C.
Attorneys at Law
100 Court Avenue, Suite 600
Des Moines, Iowa 50309-2231
Phone: 515-243-7611
Fax: 515-243-2149
www.ahlerslaw.com

Kristy M. Latta
515.246.0323
klatta@ahlerslaw.com

October 12, 2018

Via Email
Ms. Margaret Johnson
Iowa Public Information Board
Margaret.Johnson@iowa.gov

Re: Formal Complaint 18FC:0090

Dear Ms. Johnson:

Thank you for allowing us the opportunity to respond to a complaint filed with your office against the Indian Hills Community College.

We understand that Kyle Ocker, a reporter for the newspaper *The Daily Iowegian*, has filed the above-referenced complaint alleging that the College violated the Iowa Open Records Law. Specifically, the Complainant urges that the recent legislative amendment to Iowa Code Section 22.7(11)(a)(5) should be interpreted so as to require the College to provide "documented reasons and rationale" for individuals who completed their terms of employment with the College.

This complaint is beyond the jurisdiction of the Iowa Public Information Board (IPIB) as it is not timely filed. Moreover, the complaint is contrary to the express language in the statute and the clear intent of the legislature. The complaint should be resolved in favor of the College.

Timeliness of Complaint

Iowa Code Section 23.7(1) limits IPIB review of complaints to those filed within sixty days from the time the alleged violation occurred.

In this case, the Complainant requested the documented reasons and rationale for the individuals at issue pursuant to Iowa Code Section 22.7(11)(a)(5), on May 14, 2018. See Exhibit 1. That same day, the College responded to the Complainant informing him that Section 22.7(11)(a)(5) did not apply to the situation and, accordingly, there were no records responsive to his request. See Exhibit 2.

The Complainant filed this complaint with IPIB on October 3, 2018 – nearly five months after the time the alleged violation occurred, and well beyond the sixty-day period for IPIB to have jurisdiction over the complaint. And, IPIB has previously ruled that there are no exceptions to determining the sixty-day period to allow time for an appeal or further discussions of a record request denial. IPIB No. 18FC:0052, Charles Vandenberg/Fort Madison Community School District (July 19, 2018).

Therefore, because the complaint was not timely filed, IPIB does not have jurisdiction or authority to review it. This case must be dismissed as a matter of law.

Statutory Interpretation

Even if the complaint had been timely filed, it should be dismissed based on the background and interpretation of the statute.

As you know, the Iowa Open Records Law generally grants persons the right to examine and copy public records. Iowa Code § 22.2(1). The statute further provides that certain enumerated categories of public records shall be kept confidential, unless otherwise ordered by a court, by the lawful custodian of the records, or by another person duly authorized to release such information. Iowa Code § 22.7. The specific exceptions from disclosure are to be construed narrowly. "Nevertheless, where the legislature has used broadly inclusive language in the exception, we do not mechanically apply the narrow-construction rule; instead, we give effect to the legislative purpose underlying the exception." *DeLaMater v. Marion Civil Service Com'n*, 554 N.W.2d 875, 878 (Iowa 1996).

One of the categories of confidential records set forth in the statute is, "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). In 2012, this subsection was amended by the legislature to make "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" public records.

The subsection was the focus of legislative amendment again in 2017. The statute currently provides that the following information shall be public records:

> The fact that the individual resigned in lieu of termination, was discharged, or was demoted as the result of a disciplinary action, and the documented reasons and rationale for the resignation in lieu of termination, the discharge, or the demotion. For purposes of this subparagraph, "demoted" and "demotion" mean a change of an employee from a position in a given classification to a position in a classification having a lower pay grade.

Iowa Code § 22.7(11)(a)(5).

The Complainant insists that this most recent legislative amendment requires the College to disclose personal information from the personnel records of individuals who completed their terms of employment with the College. However, as discussed below, the Complainant's demand is contrary to the express language in the statute and the clear intent of the legislature.

When engaging in statutory interpretation, the Iowa Supreme Court has stated:

> The goal of statutory construction is to determine legislative intent. We determine legislative intent from the words chosen by the legislature, not what it

> should or might have said. Absent a statutory definition or an established meaning in the law, words in the statute are given their ordinary and common meaning by considering the context within which they are used.

Auen v. Alcoholic Beverages Div., 679 N.W.2d 586 (Iowa 2004). An interpreting body may not change the intended meaning of a statute. *Id.*

On its face, Section 22.7(11)(a)(5) only applies when an individual "resigned in lieu of termination, was discharged, or was demoted as the result of a disciplinary action." **It does not apply to all circumstances in which an individual's employment comes to an end.** This was never the intent of the legislature, nor do the words chosen by the legislature support such an illogical construction of the statute.

In this case, the College rejects the claim that Section 22.7(11)(a)(5) applies to the individuals at issue. The individuals were employed by the College as baseball coaches for the 2017-2018 athletic season, and they completed their terms of employment. The employment of coaches of interscholastic athletic sports is governed by Iowa Code Chapter 279. By law, a coaching assignment is limited to a single athletic season. Iowa Code § 279.19A(1). As of nearly two years ago, there is no automatic continuation of a coaching assignment for subsequent seasons. House File 291, § 36 (enrolled February 17, 2017). This amendment was enacted via the same legislative bill that amended Section 22.7(11)(a)(5).

Therefore, by operation of law, the coaches could not have been "discharged" – let alone as the result of a "disciplinary action" – because they completed the 2017-2018 athletic season for which they were employed. There was no right or other legal expectation of continued employment as a coach beyond the expiration of the current athletic season. 22.7(11)(a)(5) simply does not apply here.

The plain language of the statute supports the College's position in this case. To find otherwise would "undermine[] the categorical determination of the legislature and rewrite[] the statute." *ACLU v. Atlantic Comm. Sch. District*, 818 N.W.2d 231 (Iowa 2012).

The Complainant's arguments to the contrary are without merit. The Complainant's narrow focus on the form of contract issued to the coaches is totally misplaced. Chapter 279 governs the employment relationship between the coaches and the College. The Complainant also suggests that disclosure of personnel information for these employee is in furtherance of the public interest. However, the degree of public interest involved is not a legal consideration when the statutory language addresses the issue. *ACLU v. Atlantic Comm. Sch. District*, 818 N.W.2d 231 (Iowa 2012). The Complainant's argument "creates a logical problem. Can it be that discipline in employee A's personnel file may be treated differently than the exact same discipline in employee B's file, based on the degree of public interest?" *See id.* The Iowa Supreme Court has rejected the notion that personnel information should be accorded a lesser level of protection because disclosure may "create something of a media frenzy." *Id.*

In the end, this complaint seems to be driven less by compliance with the Iowa Open Records Law and more by an insatiable desire to get the scoop for a news story. IPIB has ruled that "[a] government body is not required to explain or provide details on a public record." IPIB

No. 18FC:0027, Daniel Greenwell/Sioux City Community School District (Sept. 20, 2018). However, the College has had to consistently decline the Complainant's repeated email requests for disclosure of confidential and other information, including explanations, discussions, and interviews for his story, to no avail. No one at the College disputes the value of opening its business to the public. "But open records laws are complex, replete with valid exceptions, and subject to abuse by serial requesters." *City of Riverdale v. Diercks*, 806 N.W.2d 643 (Iowa 2011). Such is the case here.

In light of the above, the College respectfully requests that the complaint be dismissed.

Sincerely,

AHLERS & COONEY, P.C.

By */s/ Kristy M. Latta*

Kristy M. Latta

Enclosures

01528547-1\10609-000\

EXHIBIT 1

The Daily Iowegian
201 N. 13th St., Centerville, IA 52544
Phone 641-856-6336 **Fax** 641-856-8118
newsroom@dailyiowegian.com
www.dailyiowegian.com

Daily Iowegian
The Newspaper That Cares About Appanoose County

MONDAY, MAY 14, 2018

Brett Monaghan
525 Grandview Ave.
Ottumwa, IA 52501

RE: FREEDOM OF INFORMATION ACT/PUBLIC RECORDS REQUEST

Dear Brent Monaghan:

The Daily Iowegian requests the following records regarding the termination/resignation/resignation in lieu of termination for the following employees at Indian Hills Community College:

- Cam Walker, Head Baseball Coach
- Steve Kletke, Assistant Baseball Coach
- Jordan Camp, Assistant Coach

Iowa Code Chapter 22.7(11)(a)(5) states: "The fact that the individual resigned in lieu of termination, was discharged, or was demoted as the result of a disciplinary action, and the documented reasons and rationale for the resignation in lieu of termination, the discharge, or the demotion" are public record.

These records are being requested under Iowa Open Records Law 22.1. If there are any fees to produce these records, please inform us of these fees ahead of time. We feel the disclosure of these records are in the public's interest and should be provided free of charge. The request is being made by a representative of the news media for news gathering purposes.

The Iowa Open Records Law requires a response time within ten to twenty business days. If access to the records I am requesting will take longer than that time period, please contact me with information about when I might expect copies or the ability to inspect the requested records.

If you deny any or all of this request, please cite each specific exemption you feel justifies the refusal to release the information and notify me of the appeal procedures available to me under the law.

Thank you,

Kyle Oeker

EDITOR

EXHIBIT 2

Kristy Latta

From: Kristy Latta
Sent: Monday, May 14, 2018 2:49 PM
To: kocker@dailyiowegian.com
Subject: RE: FOIA request

Mr. Ocker:

My office represents Indian Hills Community College. The College has asked that I respond to your records request below.

Please be advised, Iowa Code Section 22.7(11)(a)(5) does not require a public explanation of all separations from employment. Rather, that provision applies only to a discharge (or resignation in lieu thereof) that occurs as a result of a disciplinary action. In this case, there are no records responsive to your request.

For your information, the baseball coaching assignments of Steve Kletke and Cam Walker expire at the end of the spring term and have not been renewed.

Thanks.

Kristy M. Latta
SHAREHOLDER

AHLERS COONEY
ATTORNEYS

Ahlers & Cooney, P.C.
100 Court Avenue, Suite 600
Des Moines, Iowa 50309-2231
Phone: (515) 246-0323 | Fax: (515) 243-2149

VCard | Email | Bio | Firm Website |

From: Kyle Ocker [mailto:kocker@dailyiowegian.com]
Sent: Monday, May 14, 2018 12:09 PM
To: Brett Monaghan <Brett.Monaghan@indianhills.edu>
Cc: Kevin Pink <Kevin.Pink@indianhills.edu>
Subject: FOIA request

Brett, attached is a FOIA request for IHCC Athletics. I wasn't sure who to send it to, so since it was athletics I started with you. Please confirm receipt when you get a chance. If it needs to go to someone else for fulfillment, let me know.

The request is in response to reports to us that there have been three coaches terminated from the Indian Hills baseball program. Let me know if you have any questions related to the FOIA request attached in PDF format.

Thanks,

Kyle J. Ocker
Editor, The Daily Iowegian
kocker@dailyiowegian.com
Office: (641) 856-6336
Cell: (641) 895-5660
Twitter: @Kyle_Ocker

AHLERS COONEY
ATTORNEYS

Ahlers & Cooney, P.C.
Attorneys at Law
100 Court Avenue, Suite 600
Des Moines, Iowa 50309-2231
Phone: 515-243-7611
Fax: 515-243-2149
www.ahlerslaw.com
Kristy M. Latta
515.246.0323
klatta@ahlerslaw.com

October 31, 2018

Via Email
Ms. Margaret Johnson
Iowa Public Information Board
Margaret.Johnson@iowa.gov

Re: Formal Complaint 18FC:0090

Dear Ms. Johnson:

Thank you for forwarding us the Complainant's response to the answer submitted by the College regarding the above-referenced complaint. Please consider the following in reply.

The Complainant's response reflects a fundamental misunderstanding of the various laws applicable to community colleges and a flawed perception as to what the media is entitled to under Iowa Code Chapter 22.

First, all community college coaches are subject to the provisions of Iowa Code Section 279.19A. Subsection 1 specifically states that coaches are employed for a single season. Nothing the College says or does can change this. *See Chehock v. Independent School Dist. of Marion*, 228 N.W. 585, 587 (Iowa 1930) (recognizing Chapter 279 governs the employer-employee relationship because a school district/community college has no legal authority to enter into any other kind of arrangement; "the resulting relationship of necessity must be limited by, and burdened with, the statutory provisions under discussion.").

As far as the coaching positions of the two former employees in question, nothing has changed since the College denied the Complainant's first request under Iowa Code Section 22.7(11)(a)(5). It was accurate then, as it is now, that the employment term of the coaches expired at the end of the baseball season and was not renewed by the College. Indeed, each of the coaches received a letter stating in part, "This letter is to notify you that your [] baseball coaching assignment for the 2017-2018 academic year *expires effective at the end of the spring term*. This assignment *has not been renewed*." (Emphasis added). The Complainant was informed of the same on May 14, 2018. See Exhibit 2, Answer.

Second, the Complainant insists that because Section 279.19A(1) speaks in terms of "contracts" for coaches, the "letters of employment" given to the coaches do not suffice. This is a claim of form over substance. It is well settled that a contract is nothing more than an offer, acceptance, and consideration. The College made the coaches an offer for the 2017-2018 baseball season, which the coaches accepted and performed, in consideration of the salary paid by the College. This is a "contract," even if the College happens to label it as something else. Furthermore, even if the letters of employment were not contracts as the Complainant urges, the

law is clear they could not alter the terms and conditions of employment prescribed by Section 279.19A. *See Chehock* 228 N.W. at 587.

Third, the Complainant also makes much of the reference in the letters of employment to the coaches being "at will." The at-will employment doctrine refers to the idea that an employer can terminate an employee at any time for any lawful reason. *See Fitzgerald v. Salsbury Chem., Inc.*, 613 N.W.2d 275, 281 (Iowa 2000) (explaining "the traditional doctrine of [at-will employment] is now more properly stated as permitting 'termination at any time for any lawful reason'"). This is totally consistent with Section 279.19A which, in addition to limiting employment to a single season, states in Subsection 7 that a coach "may be terminated prior to the expiration of that contract for any lawful reason." Moreover, Section 279.19A(7) goes on to state that any termination must occur "following an informal, private hearing before the board of directors," at which the board's decision is final. Because the coaches were not terminated, no such board hearing or decision ever occured in this situation.

In view of the foregoing, it is clear the Complainant's assertions are without merit in all respects. If the Iowa Legislature had wanted to make Section 22.7(11)(a)(5) applicable to instances in which employees complete their terms of employment and are not re-employed for another term, then it would have stated as much in the statute. IPIB "cannot supply the omission by construction." *See Gabrielson v. Webster Cty.*, 210 N.W. 912, 913 (Iowa 1926).

Please know, the College wholeheartedly rejects the Complainant's statements as to it being "less than forthcoming," its "efforts to stonewall," and its "clearly false" basis for not giving something the Complainant wants. The College has engaged with the Complainant on numerous occasions to provide public records and has gone above and beyond to provide the Complainant with explanations at its own legal expense. But the Complainant should understand the College does not exist to serve one news media outlet trying to piece together a story, and it will not disclose employee records that it does not have or are confidential by law.

In light of the above, the College respectfully requests that the complaint be dismissed.

Sincerely,

AHLERS & COONEY, P.C.

By */s/ Kristy M. Latta*

Kristy M. Latta

01533296-1\10609-000\