

IN THE SUPREME COURT OF IOWA

No. 21-1651

MICHELLE VACCARO,

Plaintiff-Appellee,

v.

**POLK COUNTY, IOWA and POLK COUNTY SHERIFF KEVIN
SCHNEIDER,**

Defendants-Appellants.

APPEAL FROM THE IOWA DISTRICT COURT
FOR POLK COUNTY CASE NO. CVCV060323
THE HONORABLE LAWRENCE P. McLELLAN, PRESIDING

APPELLANTS' FINAL REPLY BRIEF

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. Whether the district court abused its discretion by ordering the Polk County Sheriff to produce the confidential investigative reports during discovery in an Iowa Code chapter 22 enforcement action.

AUTHORITIES

Neer v. State, No. 10-0966, 2011 WL 662725 (Iowa Ct. App. Feb. 21, 2011)

Iowa Code § 22.7

ARGUMENT

I. THE DISTRICT COURT ABUSED ITS DISCRETION BY ORDERING THE POLK COUNTY SHERIFF TO PRODUCE THE CONFIDENTIAL INVESTIGATIVE REPORTS DURING DISCOVERY IN AN IOWA CODE CHAPTER 22 ENFORCEMENT ACTION.

Ms. Vacarro attempts to characterize Polk County's argument as asserting that the records are exempt from discovery because they are confidential under Iowa Code chapter 22. This once again mischaracterizes Polk County's position. As set forth in its brief, the question is not whether chapter 22 prevents discovery in a civil case, but whether civil discovery rules entitle Plaintiff access to the very confidential documents at issue in a chapter 22 enforcement action. Polk County believes the district court erred in finding the permissible scope of discovery in a chapter 22 case includes producing the actual documents at issue prior to a finding on whether the records were properly withheld as confidential under chapter 22.

Ms. Vaccaro cites numerous cases discussing the applicability of chapter 22 in civil discovery. However, she does not cite to a single case indicating the same legal

principals apply during a chapter 22 enforcement action.

Examining this legal question under traditional civil discovery principles ignores the unique and novel question in this case—can a person dissatisfied with a response to a public records request get the disputed documents regardless of their confidentiality through discovery in a chapter 22 enforcement action? Comparing this to routine discovery in a civil case ignores the nature of this legal question.

This issue presents a novel case of first impression. No Iowa case law exists on the scope of discovery in an Open Records enforcement action. This Court must weigh in, because if the district court’s decision is upheld, the confidentiality provisions in Iowa Code section 22.7 are eviscerated. Anyone denied access to public records under section 22.7 would be entitled to those very confidential records with a simple discovery request. While Ms. Vaccaro mocks this as “a parade of horrors,” evisceration of the confidentiality provisions contained within section 22.7 would indeed be horrible. Confidential documents, including student education records (22.7(1)), hospital records, medical records,

and professional counseling records (22.7(2)), trade secrets (22.7(3)), attorney work product (22.7(4)), personnel files (22.7(11)), identity of persons infected with communicable diseases (22.7(16)), psychological examinations of law enforcement (22.7(19)), paternity testing (22.7(30)), social security numbers (22.7(32)), autopsy reports (22.7(41)), and other confidential records identified in section 22.7 would automatically be subject to disclosure through discovery in the very process designed to protect them. Iowa Code § 22.7.

Ms. Vaccaro admits all documents she seeks were “produced as part of the Polk County Sheriff Department’s investigation...” Appellee’s Proof Brief at 8. She then claims she needs the reports to prove release of those confidential records is not detrimental to the public’s interest if disclosed. She also claims she needs them because she has serious concerns about the Sheriff’s Office’s handling of the investigation. Ms. Vaccaro’s argument, like the district court’s ruling in this matter, completely ignores the burden shifting analysis set forth in Iowa Code section 22.10(2).

Ms. Vaccaro's arguments also ignore she was offered to meet with the Sheriff's Office and its investigators to discuss her concerns and the investigation itself numerous times. Her argument also ignores she was given a detailed list of all documents contained within the investigative file despite the Iowa Court of Appeals holding in *Neer*. *Neer v. State*, No. 10-0966, 2011 WL 662725, *4 (Iowa Ct. App. Feb. 21, 2011). It ignores other methods of discovery available, including deposing decisions makers and the detective involved with the case. Additionally, Ms. Vaccaro was told she could obtain the investigative reports through a subpoena in civil discovery of her wrongful death claim against the motorcycle driver.¹ However, she chose to settle the claim prior to issuing a subpoena to Polk County.

Ms. Vaccaro indicates *Neer* stands for the proposition that, "police investigation reports are properly the subject of discovery in an open records violation case." Appellee's Brief at 20. However, this was not the finding of the Court of

¹ The motorcycle driver was a juvenile at the time the accident occurred.

Appeals. Instead, the court found the requested documents were part of the investigative reports and therefore confidential as a matter of law under Iowa Code section 22.7(5). *Neer v. State*, at *4. The State did choose to produce the records in response to the public records request after the district court action was filed. *Id.* at *1. The State then argued the Chapter 22 enforcement action was moot. *Id.* However, the court chose to decide the case anyway, invoking the public interest exception because it was an important issue. *Id.* The court then found that an “item-by-item assessment of everything within a criminal investigative file would, for all practical purposes, eliminate the investigative report exemption.” *Id.* at *4. The court also found no authority required releasing parts of the investigative file to comply with the “date, time, specific location, and immediate facts and circumstances surrounding a crime or incident” to satisfy the requirements contained in Iowa Code section 22.7(5). *Id.* “Were we to impose such a requirement, we believe the ‘incident’ disclosure exception would swallow the provision holding ‘investigative reports’ confidential.” *Id.*

Requiring disclosure of the very confidential records to the requesting party, prior to a finding by the Court on whether the entity complied with chapter 22, destroys the confidentiality provisions in 22.7. The district court's ruling, if allowed to stand, would completely eviscerate the confidentiality provisions set forth in Iowa Code section 22.7 with the simple filing of an enforcement action. The grounds relied upon by the district court are clearly unreasonable, untenable, and based on an erroneous interpretation of law.

CONCLUSION

For the reasons expressed above, Polk County respectfully urges this Court to find the district court's October 5, 2021 order was an erroneous interpretation of law and an abuse of discretion and for any other relief this Court deems appropriate under the circumstances.

REQUEST FOR ORAL ARGUMENT

Defendants-Appellants respectfully request to be heard in oral argument.

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Proof Reply Brief complies with the type-volume limitation, typeface, and the type-style requirements of Iowa Rule of Appellate Procedure 6.903. This Proof Brief was prepared in Microsoft Word using Bookman Old Style font, size 14. The number of words is 1000, excluding the parts of the brief exempted by Iowa Rule of Appellate Procedure 6.903(1)(g)(1).

Date: August4, 2022

/s/ Julie J. Bussanmas

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CERTIFICATE OF SERVICE

I hereby certify that on August 4, 2022, I electronically filed the foregoing document with the Clerk of Court using the electronic filing system which will send notification of such filing to the following:

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