IN THE SUPREME COURT OF IOWA

Supreme Court No. 18-0124

Linn County No. LACV087209

JERIME ERON MITCHELL and **BRACKEN ANN MITCHELL**,
Plaintiffs-Appellees,
vs.

CITY OF CEDAR RAPIDS, IOWA and **OFFICER LUCAS JONES**, Individually and in his official capacity as an agent and/or employee of the City of Cedar Rapids Police Department, a governmental subdivision of the CITY OF CEDAR RAPIDS, IOWA,
Defendants-Appellants.

ON APPEAL FROM THE IOWA DISTRICT COURT FOR LINN COUNTY
HONORABLE PATRICK R. GRADY

DEFENDANTS-APPELLANTS' REPLY BRIEF AND ARGUMENT

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This case is much simpler than the Mitchells would have the Court believe. Jones and the City seek only to preclude public inspection of documents the Iowa Legislature has deemed confidential under Iowa Code Section 22.7(5) (2017). By insisting on unprotected discovery of peace officers' investigative reports in this case, the Mitchells are asking the Court to make public that which the Iowa Legislature determined is confidential and otherwise unavailable for public inspection under Section 22.7(5) (2017). A ruling which permits the result the Mitchells desire would be an unprecedented contradiction of plain statutory provisions.

Additionally, although the district court's November 1, 2017 Order properly recognizes the importance of confidentiality established by Iowa Code Section 22.7(5) (2017), the court failed to properly apply it. That provision makes public only the "immediate facts and circumstances surrounding a crime or incident" while preserving the confidentiality of the documents themselves which constitute "peace officers' investigative reports." By contrast, Jones' and the City's proposed protective order serves to ensure the Mitchells have access to all relevant information in the discovery

process *regardless* of the confidential nature of certain documents, while simultaneously protecting the confidentiality of those documents which the Legislature has declared confidential by prohibiting their redisclosure to non-litigant members of the public. The proposed protective order, then, is the best, if not the only, available means of adhering to Iowa Rules of Civil Procedure, Iowa Code Chapter 22, and applicable decisions of this Court interpreting those rules and laws.

A. The Supreme Court's Holding in *Atlantic* is Controlling Precedent such that the Documents at Issue are Confidential Under Iowa Code Section 22.7(5) (2017).

Two Supreme Court of Iowa cases are at the center of the discovery dispute in this case – *American Civil Liberties Union Foundation of Iowa, Inc. v. Records Custodian, Atlantic Community School District*, 818 N.W.2d 231 (Iowa 2012) and *Hawk Eye v. Jackson*, 521 N.W.2d 750 (Iowa 1994). Contrary to assertions in the Mitchells' brief, Jones and the City did not claim *Atlantic* "overturned" *Hawk Eye* (nor did Jones and the City claim *Atlantic* stated it was doing so). *See* Mitchells' Br. pp. 26–27. Rather, Jones and the City argue that *Atlantic* and subsequent case law dictate that a court may employ the *Hawk Eye* balancing test only if the documents in question do not fall within the plain language of the Section 22.7 exemption at issue. *See* Defendant-Appellants' Br. pp. 13–19.

The Mitchells' attempt to distinguish *Atlantic* as pertaining to "personnel records" under Section 22.7(11), but not "peace officer investigative reports" under Section 22.7(5) (2017). *See* Mitchells' Br. pp. 26–27. The Mitchells' position is illogical. It makes no sense to suggest that applying a balancing test for personnel records would "undermine[] the categorical determination of the legislature and rewrite[] the statute," but applying a balancing test for peace officer investigation reports as deemed confidential by the legislature in Iowa Code Section 22.7(5) (2017) does not. *Atlantic*, 818 N.W.2d at 236. Indeed, *Atlantic's* same fundamental reasoning applies equally to both subsection (5) and subsection (7) of Section 22.7.

In *Gabrilson v. Flynn*, 554 N.W.2d 267 (Iowa 1996), for instance, this Court held that a district court should apply the Section 22.7(19) exemption for "examinations" as it was written, and because the document at issue clearly fell within that exemption, it was not proper to weigh the public's right to know against the school district's interest in secrecy. As the Supreme Court put it, "there is no indication that the legislature sought a balancing of policy interest when construing Section 22.7(19), as plaintiff proposes." *Id.* at 273.

Similarly, in *Simington v. Banwart*, the Iowa Court of Appeals declined to balance any interests regarding Iowa code section 22.7(41) regarding "autopsy reports", stating it was not at liberty to choose a different "balancing

of policy interests." *Simington*, 2010 WL 2089348, at *4–5. In doing so, the Iowa Court of Appeals observed:

> "Here, the General Assembly has written sixty-four separate exemptions into the public records law with considerable care and detail. Section 22.7(41) is one of those exemptions. Its language is specific and clear that autopsy reports are exempt from disclosure except to the decedent's immediate next of kin."

Id. at *5. The Court of Appeals recognized that an exemption to the requirements of Chapter 22 is just that – an exemption rendering the information in question a confidential record.

When determining whether a record is confidential under Iowa Code Section 22.7 (2017), then, the Court need only determine whether the record(s) in question fall within one of the categorical exemptions. The courts only apply a balancing test when a record does not fit into a Section 22.7 exemption. *See Atlantic Comm. Sch. Dist.*, 818 N.W.2d at 233. Now, under *Atlantic* and subsequent cases applying *Atlantic*, there is no need to engage in any balancing test to determine the confidentiality of peace officers' investigative reports. *See e.g.*, *Allen v. Iowa Dept. of Pub. Safety*, Case No. EQCE074161 (Polk County. Dist. Ct. Mar. 7, 2014) (App. 281-289); *In the Matter of Cali Smith and City of Nevada Police Dept.*, Complaint No. 14 FC:0096 (Jan. 9, 2015) (App. 290-291).

For these reasons, this Court should reverse the district court's Order denying Jones' and the City's Motion for Protective Order and further require that the documents requested by the Mitchells be produced pursuant to an appropriate protective order in accordance with this Court's holding in *Atlantic*.

B. The "Unless Otherwise Ordered by a Court" Exception in Iowa Code Section 22.7 Does Not Apply to the Peace Officers' Investigative Reports at Issue.

Iowa Code Section 22.7(5) (2017) provides in relevant part that:

> The following records shall be kept confidential, *unless otherwise ordered by a court*, by the lawful custodian of the records, or by another person duly authorized to release such information: . . . [p]eace officers' investigative reports, privileged records or information specified in section 80G.2, and specific portions of electronic mail and telephone billing records of law enforcement agencies if that information is part of an ongoing investigation, except where disclosure is authorized elsewhere in this Code.

(emphasis added).

The Mitchells argue on appeal, without ever having raised it in the District Court, that the first sentence of Iowa Code Section 22.7 (2017) strips the peace officers' investigative reports of their confidential status. That sentence provides that the categories of documents enumerated in Section 22.7 must be kept confidential "unless otherwise ordered by a court."

Although this point was never mentioned in passing or previously briefed, the Mitchells apparently assert that this phrase gives a court discretion to order the production of confidential records without any protective order, even where those documents fall squarely within one of the seventy-two enumerated exemptions currently in Iowa Code Section 22.7 (2017). *See* Mitchells' Br. at pp. 28–30; *see generally* Transcript of August 23, 2017 Hearing on Motion for Protective Order; App. 301-308. Notwithstanding the authority of the Court to order discovery of otherwise confidential documents in appropriate circumstances, there is no basis in this case to require that Jones and the City produce confidential records so they can be disclosed to the public.

In urging this Court to affirm the district court on the basis of the phrase "unless otherwise ordered by a court," the Mitchells misinterpret *Brown v. Iowa Legislative Council*, 490 N.W.2d 551, 554 (Iowa 1992). The *Brown* case actually supports Jones and the City's arguments. In it, the Plaintiff was a citizen taxpayer who requested from the governmental body certain computer data purchased with public funds for use in developing a redistricting plan. *Id.* at 552. Unlike the case at bar, the government body refused to produce the data altogether, claiming it constituted a trade secret. *Id.* Although the Supreme Court correctly found the information to be a trade secret, the quote

regarding the "escape clause" came in reference to the District Court's ability to "fashion a 'tentative remedy,' one that would allow an exploration of the materials *while protecting the trade secret*." *Id.* at 554 (emphasis supplied). That is precisely what Jones and the City are suggesting in this case – a "tentative remedy" that permits them to disclose confidential documents pursuant to a protective order for full examination by the Mitchells and their attorneys. The Mitchells' reliance on *Brown* in support of their "escape clause" argument is misguided, and actually lends support to Jones and the City's argument in favor of entry of a protective order in this case.

Second, though they discussed the case only in passing, the Mitchells cite another recent case which actually lends strong support to Jones' and the City's position. *See* Mitchells' Br. at pp. 29–30. See *Simington v Banwart*, discussed above, directly addressed the scope of the "otherwise ordered by a court" exception. *Simington*, 2010 WL 2089348 at *3–5. The Court of Appeals in *Simington* was asked to determine whether a court "should order the release of an autopsy report to a close relative of the decedent when the decedent's immediate next of kin is an estranged spouse." *Id.* at *2. The Plaintiff's estranged spouse argued that the "unless otherwise ordered by a court" language authorized the court to order disclosure of the report to her as someone who fit the "next of kin" category of persons as to whom the

confidentiality of such a report would not apply under Iowa Code Section 22.7(41). *Id.* The Court of Appeals determined that the phrase "unless otherwise ordered by a court" cannot be used to "revise the scope of a particular exemption," but can be used to give a court "an escape valve when strict application of the literal language of the exemption would undermine either the exemption itself or some other provision of law." *Id.* at *4. Most importantly, the *Simington* Court then cited three additional cases in support of its interpretation of the purpose of such an escape clause:

> An example of this is *Mediacom Iowa, L.L.C. v. Incorporated City of Spencer*, 682 N.W.2d 62 (Iowa 2004). There the court ruled that the section 22.7(3) exemption for "trade secrets" cannot be used to shield documents from the regular discovery process in litigation. *Mediacom*, 682 N.W.2d at 69. As the supreme court explained:
>
> > We agree with Mediacom that there is nothing in section 22.7 that suggests the legislature intended to limit the discovery rights of litigants in cases involving governmental entities. To the contrary, section 22.7 indicates the opposite because it allows disclosure upon a court order. We conclude, contrary to the district court, that section 22.7 does not trump our discovery rules.
>
> *Id.* Similarly, in *Poole v. Hawkeye Area Community Action Program, Inc.*, 666 N.W.2d 560, 565 (Iowa 2003), the court held that student records that were otherwise relevant could be subpoenaed in litigation

> notwithstanding their exempt status under section 22.7(1). We consider *Brown v. Iowa Legislative Council*, 490 N.W.2d 551 (Iowa 1992), also consistent with this line of thought. There, the supreme court upheld a district court's refusal to order disclosure of computerized redistricting data based on the ground that they were "trade secrets." *Brown*, 490 N.W.2d at 553–54.

Simington, 2010 WL 208934, at *4 (underlining supplied); *see also Poole*, 666 N.W.2d at 565 (discussing the "escape clause" language within the context of determining relevancy of confidential information for trial admission purposes rather than within the context of a protective order governing discovery.) The Court of Appeals affirmed the district court's ruling that the estranged spouse who had filed for divorce from the decedent was not entitled to a copy of the autopsy report despite the fact that she was technically still within the category of "next of kin," saying it was precisely because such a disclosure would undermine the purpose of the exemption itself. *Id.* The same is true in this case. Ordering the disclosure of peace officers' investigative reports without a protective order in place would undermine the statutory exemption's purpose for peace officers' investigative reports.

All of the cases cited by the Court of Appeals in *Simington* stand for the principles espoused by Jones and the City. First, Jones and the City agree that "Section 22.7 does not trump our discovery rules," but neither does that

imply, as the Mitchells insist, that discovery rules may be used to eviscerate the clear commands to maintain the confidentiality of documents *with respect to non-litigant members of the public*. Second, while it is true the Mitchells have every right to discovery of the confidential documents at issue in this case under Iowa R. Civ. P. 1.503, the district court erred in its legal analysis of Iowa Code Section 22.7(5) (2017). As it stands, the district court order is not a proper exercise of the authority in the phrase "unless otherwise ordered by a court" because it does not merely require Jones and the City to provide confidential documents to the Mitchells, it enables the Mitchells to provide them to the general public in violation of the unambiguous command of the statute.

C. Legislative History of Iowa Code Section 22.7(5) (2017) Supports Jones and the City's Interpretation of that Statute and the Confidentiality of Police Investigative Reports.

The Mitchells argue that Section 22.7(5) (2017) permits disclosure of investigative reports if they are not part of an ongoing investigation. *See* Mitchells' Br. at pp. 27–28. The plain reading of the statute, however, does not support the Mitchells' interpretation. The phrase "if that information is part of an ongoing investigation" *only modifies the immediately preceding phrase* "specific portions of electronic mail and telephone billing records of law enforcement agencies." The initial phrase before the first comma,

"[p]eace officers' investigative reports," is unqualified; thus, investigative reports are confidential without condition. There are additional arguments supporting this statutory interpretation.

First, the statute's reading in this manner is confirmed by examining the history of the statute. The entire clause "and specific portions of electronic mail and telephone billing records of law enforcement agencies if that information is part of an ongoing investigation" was added to the statute in Acts 2006 (81 G.A.), chapter 1122, H.F. 2562, § 1, subsection 5. Therefore, the Iowa Legislature intended that language to be a stand-alone clause, and it reflects the clear intent of the Legislature that only electronic mail and telephone billing records remain confidential under circumstances where there is no longer "an ongoing investigation." The addition of this stand-alone clause does not demonstrate a legislative intent to modify the conditions in which peace officers' investigative report should remain confidential.

Second, Jones and the City's interpretation of the statute is consistent with the last sentence of Section 22.7(5) (2017), which explicitly describes the time limitation applicable to the confidentiality term of electronic mail and telephone billing records. If the phrase "if that information is part of an ongoing investigation" was intended to modify "[p]eace officers' investigative

reports," then the last sentence of Section 22.7(5) (2017) should include a reference to investigative reports – it does not.

Third, Jones and the City reiterate the importance of the "doctrine of last preceding antecedent," as more fully developed in their opening brief.

Finally, the inclusion of the "date, time, specific location, and immediate facts and circumstances surrounding a crime or incident. . ." exception is further evidence of the Legislature's intent to provide for the confidentiality of the documents at issue in this case. By including that language, the Legislature created an exception to the general exemption stated in subsection (5) of Iowa Code Section 22.7. Thus, it was error for the district court to engage in any balancing test with respect to that subsection because the Iowa Legislature has already conducted a careful balancing of the competing public interests at stake – the public's right to obtain government records about certain governmental operations versus the public interest in maintaining confidentiality of certain categories of information. Stated otherwise, the legislature has already codified the result of that balancing of interests in the carefully crafted language of Iowa Code Section 22.7(5) (2017). Further balancing of interests by the Courts would therefore undermine the Legislative intent and be directly contrary to statutory provisions. The Iowa Legislature clearly intended to provide for the

unconditional confidentiality of investigative reports in enacting Iowa Code Section 22.7(5) (2017). For the reasons set forth above, this Court should reverse the ruling of the district court and enter Orders providing for entry of a protective order governing the disclosure of the confidential documents at issue in this case.[1]

II. GOOD CAUSE EXISTS TO ENTER A PROTECTIVE ORDER.

A. The Risk of Harm to Jones and the City by Dissemination of the Confidential Documents in this Case is Substantial and Serious.

Iowa R. Civ. P. 1.504(a) allows the court to enter a protective order upon showing of "good cause" in order "to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense. . ." Iowa R. Civ. P. 1.504(a). "Iowa courts have wide discretion to enter a protective order pursuant to Iowa R. Civ. P. 1.504." *Comes v. Microsoft Corp.*, 775

[1] On May 11, 2018, this Court issued its opinion in *Powers v. State* in which it stated in dicta that the "investigative reports at issue [in that case were] not considered confidential records" because there is no ongoing investigation and "disclosure would not plainly and seriously jeopardize an investigation or pose a clear and present danger to the safety of an individual." *Powers v. State*, 2018 WL 2165329, at * 5 (Iowa 2018). Critically, though, this Court also noted that "[t]he city never argued before the district court that the investigative reports were confidential under section 22.7(5) (2017) or fell within an exception to the state open records laws . . . [n]or did the State on appeal." *Id.* Given the Court's own acknowledgement that the issue was not raised on appeal, as confirmed by the Court's summary treatment of the issue without citation to any legal authority, the language quoted above should be treated as dicta in determining the issues on appeal in this case.

N.W.2d 302, 305 (Iowa 2009). "In evaluating [whether good cause exists for a request for a protective order], the district court should employ three criteria: (1) the harm posed by dissemination must be substantial and serious; (2) the restraining order must be narrowly drawn and precise; and (3) there must be no alternative means of protecting the public interest which intrudes less directly on expression." *Mediacom Iowa, L.L.C. v. Inc. City of Spencer*, 682 N.W.2d 62, 68 (Iowa 2004) (citing *Farnum v. G.D. Searle & Co.*, 339 N.W.2d 384, 389 (Iowa 1983).

In their brief, the Mitchells misstate or mischaracterize matters in the record and the protective order in issue. The Mitchells also make numerous references to extraneous facts and irrelevant information with respect to the issues to be tried in this case. Both of these matters underscore the substantial risk of harm and prejudice Jones and the City face if discovery is conducted without entry of a protective order to prohibit dissemination of documents deemed confidential under Iowa Code Section 22.7.

i. <u>The Mitchells Mischaracterize the Record and Issues Presented.</u>

In their brief, the Mitchells make numerous misstatements of matters in the record that unnecessarily confuse the issues in front of the Court. More problematic than mischaracterizations of materials in the record are the

numerous references to irrelevant issues or potential claims that have no bearing on this litigation, let alone on the issue before the Court.

First, despite the Mitchells' contentions to the contrary, Jones and the City are not attempting to shift the burden to the Mitchells to prove "how dissemination will further the merits of their claims." *See* Mitchells' Br. p. 51. While this is a clever attempt to persuade the Court that Jones and the City are trying to shirk the responsibility of proving good cause for a protective order, it ignores the critical distinction between: (1) forcing the Mitchells to prove how dissemination will further the merits of their claims; and (2) forcing the Mitchells' to disprove Jones and the City's true argument that *neither the Mitchells nor any other party to the case is prejudiced by entry of a protective order* under which all confidential documents are produced for full inspection and use with experts, in depositions, and at trial. The fact that Jones and the City would be prejudiced to the Mitchells' advantage by dissemination of confidential documents in the absence of a protective order cannot be ignored where it is undeniable that the Mitchells would face absolutely no risk of prejudice if they are given all documents in question during discovery pursuant to a protective order.

Second, the Mitchells throughout the litigation and in their brief, have characterized Jones and the City's proposed protective order as broad,

restrictive of their discovery rights, and "applicable to all documents." Mitchells' Br. pp. 13–14. The Mitchells even went on record at the August 23, 2017 hearing on Jones and the City's Motion for Protective Order saying that they had "not received *any* records" as of that date. (App. 303; August 23, 2017 Hearing Tr. **11:** 2.) At the time of the August 23, 2017 hearing, Jones and the City had already provided Mr. Rogers with thousands of pages of training, policy and operational materials pursuant to a February 2017 open records request by Mr. Rogers. The notion that Jones and the City's proposed protective order applies to "all documents" or that the City and Jones have yet to provide the Mitchells with *any* discovery is, at best, a misleading exercise in semantics.

Finally, the Mitchells also spend a great deal of time in their brief discussing the objectives of Iowa's Open Records Act (Chapter 22) as aimed toward enabling public scrutiny of government decision-making and law enforcement actions. See Mitchells' Br. pp. 30–34. Their exhaustive reliance on the Iowa Legislature's intent in enacting Chapter 22 is aimed at making their argument against entry of a protective order appear as a noble championing of a cause, but in reality, the argument is disingenuous given their concurrent argument that the confidentiality provisions in a subsection of that very same chapter, Section 22.7(5) (2017), can be ignored and

circumvented entirely by a simple discovery request in litigation against a government subdivision. Further, it is also disingenuous for the Mitchells to suggest that Jones and the City are unwilling to be transparent and provide documents that shed light on the Police Department's decision-making and operational policies when the City provided thousands of pages of non-confidential public documents detailing the Department's training, disciplinary, and use of force practices before the Mitchells even filed their Petition in this case. (App. 101; 303.)

Given the issues outlined in Jones and the City's initial brief and those discussed above, the risk of harm and/or prejudice to Jones and the City is substantial if no protective order is put in place to protect the confidentiality of the documents at issue in this case.

ii. The Mitchells Make Extraneous and Irrelevant References.

The Mitchells' brief contains a number of references to extraneous and irrelevant information and issues not pertinent to the litigation generally. These matters, in addition to those cited in Jones and the City's initial brief, highlight the substantial risk of prejudice faced by Jones and the City in this case if no protective order is in place to prevent dissemination of the confidential documents in question and are also indicative of the Mitchells' apparent desire to litigate this case as much outside the courtroom as they

intend to try it to an unbiased jury. *Cf. State of Iowa v. Christensen*, 2018 WL 1865353 ((Iowa Ct. App. April 18, 2018) (general discussion of jury intrusion and extraneous information influencing a jury).

At various locations, the Mitchells refer to:

- "police misconduct" or "police officers accused of misconduct" (page 32, 34 and 35);
- the alleged "significant harm that is caused by refusing to allow public inspection of documents used by grand juries and internal investigators…" (page 34);
- a statement that the general public has "serious concerns about the police departments and local prosecutors' investigation into allegations of misconduct by local police departments and local prosecutors" (page 36);
- multiple references to the "appointment of special prosecutors," "Linn County prosecutor's office," "the grand jury," and the grand jury's" decisions not to pursue criminal charges [against Jones]" (pages 36–38); and
- "the internal investigator's choice to refrain from taking disciplinary action against the defendant Lucas Jones" (page 38).

See Mitchells' Br. pp. 32–38.

Jones and the City have no possession nor custody of any information regarding the Linn County attorney's office, the grand jury process nor do they have information regarding the decision-making processes of either of

those bodies. Moreover, Judge Grady's November 1, 2017, Order merely addressed disclosure without a protective order of "law enforcement investigative reports." (App. 122.) Judge Grady specifically stated: "the order covers any investigative reports or electronic communications generated or filed within 96 hours of the incident, but does not apply to reports or memorandum generated solely for purposes of police internal review of the incident." Id.

Finally, this case merely involves the alleged negligence of the City and Officer Lucas Jones. Although the Mitchells cite a University of Chicago study entitled "Law Enforcement and Violence: The Divide Between Black and White America," the Mitchells have not made any claim that the City or Lucas Jones violated Mr. Mitchell's constitutional rights. (App. 4-27.) Further, the Mitchells have made no allegations of "police misconduct," alleged "racial divisions" in the community that might underlie or be relevant to any of their claims, nor have they alleged any "perception in the black community of how police officers accused of misconduct are treated by the justice system in the courts." See Mitchells' Brief pp. 35–36; see also App. 4-27.) The Mitchells' efforts to insert such issues into this case given the current state of the pleadings is further reason why Jones and the City request a protective order of confidential documents based upon the risk of prejudice

that exists if the Mitchells or their counsel are able to use these extraneous references to frame their case in the media.

Therefore, in addition to considering the authority cited above regarding the confidentiality of the records and documents at issue here, Jones and the City reiterate their request that this Court also consider the conduct of Plaintiffs' and their counsel as well as those statements in the record that are indicative of their desire to influence the litigation by disseminating confidential materials to the public under the guise of protecting the public interest. After considering those matters, Jones and the City urge this Court to order that all confidential records pursuant to Iowa Code Section 22.7(5) (2017) and other confidential information be produced under a protective order similar or identical to the one Jones and the City initially proposed in conjunction with their July 14, 2017, Motion for Protective Order.

B. There is No Alternative to the Protective Order Proposed by Jones and the City Which Strikes a Proper Balance Between the Parties' Competing Interests.

The protective order proposed by Jones and the City affords all parties (not just Jones and the City) the opportunity to obtain full discovery while protecting the interests of all parties (not just Jones and the City) in a full and fair jury trial without any abuse of discovery. The Mitchells, on the other hand, insist they should not only be permitted full discovery, but also the

opportunity to disseminate to the public in advance of trial whatever they receive in discovery which they regard as public. In fact, the Mitchells' alternative, such as it is, would have Jones and the City produce documents which Jones and the City in good faith regard as confidential under Iowa law so that the Mitchells could unilaterally determine confidentiality. This approach provides no protection whatsoever to the interests Jones and the City have in seating a jury in Linn County District Court and avoiding an abuse of discovery which would undermine the Legislature's determinations under Iowa Code Section 22.7, briefed elsewhere. Indeed, the Mitchells seek to usurp the trial court's discretion to determine whether documents regarded as confidential under applicable law should be publicly disseminated.

CONCLUSION

For the reasons stated above, Jones and the City reiterate their request that this Court find that the district court's orders of November 1, 2017, and December 22, 2017, misinterpreted the applicable law, and therefore, constitute an abuse of discretion. Accordingly, this Court should reverse the district court's orders requiring production of the confidential documents without a protective order prohibiting disclosure of same to parties outside the litigation, and issue orders instructing the district court to enter the proposed

protective order submitted by Jones and the City in conjunction with their initial Motion, and for such further relief as the Court deems equitable.

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Dated this 30th day of May, 2018.

/s/ Wilford H. Stone