

IN THE IOWA DISTRICT COURT IN AND FOR SCOTT COUNTY

CITY OF DAVENPORT, IOWA,
Plaintiff,

v.

DAVID E. SIDRAN,

Defendant

CASE NO. CVCV302840

MOTION TO INTERVENE and
RESISTANCE IN PART TO
EXPEDITED REVIEW

COME NOW Intervenor Tiffany Thorndike and Samantha Torres, and for their Motion to Intervene and Resistance in Part to Expedited Review, respectfully state to the Court the following:

Facts

1. On February 14, 2024, the City of Davenport filed the present Petition for Declaratory Judgment, requesting that this Court enter a Ruling regarding its recent open records requests.
2. This Petition outlined how the City has to this point withheld certain materials from the public (the “Letter”) under the auspices of Iowa Code Chapter 22, claiming that this Letter constitutes a confidential personnel record.
3. The City’s Petition also describes the contents of this Letter, which “details a series of circumstances that Ms. Spiegel contends constitutes discrimination, harassment, bias, intimidation and retaliation and makes a monetary demand”. *Petition*, para. 4.

4. The Petition also notes that within the last several months, the City released a number of other substantially similar letters [hereinafter for clarity, the “released documents”] in response to open records requests. *Id.*, para 9.

5. These released documents contained information regarding former City employees Mrs. Tiffany Thorndike and Mrs. Samantha Torres’ own experiences of discrimination, harassment, bias, intimidation, and retaliation by the City and its officials, as well as the adverse physical and mental health impacts of this misconduct. These released documents likewise contained extremely sensitive personal health information and other humiliating details of the Intervenor’s lives, the details of which the City had solicited from them.

6. The Intervenor’s were informed by the City that these letters would be treated as personal information in confidential personnel records and would not be released to the public. These released documents were also classified by the City in its own internal communications as “confidential personnel” materials.

7. As the City points out in its Petition, all this creates serious tension regarding its open records practices, which will require judicial intervention to resolve.

8. Why all this matters to the Intervenor’s is that, in November 2023, an open records request was made with the City which attempted to gain access to these soon to be released documents which described the Intervenor’s’ experiences, victimization, and the harms they suffered as a result.

9. The City employee responsible for reviewing, assessing, and disseminating the released documents has stated, in writing, that these confidential personnel records,

which the city intended not to release under Iowa Code section 22.7(11)(a) as lawful custodian, were released in error.

10. This same City employee noted, again in writing, that that this wholesale release was the express result of the City's negligence, noting he had "messed up during [his] review" and accidentally released information the City had affirmatively determined it would keep confidential.

11. The City, having decided that the released records were 1) subject to (at least) the exceptions in Iowa Code section 22.7(11)(a), and 2) therefore could and should in its determination be withheld from the public, then 3) "messed up" and accidentally provided them to multiple parties, causing humiliation and harm to Mrs. Torres and Mrs. Thorndike.¹

12. In response to this negligence, Mrs. Torres and Mrs. Thorndike provided the City with a deadline of February 16, 2024, to respond to a demand letter, after which time they would file suit.

13. The present request for declaratory judgment was made within 48 hours of this deadline.

Argument

14. With written admissions establishing an unavoidable case of negligence, the only outstanding legal and factual issue in the dispute between Intervenor and the City is whether these released documents are properly classified as "[p]ersonal

¹ By analogy, this sort of failure would be as if the City had affirmatively decided to tear down and remodel the Davenport City Library at 321 N Main St. (theoretically a protected, discretionary policy decision), but its construction crews had negligently shown up at 220 N Main St. and torn down that building instead. No one would deny that such an error would constitute an actionable tort.

information in confidential personnel records” under Iowa Code § 22.7(11)(a)—that is, one of the things that the City has asked this Court to enter a binding ruling on, without the presence or involvement of Intervenor.

15. While acknowledging the double bind the City is in, the timing of the request for expedited declaratory judgment would have the incidental effect of preventing Mrs. Torres and Mrs. Thorndike from gaining further information from the City through civil discovery in the impending lawsuit they had put the City on notice of, stopping them from gathering further support for the factual and legal conclusion that the released documents were confidential personnel records within the meaning of Iowa Code Chapter 22, which the City had both the ability and intent to retain.²

16. The timing of Plaintiff’s Petition also raises a specter over this Court’s power to even conduct an inquiry: a declaratory judgment may not be had in a manner which abridges any parties’ right to a jury trial on the issues involved. Iowa R. Civ. P. 1.1108 (“The right of trial by jury shall not be abridged or extended by rules 1.1101 through 1.1107”); Iowa R. Civ. P. 1.902 (noting right to demand jury trial in civil case). The good faith notice Intervenor afforded to the City prior to filing suit and the timing of the City’s Petition for Declaratory Judgment presents a point of legal friction.

17. Regardless, Intervenor’s causes of action are directly related to the subject matter of this Petition for Declaratory Judgment. Indeed, they are the very people those

² This is a particularly problematic development, given that the answer to the City’s declaratory requests may involve a very “fact specific” analysis of the contents of the documents in question, and the circumstances of their creation and release, to determine what information in them is of legitimate public interest. *Clymer v. City of Cedar Rapids*, 601 N.W.2d 42, 48 (Iowa 1999).

“other allegedly confidential records” involve, and who have “threatened [the City] with lawsuits for releasing those records”. *Petition*, at para 9.

18. As the City notes, determination in this case will control whether it ‘risks being sued’ by Intervenorors—to allow the guts of Intervenorors’ case to be determined without their involvement would “impair or impede the applicant's ability to protect” their interest in pursuing their tort against the City, “unless the applicant's interest is adequately represented by existing parties”. Iowa R. Civ. P. 1.407(1)(b).

19. No party presently engaged in this action is adequately situated to represent the interests of Mrs. Torres and Mrs. Thorndike, whose cause of action is imperiled by this Petition’s bypass of their involvement and their ability to engage in civil discovery. The City “expresses no opinion on the outcome of this case”, and Dr. Sidran is unlikely to advocate that Ms. Spiegel’s Letter can be withheld from his request as a confidential personnel record.

20. Intervenorors therefore request to intervene as a matter of right in this matter.

21. Intervenorors also object to the City’s request for expedited review. As noted *supra*, such review would shield the City from a proper examination of its internal records via civil discovery.

22. The City’s request for expedited review is likewise unnecessary. Iowa Code section 22.8(4)(c) expressly provides that:

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 purpose of the delay is any of the following:

...

c. To determine whether the government record in question is a public record, or confidential record.

23. The City's current Petition meets this exception. The only effect of a high-speed, high-pressure resolution of the current quandary would be to deny the fact finder (this Court) access to all the necessary information to make an accurate legal and factual determination of the City's liability and the nature of the Letter and released documents under Iowa Code 22.7.

Wherefore, Tiffany Thorndike and Samantha Torres request that they be granted intervention in this action as of right, and that this Court deny Plaintiff City's request for expedited review regarding all matters except for whether the delay in permitting the examination of the Letter is a violation of Chapter 22, as the City's delay is wholly protected by Iowa Code section 22.8(4)(c).

**PARRISH KRUIDENIER DUNN GENTRY
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BY: /s/ Clinton Luth

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PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was **electronically filed** on EDMS on February 18, 2024. Subject to the exceptions cited therein, Iowa Court Rule 16.315 provides that this electronic filing, once electronically posted to the registered case party's EDMS account, constitutes service for purposes of the Iowa Court Rules.

Copies have been provided to all registered parties because once the document is posted, those parties are able to view and download the presented or filed document.

/s/ Clinton Luth