

SUPREME COURT NO. 20-0657
POLK COUNTY DISTRICT COURT NO. CVCV057831

IN THE SUPREME COURT OF IOWA

Adam Klein,

Petitioner-Appellant,

v.

Iowa Public Information Board,

Respondent-Appellee,

and

**Burlington Police Department and Iowa Department of
Public Safety, Division of Criminal Investigations,**

Intervenors-Appellees.

*APPEAL FROM THE IOWA DISTRICT COURT
FOR POLK COUNTY
HONORABLE SAMANTHA GRONEWALD*

FINAL BRIEF OF APPELLANT

Nicholas D. Ott
Ott Law DSM
309 E 5th St Unit 201
Des Moines, IA 50309
Phone: (765) 337-1987
OttLawDSM@gmail.com

Rita Bettis Austen
ACLU of Iowa Foundation
505 Fifth Ave., Ste. 808
Des Moines, IA 50309
Phone: (515) 243-3988
Fax: (515) 243-8506
rita.bettis@aclu-ia.org

Shefali Aurora
ACLU of Iowa Foundation, Inc.
505 Fifth Ave., Ste. 808
Des Moines, IA 50309-2317
Phone: (515) 243-3988
Fax: (515) 243-8506
Shefali.Aurora@aclu-ia.org

ATTORNEYS FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS	3
TABLE OF AUTHORITIES	6
STATEMENT OF THE ISSUES PRESENTED FOR REVIEW	9
ROUTING STATEMENT	12
STATEMENT OF THE CASE.....	12
FACTS AND PROCEDURAL HISTORY.....	13
I. The shooting of Autumn Steele and investigation	13
II. Klein’s open records requests and law enforcement refusals to disclose public records.....	14
III. Klein’s Complaint to the IPIB and Contested Case	18
IV. Unsealing of some records related to the federal civil rights lawsuit	21
V. The ALJ’s Proposed Decision, Appeal to the IPIB, and Final Agency Action	30
VI. Klein’s Judicial Review Petition.....	32
ARGUMENT	33
I. Standard of Review Applicable to All Issues on Appeal	35
II. Klein is a “person or a party who has exhausted all adequate administrative remedies.”	37
A. Error Preservation and Standard of Review	39

B.	Klein exhausted all adequate administrative remedies by filing his Complaint and by the entry of final agency action dismissing his Complaint.	39
C.	Chapter 23 Does Not Expressly or Impliedly Require Intervention by the Complainant to Exhaust.	44
D.	Because Intervention Would Have Served No Purpose, Klein was Not Required to Intervene.	46
E.	Klein was a “person or a party”	48
1.	<i>The record shows that Klein was a party before the IPIB, below</i>	50
2.	<i>The express language and purpose of chapter 23 show a legislative intent to confer party status on Klein, as the original Complainant, in the contested case on his Complaint brought by the special prosecutor</i>	52
III.	Klein Has Standing To Challenge The Denial Of All Public Records Included In His Underlying Complaint.	54
A.	Error Preservation and Standard of Review	54
B.	All Records in Klein’s Complaint were Pursued Below, and the IPIB Dismissed the Complaint as a Whole	55
IV.	Klein Properly Sought Declaratory Relief in his Petition for Judicial Review.	63
A.	Error Preservation and Standard of Review	63
B.	Declaratory Relief is Generally Available in Judicial Review Actions Under the IAPA, and Klein Sought Declaratory Relief Below	64

CONCLUSION 71
STATEMENT ON ORAL ARGUMENT..... 72
COST CERTIFICATE..... 72
CERTIFICATE OF COMPLIANCE 73

TABLE OF AUTHORITIES

Iowa Supreme Court Cases

<i>Banilla Games, Inc. v. Iowa Dep’t of Inspections & Appeals</i> , 919 N.W.2d 6 (Iowa 2018)	51
<i>Black v. Univ. of Iowa</i> , 362 N.W.2d 459 (Iowa 1985).....	63, 66
<i>Burton v. Hilltop Care Ctr.</i> , 813 N.W.2d 250 (Iowa 2012).....	34
<i>City of Riverdale v. Diercks</i> , 806 N.W.2d 643 (Iowa 2011)	32
<i>Fisher v. Iowa Bd. of Optometry Exam’rs</i> , 476 N.W.2d 48 (Iowa 1991)	49-50
<i>Gartner v. Iowa Dep’t of Pub. Health</i> , 830 N.W.2d 335 (Iowa 2013).	35, 65
<i>Godfrey v. State</i> , 752 N.W.2d 413 (Iowa 2008)	55
<i>Good et al. v. Iowa Dep’t of Hum. Servs.</i> , 924 N.W.2d 853 (Iowa 2019)	64
<i>IES Utilities v. Iowa Dep’t of Revenue & Fin.</i> , 545 N.W.2d 536 (Iowa 1996)	68
<i>Keokuk County v. H.B.</i> , 593 N.W.2d 118 (Iowa 1999).....	36
<i>Mitchell v. City of Cedar Rapids</i> , 926 N.W.2d 222 (Iowa 2019)	12, 32, 55
<i>Polk Cty. v. Iowa State Appeal Bd.</i> , 330 N.W.2d 267 (Iowa 1983).	55
<i>Ramirez-Trujillo v. Quality Egg, L.L.C.</i> , 878 N.W.2d 759 (Iowa 2016)	51, 52
<i>Rathmann v. Bd. of Dirs.</i> , 580 N.W.2d 773 (Iowa 1998).....	32

<i>Reg'l Ret. Living, Inc. v. Bd. of Review of Wapello Cty.</i> , 611 N.W.2d 779 (Iowa 2000)	36
<i>Renda v. Iowa Civil Rights Comm'n</i> , 784 N.W.2d 8 (Iowa 2010)	34, 52
<i>Roland v. Annett Holdings, Inc.</i> , 940 N.W.2d 752 (Iowa 2020)	36
<i>Salsbury Labs. v. Iowa Dep't of Env'tl. Quality</i> , 276 N.W.2d 830 (Iowa 1979)	46
<i>Shors v. Johnson</i> , 581 N.W.2d 648 (Iowa 1998)	36
<i>State v. Clark</i> , 608 N.W.2d 5 (Iowa 2000)	36
<i>Travelers Indem. Co. v. D.J. Frazen, Inc.</i> , 792 N.W.2d 242 (Iowa 2010)	34-35
<i>Tremel v. Iowa Dep't of Revenue</i> , 785 N.W.2d 690 (Iowa 2010)	34-35

Other Cases

<i>Al-Jurf v. Iowa Bd. of Medicine</i> , 838 N.W.2d 680, 2013 WL 3830159 (Iowa Ct. App. 2013)	44
<i>Application of Bank of Rhame</i> , 231 N.W.2d 801 (N.D.1975)	50

Iowa Statutes

Iowa Code § 17A.2	49
Iowa Code § 17A.19	<i>passim</i>
Iowa Code § 22.2	55, 57, 59
Iowa Code § 22.7	67
Iowa Code § 22.10	39
Iowa Code § 23.1	33, 41, 53

Iowa Code § 23.2	40, 52
Iowa Code § 23.5	39
Iowa Code § 23.8	40, 52
Iowa Code § 23.9	52-53
Iowa Code § 23.10	<i>passim</i>
Iowa Rules of Appellate Procedure	
Iowa R. App. P. 6.1101.....	12
Iowa Administrative Regulations	
Iowa Admin. r. 497-3	69
Iowa Admin. r. 497-4.18	45, 69
Other Authorities	
Arthur Earl Bonfield, <i>The Definition of Formal Agency Adjudication Under the Iowa Administrative Procedure Act</i> , 63 Iowa L. Rev. 285 (1977)	47

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

1. Whether Klein exhausted all adequate administrative remedies.

Authorities

Iowa Code § 22.10

Iowa Code § 23.5

Iowa Code § 23.10

Iowa Code § 17A.19

Iowa Code § 23.2

Iowa Code § 23.8

Iowa Code § 23.1

Travelers Indem. Co. v. D.J. Frazen, Inc., 792 N.W.2d 242 (Iowa 2010)

Al-Jurf v. Iowa Bd. of Medicine, 838 N.W.2d 680, 2013 WL 3830159 (Iowa Ct. App. 2013) (unreported)

Iowa Admin. r. 497-4.18

Salsbury Labs. v. Iowa Dep't of Env'tl. Quality, 276 N.W.2d 830 (Iowa 1979)

Arthur Earl Bonfield, *The Definition of Formal Agency Adjudication Under the Iowa Administrative Procedure Act*, 63 Iowa L. Rev. 285 (1977)

Renda v. Iowa Civil Rights Com'n, 784 N.W.2d 8 (Iowa 2010)

Iowa Code § 17A.2

Fisher v. Iowa Bd. of Optometry Exam'rs, 476 N.W.2d 48 (Iowa 1991)

Application of Bank of Rhame, 231 N.W.2d 801 (N.D. 1975)

Banilla Games, Inc. v. Iowa Dep't of Inspections & Appeals, 919 N.W.2d 6 (Iowa 2018)

Ramirez-Trujillo v. Quality Egg, L.L.C., 878 N.W.2d 759 (Iowa 2016)

Iowa Code § 23.9

- 2. Whether Klein has standing to challenge the denial of all public records included in his underlying Complaint.**

Authorities

Iowa Code § 17A.19

Polk Cty. v. Iowa State Appeal Bd., 330 N.W.2d 267 (Iowa 1983)

Godfrey v. State, 752 N.W.2d 413 (Iowa 2008)

Iowa Code § 22.2

Iowa Code § 23.10

Mitchell v. City of Cedar Rapids, 926 N.W.2d 222 (Iowa 2019)

3. Whether Klein properly sought declaratory relief in his Petition for Judicial Review.

Authorities

Black v. Univ. of Iowa, 362 N.W.2d 459, 462 (Iowa 1985)

Iowa Code § 17A.19

Good et al. v. Iowa Dep't of Hum. Servs., 924 N.W.2d 853 (Iowa 2019)

Gartner v. Iowa Dep't of Pub. Health, 830 N.W.2d 335 (Iowa 2013)

IES Utilities v. Iowa Dep't of Revenue & Fin., 545 N.W.2d 536 (Iowa 1996)

Iowa Admin. r. 497-3

Iowa Admin. r. 497-4

ROUTING STATEMENT

The Iowa Supreme Court should retain this case because it presents an issue of first impression that is of broad public importance and whose ultimate determination by the Iowa Supreme Court is required. Iowa R. App. P. 6.1101(2)(c), (d). Specifically, it will determine the applicable procedures and remedies governing dismissals of public records complaints made to the Iowa Public Information Board (“IPIB”).

The public’s right to access and disseminate chapter 22 open records, and the procedures by which they must aggrieve the denials of such requests, are critical legal rights to “open the doors of government to public scrutiny” and prevent “secreting its decision-making activities from the public.” *Mitchell v. City of Cedar Rapids*, 926 N.W.2d 222, 229 (Iowa 2019).

STATEMENT OF THE CASE

Petitioner-Appellant, Adam Klein, appeals the district court’s dismissal of his section 17A petition for judicial review of administrative agency action. The appeal presents three issues: (1) whether an open-records complainant before the IPIB must file a

motion to intervene in the agency's contested case subsequent to filing his complaint in order to exhaust administrative remedies; (2) whether the district court may render relief as to all the open records sought by the complainant on judicial review of final agency action; and (3) whether a complainant must file a motion for declaratory relief before the IPIB as a prerequisite to seeking declaratory relief on a subsequent judicial review of final agency action.

FACTS AND PROCEDURAL HISTORY

I. The shooting of Autumn Steele and investigation

The IPIB accepted the following facts in its Final Decision. (App. 2132, Certified Admin. Record ("CR") 1572.) On January 6, 2015, Autumn Steele was shot and killed by Jesse Hill, a Burlington Police Department ("BPD") Officer. (App. 2040, CR 1480.) The Des Moines County Attorney investigated the incident and determined that she would file no criminal charges against the officer. (*Id.*) The County Attorney summarized her findings, including a description of some of the details surrounding the shooting, in a February 27, 2015, letter (the "summary letter") to Iowa Department of Public

Safety, Division of Criminal Investigation (“DCI”) Agent Matthew George. (App. 2040, CR 1480; App. 2152, CR 1592.)¹

A DCI special agent testified before the IPIB that in the investigation into the shooting that followed, bodycam footage and patrol car video from the shooting were collected, and he personally attested to viewing a video of the shooting. (App. 2044, CR 1484; App. 2046-2047, CR 1486-87.) The BPD Police Chief testified that “all” records were turned over to the DCI, and he acknowledged bodycam footage, dashcam video, 911 calls, and initial reports from officers were in the DCI’s custody. (App. 2047-48, CR 1487-88.)

II. Klein’s open records requests and law enforcement refusals to disclose public records

On February 27, 2015, Klein made a chapter 22 public records request to the DCI. (App. 0590-91, CR 30-31.) He requested, as a catch-all “any and all public records regarding the incident.” (*Id.*) He also specifically requested the following records:

¹ Klein has never conceded the accuracy of the County Attorney’s report or conclusions of facts or law. (See App. 0576, CR 16; App. 0683-84, CR 123-24; App. 0699, CR 139; App. 0742-43, CR 182-83; App. 0238, Petr’s Br. on Judicial Review at 12.)

1. the investigative report of the Iowa Department of Criminal Investigation into the Incident, in its entirety, including any and all supporting evidence;
2. original or supplemental incident reports, and any other investigative reports;
3. audio or video regarding the Incident or the scene, including squad car and body cameras from Ofc. Hill and any other responding officers;
4. audio recordings or transcripts of communication by law enforcement personnel regarding the Incident, including all police radio dispatch;
5. reports of any ballistic or forensic investigation into the Incident;
6. any photographs relating to or depicting the incident or the scene, or any part thereof;
7. the report of Ms. Steele's autopsy, including any photographs, audio, video, or other supplemental evidence;
8. audio or video, as well as transcripts, of any interview of Ofc. Hill or any person, relating to the Incident;
9. records of any investigation into the dog who allegedly attacked Ofc. Hill, including all supporting evidence;
10. records, photographs, or other documentation of the alleged attack on Ofc. Hill by a dog during the Incident, as well as any injuries received by Ofc. Hill;

11. the names and contact information for any witnesses to the Incident;
12. any written statement provided by witnesses to the Incident;
13. any audio or video recording of any interview with witnesses to the Incident;
14. any and all notes, memoranda, or other written records generated in the course of the investigation of the Incident;
15. any other information regarding the Incident or its investigation within your possession or control.

(Id.)

Counsel for the DCI responded to Klein's open records request on March 18, 2015. (App. 0596, CR 36.) The response stated, in part:

I can have DCI send you the material we are sending in response to media open records request. That would include the County Attorney's Letter regarding charges, DCI press releases and a link to some of the body camera footage. That would be the same things we would provide to you in response to your open records request. Other materials would be protected from disclosure under Iowa's open records laws.

(Id.)

On February 27, 2015, Klein also made a chapter 22 public records request to the BPD. (App. 0593-94, CR 33-34.) He made the

same catch-all request for “any and all public records regarding the incident.” (*Id.*) He also specifically requested the following records:

6. Records of any internal investigation regarding the Incident or Ofc. Hill’s conduct during the Incident;
7. Records of any investigation into the dog who allegedly attacked Ofc. Hill, including all supporting evidence;
8. Records, including photographs, documenting any injuries received by Ofc. Hill during the Incident, and/or the treatment of any such injuries;
-
10. Dispatch logs, audio recordings, transcripts, or any other records of communication by law enforcement personnel regarding the Incident, including all police radio dispatch;
11. Transcripts or audio recordings of any 911 call, emergency call, or other call to law enforcement regarding the Incident.
12. All records regarding the vicious animal complaint in October 2014 in which Ofc. Hill deployed a taser against a pit bull . . . including, but not limited to:
 - a. the incident report and any and all supplemental reports
 - b. any records of injuries received by Ofc. Hill of treatment thereof

(*Id.*) (numbered as in the original.)

Counsel for the BPD responded to Klein's open records request on March 19, 2015. (App. 0599-0602, CR 39-42.) The BPD declined to produce most of the requested records:

All other items you requested in your Requests Nos. 6, 7, 8, 10, 11, and 12 are peace officers' investigative reports and therefore are confidential records pursuant to Iowa Code Section 22.7(5), except for the date, time, specific location, and immediate facts and circumstances surrounding the incident. Iowa Code 22.7(5) (2014); *see also Neer v. State*, 798 N.W.2d 349 (Iowa Ct. App. 2011).

The date, time, specific location, and immediate facts surrounding the Ms. Steele's death on January 6, 2015, are contained in the County Attorney's memorandum which has been provided to the public and is enclosed with this letter.

(App. 0601, CR 41.)

III. Klein's Complaint to the IPIB and Contested Case

Klein submitted his Complaint to the IPIB on May 15, 2015. (App. 0568- 80, CR 8-20.) He alleged that the BPD and DCI violated chapter 22 by withholding access to public records related to the shooting that he had requested. (App. 0568-80, CR 8-20.) Inter alia, Klein requested that the agency: "(2) Find that the requested records are not exempt from disclosure under Iowa Code § 22.7(5), and (3) Order Respondents to fully disclose all records responsive

to Complainants' request." (App. 0579, CR 19) (numbered as in the original.)

On October 27, 2016, the IPIB retained jurisdiction of Klein's Complaint and rendered a probable cause determination that the BPD and DCI had violated chapter 22 by failing to disclose public records to Klein:

[T]he IPIB Board finds that the complaint by Adam Klein in this case is within IPIB's jurisdiction.

Pursuant to Iowa Code section 23.10(3)(a), the IPIB Board finds that there is probable cause to believe there has been a violation of Iowa Code section 22.2 when [BPD and DCI] withheld public records as defined therein in response to Complainant's request, including, but not limited to, police audio records, body camera videos, and 911 calls that were subject to disclosure under Iowa Code chapter 22.

(App. 1279, CR 719.) Additionally, the agency designated a special prosecutor, former Iowa Supreme Court Justice Mark McCormick, to commence a contested case on Klein's Complaint.

(Id.)

The special prosecutor filed a Petition on November 4, 2016. (App. 1280, CR 720.) Under the heading "Parties, Jurisdiction, and Venue", the Petition identified Klein and The Hawk Eye newspaper

as complainants: “The Complainant in 15 FC:0034 is Adam Klein, an attorney in Atlanta, Georgia, who is also a person pursuant to Iowa Code §23.2. The Complainant in 15 FC:0030 is The Hawk Eye, a newspaper headquartered in Burlington, which is a person pursuant to Iowa Code §23.2.” (*Id.*) The Petition stated:

Complainants [Klein and The Hawk Eye] make essentially the same allegation against the DCI, and the complaint of Adam Klein against the Burlington Police Department arises from the same circumstances. This petition is filed to initiate a contested case on the complaints.

(*Id.*)

The Statement of Facts and Statement of Charges provided, “Adam Klein requested copies of all public records . . . including, but not limited to, the files of the [BPD and DCI], and which were broad enough to include any police audio, body camera videos, and 911 calls.” (App. 1282, CR 722.) The special prosecutor further described the records which law enforcement improperly denied:

Among the public records that were requested but which Respondents have wrongfully refused to produced are the following: the recording and transcripts of 911 calls, bodycam videos taken by the officers, videos taken by dashboard cameras, records showing ‘the date, time, specific location, and immediate circumstances surrounding the . . . incident,’ and emails regarding the

Autumn Steele homicide from and to representatives of the City of Burlington in correspondence with Autumn Steele's family members.

(App. 1283, CR 723.) The special prosecutor sought relief as follows:

that a contested case hearing be set and upon hearing an appropriate order be entered finding Respondents have violated Iowa Code chapter 22 in the respects alleged and that an appropriate order be entered to ensure Respondents' compliance with Iowa Code chapter 22, including statutory damages and a requirement that Respondents produce the documents that have been withheld for examination and copying without cost to Complainants.

(App. 1284, CR 724.)

IV. Unsealing of some records related to the federal civil rights lawsuit

In 2016, Klein filed a federal lawsuit against the BPD and Officer Hill on behalf of the family of Autumn Steele. (App. 2140, CR 1580.) A protective order was entered through stipulation of the parties to govern discovery in that matter. (App. 2141, CR 1581.) The Iowa Freedom of Information Council subsequently filed a

motion to unseal documents, which was granted in part.² *See Steele et al. v. City of Burlington et al.*, 3:16-cv-105, Doc. 79-1, Movants-

² The enormous public interest in this case is reflected in the record. (*See, inter alia*, App. 0561-62, CR 1-2 (letter from The Hawk Eye newspaper to Mr. Smithson, describing public interest in the matter, and mentioning a local rally opposing the reinstatement of Officer Hill); App. 0576, CR 16 (Compl. filed by Adam Klein, describing not only the public interest in the shooting itself, but also “allegations of leniency or cover-up” by officials, as well as the reinstatement of Officer Hill without any discipline); App. 0683, CR 123 (The Hawk Eye brief below, citing a Washington Post article describing community interest in police shootings of civilians around the country and in Autumn Steele’s case particularly); App. 0684, CR 124; App. 0699, CR 139 (The Hawk Eye brief below, describing the concern of cover up: “Yet every law enforcement agency involved in this open records dispute has circled the squad cars in a collective effort to make sure that objective video depictions and other records evidencing what transpired on the morning Autumn Steele was shot can be seen only by those within government and to the exclusion of the very citizenry the police agencies involved are charged with serving and protecting.”); App. 0742, CR 182 (Klein brief below, describing how the public interest is harmed by allowing police to “cherry-pick from the facts and circumstances, releasing those which serve their interests and suppressing those which do not” in reference to the police releasing an edited twelve-second clip from Officer Hill’s body camera.”); App. 0743, CR 183 (Klein brief below, describing concerns that the records made available at that point demonstrated that “Officer Hill was ready to fire, weapon drawn, before he asked the Steeles to ‘get the dog.’”); App. 0766, CR 206 (letter from reporter Andy Hoffman describing purpose in seeking records as “related to news-gathering purposes only” and stating “release of the information would contribute substantially to the public’s understanding of this incident.”).)

Intervenors Randy Evans and the Iowa Freedom of Information Council’s Br. in Supp. of their Limited Mot. to Intervene at 1 (S.D. Iowa June 12, 2018); (App. 0152-61, Resistance to Mot. to Dismiss, Ex. 02.)

Through that unsealing, a portion, but not all, of the records Klein sought and that are subject to this judicial review proceeding were disclosed. The unsealed evidence that was made publicly available does not include any of the public records which were not filed in the court case. Nor does it include many records, exchanged in discovery, which were responsive to Klein’s open records request and subsequent IPIB Complaint.

Below are examples of responsive records that were identified through the unsealed, publicly available records but that have not been publicly released:

- Unsealed Doc. 111-1 includes the cover sheet from Officer Jesse Hill’s deposition. (App. 0181, Resistance to Mot. to Dismiss, Ex. 06: *Steele* Doc. 111-1, at 5). It itemizes deposition exhibits—which were responsive records that have not been publicly released—including “1/6/15 Iowa DCI George Narrative”

and “Photocopied Color Photographs (9 pages).” (*Id.*) The same unsealed document includes the cover sheet from Chief Beard’s deposition, which references additional “Photocopied Color Photographs (10 pages)” and “Webb, Rank, Mellinger Interview Notes”. (App. 0190-91, *Id.* at 87-88.) Neither of those records has been released. Unsealed Doc. 111-1 also includes a table of “Evidence and Exhibit List as of February 20, 2015.” (App. 0192-93, *Id.* at 89-90.) The document further references multiple records which were responsive to Klein’s open records request but were not released, including:

- DVD containing the January 9, 2015 interview of Officer JESSE HILL at the DCI Catfish Bend Casino
- Original Affidavits prepared by S/A Matt George; Not-to-scale diagrams prepared by Officer JESSE HILL
- Criminal Investigation Warning signed by Officer JESSE HILL; Diagrams prepared by Gabriel Steele and S/A Ryan Kedley; DCI Receipts dated January 6, 2015
- Consent to Provide Chemical Test of Urine signed by Officer JESSE HILL

- DVD containing photos of shooting scene of 100 block of South Garfield in Burlington, Iowa, and AUTUMN STEELE's clothing
 - DVD containing photos of packaged evidence stored at the BPD on January 6, 2015; DVD containing photos of Officer HILL in uniform on January 2, 2015
 - Officer Hill's dog bite injury on January 6, 2015
 - Officer HILL's firearm and equipment; Officer HILL's duty pants; DVD containing photos of AUTUMN and GABRIEL STEELE's dog taken January 6, 2015
 - DVD containing photos taken by Det. Schwandt of AUTUMN STEELE on January 6, 2015 at Lunning Chapel; DVD containing AUTUMN STEELE's autopsy photographs
 - CD containing the audio recording of Officer JESSE HILL's January 9, 2015 DCI Interview
 - CD containing the audio recording of EBONY TURNER and CHRIS BURK's interview;
-
- DVD containing (copy) of in-dash camera from BPD Lieutenant Greg Allen's squad car on January 6, 2015 (maintained at Stockton DCI Office)
 - GRMC Medical Records documenting Officer HILL's dog bite injuries (maintained at the Stockton DCI Office)

(App. 0192-93, *Id.* at 89-90.)

- Unsealed Doc. 112-0 is a narrative describing “follow up questions for Officer Jesse Hill” asked by DCI “after the conclusion of Officer Jesse Hill’s interview.” (App. 0166, Resistance to Mot. to Dismiss, Ex. 03: *Steele*, Doc. 112-0, at 23.) An excerpt from the transcript of the DCI interview of Officer Jesse Hill is included in the unsealed documents which has been marked by DCI as beginning on page 38 and line 1526, in unsealed Doc. 105-3, at 4-5 (App. 0169-70, Resistance to Mot. to Dismiss, Ex. 04 at 4-5). Unsealed Doc. 109-0 includes another short excerpt from the same interview. The DCI-marked pages jump from the first page to page 27, and from line 21 to line 1066. (App. 0176-77, Resistance to Mot. to Dismiss, Ex. 05: *Steele* Doc. 109-0, at 31-32.) Thus, at least 26 pages and 1045 lines of the transcript before the excerpt, as well as some number after that, aren’t included in the unsealed, publicly available record. The remainder of that interview has not been released, since it was never filed. (*Id.*)

- Also, in Doc. 112-0 is a deposition exhibit which is a photograph of Officer Jesse Hill’s leg after he was allegedly bitten

by the Steele family dog. (App. 0165, Resistance to Mot. to Dismiss, Ex. 03: *Steele* Doc. 112-0, at 15). A pen mark made by a witness obscures the area of the leg where the alleged bite mark was. (*Id.*) However, the unmarked, original photograph—responsive to Klein’s open records request and subject to his IPIB Complaint—was never released.

- Unsealed Doc. 105-3 is a transcript from the deposition of Burlington Police Chief Douglas Beaird, which also discusses documents “regarding Defendant Hill and his interactions with dogs or other animals and complaints regarding Officer Hill” . . . including “some documents that have been provided about an interaction that Officer Hill had with another animal where he ultimately used his Taser to subdue that animal.” (App. 0171, Resistance to Mot. to Dismiss: Ex. 04: *Steele* Doc. 105-3, at 19.) Those documents are also responsive to Klein’s open records request and covered by his IPIB Complaint, but they have not been publicly released.

- The released body camera footage reveals that the officers drove their vehicles to the Steele home; yet no dashcam

video, also referenced above, and responsive to Klein's request and IPIB Complaint, has been publicly released.

- Unsealed Doc. 109-0 likewise references a wealth of records, including an autopsy report, ambulance records, a photograph of the alleged dog bite, and lab results from a urine sample collected from Officer Jesse Hill, all of which have never been released. (App. 0175, Resistance to Mot. to Dismiss, Ex. 05: *Steele* Doc. 109-0, at 28.)

- Unsealed Doc. 114-0 is the transcript of the summary judgment hearing. Statements by counsel refer to witness statements about the Steele family dog which were included in the bodycam video released to the public, but which were omitted from the written reports prepared by police that have *not* been released to the public, as they were never filed in the federal court case. (App. 0196, Resistance to Mot. to Dismiss, Ex. 07: *Steele* Doc. 114-0, at 29:1-8) (alluding to actions by the Burlington Police Department which were alleged to cover-up the circumstances of the shooting, stating, "all three of them said the dog was not aggressive. *None of*

that is in the reports that the police prepared, but that's what is in their video statements.") (emphasis added).

- Finally, unsealed Doc 101-3 is the full summary sheet from Officer Jesse Hill's deposition. It references twenty-eight pages of various photocopied color photographs". Of those, only three pages were released, because they were the only records among the twenty-eight that were included in summary judgment proceedings and thus filed in court and subject to the unsealing motion. (*Compare* App. 0200-02, Resistance to Mot. to Dismiss, Ex. 08, *Steele* Doc. 101-3, at 15-17 (showing the three released pages of photos) *with* App. 0203, Resistance to Mot. to Dismiss, Ex. 08, *Steele* Doc. 101-3, at 45 (describing 28 pages of photographs in deposition exhibits).) Deposition exhibits listed which also were not publicly released through the unsealing motion include deposition exhibits 13-15 ("Diagrams"), deposition exhibit 17, a "Vicious Animal Investigation of 'Jimmy'", deposition exhibit 19, "Reports Related to a 10/11/14 Incident", deposition exhibits 23-25, "Kramer Memo[s]", and deposition exhibit 26, "Beaird Memo." (App. 0203, Resistance to Mot. to Dismiss, Ex. 08, *Steele* Doc. 101-3, at 45.)

V. The ALJ's Proposed Decision, Appeal to the IPIB, and Final Agency Action

On October 5, 2018, the administrative law judge issued her Proposed Decision. (App. 2037-60, CR 1477-1500.) The ALJ found that the BPD and DCI failed to comply with chapter 22 by denying Klein and The Hawk Eye the requested records pursuant to Section 22.7(5). (App. 2059, CR 1499.) The ALJ granted the special prosecutor's request for an order requiring production of the records but declined to assess damages. (App. 2058-59, CR 1498-99.) The BPD and DCI appealed the Proposed Decision to the IPIB, whose membership had changed since it voted to find probable cause and open a contested case. (App. 2062-71, CR 1502-11; *compare* App. 2168, CR 1608 (membership list), *with* App. 2239, CR 1679 (membership list).)

The IPIB rendered final agency action on Klein's Complaint on February 21, 2019. (App. 2130-50, CR 1570-90) ("Final Decision and Order Dismissing Petition.") The IPIB's Final Decision named Adam Klein as the requestor of public records that were denied, including those "such as the 911 call, the dashcam videos and the bodycam videos." (App. 2133, CR 1573; App. 2142, CR 1582.) It also

named Klein among the parties who received notice of the final agency action. (App. 2150, CR 1590.)

The IPIB rejected each legal determination made by the ALJ in the Proposed Decision and held the BPD and DCI complied with chapter 22 in responding to Klein’s public records request. (App. 2149, CR 1589.) The agency described “[t]he crux of this case [as] whether [BPD and DCI] violated chapter 22 by refusing to release the recording and transcript of 911 calls, bodycam videos taken by officers, videos taken by dash cameras, and records showing the ‘date, time, specific location and immediate circumstances surrounding the incident.’” (App. 2144, CR. 1584.) The IPIB ultimately concluded that all the disputed records were confidential and exempt from disclosure. (App. 2145-46, CR 1585-86; App. 2148, CR 1588.) Additionally, the IPIB determined that the County Attorney’s summary letter and a short 12-second bodycam video, clipped from the longer footage, satisfied the immediate facts and circumstances clause of Section 22.7(5). (App. 2148, CR 1588.)

VI. Klein's Judicial Review Petition

Klein timely petitioned the district court for judicial review of final agency action under Section 17A.19 on March 22, 2019. (*See* App. 0006-13, Klein Pet.) The DCI moved to dismiss the petition, which the district court denied, except as to Klein's request for declaratory relief. (App. 00211-19, Order Re Mot. to Dismiss.) BPD and DCI intervened as of right in the judicial review action. (BPD's Appearance and Notice of Intervention at 1-2; DCI Appearance and Notice of Intervention at 1.) After a hearing concluded and briefing on the merits, the case was submitted to the district court on January 24, 2020. (App. 0441, Order at 5.)

The district court issued its Ruling on March 23, 2020, dismissing Klein's Petition for failing to exhaust administrative remedies because he did not file a motion to intervene in the contested case below. (App. 0459, Order at 23.) It also determined Klein only had standing to seek the dashcam video. (App. 0449, Order at 13.) Klein timely filed a Notice of Appeal on April 20, 2020. (App. 0461-64, Not. of Appeal.)

ARGUMENT

In the recent *Mitchell* case, this Court recognized the vital role that access to government records plays in our democracy, reiterating that the purpose of Iowa Code chapter 22 is “to open the doors of government to public scrutiny [and] to prevent government from secreting its decision-making activities from the public, on whose behalf it is its duty to act.” 926 N.W.2d at 229 (citing *City of Riverdale v. Diercks*, 806 N.W.2d 643, 652 (Iowa 2011) (alteration in original) (quoting *Rathmann v. Bd. of Dirs.*, 580 N.W.2d 773, 777 (Iowa 1998)). In recognition of this vital role, and the high cost of litigation in resolving open records disputes, in 2012, the Legislature created the IPIB “to provide an alternative means by which to secure compliance with and enforcement of the requirements of chapters 21 and 22 through the provision by the Iowa public information board to all interested parties of an efficient, informal, and cost-effective process for resolving disputes.” Iowa Code § 23.1.

This important case, of significant interest to the public, presents threshold questions about whether the IPIB will fulfill its

legislative purpose to resolve open records disputes in a low-cost, simplified process, or, if the district court's dismissal is upheld, whether instead it will become a highly formalistic and procedurally-complex bottleneck that only serves to further delay and complicate access to records for members of the public who file complaints with the IPIB.

While the merits of the IPIB's final agency action on Klein's Complaint to the IPIB were fully briefed and submitted to the district court, it dismissed his Petition for Judicial Review without reaching them.

As argued below, this dismissal was error at law for three reasons. First, because Klein was the Complainant below, upon whose Complaint final agency action was rendered, all administrative remedies were exhausted, and he had standing to seek further review with the district court. Second, because Klein had standing to appeal the IPIB's final agency action denying him all the records he sought in his IPIB Complaint, the district court erred in narrowing the disputed records it would adjudicate to only the 911 call, bodycam, and dashcam video. Third, because

declaratory relief is expressly available in judicial review of actions under the IAPA, and because Klein sought declaratory relief before the IPIB, the district court erred in dismissing his prayer for declaratory relief.

Because the district court's dismissal was error-at-law, Klein respectfully asks this Court to reverse and remand it with instructions to the district court to adjudicate the merits of his case.

I. Standard of Review Applicable to All Issues on Appeal

The standard of review applicable to the merits of final agency action depends on the deference given to an agency's interpretation of the relevant law. *Burton v. Hilltop Care Ctr.*, 813 N.W.2d 250, 256 (Iowa 2012); *See Renda v. Iowa Civil Rights Comm'n*, 784 N.W.2d 8, 14 (Iowa 2010); *Compare, e.g., Tremel v. Iowa Dep't of Revenue*, 785 N.W.2d 690, 692–93 (Iowa 2010) (providing that absent deference, “[o]ur review is for correction of errors at law and we are free to substitute our interpretation of the statute de novo”), *with Gartner v. Iowa Dep't of Pub. Health*, 830 N.W.2d 335, 343 (Iowa 2013) (providing that if the court grants deference to an agency's interpretation of given statutory terms, the court may

reverse if the interpretation is “irrational, illogical, or wholly unjustifiable.”). As briefed by Klein below, no deference should be due to the IPIB on the merits of his claims. (App. 0251-61, Pet’r’s Br. on Judicial Review at 25-35.)

However, in this case, the district court declined to reach the merits of Klein’s petition for further review, instead dismissing the matter based on its determination that Klein failed to exhaust administrative remedies as to all claims by failing to intervene in the contested case, (App. 0457- 58, Order at 21-22), as to declaratory relief specifically because he did not file a motion for declaratory relief in the contested case, (App. 0214-16, Order on Mot. to Dismiss at 4-6), and as to all records sought in his Complaint to the IPIB other than the dashcam video, bodycam video, and 911 call. (App. 0449, Order at 13.)

The question of whether administrative remedies have been exhausted historically “gives rise to a question of authority to resolve the case.” *See Keokuk County v. H.B.*, 593 N.W.2d 118, 122 (Iowa 1999); *Reg’l Ret. Living, Inc. v. Bd. of Review of Wapello Cty.*, 611 N.W.2d 779, 781 (Iowa 2000); *State v. Clark*, 608 N.W.2d 5, 7

(Iowa 2000); *Shors v. Johnson*, 581 N.W.2d 648, 650 (Iowa 1998). More recently, this Court has indicated that the failure to exhaust issue instead invokes the court's subject matter jurisdiction. *Roland v. Annett Holdings, Inc.*, 940 N.W.2d 752, 757 (Iowa 2020); *see also Id.* at 774 (J. Appel, dissenting). Either way, the applicable standard of review is for correction of errors at law. *Compare Reg'l Ret. Living, Inc. v. Bd. of Review*, 611 N.W.2d at 781 (citing *Clark*, 608 N.W.2d at 7, and *Shors*, 581 N.W.2d at 650), and *Keokuk Cty.*, 593 N.W.2d at 122, with *Roland*, 940 N.W.2d at 757.

Therefore, the standard of review applicable to all issues raised on appeal is reviewable for correction of errors at law.

II. Klein is a “person or a party who has exhausted all adequate administrative remedies.”

The district court erred in finding that Klein failed to exhaust administrative remedies as required by Section 17A.19(10)(2). (App. 0457-58, Order at 21-22.) Further, while it was unnecessary for the district court to have done so, having already determined that Klein failed to exhaust administrative remedies, and that he is a “person” with standing, (App. 0449, Order 13; App. 0457, Order

21) the district also erred in determining Klein was not a “party.” (App. 0455, Order 19.)

First, the express language and purpose of chapter 23 require Klein to do nothing more than file his Complaint with the IPIB and have final agency action rendered upon his Complaint to exhaust. Second, neither chapter 23 nor the agency’s rules for intervention expressly or impliedly require intervention to exhaust. Third, intervention was not required because it would have been fruitless. No additional remedy would have been available to Klein through intervention. For these reasons, the district court’s ruling that Klein was required to intervene in his own case was erroneous and should be reversed on appeal.

Further, the entirety of the record, express statutory language, and purpose of chapter 23 all demonstrate that Klein was a party to the contested case proceeding and was not required to intervene in the IPIB’s prosecution of Respondents following its probable cause determination of his Complaint in order to preserve his right to judicial review.

A. Error Preservation and Standard of Review

Klein preserved error on this argument. (*See* App. 0125-31, Resistance to Mot. to Dismiss at 7-13; Reply Br. at 9-11) (resisting state's argument that Klein was required to intervene in the contested case before the IPIB in order to exhaust administrative remedies); (App. 0449, Order 13) (ruling intervention below was required).

The standard of review is for correction of error at law. (*See* Argument Part I, above, at 34-36.)

B. Klein exhausted all adequate administrative remedies by filing his Complaint and by the entry of final agency action dismissing his Complaint.

Klein exhausted all adequate administrative remedies by filing the underlying Complaint that resulted in the IPIB's final agency action ruling that he had no right as a matter of law to the disputed records. The IPIB did not contest, and the district court found, that this ruling was final agency action. (App. 0452, Order 16.) The district court's determination that Klein was required to intervene in the contested case regarding his own Complaint is without merit.

First, Klein, as the *Complainant* to the IPIB regarding the Respondents' denial of his access to the documents in question, was a party to the proceedings below; his participation was marked by the filing of his Complaint. (App. 0568-80, CR 8-20) (*see also* Part II.E, below, at 48-54.) The entire process that unfolded before the IPIB below is one that was triggered by Klein's Complaint, and the final agency action appealed from here is that which ruled, erroneously, on the merits of it.

The Iowa legislature has provided that when a person's right to open records under chapter 22 is violated, they have a choice of remedies. Chapter 22 provides that "[a]ny aggrieved person" may bring a civil enforcement action in district court to enforce their right to the open records. Iowa Code § 22.10(1). Alternatively, the person may file a timely complaint with the IPIB. Iowa Code § 23.5(1). Once a complaint is filed with the IPIB, the complainant is entitled to a decision on that complaint by the IPIB and, when final agency action is rendered by the IPIB on his or her complaint in violation of chapter 22, the complainant has a right to judicial review of that action under the IAPA. *See* Iowa Code § 23.10(3)(d)

“A final board order resulting from such [contested case] proceedings . . . is subject to judicial review.”); Iowa Code § 17A.19 (providing for judicial review to a person who is aggrieved by agency action who has exhausted all adequate remedies).

Chapter 23 sets forth the procedures for the IPIB to follow once a complaint is filed alleging a chapter 22 violation. Logically, it expressly references the Complainant as a party to those procedures. *See* Iowa Code § 23.2 (defining the “Complainant” as the “person who files a complaint with the board”); Iowa Code § 23.8(1) (“Upon receipt of a complaint alleging a violation of chapter 21 or 22, the board shall . . . [d]etermine that, on its face, the complaint is within the board’s jurisdiction, appears legally sufficient, and could have merit. In such a case the board shall accept the complaint, and shall notify the *parties* of that fact in writing.”) (emphasis added.) Indeed, the special prosecutor’s Petition initiating a contested case against Respondents properly identifies Klein and The Hawk Eye under the heading “Parties, Jurisdiction, and Venue”. (App. 1280, CR 720.) The relief sought in turn “request[ed] that . . . a contested case hearing be set, that upon

such hearing an appropriate order be entered to ensure Respondents' compliance with Iowa Code chapter 22, including a requirement that Respondents be ordered to produce the documents that have been withheld for examination and copying without cost to Complainants [Klein and The Hawk Eye]." (App. 1284, *Id.* at 5.)

Klein was not required to do anything beyond filing his Complaint and have final agency action taken on that Complaint, as it has been, to exhaust administrative remedies. The stated legislative purpose for the very existence of the IPIB is to facilitate the resolution of open records disputes without burdening the complainant with the cost of having to undertake the litigation himself or herself. *See* Iowa Code § 23.1 It would completely undermine the purpose of chapter 23 to require Klein or any complainant to intervene and litigate the contested case brought by the IPIB on his Complaint in order to preserve his ability to seek judicial review of the agency's final action denying the records.

To the contrary, the IPIB's mechanism for enforcement of chapter 22, once it makes a probable cause finding, is as follows:

If the board finds the complaint is within the board's jurisdiction and there is probable cause to believe there has been a violation of chapter 21 or 22, *the board shall issue a written order to that effect and shall commence a contested case proceeding under chapter 17A against the respondent.* If there are no material facts in dispute, the board may order that the contested case procedures relating to the presentation of evidence shall not apply as provided in section 17A.10A. The executive director of the board or an attorney selected by the executive director shall prosecute the respondent in the contested case proceeding. At the termination of the contested case proceeding the board shall, by a majority vote of its members, *render a final decision as to the merits of the complaint.*

Iowa Code § 23.10(3)(a) (emphasis added). Upon a finding in favor of the complainant, chapter 23 sets forth the remedies that it may provide the complainant—including to issue “any appropriate order to ensure enforcement of chapter ...22 including but not limited to an order requiring specified action . . . , [r]equire the respondent to pay damages, [and] [r]equire the respondent to take any remedial action deemed appropriate by the board.” Iowa Code § 23.10(3)(a)-(b).

Here, pursuant to that process, after the IPIB made a determination of probable cause as to Klein's Complaint, it brought a contested case against the Respondents on his Complaint, seeking

to prosecute the open records violations he complained of, in order to provide him with the relief to which he was entitled under chapters 22 and 23. After the ALJ rendered its decision in favor of Klein, determining he was entitled to the records he sought, the Respondents appealed to the IPIB, which decided not to adopt the ALJ's decision, reversing the probable cause determination made by the earlier IPIB, and rendering final agency action on the matter of Klein's Complaint pursuant to Iowa Code § 23.10(3)(a). Nothing more was required by Klein to exhaust administrative remedies in order to now seek judicial review of that final agency action, according to the plain text and purpose of chapter 23.

C. Chapter 23 Does Not Expressly or Impliedly Require Intervention by the Complainant to Exhaust.

The second reason that intervention was not required to exhaust is that neither chapter 23 nor IPIB regulations expressly or impliedly require it. The Iowa Supreme Court has recognized that “the administrative-exhaustion requirement does not apply unless two conditions are satisfied: (1) an administrative remedy must exist for the claimed wrong, and (2) the statutes must expressly or impliedly require that remedy to be exhausted before

resort to the courts.” *Travelers Indem. Co. v. D.J. Frazen, Inc.*, 792 N.W.2d 242, 247 (Iowa 2010) (internal citations omitted); *Al-Jurf v. Iowa Bd. of Medicine*, 838 N.W.2d 680, 2013 WL 3830159, *6 (Iowa Ct. App. 2013) (unreported) (finding physician was not expressly or impliedly required to file an interagency appeal to exhaust for judicial review because the agency rule was permissive, not mandatory).

Chapter 23 does not even mention, much less require, intervention by the Complainant. Iowa Code § 23.10 (providing for IPIB enforcement of chapter 22 procedures, and not including any mention or requirement of intervention). IPIB administrative rules governing contested cases further demonstrate that intervention by the Complainant is not required to exhaust the Complainant’s remedies—especially, as here, when the IPIB takes final agency action on the Complainant’s Complaint. The administrative rule provides that anyone seeking intervention must:

demonstrate that: (a) intervention would not unduly prolong the proceedings or otherwise prejudice the rights of existing parties; (b) the movant is likely to be aggrieved or adversely affected by a final order in the proceeding; and (c) the interests of the movant are not adequately represented by existing parties.

Iowa Admin. r. 497-4.18(3). As the Complainant—whose interests in obtaining the public records he sought were already being advanced by the IPIB prosecutor against the Respondents in the contested case—Klein was an existing party, demonstrating the nonsensical nature of the IPIB’s ad hoc argument that he was required to intervene in the agency’s prosecution of his own Complaint. Indeed, any intervention by the Complainant in the contested case proceeding to decide the matter of his Complaint, if it would be entertained at all, would be permissive, not mandatory, because in the absence of his intervention, final agency action is rendered on the Complainant’s Complaint. Thus, intervention by the Complainant is not expressly or impliedly required to exhaust.

D. Because Intervention Would Have Served No Purpose, Klein was Not Required to Intervene

The third reason intervention was not required is that intervention would have provided Klein with no additional remedy. The Iowa Supreme Court had held that the IAPA does not require the exhaustion of fruitless procedures:

The doctrine of exhaustion of administrative remedies has never been thought to be absolute. If the agency is

incapable of granting the relief sought during the subsequent administrative proceedings, a fruitless pursuit of these remedies is not required.

Salsbury Labs. v. Iowa Dep't of Env'tl. Quality, 276 N.W.2d 830, 836 (Iowa 1979) (internal citations omitted).

Here, the IPIB determined that as a matter of law Klein had no right to the documents he sought. Thus, even if Klein were required to intervene in the IPIB's prosecution of his own complaint—putting aside the absurdity of that prospect in light of the plain text and purpose of chapter 23 set forth above—doing so would have yielded him no more or relief than declining to intervene. Intervention would have been especially wasteful and fruitless in this case, because the only contested matter before the agency was the legal question of whether the BPD and DCI improperly denied the public records sought by Klein as set forth in his Complaint. Klein contested no facts from those set forth by the IPIB's prosecutor upon the IPIB's determination of probable cause regarding his Complaint. Scholarship by Professor Bonfield, the generally acknowledged author of the Iowa Administrative

Procedures Act, makes clear the unnecessary of additional agency proceedings when facts are not in dispute:

Therefore, when there are no facts in dispute between the parties to a proceeding, or the facts in dispute are wholly irrelevant to its outcome, a court is not likely to find a hearing required by statute within the meaning of the section 2(2) definition of “contested case.” This is true, even if the statute in question otherwise seems to demand an opportunity for an evidentiary hearing in that particular type of proceeding.

Arthur Earl Bonfield, *The Definition of Formal Agency Adjudication Under the Iowa Administrative Procedure Act*, 63 Iowa L. Rev. 285, 321-22 (1977).

Because Klein disputed no facts from those set forth by the special prosecutor against the Respondents regarding his Complaint, and because intervention would have provided no remedy in light of the IPIB’s determination that as a matter of law he was not entitled to the records he sought, intervention was not required.

E. Klein was a “person or a party”

Section 17A.19 of the IAPA provides that “[a] person or party who has exhausted all adequate administrative remedies and who is aggrieved or adversely affected by any final agency action” has

the right to seek judicial review of the final agency action in district court. Iowa Code § 17A.19(1)-(2) (2020). As the district court recognized, by this plain text reference to a “person or party”, Klein was not required to be a party to the contested case below, so long as he had sufficient injury to establish standing and all available administrative remedies were exhausted; puzzlingly and circularly, however, it nevertheless determined that because he did not intervene in the contested case regarding his Complaint, he was not a party below, and therefore failed to exhaust administrative remedies.³ (App. 0457, Order at 21.)

³ Petitioner believes this question of whether Klein was a party before the IPIB is not necessary to resolve the appeal because the district court in fact determined Klein had sufficient injury to confer standing regardless of whether he was a “party or a person” under section 17A.19(1)-(2) and recognized that final agency action was rendered on Klein’s Complaint. (App. 0449, Order 13; App. 0452, Order 16.) But Klein addresses the argument because the district court based its finding that Petitioner failed to exhaust administrative remedies by employing a circular logic that intervening below was required to acquire party status and exhaust administrative remedies. (App. 0457-58, Order 21, 22.) Thus, Petitioner includes this argument out of an abundance of caution, because Klein was in fact a party below, and because a legal precedent establishing that the Complainant in a contested before

1. *The record shows that Klein was a party before the IPIB, below*

Party is defined as “each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.” Iowa Code § 17A.2(8) (2020). In determining whether someone is a party under section 17A.2, the question must be answered using the information disclosed in the record and not simply from the entitlement of the proceedings—although the Court agreed with the North Dakota Supreme Court that as to the person captioned, “there is no question” the person is a party:

We agree with the North Dakota Supreme Court that:

‘Generally, parties to an action or proceedings are set out in the title of the action of the proceedings. However, in matters before administrative agencies it is common to entitle the proceedings “IN THE MATTER OF _____.” Such entitlement does not serve as an aid in determining who is a party, except for the applicant, on which there is no question. The question of who are the parties to the proceeding must be determined from the record rather than from the entitlement of the

the IPIB lacks the requisite standing or party status to file a judicial review of final agency action taken on his or her Complaint substantially thwarts the Legislature’s purpose of chapters 22 and 23 generally to provide a low cost and simple process for resolving open records disputes in order to obtain records to which the public is entitled.

proceedings. The information as disclosed by the record constitutes the basis upon which a determination can be made as to who are parties to the proceedings.’

Fisher v. Iowa Bd. of Optometry Exam’rs, 476 N.W.2d 48, 50 (Iowa1991) (quoting *Application of Bank of Rhame*, 231 N.W.2d 801, 808 (N.D.1975)).

Here, Klein satisfies either test. He was both named in the caption of the Probable Cause finding, (App. 1279, CR 719), in the Petition under the Heading “Parties, Venue, and Jurisdiction (App. 1280-81, CR 720, 721), and in all IPIB Agendas and Minutes the case is referred to by Klein’s name. (App. 2159- 2242, CR 1599-1682.) He was also in fact a party to the case as disclosed by the record below. It was Klein’s Complaint that was adjudicated by the IPIB’s final agency action. The fighting issue in the contested case was whether Klein was entitled, by law, to receive the public records he requested. In a favorable outcome, the BPD and DCI would have been ordered to turn over the disputed public records to Klein. In an unfavorable outcome, Klein would be denied the records. The final agency action was not deciding a dispute between the IPIB and the State; it was deciding a dispute between Klein and

the BPD and DCI. The IPIB cannot avoid judicial review by now claiming Klein was not a section 17A.2 party despite treating him as such all along. Accordingly, the district court's finding that Klein was not a party was in error and should be reversed.

2. *The express language and purpose of chapter 23 show a legislative intent to confer party status on Klein, as the original Complainant, in the contested case on his Complaint brought by the special prosecutor*

The statutory language of chapter 23 and its underlying purpose demonstrate that the legislature intended for Klein to be conferred party status. As such, the district court's ruling to the contrary was in error.

In questions of statutory interpretation, courts seek to carry out the legislative intent by first looking to the language used in the statute. *Banilla Games, Inc. v. Iowa Dep't of Inspections & Appeals*, 919 N.W.2d 6, 14 (Iowa 2018). Terms not statutorily defined should be interpreted "in the context in which they appear" and each word should be given "its plain and common meaning." *Id.* (quoting *Ramirez-Trujillo v. Quality Egg, L.L.C.*, 878 N.W.2d 759, 770 (Iowa 2016)). When there is more than one plain meaning that

is reasonable, courts should avoid a reading that produces “impractical or absurd results” and employ a “liberal construction which will best effect its purpose rather than one which will defeat it.” *Renda*, 784 N.W.2d at 15. Applying these principles demonstrates that the legislature intended to confer party status on Klein as the original Complainant.

“Party” is not defined by statute under chapter 23. *See* Iowa Code § 23.2. Therefore, this term should be interpreted according to the context in which it appears and its plain and common meaning. *Ramirez-Trujillo*, 878 N.W.2d at 770. Here, the plain meaning of “party” and the context of its use in sections 23.8, 23.9, and 23.10 support the position that the original Complainant is intended to be a party to the proceedings.

Chapter 23’s procedures for handling chapter 22 complaints expressly references the Complainant as a party to those procedures. First, the “Complainant” is defined as the “person who files a complaint with the board.” Iowa Code § 23.2. Next, the procedure indicates that once a complaint is alleged and the IPIB accepts the complaint, it “shall notify the *parties* of that fact in

writing.” Iowa Code § 23.8(1) (emphasis added). Section 23.9 goes on to state that, “[a]fter accepting the complaint, the board shall promptly work with the *parties* . . . to reach an informal, expeditious resolution of the complaint.” Iowa Code § 23.9 (emphasis added). Section 23.10 describes enforcement of chapters 21 and 22, providing, “If any *party* declines informal assistance or if informal assistance fails to resolve the matter to the satisfaction of all *parties*, the board shall initiate a formal investigation.” Iowa Code § 23.10(1) (emphasis added). Under the governing principles of statutory interpretation, these provisions make clear that Klein, as the original Complainant, as well as the Respondent, is intended to be positioned as a party under chapter 23. Iowa Code § 23.1.

VII. Klein Has Standing To Challenge The Denial Of All Public Records Included In His Underlying Complaint

A. Error Preservation and Standard of Review

Klein preserved error on this argument. (App. 0404-07, Reply Br. at 42-45 (resisting BPD’s argument that Klein’s judicial review action must be limited to the 911 call, bodycam, and dashcam video); App. 0449, Order 13 (ruling records at issue on judicial appeal were so limited)).

The standard of review is for correction of error at law. (*See* Argument Part I, above, at 34-36.)

B. All Records in Klein's Complaint were Pursued Below, and the IPIB Dismissed the Complaint as a Whole

While the district court correctly recognized that Klein has standing to challenge the denial of the dashcam video resulting from the IPIB's final agency action, it improperly determined that he lacked standing to challenge the denial of the remaining records sought in his underlying complaint to the IPIB. (App. 0448-49, Order 12-13). The Court reasoned that it was limited to deciding those records adjudicated by the IPIB in its final decision, based on its denial of the IPIB special prosecutor's request for the IPIB to consider additional records. (App. 0449, *Id.* at 13) (citing Proposed Dec. at 13; Final Dec. at 13.)

As detailed below, this decision was in error because Klein requested all the public records related to the shooting of Autumn Steele in his Complaint, and the IPIB fully adjudicated this full number of records, ultimately denying him relief as to all of them. (App. 2049, Proposed Dec. at 13; App. 1582, Final Dec. at 13.)

Likewise, the special prosecutor pursued, and the final agency action denied, access to all records addressed in Klein’s Complaint.

In order to have standing to bring a judicial review action, the petitioner must show he was “aggrieved or adversely affected” by the agency action. Iowa Code § 17A.19(1). To satisfy this statutory requirement, he must show both “(1) a specific, personal, [or] legal interest in the subject matter of the Board’s decision; and (2) that this interest has been specifically and injuriously affected by the decision.” *Polk Cty. v. Iowa State Appeal Bd.*, 330 N.W.2d 267, 273 (Iowa 1983); *Godfrey v. State*, 752 N.W.2d 413, 420 (Iowa 2008). Being aggrieved for purposes of chapter 22 means having been denied the right to access, copy, and disseminate public records. Iowa Code § 22.2(1) (“[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.”); *Mitchell v. City of Cedar Rapids*, 926 N.W.2d 222, 229 (Iowa 2019) (“The Act essentially gives all persons the right to examine public records” unless those records fit “specific categories of records that must be kept confidential.”).

Chapter 23 contains an express legislative grant of standing to aggrieved or adversely affected persons or parties to bring a judicial review action of final IPIB board orders, such as the one at issue here, pursuant to section 17A.19. Iowa Code § 23.10(3)(d) (“A final board order resulting from such proceedings may be enforced by the board in court *and is subject to judicial review pursuant to section 17A.19.*”) (emphasis added). Here, because Klein has exhausted all adequate administrative remedies as to all the public records disputed in his Complaint to the IPIB, and because he is adversely affected by the IPIB’s final decision in being able to acquire and share this broader class of open records, he has standing to challenge all of the records he sought in his Complaint to the IPIB, not just the 911 call, dashcam, and bodycam videos.

First, Klein’s Complaint to the IPIB included not only the catch-all request for “any and all public records regarding the incident,” it also included enumerated requests for the DCI’s investigative report into the incident, ballistic reports or forensic investigation reports, photographs relating to or depicting the incident or scene, the autopsy report, the investigation into the

alleged dog attack, and more. (App. 0568-80, CR 8-20; App. 0590-91, CR 30-31.) While a number of records were subsequently released through the federal wrongful death case brought by Klein, many others were never released, as detailed above. (*See* Facts and Procedural History, Part IV, at 21-29.)⁴

⁴ Any records produced through discovery in that separate litigation are subject to a protective order. (App. 0149, Resistance to Mot. to dismiss, Ex. 01: Protective Order, at 4 ¶ 10.) The protective order requires Klein either to have returned them to the producing party, certified that he has destroyed them, or retained them in his files on the condition that those files will remain confidential. (*Id.*) Indeed, Klein is not able even to confirm the existence of said records, (App. 0147, Resistance to Mot. to dismiss, Ex. 01: Protective Order, at 2 ¶ 5) (stating that “information obtained from or materials designated as ‘confidential’ shall not be disclosed to any person, except [persons involved in the separate federal court case].”). Klein’s statutory rights under chapter 22, by contrast, come with no such limitations, and specifically includes his right “to publish or otherwise disseminate” the record. Iowa Code § 22.2(1). Because Klein is aggrieved by deprivation of his right under chapter 22 to obtain, disclose the existence of, and disseminate the documents he sought in his Complaint filed with the IPIB, irrespective of the separate federal court case, his injuries under chapter 22 are not mooted by the discovery turned over as part of that case.

In addition, without even accounting for those records which are subject to the protective order in the separate federal litigation, the IPIB’s contention that most of those records have been publicly

The IPIB Prosecutor’s Petition also uses non-exhaustive language to refer back to the complaints filed by Klein and The Hawk Eye. (App. 1283, CR 723). And the IPIB decision itself recounts the BPD’s specific denials of open records at issue, quoting from the BPD’s denial, as “[a]ll other items you request in your Requests Nos. 6, 7, 8, 10, and 12. (App. 2133, CR 1573; App. 0590-91, CR 30-31); (Facts and Procedural History, Part II, above, at 17) (detailing these specific records requested, going beyond the dashcam and bodycam videos and 911 call.)

The IPIB’s issuance of a probable cause determination and order commencing a contested case similarly provided:

[T]he IPIB Board finds that the complaint by Adam Klein in this case is within IPIB’s jurisdiction.

Pursuant to Iowa Code section 23.10(3)(a), the IPIB Board finds that there is probable cause to believe there has been a violation of Iowa Code section 22.2 when

disclosed is refuted by those records which have been unsealed. The unsealed evidence made publicly available does not include any of the numerous public records that were responsive to Klein’s open records request and subsequent IPIB Complaint that were exchanged in discovery but which were not filed in court as part of summary judgment proceedings in that case. (See Facts and Procedural History, Part IV, at 21-29.)

[Intervenors] withheld public records as defined therein in response to Complainant’s request, *including, but not limited to*, police audio records, body camera videos, and 911 calls that were subject to disclosure under Iowa Code chapter 22.

(App. 1279, CR 719) (emphasis added.)

The special prosecutor’s Petition also names the records that were denied in reference to Klein’s entire Complaint, as “*including, but not limited to*, the files of [BPD and DCI], *and which were broad enough to include* any police audio, body camera videos, and 911 calls.” (App. 1280, CR 720; App. 1282-83, CR 722-23) (emphasis added.) While the special prosecutor does list certain records that the charges were improperly withheld, he preferences that these are “[*a*]mong the public records that were requested but which Respondents have wrongfully refused to produce.” (App. 1283, CR 723) (emphasis added.) If the special prosecutor were only pursuing the 911 calls, bodycam footage, and dashcam video records—and not Klein’s entire Complaint—there would be no need to use phrases like “including, but not limited to,” “which were broad enough to include,” or “among the public records that were requested.” Furthermore, the special prosecutor charged

specifically that there were also “emails regarding the Autumn Steele homicide” that were wrongfully withheld. (App. 1283, CR 723.) This express language used by the IPIB shows that the special prosecutor was prosecuting Klein’s entire Complaint, and the contested case was not limited to only the 911 calls, bodycam footage, and dashcam footage.

The district court was also incorrect in its interpretation of the record when it stated, “Here, the Board, in its proposed and final decisions, determined the scope of the contested case was limited to the three aforementioned records.” (App. 0449, Order at 13) (citing Prop. Dec. at 13; Final Dec. at 13.) In those decisions, the ALJ and IPIB, respectively, define the scope of the probable cause finding, stating “that [Intervenors] violated chapter 22 by withholding public records *such as* the 911 call, the dashcam videos and the bodycam videos.” (App. 2049, CR 1489; App. 2142, CR 1582) (emphasis added.) The use of the phrase “such as” indicates that both the Proposed and Final Decisions expressly *did not* narrow the records to only the aforementioned three.

This is further shown in the IPIB's Final Decision and Order

Dismissing Petition:

The crux of this case is whether [BPD and DCI] violated chapter 22 by refusing to release the recording and transcript of 911 calls, bodycam videos taken by officers, videos taken by dash cameras, *and records showing the 'date, time, specific location and immediate circumstances surrounding the incident.'*”

(App. 2144, CR 1584) (emphasis added.) Had the IPIB truly only “determined the scope to be limited to the three aforementioned records,” as the district court found, there would be no need to reference the additional “records showing the ‘date, time, specific location and immediate circumstances surrounding the incident.’”

(App. 0449, Order at 13; App. 2144, CR 1584.)

Finally, even if *arguendo* the ALJ and IPIB in fact intended to limit the scope of their decisions to the dashcam video, bodycam video, and 911 call, doing so merely preserves error on the prosecutor's motion to clearly adjudicate the full number of public records contained in Klein's complaint. Because the prosecutor specifically sought relief on those additional public records, (App. 1283-84, CR 723-24), because the IPIB denied that motion in its final agency action, (App. 1582, Final Dec. at 13), and because the

statutory rights of Klein, as the Complainant, were violated as a result of that decision, he has standing to challenge the denial, and has exhausted all available administrative remedies to do so.

The district court erred in curtailing Klein’s petition for judicial review to only a single record—the dashcam footage—as such, it should be reversed.

VIII. Klein Properly Sought Declaratory Relief in his Petition for Judicial Review

A. Error Preservation and Standard of Review

Klein preserved error on this argument. (App. 0122-25, 131-133, Resistance to Mot. to Dismiss at 4-7, 13-15) (arguing that declaratory relief is available in judicial review actions regardless of whether it was sought through a formal motion before the agency); (App. 0214-16, Order on Mot. to Dismiss at 4-6) (dismissing Klein’s request for declaratory relief.)

The standard of review is for correction of error at law. (*See* Argument Part I, above, at 34-36.)

B. Declaratory Relief is Generally Available in Judicial Review Actions Under the IAPA, and Klein Sought Declaratory Relief Below

Finally, Klein appeals the district court's dismissal of his request for declaratory relief. (App. 0213-14, Order re Mot. to Dismiss at 3-4.) The district court reasoned, first, that declaratory relief is generally unavailable in IAPA judicial review actions, such that to seek declaratory relief in a judicial review action "improperly combines a petition for judicial review and petition for declaratory judgment." (App. 0214, *Id.* at 4) (relying on *Black v. Univ. of Iowa*, 362 N.W.2d 459, 462 (Iowa 1985).) Second, it reasoned that Klein would have had to intervene and specifically request declaratory relief before the agency in order to exhaust administrative remedies to then seek declaratory relief on judicial review. (App. 0216, Order re Mot. to Dismiss at 6.) As explained below, this finding must be reversed because declaratory relief is expressively available under the IAPA in judicial review actions. The *Black* case, which did not abrogate this express provision of authority to district courts to grant declaratory relief in judicial review actions, is inapposite. However, even if Klein were required

to request declaratory relief from the agency below, the district court must be reversed because Klein and the IPIB prosecutor in fact did so. Iowa Code § 17A.19(10).

The IAPA expressly provides, “The court may affirm the agency action or remand to the agency for further proceedings. The court shall reverse, modify, or grant other appropriate relief from agency action, equitable or legal and *including declaratory relief...*”. Iowa Code § 17A.19(10) (emphasis added). That Code section specifically sets forth sections 17A.19(10) (b), (c), (k), (l), (m), (n)—the same grounds pursued by Klein in his Petition—as bases for the court’s jurisdiction to grant those forms of relief. (App. 0441-45, Order 5-9; App. 0429-33, Am. Pet. 8-12); Iowa Code § 17A.19(10). The Iowa Code thus specifically authorizes the court to grant declaratory relief to petitioners in judicial review actions.⁵ The

⁵ Unsurprisingly, this express grant of jurisdiction to district courts to grant declaratory relief in judicial review actions is reflected in numerous decisions and established pleading practices, although this unavailing argument was never raised and thus not adjudicated in those cases. *See, e.g., Good et al. v. Iowa Dep’t of Hum. Servs.* [hereinafter “*Good*”], Case No. CVCV054956, Order

district court's order dismissing Petitioner's prayer for declaratory relief failed to account for this plain text of section 17A.19(10) in any way. (App. 0437-60, *See generally* Order.)

Instead, drawing from the *Black* case, the district court determined that Petitioner's request for declaratory relief was an improper attempt to join a judicial review action with an original action for declaratory relief. (App. 0440, Order at 4.) *Black* is

Granting Pet. (Iowa Dist. Ct. June 6, 2018) (inter alia, granting declaratory relief), *available at* https://www.aclu-ia.org/sites/default/files/6-7-18_transgender_medicaid_decision.pdf; *Good*, 924 N.W.2d 853, 863 (Iowa 2019) (upholding the district court's decision); *Good*, Pet. at *16-17, *23 (Iowa Dist. Ct. Sept. 21, 2017) (setting forth, inter alia, Count I as "Iowa APA, Section 17A.19(10)(b), . . . Section 216.7(1)(a) of the ICRA" and seeking declaratory relief that the challenged agency rule and action violated the Iowa Civil Rights Act), *available at*: https://www.aclu-ia.org/sites/default/files/05771_cvcv054956_pfld_4875001_petition.pdf. *See also* *Gartner v. Iowa Dep't of Pub. Health* [hereinafter "*Gartner*"], Case No. CE 67807, Pet. (Iowa Dist. Ct. May 7, 2010) (alleging, inter alia, the agency's action violated Iowa statute in light of how the statute must be construed under *Varnum v. Brien*, 763 N.W.2d 862 (Iowa 2009)); *Gartner*, Case No. Case No. CE 67807, Order at *3-4, *6-12 (Iowa Dist. Ct. Jan. 4, 2012) (inter alia, granting declaratory relief), *available at*: https://www.lambdalegal.org/sites/default/files/gartner_ia_201101_04_ruling-on-petition-for-judicial-review.pdf; *Gartner*, 830 N.W.2d 335 (Iowa 2013) (upholding the district court decision).

inapposite. It does not stand for the proposition that declaratory relief is unavailable in judicial review actions.

Black dealt with a judicial review action challenging a university employer's denial of tenure to an employee professor. *Black*, 362 N.W.2d at 461-62. That judicial review action improperly included various original claims for relief unavailable through the judicial review action, including claims which must be brought through an original civil rights action, contract, and tort claims. *Black*, 362 N.W.2d at 461-62.

By contrast, Klein sought declaratory relief, expressly set forth as an available remedy in the IAPA, as related to his judicial review action only—namely, that his statutory rights under chapter 22 were violated by the IPIB final agency action. (App. 0440, Order 4; App. 0429-33, Am. Pet. 8-12.) Klein filed a straightforward Petition for Judicial Review of Agency Action pursuant to Iowa Code section 17A.19. The statutory grounds upon which he has sought judicial review of the IPIB were sections 17A.19 (10) (b), (c), (k), (l), (m), (n). *Id.* (variously: in violation of any provision of law, not required by law, based on an erroneous interpretation of law,

based on an irrational, illogical, or wholly unjustifiable interpretation law, or otherwise unreasonable, arbitrary, capricious, or an abuse of discretion) (App. 0429-33, Am. Pet. at 8-12.) The law that Klein alleges the IPIB violated in those grounds, as set forth in his petition, is chapter 22. Thus, it is through the mechanism of an IAPA judicial review of agency action, and not otherwise, that Klein's Petition sought to enforce his rights under chapter 22. *Black* is thus inapposite, and the district court's reliance on it to dismiss Klein's prayer for declaratory relief was in error.

The district court, having determined that declaratory relief was unavailable in judicial review actions, dismissed rather than severed Klein's prayer for declaratory relief because it determined that Klein had not sought declaratory relief before the agency. (App. 0441-42, Order 5, 6.) Beyond being an error at law, it was illogical for the district court to require administrative exhaustion of claims that it simultaneously held are altogether unavailable in an IAPA case. However, even if, *arguendo*, Klein was required to seek declaratory relief before the agency in order to seek declaratory

relief in his judicial review action, the district court should not have dismissed his prayer for declaratory relief, because Klein actually did seek declaratory relief before the agency in his original Complaint. (App. 0579, CR 19) (asking, inter alia, that the IPIB “[f]ind that the requested records are not exempt from disclosure under Iowa Code § 22.7(5)”.) Without explanation, the district court determined that this request in his complaint was “insufficient.” (App. 0442, Order at 6.)

Instead, the district court held that to seek the declaratory relief that he did, Klein was required “to intervene or file[] a separate request for a declaratory order.” (App. 0442, Order at 6.) The district court cited *IES Utilities v. Iowa Dep’t of Revenue & Fin.*, 545 N.W.2d 536, 538-39 (Iowa 1996) for this proposition. (*Id.*) But *IES Utilities* doesn’t stand for that proposition at all. The holding of *IES Utilities* deals with the *Lundy* exception to the general rule that the IAPA is the exclusive form of relief to challenge agency action. *IES Utilities*, 545 N.W.2d at 539. The *Lundy* exception has to do with claims about violations of rulemaking procedures (as opposed to contested cases or other agency action). It has no

relationship to Klein’s case. *Id.* Unlike the present action, in which Klein filed a petition for judicial review seeking declaratory relief as set forth expressly in the IAPA, *IES Utilities* concerns an attempt to file an original civil action seeking declaratory relief in an attempt to circumvent the IAPA altogether. *IES Utilities*, 545 N.W.2d at 538.

Further, the administrative process governing the filing of a Petition for Declaratory Order before the IPIB—which the district court relied on in dismissing Klein’s prayer for declaratory relief—is outside of and separate from the Complaint and contested case procedure at issue in this case. *Compare* Iowa Admin. r. 497-3 (setting forth the process for filing petitions for declaratory orders) *with* Iowa Admin. r. 497-4 (setting forth the Contested Case process). Unlike a contested case following the filing of a complaint, anyone—not just a complainant—can seek a declaratory order from the IPIB after filing a petition that sets out “the questions petitioner wants answered.” *See* Iowa Admin. r. 497-3 (1) (providing “[a]ny person may file a petition with the board for a declaratory order as to the applicability to specified circumstances of a statute,

rule, or order within the primary jurisdiction of the board.”); *see also* Iowa Admin. r. 497-3.1 (setting out form for petition). In other words, a complainant need not file a petition for a declaratory order to exhaust administrative remedies on their complaint, and a petitioner for a declaratory order need not file a complaint to exhaust administrative remedies on their petition for a declaratory order. The complaint and contested case process inherently require the IPIB to determine the rights of the parties under chapter 22 in order to resolve the Complaint. Nowhere in chapter 23 or the IPIB’s administrative rules are the remedies available to a complainant limited by the existence of a separate procedure for seeking declaratory orders by third parties outside of the complaint and contested case processes.

For these reasons, the district court’s dismissal of Klein’s petition for declaratory relief was error at law and should be reversed.

CONCLUSION

For the foregoing reasons, Klein respectfully seeks an order reversing and remanding this matter back to the district court and

requiring that the court adjudicate the merits of Klein's judicial review action, which are fully submitted.

STATEMENT ON ORAL ARGUMENT

Petitioner respectfully requests oral argument.

Respectfully submitted:

/s/ Nicholas D. Ott

Nicholas D. Ott, AT0014362
Ott Law DSM
309 E 5th St Unit 201
Des Moines, IA 50309
Telephone: (765) 337-1987
Email: OttLawDSM@gmail.com

/s/ Rita Bettis Austen

Rita Bettis Austen, AT0011558
ACLU of Iowa Foundation, Inc.
505 Fifth Ave., Ste. 808
Des Moines, IA 50309-2317
Telephone: (515) 207-0567
Fax: (515) 243-8506
Email: Rita.Bettis@aclu-ia.org

/s/ Shefali Aurora

Shefali Aurora, AT0012874
ACLU of Iowa Foundation, Inc.
505 Fifth Ave., Ste. 808
Des Moines, IA 50309-2317
Telephone: (515) 243-3988
Fax: (515) 243-8506
Email: Shefali.Aurora@aclu-ia.org

ATTORNEYS FOR PETITIONER- APPELLANT

COST CERTIFICATE

I hereby certify that the cost of printing this application was \$0.00 and that that amount has been paid in full by the undersigned.

CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) or (2) because:

this brief contains 11,798 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1) or

this brief uses a monospaced typeface and contains _____ lines of text, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(2).

2. This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because:

this brief has been prepared in a proportionally spaced typeface using Century Schoolbook in 14 point, or

this brief has been prepared in a monospaced typeface using MS Word 2007 with __ characters per inch and __ style.

/s/ Shefali Aurora

Shefali Aurora, AT0012874
ACLU of Iowa Foundation, Inc.
505 Fifth Ave., Ste. 808
Des Moines, IA 50309-2317