

**IN THE COURT OF APPEALS OF IOWA**

No. 8-578 / 07-2164  
Filed August 27, 2008

**KEITH ROBERT BROWN,**  
Plaintiff-Appellant,

**vs.**

**DAVENPORT POLICE DEPARTMENT,**  
Defendant-Appellee.

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Appeal from the Iowa District Court for Scott County, David H. Sivright, Jr.,  
Judge.

Plaintiff appeals the district court's dismissal of his petition seeking to  
obtain investigation records under the Iowa Open Records Act. **AFFIRMED.**

Keith Robert Brown, pro se, Anamosa.

Christopher S. Jackson, Davenport, for appellee.

Considered by Sackett, C.J., and Miller and Potterfield, JJ.

**SACKETT, C.J.**

Plaintiff appeals from the district court's dismissal of his petition seeking to obtain police investigation reports under the Iowa Open Records Act. We affirm.

**I. BACKGROUND.**

Plaintiff is incarcerated after being convicted of charges relating to the death of Virgil Engelkins in 1999. In 2004, Plaintiff sought to obtain police reports made during the investigation of the crime. He sent several letters to the Davenport Police Department, requesting a copy of all records relating to the investigation pursuant to the Federal Freedom of Information Act and Iowa Open Records Act. Plaintiff's requests were unanswered by the police department. The county attorney informed plaintiff that the records were previously provided to plaintiff's attorney and would not be furnished again. Plaintiff filed a petition with the district court requesting the production of the documents and filed a motion for summary judgment. Plaintiff served notice of the action on the defendant by sending a copy of the original notice and petition to the defendant by certified mail. On January 19, 2005, the district court dismissed the action without prejudice finding the defendant had never been personally served with original notice because no return of service was in the court file. The court ordered plaintiff to effectuate service of original notice by February 7. Though original notice was filed on February 2, 2005, no return of service appears in the record.

In 2007, plaintiff filed a new petition seeking enforcement of the Iowa Records Act against the Davenport Police Department. The defendant again

asserted it had not been served original notice. On December 14, 2007, the district court dismissed the action on several grounds including the failure to serve an original notice. Plaintiff appeals.

## **II. SCOPE OF REVIEW.**

If a party is not served original notice or improperly served notice, a court may not have personal jurisdiction to resolve a legal issue. See *Dickens v. Associated Anesthesiologists, P.C.*, 709 N.W.2d 122, 127 (Iowa 2006). Proceedings concerning a court's jurisdiction are legal issues and reviewed for errors at law. *In re Marriage of Engler*, 532 N.W.2d 747, 748 (Iowa 1995).

## **III. ANALYSIS.**

"Original notices are 'served' by delivering a copy to the proper person." Iowa R. Civ. P. 1.305. A governmental board or agency can be served by delivering the notice to its presiding officer, clerk, or secretary. Iowa R. Civ. P. 1.305(13). A mailed notice does not satisfy the personal service required by the rules of civil procedure. *Harrington v. City of Keokuk*, 258 Iowa 1043, 1049-50, 141 N.W.2d 633, 637-38 (1966). "[U]nless otherwise provided by statute, the Service of a notice must be personal." *Id.* at 1049, 141 N.W.2d at 637.

Plaintiff argues service by certified mail is permitted because he is seeking to enforce the Iowa Open Records Act. One method by which persons can enforce their rights under the Open Records Act is by seeking judicial review according to the provisions of the Iowa Administrative Procedure Act. Iowa Code § 22.5 (2007). This method is only permitted however "if the records involved are records of an 'agency' as defined in that Act." Iowa Code § 22.5. The Iowa

Administrative Procedure Act provides, “*Agency*’ means each board, commission, department, officer or other administrative office or unit of the state. ‘*Agency*’ does not mean . . . a political subdivision of the state or its offices and units.” Iowa Code § 17A.2(1). The Iowa Administrative Procedure Act provides that service can be accomplished by personal service or by mail:

Within ten days after the filing of a petition for judicial review the petitioner shall serve by the means provided in the Iowa rules of civil procedure for the personal service of an original notice, or shall mail copies of the petition to all parties named in the petition . . . .

Iowa Code § 17A.19(2).

The plaintiff correctly asserts that service by mail is permitted under the Iowa Administrative Procedure Act. However, the Administrative Procedure Act permitting this method of service is inapplicable because the defendant, Davenport Police Department, is not an “agency” for purposes of the Open Records Act and the Administrative Procedure Act. Offices and departments of state political subdivisions are expressly excluded from the definition of agency for purposes of chapter 17A governing administrative procedures, and for purposes of enforcing chapter 22, Iowa’s open records law. See Iowa Code §§ 22.5, 17A.2(1). Given that service by mail is ineffective for the court to obtain jurisdiction over the Davenport Police Department, as an office of the city of Davenport, a political subdivision of the state, the court correctly dismissed plaintiff’s action.

**AFFIRMED.**