

IN THE IOWA DISTRICT COURT FOR SCOTT COUNTY

City of Davenport, Iowa,	)	Case No. CVCV302840
	)	
Plaintiff,	)	
	)	
v.	)	
	)	Iowa Freedom of Information
David E. Sidran,	)	Council's Motion to Intervene
	)	
Defendant.	)	(Oral Argument Requested)
	)	
	)	
Iowa Freedom of Information Council,	)	
	)	
Intervenor.	)	
	)	

The Iowa Freedom of Information Council (the “Council”), in part pursuant to Iowa R. Civ. P. 1.407, seeks intervention status to appear and advocate for the release of public records. In support of its Motion, the Council states:

1. The Council is an Iowa nonprofit, nonpartisan organization that works to preserve and promote openness and transparency in Iowa’s state and local governments.
2. The Council serves as an umbrella organization for media companies, news associations, and other individuals and entities that value an open and accountable government in Iowa. The Council seeks to secure and maintain press and speech freedoms under the federal and state constitutions and access rights under statutes, such as the Iowa Open Meetings Act and the Iowa Public Records Act, Iowa Code Chapter 22.
3. Courts regularly grant the Council intervention status or permit it an opportunity for hearing when lawsuits or motions implicate court access, public records, or open meetings to keep Iowa courtrooms open or advocate for access to public records. *See Clymer v. City of Cedar Rapids*, 601 N.W.2d 42 (Iowa 1999) (allowing the Council and other organizations to intervene in

an Iowa Open Records Act declaratory ruling action); *see also In re Iowa Freedom of Information Council*, 724 F.2d 658 (8th Cir. 1983); *Iowa Freedom of Information Council v. Wifvat*, 328 N.W.2d 920 (1983); *Iowa v. Goodale*, Case No. FECR005144 (Iowa D. Ct. Jefferson Cty. Mar. 22, 2022) (denying Defendant’s request to close courtroom following the Council’s resistance); *Steele v. City of Burlington, Iowa*, 334 F. Supp. 3d 972 (S.D. Iowa 2018).

4. On February 14, 2024, the City of Davenport filed a Petition for Declaratory Judgment, requesting that this Court decide for it as the lawful custodian whether to release public records in response to Defendant David Sidran’s open record request that sought access to a demand letter (the “Letter”) detailing alleged discrimination, harassment, bias, intimidation and retaliation former City Administrator Corrin Spiegel claimed she experienced.

5. The Letter, delivered to the City of Davenport on or about September 15, 2023, started a negotiation process that ended with the City of Davenport entering into to a separation agreement with Spiegel that paid her \$1.6 million in taxpayer funds and resulted in a settlement and release of her claims.

6. On or about November 17, 2023 and again on January 25, 2024, Sidran made open records requests to the City of Davenport for a copy of the Letter.

7. Despite Iowa Code § 22.8(4)(d)’s proclamation that a lawful custodian should not take more than “twenty calendar days and ordinarily should not exceed ten business days” to determine “whether a confidential record should be available for inspection and copying to the person requesting the right to do so,” and caselaw holding that an unreasonable delay in responding to an open records request can constitute a violation of the statute, *see Belin v. Reynolds*, 989 N.W.2d 166, 175 (Iowa 2023), the City of Davenport has not made this determination and instead requested this Court make the decision for it.

8. Iowa R. Civ. P. 1.407 authorizes and supports granting the Council intervenor status because it has a direct and substantial interest in access to public records and actions taken by governmental entities such as the City of Davenport on matters involving the operation of government, expenditure of taxpayer funds, and matters in the public interest and in the release of the Letter to the public and the news media to permit assessment of the conduct of public officials and the expenditure of \$1.6 million.

9. Further, the Council requests that the Court unequivocally rule that the Letter is a public record not exempted from disclosure or that even if so, justifies a court order compelling disclosure under the initial provisions of Iowa Code § 22.7.

10. As such, this Court should order release of the Letter to Sidran and anyone else who requests access.

11. This follows, first because the Letter (a) is a public record under Iowa Code § 22.1(3); it is in the possession and custody of the City of Davenport as a government body as defined by Iowa Code § 22.1(1); (b) Sidran requested it from the City of Davenport as a “lawful custodian” under Iowa Code § 22.1(2); and (c) Sidran and anyone else who requests it should receive access pursuant to Iowa Code § 22.4.

12. Moreover, none of the enumerated confidentiality exceptions in Iowa Code § 22.7 apply to the Letter.

13. The Council understands that Tiffany Thorndike and Samantha Torres filed a Motion to Intervene on February 18, 2024, and in their Motion argue that Iowa Code § 22.7(11) applies to the Letter.¹

¹ Without seeing the Letter, it is impossible to know the full extent of its contents, but the Council questions whether Thorndike or Torres even have standing to assert that the Letter, which details Spiegel’s accusations—not their own accusations—is a public record exempted

14. However, a plain reading of that exemption shows it does not apply. Even without knowing the contents of the Letter, the City of Davenport's petition makes clear that it is a demand letter sent from Spiegel (or her representative, such as an attorney) to the Davenport City Attorney, Tom Warner, detailing Spiegel's allegations of discrimination, harassment, bias, intimidation and retaliation. Petition ¶¶ 3-4.

15. Such a Letter is not the type of document—such as a performance evaluation, tax withholding form, or other personal information—that would ever be found in a personnel file. *See e.g., Clymer*, 601 N.W.2d at 48 (requiring release of information about a public employee and stating that as “long as the information disclosed does not reveal personal medical conditions or professional evaluations, the public has the right to examine it”).

16. Further, the Letter made a monetary demand, Petition ¶ 4. Government employees are not in the business of making seven-figure demands of their employer. Communication such as the Letter is more aptly classified as an external communication threatening litigation that resulted in a settlement and release of claims. As such it remains an open public record, not an exempt personnel file record that is private and personal to the governmental employee.

17. Indeed, Spiegel presumably sent the letter intending the government to take public action based on it, including approving a large payment to her, which indeed occurred.

18. Further proof that the Letter is not part of Spiegel's personnel file is Thorndike and Torres's allegations that the Letter contains their own accounting of discrimination, harassment, bias, intimidation, and retaliation by the City. Thorndike Motion to Intervene, ¶ 5.

from disclosure and is instead a confidential record containing personal information and maintained in a personnel file.

19. Documents in a personnel file, like those covered by Iowa Code § 22.7(11), apply only to *personal* documents—not attorney demand letters detailing alleged illegal conduct against multiple individuals. *See e.g., Clymer*, 601 N.W.2d at 48.

20. Even if the Court were to find the confidentiality provision of Iowa Code § 22.7(11) does apply, the Court, the lawful custodian of the record, or another person duly authorized to release such information can always make the determination that it is in the public interest for the record to be released. Iowa Code § 22.7.²

21. The content of the Letter, as well as in the City of Davenport’s working conditions, treatment of employees, and expenditure of taxpayer dollars are matters of legitimate and deep public concern.³

22. Further, release of the Letter to the public would ensure accountability by public and elected officials for the financial decisions made by the City of Davenport without allowing multimillion dollar payments to occur in secrecy.

23. A Court ruling that the City of Davenport can and should release the Letter as a public record is in accordance with the public policy of this state, as Iowa Code Chapter 22 proclaims that the “free and open examination of public records is generally in the public interest

² This discretion cuts against Thorndike and Torres’s allegations that they were promised confidentiality. Indeed, these listed individuals always have the discretion to release public records; there is no mandate that personnel records be kept confidential.

³ To the extent the Letter contains medical information, the Council questions the intended confidentiality of that, since the Letter voluntarily disclosed that information in an effort to obtain a monetary settlement from the City of Davenport. In other words, Spiegel, Thorndike, and Torres should not be allowed to disclose their medical history when it benefits them financially yet muzzle that information when the public seeks an accounting for its \$1.6 million settlement. Public interest in the allegations that led the city to expend \$1.6 million in taxpayer funds greatly outweighs any privacy interest they may now claim. However, should the Court have concerns about release of that particular information, the Council suggests there are less drastic measures than withholding the entire document, such as redaction.

even though such examination may cause inconvenience or embarrassment to public officials or others.” Iowa Code § 22.8(3).

24. Further, the Iowa Supreme Court has explained that Iowa Code Chapter 22’s “purpose is ‘to open the doors of government to public scrutiny to prevent government from secreting its decision-making activities from the public, on whose behalf it is its duty to act.’” *Northeast Council on Substance Abuse, Inc. v. Iowa Dep’t of Pub. Health*, 513 N.W.2d 757, 759 (Iowa 1993).

25. To the extent Thorndike and Torres have expressed in their Motion to Intervene their personal concerns regarding release of the Letter, those personal concerns are outweighed by the public interest considering the Letter resulted in a \$1.6 million payout by the City of Davenport.

26. Further, Thorndike and Torres’s concerns about release of information of their own personal experiences of discrimination and retaliation will be rendered moot if they ultimately file a lawsuit against the City of Davenport, as they have indicated they are likely to do in ¶ 12 of their Motion to Intervene.

27. That lawsuit, its publicly available court records, and/or a public trial will almost certainly disclose the allegations and facts Thorndike and Torres seek to keep secret.

28. Further, release of the Letter to Sidran and the public will not affect Thorndike or Torres’s “ability to engage in civil discovery” in their own lawsuit. Thorndike Motion to Intervene ¶ 19.

29. Indeed, neither Torres nor Thorndike offer any support for such a sweeping statement, and they fail to acknowledge the immense public concern about the factual basis for the City to pay a former employee \$1.6 million.

30. At bottom, neither Torres nor Thorndike would suffer any harm if the Court ruled that the Letter is a public record.

31. As the Iowa Supreme Court has already declared, documents such as the Letter are public records even though they contain some information of a “public nature and also of a personal matter the legislature has designated as confidential.” *In re Des Moines Independent Community School District Public Records v. Des Moines Register & Tribune Co.*, 487 N.W.2d 666, 669-70 (Iowa 1992).

32. In that case, the Court held that the “outstanding characteristic” of the document at issue “was the fact that public funds were being paid to settle a private dispute,” which is exactly the type of document “the legislature designated for disclosure.” *Id.*

33. The Council and its members have a direct and substantial interest in the contents of the Letter as well as access to public records and actions taken by governmental entities such as the City of Davenport.

34. Accordingly, under Iowa R. Civ. P. 1.201 and 1.407, the Court should permit the Council to intervene as a real party in interest in this litigation, aligned with Sidran, adverse to Thorndike and Torres (if they are allowed to intervene), and potentially adverse or aligned to the City of Davenport.

35. Intervention of the Council will provide a meaningful opportunity for the Court to consider and vindicate its interests as well as those of its members, the press, and the public.

36. The undersigned has communicated with an attorney for the City of Davenport, who advises that the City opposes the granting this Petition to Intervene; communicated with Sidran, who advises that he consents to the granting of this Petition to Intervene; and communicated with the attorney for Thorndike and Torres, who advises that they do not express

a position on to the Council's motion as their own motion to intervene remains pending and they are not presently parties to the case.

37. The Council request the right to be heard orally on its Motion to Intervene.

WHEREFORE, the Iowa Freedom of Information Council requests that this Court:

- A. Grant its Motion for Intervention;
- B. Order the Clerk to change the caption in this matter to reflect the Council as a party intervenor;
- C. Allow the Council to participate fully in all court conferences, and provide it equal opportunity to be heard in any proceedings and to present evidence and argument as a party in this case; and
- D. Provide the Council 20 days from the entry of the Order granting this Intervention motion to file its initial responsive pleadings to the Petition for Declaratory Judgment.

Dated: February 22, 2024.

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Certificate of Service

The undersigned certifies she served a true copy of **Iowa Freedom of Information Council's Motion to Intervene (Oral Argument Requested)** upon the attorney of record for each party or the party himself through the Court's electronic filing system or last known e-mail address as shown below on February 22, 2024.

/s/ Trisha Richey

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