



# TRUSTEES UPDATE & REPORT

AUGUST 2015

*A coalition of journalists, librarians, lawyers, educators and other Iowans interested in open government*

## Police body camera issues are focus of FOI day panel

The Iowa Freedom of Information Council will hold its annual meeting on Thursday, Oct. 8, as part of the annual daylong “Celebrating a Free Press and Open Government” events. This year’s FOI day will include a panel discussion on the public records, privacy and ethical issues surrounding use of police body cameras, and an evening banquet featuring national First Amendment expert Ken Paulson.

The use of body cameras by police officers is increasing around the nation amid calls

for more accountability and transparency by law enforcement. At the same time, legislation is being introduced to limit public access to the video footage out of privacy concerns for crime victims and others whose images are captured. A panel of media, police and legal experts will examine the issues raised by body cameras.

The Iowa FOI Council’s annual business meeting will be held after the panel. Charles Smithson, the new executive director of the Iowa Public

**BODY CAMERAS, see pg. 4**

### Schedule of events

**Roundtable on police body camera issues:** 1-3 p.m., Register Media offices, 1st floor conference room, 400 Locust St., Des Moines, IA 50309.

**Meet and greet with Charles Smithson, executive director of the Iowa Public Information Board:** 3:30-4:30 p.m., Salons F & G, 2nd floor, Des Moines Marriott Downtown, 700 Grand Ave., Des Moines, IA 50309.

**Iowa FOI Council Annual Business Meeting:** 4:30-5:30 p.m., Salons F & G, Des Moines Marriott Downtown.

**Celebrating a Free Press and Open Government Banquet:** 5:30-8:30 p.m., reception and dinner, Des Moines Marriott Downtown.

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## IFOIC to appoint new executive director

The Iowa Freedom of Information Council trustees will vote on a new executive director at the IFOIC annual meeting on Oct. 8.

The Council’s Executive Committee has recommended the appointment of Randy Evans, retired editorial page editor of The

Des Moines Register, for the position.

Kathleen Richardson, who has been executive director since June 2000, this summer informed the committee of her decision to leave the job to focus on her responsibilities as dean of the School of Journalism

and Mass Communication at Drake University.

According to the Council bylaws, the Executive Committee recommends a candidate for the executive director for a vote of the full board of trustees. Members of the 2015 Executive

**DIRECTOR, see pg. 5**

## Public Information Board bill fails to advance in Legislature

The Iowa Public Information Board, a 3-year-old state agency tasked with helping to enforce the state open meetings and records laws, had a busy year responding to hun-

dreds of open-government questions and complaints. However, the board failed in its first legislative attempt to remedy several longstanding issues in the FOI laws.

After extensive public hearings, the board introduced legislation (Senate File 384) that would have amended Chapter 21, the state open meetings law, to ensure appropri-

ate advance notice of meetings and expand the definition of government bodies required to comply with the law to include more subcommittees. The

**IPIB see pg. 6**

## Expanded News Media Coverage

The Iowa Freedom of Information Council this year amended its procedures for handling journalists' requests for Expanded News Media Coverage of Iowa court proceedings. The changes were in response to the overhaul of ENMC in 2014 that adapted the program to modern newsgathering and publishing technologies, such

as mobile phones and social media; expedited ENMC coverage of initial appearances, and shortened deadlines for handling requests. Texts of the new IFOIC procedures, as well as the updated "Iowa Court Rules, Chapter 25: Rules for expanded news media coverage" can be found at the IFOIC website: [www.ifoic.org](http://www.ifoic.org).

Central Iowa judges and journalists met in October 2014 to discuss the amendments to the ENMC program, the most sweeping changes to the rules since their inception in 1979. About 30 jurists and journalists met at the Cub Club at Principal Park in Des Moines to discuss the new rules, online court records, cameras in federal courtrooms, and the new tools that reporters use to cover the courts.

*Following is a list of the Expanded News Media Coverage coordinators. The list is also available online at [www.ifoic.org](http://www.ifoic.org).*

### REGION 1

Allamakee, Clayton, Delaware, Dubuque counties  
Brian Cooper,  
Telegraph Herald,  
801 Bluff,  
Dubuque, IA 52004,  
(563) 588-5662  
(bcooper@wcinet.com)

### REGION 2

Howard, Chickasaw, Winneshiak, Bremer, Fayette, Butler, Grundy, Black Hawk, Buchanan counties  
Nancy Raffensperger  
Newhoff, Waterloo-Cedar Falls Courier,  
P.O. Box 540,  
Waterloo, IA 50704,  
(319) 291-1400 or -1445  
(nancy.newhoff@wcfcourier.com)

### REGION 3

Winnebago, Worth, Mitchell, Hancock, Cerro Gordo, Floyd, Franklin counties  
Matt Bradley,  
KIMT-TV,  
112 N. Pennsylvania Ave.,  
Mason City, IA 50401,  
(641) 421-2628  
(mbradley@kimt.com)

### REGION 4

Pocahontas, Humboldt,

## Updated list of regional ENMC coordinators

Wright, Sac, Calhoun, Webster, Hamilton, Hardin, Carroll, Greene, Boone counties  
Peter Kaspari,  
Fort Dodge Messenger,  
P.O. Box 659,  
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Jeff Grant,  
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### REGION 6

Plymouth, Cherokee, Buena Vista, Woodbury, Ida, Monona, Crawford counties  
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Story, Marshall, Guthrie, Dallas, Polk, Jasper, Madison, Warren, Marion counties  
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### REGION 9

Adair, Adams, Union, Clarke, Lucas, Taylor, Ringgold, Decatur, Wayne counties  
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### REGION 10

Tama, Benton, Linn, Jones, Iowa, Johnson counties  
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## From the President

In retrospect, I now wonder, “What were we thinking?”

It was sometime in the first several months after the Iowa Public Information Board opened for business on July 1, 2013.

Creation of such a board, rejected in legislative session after legislative session, finally won approval in 2012.



**COOPER**

Many people deserve credit for that, including Dubuque lawmaker Pam Jochum, who doggedly pressed her colleagues for such a board; Gov. Terry Branstad, who endorsed it after returning to office in 2011, and media executives and other advocates for government transparency, whose editorials and lobbying finally made a difference.

As soon as the Iowa Public Information Board became operational in

mid-2013, it was swamped with calls, complaints and inquiries.

That impacted the Iowa Freedom of Information Council, a private, non-profit organization. People who would have otherwise contacted the council were now going directly to the Iowa Public Information Board, which has investigative and enforcement powers. As they should.

So it happened that, at a meeting of Iowa Freedom of Information Council trustees, someone around the table floated the question: “Does this organization still need to exist?”

Hmm. Intriguing question.

No action took place that day. There wasn’t that much discussion. But we agreed to keep the question in mind.

What were we thinking?

Events and issues the past couple of years have made it clear that not only do we still need the Iowa Freedom of Information

Council, its work is as important as ever.

Though the Iowa Freedom of Information Council and Iowa Public Information Board have similar names and a mutual interest in government transparency, their roles and responsibilities are not the same.

The old saying, “You can’t win ’em all,” applies to government transparency. Advocates for openness in government have not won ’em in Public Information Board decisions. Board members might not agree with the law, but it’s their responsibility to decide cases according to existing law.

Meanwhile, the board itself hasn’t won ’em all. Its budget has been underfunded, and its reasonable, common-sense legislative proposals have failed.

If one needs evidence of the continued need for the Iowa Freedom of Information Council, look no further than the 2015 legislative session. At seemingly every turn, some lawmakers tried to reduce citizen access to public information and their government.

They wanted to reduce or totally eliminate access to public records of weapons permit holders.

They wanted to scrub some convictions from court records.

They wanted to substitute general summaries for the actual minutes of county supervisors’ meetings in newspaper legal notices.

They wanted (and suc-

ceeded) in making it possible to scrub from court records verdicts of not-guilty verdict or dismissed charges – as if a trial never took place.

They also resisted initiatives for better transparency, including the IPIB’s recommendations to make governmental advisory committees subject to the open meetings law and improve the law concerning adequate public notice of governmental meetings.

Meanwhile, the council, along with its partners in the newspaper and broadcast media, continues to alternately work with and push the Iowa Supreme Court to permit journalists to receive better access to the court documents now available online. We hope to receive the same access that the court currently bestows upon professionals in another private enterprise – namely real estate abstractors.

The possible obsolescence of the Iowa Freedom of Information Council was a question asked during the euphoria of winning the hard-fought victory to establish an official state board. We’re back to reality. All signs indicate that we’ll have plenty to keep us vigilant and active for a great many years to come.

I hope that you will continue to support us in that effort.

**Brian Cooper**

Executive editor, TH  
Media/Dubuque  
Telegraph Herald  
IFOIC President 2015

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## Iowa Newspaper Association executive director to retire



MUDGE

Chris Mudge, the executive director of the Iowa Newspaper Association, has announced that she will retire in 2016. Mudge has held the position since 2009. Previously, she was INA assistant executive director and marketing director. Mudge has also been active in the Iowa Freedom of Information Council, serving as a trustee and member of the executive committee.

## 16th edition of open meetings, records handbook available

The Iowa FOI Council updated the 16th edition of its popular “Open Meetings, Open Records Handbook” early in 2015. The pocket-sized booklet is updated every two years when the Iowa Code is updated, and it is distributed to thousands of Iowans through the Council, county auditors’ offices, journalism and government organizations, libraries, the Office of Ombudsman and the Iowa Public Information Board.

The handbook contains the texts of Chapter 21 and 22 of the Iowa Code, the state’s open meetings and public records laws; tips for comply-

ing with the laws; frequently asked questions; a sample records request letter, and a list of suggested resources. The booklet also includes the text of Chapter 23, the Iowa Public Information Board Act, and questions and answers about the state agency that was created by the Legislature in 2012 to help enforce the Iowa access laws.

The Council sells the booklet for \$2 apiece to pay for printing and postage. The text is also available online at [www.ifoic.org](http://www.ifoic.org). Copies may be obtained by emailing Kathleen.Richardson@drake.edu or calling 515-271-2295.



## Secret beneficiary of development deal finally identified

The mysterious beneficiary of a Clear Lake development project was identified in February as San Francisco-based pharmaceutical company McKesson Corp. The identity of the company had been kept secret for about a year, despite the fact McKesson had been promised forgivable loans and tax breaks from the city and county. Government officials claimed they had no documents that named the beneficiary of the development deal. The issue came before the Iowa Public Information Board in June 2014, but the board ruled that the developer, the North Iowa Corridor Economic Development Corp., was not subject to the open records laws because it wasn’t a government entity, even though it had received \$260,000 from Clear Lake, Mason City and Cerro Gordo County.

### BODY CAMERAS, from pg. 1

Information Board, and board members will attend for an informal “meet and greet” with Council members and others.

The day will culminate with the Iowa Center for Public Affairs Journalism’s annual IowaWatch fundraising banquet. The guest speaker is Paulson, dean

of the College of Media and Entertainment at Middle Tennessee State and president of the Newseum Institute’s First Amendment Center. The IFOIC will present its annual Harrison “Skip” Weber Friend of the First Amendment Award. IowaWatch will present its Steve Berry Free Press Champion Award and Bill Monroe Free Press Champion

### REGISTRATION

To register for any of the day’s events, visit [www.inanews.com](http://www.inanews.com).

Award.

Parking is available in downtown parking garages: 7th and Grand Garage, 9th and Locust Garage and Greater Des Moines Partnership Garage. Valet parking

is also available at the Marriott.

The afternoon roundtable and IFOIC meetings are free and open to the public. Tickets for the evening banquet are \$55 each. To register for any of the day’s events, visit [www.inanews.com](http://www.inanews.com).

For more information, contact Kathleen Richardson at [kathleen.richardson@drake.edu](mailto:kathleen.richardson@drake.edu) or 515-271-2295.



# New laws limit access to court records

Legislators in 2015 debated but did not pass bills that would have shielded firearms permits and police body camera footage from public scrutiny, but lawmakers did pass laws that limit access to court records.

## Passed:

**Criminal records:** Senate File 385 allows a motion to expunge all records in a criminal case 180 days after the defendant has been acquitted of all charges or the charges have been dismissed. If the defendant was the victim of mistaken identity, the motion to expunge can be filed immediately. The record in a criminal case expunged in this matter is a confidential public record under Chapter 22.7.

**Juvenile records:** SF 292 amends Chapter

232, making confidential juvenile court records when the case is dismissed or there is an informal adjustment where no petition is filed (no formal delinquency proceeding). Such records are available only to a limited class of people, including the child's attorney or guardian ad litem, court staff, the county attorney and the superintendent of the child's school district.

**Data processing software:** Chapter 22 was amended by SF 435 to clarify that a government body can charge "reasonable" programming or processing costs associated with fulfilling a record request if the requester wants the record in a specific format different from that in which the record is kept.

**Access to records of closed meetings:** The

ombudsman and the Iowa Public Information Board will have access to the minutes and recordings of closed meetings, in order to perform their duties, under SF 457.

**Medical examiner reports:** Medical examiner reports, including autopsy reports, may be released to an organ procurement organization if the deceased was an organ donor (SF 335).

## Did not pass:

**Weapons permits:** The Legislature spent much of the session debating changes to firearms regulation, including limiting public access to weapons permits, but the language was eventually removed from legislation.

**Police body camera footage:** Three bills were filed that would have

required police to use body cameras, but would have made the video generally confidential. The legislation did not advance; however, the issue is expected to reemerge next year.

**Public employee disciplinary records:** HF 509 would have made public the reasons for a government employee's dismissal, demotion or resignation in lieu of termination, but the bill faced strong opposition from public employees' and government organizations.

**Confidentiality requests:** HF 502 would have allowed any citizen to request that his or her name, address and phone number be made confidential in records of the county auditor, treasurer, recorder or assessor. The bill was not debated by the House.

## Regents discuss U of I president's retirement deal behind closed doors

The Iowa Board of Regents in January approved University of Iowa President Sally Mason's request to remain a tenured professor and "emeritus president" after her retirement in August, at a salary

of \$315,000. But the regents made the decision in closed session, citing Chapter 21.5(1)(i), which allows a closed meeting "to evaluate the professional competency of an individual whose appointment,

hiring, performance, or discharge is being considered when necessary to prevent needless and irreparable injury to that individual's reputation and that individual requests a closed session."

### DIRECTOR, from pg. 1

Committee are IFOIC President Brian Cooper, First Vice President Jim Boyd, Second Vice President Amalie Nash, Past President Rox Laird and Sue Toma of the Iowa Broadcasters Association.

At the trustees summer meeting on Aug. 13, Cooper said that the Council is fortunate to have such a qualified candidate to replace Rich-

ardson. Evans retired in 2014 after a 40-year career in The Register newsroom, including jobs as state editor and city editor. He is a past president of the IFOIC and received the Council's first Skip Weber Friend of the First Amendment Award in 2001 for his work on behalf of open government.

If appointed, Evans will become only the third executive staff member in the Council's history. Dr. Herb

Strentz of Drake University served as executive secretary from the Council's founding in 1976 until his retirement in 2000. The position's title was changed to executive director in 2014.

The IFOIC executive director also has served as the central coordinator of the Iowa judiciary's Expanded News Media Coverage program, which coordinates electronic coverage of Iowa courts.

**IPIB, from pg. 1**

board also introduced an amendment to Chapter 22, the public records law, modeled after the federal Freedom of Information Act that would have clarified which law enforcement records are required to be released. The meetings amendments were fought by government associations and the records changes met resistance from law enforcement and victims' advocates. The IPIB legislation passed the Senate, with the law enforcement provision removed, but did not advance out of a House subcommittee.

Among other issues addressed by the IPIB this year:

**The Burlington Hawk Eye** and the family of a Burlington woman who was shot and killed by a police officer are asking the board to order the release of records related to her death.

Burlington officer Jesse Hill in January responded to reports of a domestic dispute at the home of Autumn Steele. Hill accidentally shot Steele when he was attacked by her German Shepherd as he approached the house. The Des Moines County attorney cleared Hill of criminal charges and the officer has returned to work.

Local law enforcement authorities say that they have turned over all records in the case to the Iowa Division of Criminal Investigation. The DCI has refused to release the transcript of a 911 call, police body camera and

## Mason City implemented a practice earlier this year in which city council members split into subcommittees to discuss the budget without open meetings or minutes. Budget discussions previously had been open to the public.

dashboard videos and other information requested by the Hawk Eye and Steele's family. The state claims the records are part of the police investigative file, which can be kept confidential under Chapter 22.7(5). Officials have released 12 seconds of the body camera footage and a summary of the incident, but the DCI claims releasing more information would invade the dead woman's privacy.

IPIB Executive Director Charlie Smithson recommended in July that the board dismiss the records complaints because Iowa law allows law enforcement officials to keep investigative files confidential indefinitely. However, board members instructed Smithson to review the material sought to determine whether any of it could be interpreted as the "immediate facts and circumstances" of the incident that are required to be released.

**Mason City** implemented a practice earlier this year in which city council members split into subcommittees to discuss the budget without open meetings or minutes. Budget discussions previously had been open to the public. Mayor Eric Bookmeyer argued that the pro-

cedure was legal because the subcommittees did not constitute a quorum of the council members and were merely advisory in nature.

The issue was brought before the Iowa Public Information Board, which said that lack of clarity in the Iowa open meetings law allowed the subcommittees to meet behind closed doors. However, board members discouraged the practice.

### **Formal advisory opinions of the board:**

**Creation of records (IPIB AO 2015-04):** The city of Muscatine received a request for information concerning the city's automatic traffic cameras. The city said that some of the information requested was not collected or kept by the city, and asked the board whether it was required to create records to respond to the request. In an advisory opinion, the IPIB said that there is nothing in the Iowa Code that requires a government body to create records that do not otherwise exist.

Who may attend closed sessions (IPIB AO 2015-03): A Diagonal, Iowa, resident asked the board whether there are any limits on who may be allowed into a government

body's closed session. The opinion says that the open meetings law is silent on this topic, and concludes that the government body has discretion as to whom it may invite to attend a closed meeting.

Draft documents (IPIB AO 2015-01): Chapter 22.7(65) allows confidentiality for government bodies' "tentative, preliminary, draft, speculative or research material." The board established the following criteria to determine whether a document falls into exception:

The document is tentative, preliminary, draft, speculative or research material;

The document exists in a form prior to completion of its intended purpose;

The document exists in a form prior to the form that is ultimately submitted for use or used in the actual formulation, recommendation, adoption or execution of any official policy or action by a public official with authority to make such decisions; and

The document must not have been submitted to or used by a public official authorized to adopt or execute official policy.

In applying this criteria, the document must truly be a draft that is not in its final form to be submitted to a public official who has authority to make decisions regarding the subject matter to which the draft applies. In addition, if the draft has been submitted to a public official authorized to adopt or execute official policy, the exception does not apply.

**IPIB see pg. 7**

## Insurer settles privacy lawsuit by former D.M. superintendent

The insurer for Des Moines Public Schools in August settled a lawsuit with former superintendent Nancy Sebring, agreeing to pay her \$350,000.

The settlement came after Polk County District Judge Robert Hutchison ruled this spring that Sebring's sexually explicit emails with a lover are public record.

The school district discovered the emails in spring 2012 while responding to public records requests from The Des Moines Register and the Omaha World-Herald

about Sebring's move to a new job in Omaha. Sebring abruptly resigned, then lost the Omaha job after the emails became public. Sebring claims that the district's release of the emails ruined her life, and she sued the district and school officials for invasion of privacy, intentional infliction of emotional distress, interference with contract of employment, and conspiracy. The district's insurance company decided to settle the lawsuit to avoid the expense of litigation.

District Judge Glenn Pille ruled last year that

the emails, made on government computers from a government email account in violation of district policy, were part of Sebring's personnel file and so fell under an exception to the Iowa public records law and shouldn't have been released. But Judge Hutchison wrote this year, "What are otherwise public records cannot be hidden from public scrutiny simply by the records keeper pronouncing them to be the basis for possible disciplinary action."

The case also raised issues of reporter's privilege

to keep sources confidential. The Register fought attempts to force then-editor Rick Green and reporter Kathy Bolten to testify about the circumstances surrounding the release of the Sebring emails. Iowa's common law privilege provides that journalists cannot be forced to testify unless the plaintiff can prove that the information sought is substantially necessary to the cause of action and that the plaintiff has exhausted all other ways of obtaining the information. Hutchison ruled that Sebring had not met that legal burden.

## 2015 OFFICERS

### *Iowa Freedom of Information Council Officers and Executive Committee 2015*

- **Brian Cooper**, TH Media/Dubuque Telegraph Herald, Iowa Newspaper Association, president
- **Jim Boyd**, WHO Radio, Iowa Broadcasters Association, first vice president
- **Amalie Nash**, The Des Moines Register, second vice president
- **Sue Toma**, Iowa Broadcasters Association
- **Rox Laird**, The Des Moines Register, former president
- **Kathleen Richardson**, Drake University, executive director

## 2015 MEMBERS

### *Iowa Freedom of Information Council 2015*

#### SUSTAINING MEMBERS

Cedar Rapids Gazette Company  
Cityview  
Des Moines Register and Tribune Company  
Iowa Broadcasters Association  
Iowa Cubs  
Iowa Newspaper Association  
Iowa Public Television  
KCCI-TV, Des Moines  
Hearst Television, Inc.  
KCRG-TV, Cedar Rapids  
Cedar Rapids Television Co.  
Meredith Corporation  
Quad-City Times  
WHO-TV, Des Moines  
Local TV, LLC

Woodward Communications, Inc., TH Media, Dyersville  
Commercial, Cascade Pioneer

#### FIRST AMENDMENT MEMBERS

American Civil Liberties Union of Iowa  
Ames Daily Tribune  
Associated Press, Iowa Bureau  
Greenlee School of Journalism and Mass Communication, Iowa State University  
The Hawk Eye, Burlington  
Iowa Association for Justice  
Iowa Association of School Boards  
Iowa Broadcast News Association  
Iowa Library Association  
School of Journalism and Mass Communication, University of Iowa  
Washington Evening Journal  
Waterloo-Cedar Falls Courier

### **IPIB, from pg. 6**

Notice requirements for public meetings (IPIB AO 2015-02): A Diagonal, Iowa, resident asked whether the Chapter 21 public meetings notice is the same as the notice requirements for a pub-

lic hearing. The board's opinion is that the notice requirements in Chapter 21 do not satisfy the notice requirements for public hearings under Chapter 331.434, though the notice requirements of Ch. 331.434 would constitute

notice under Ch. 21.

According to the board's 2014 report to the Legislature, the IPIB last year resolved 92 formal complaints, answered 788 informal inquiries from government officials and citizens, and conducted 38

training sessions around the state. Most issues were resolved informally by the board staff working with complainants and governments. The board also negotiates settlement and training agreements to resolve complaints.

## U of I withholds records related to coach's firing

The University of Iowa has declined to release records relating to the dismissal of field hockey coach Tracey Griesbaum, claiming that the records are protected by the federal Family Educational Rights and Privacy Act (FERPA).

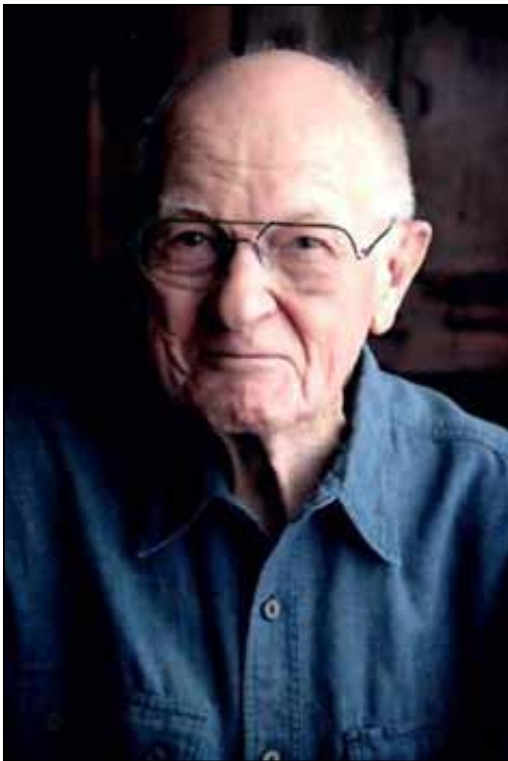
The Des Moines Register and other media organizations filed public records requests related to Griesbaum's firing last year.

The university declined to release records from professors Ellie Herman and Betsy Altmaier, who have served as faculty athletics representatives, claiming the records are shielded by FERPA. But Altmaier told The Register that the records she provided to the university were non-student records not covered by the law.

The university said Griesbaum

was fired after athletes complained she created an environment of fear and intimidation. Griesbaum has filed a civil rights complaint with the state, claiming gender bias. The complaint is the first step in filing a lawsuit.

The Register has filed a complaint with the Iowa Public Information Board regarding the denial of records. The complaint is pending.



## IFOIC member, ISU professor emeritus Wayne Davis dies

Longtime Iowa Freedom of Information Council member Wayne Davis of Ames died in January at age 94. Davis was an emeritus professor of the Iowa State University Greenlee School of Journalism and Communication. A celebration of his life will be held Sept. 10, 5 to 6 p.m., at Celebrity Cafe, Iowa State Center, Stephens Auditorium.

### GUN SAFETY

## Records provide insight into troubled state weapons purchase

An Iowa Department of Public Safety employee was exploring a job with Smith & Wesson when he tipped the gun maker off to an upcoming DPS weapons bidding process, according to public records.

The Associated Press in August wrote that DPS employee Ken Paradise got a job as a sales representative for Smith & Wesson shortly after leaving state employment in 2013. The company received handgun contracts from the state,

and a public records request by AP showed Paradise's ties to the gun maker, which may have implicated state conflict of interest laws.

Iowa journalists have covered safety problems involving the purchased weapons. The department launched an internal investigation into the process followed in awarding the contracts, but has refused to release findings, arguing that they are protected by attorney-client work product privilege.

## IFOIC seeks expanded access to electronic court records for journalists

The Iowa Freedom of Information Council has begun discussions with the Iowa judiciary to allow journalists expanded access to electronic court records. The judiciary this year completed the statewide rollout of its Electronic Data Management System that allows electronic filing of court records and statewide access to those records. How-

ever, access thus far has been limited to lawyers and real estate abstractors.

The IFOIC has written to the Supreme Court that allowing journalists wider access to electronic judicial records would help them provide a "better, faster and more complete job" of reporting on the courts and would benefit the public.



## Student newspaper staff sues community college, administrators

Staff members of the Muscatine Community College student newspaper, *The Calumet*, have sued the institution and officials for violating their First Amendment rights.

The lawsuit filed in May claims that interim dean Rick Boyer demanded that the student journalists seek permission before publishing faculty members' photos. Jim Compton, the newspaper's adviser, said that when he met with Dean Gail Spies to discuss the demand, she supported the prior restraint and threatened retaliation if the newspaper ran a story about the situation. *The Calumet* ran the story anyway. Within a week Compton was removed as adviser and replaced with a part-time adjunct. The lawsuit also claims that the newspaper classes were rescheduled at a more inconvenient time for the students.

Muscatine Community College has denied the claims. The plaintiffs are being represented pro bono by a Chicago law firm. Iowa law protects students at public schools from prior restraint.

[Mary Mason, Jessica Gomez, et al v. Bob Allbee, Don Doucette, Gail Spies, Joan Kindle, Deb Sullivan, Board of Trustees of Eastern Iowa Community Colleges and Muscatine Community College, in the U.S. District Court for the Southern District of Iowa]

## COURT ROUNDUP

### Judge rejects newspaper's appeal of IPIB ruling

A Polk County judge in November 2014 denied *The Des Moines Register's* request to obtain a copy of a video reportedly showing a state employee using excessive force while restraining a teenage girl at the Iowa Juvenile Home.

The Register had requested a copy of the video after the employee, Robert McFatrige, was dismissed and charged with assault. The newspaper ran a series of articles about alleged mistreatment of the home's residents, including girls who were confined to isolation cells for months. Gov. Terry Branstad ordered the home closed in January.

The Department of Human Services refused to release the video footage taken inside the juvenile home, even though The Register said it would blur the image of the girl's face to protect her identity. The agency and the Iowa Attorney General's Office argued that release of the video would violate state and federal laws regarding privacy of individuals receiving government services. The newspaper brought the issue to the Iowa Public Information Board, which in February 2014 agreed with the state.

The Register appealed the decision in Polk County district court. Chief District Judge

Arthur Gamble ruled that the IPIB did not err in its decision that the video was a confidential record.

McFatrige was convicted in May 2015 of assault causing bodily injury.

### Appeals court: Counsel must be present to close meeting

The Iowa Court of Appeals in March concluded that the Iowa open meetings law requires government bodies to have their counsel present in order to close a meeting to discuss litigation strategy.

James Olinger and Larry Meyer sued the members of the Harrison County Board of Supervisors, alleging that the board held two illegally closed meetings in 2013 as trustees of the Utman Drainage District. The stated rationale for closing the meetings was to discuss matters related to litigation, but counsel was not present at either meeting. Chapter 21.5(1)(c) allows government bodies to close a meeting "to discuss strategy with counsel in matters that are presently in litigation or where litigation is imminent where its disclosure would be likely to prejudice or disadvantage the position of the government body in that litigation."

The plaintiffs requested, as provided in Chapter 21.5(5), that a district court judge listen to the recordings of the closed sessions to determine

whether they could have access to the records to prepare their case. After listening to the recordings, the judge ordered the recording of one meeting released, saying a public discussion would not have prejudiced the trustees in litigation. However, the judge found that the recording of the second meeting should not be released. The court ordered each trustee to pay a \$100 fine, but later suspended the fine.

Both sides challenged aspects of the judge's ruling, including that the district court found an open meetings violation and imposed a fine without allowing the trustees an opportunity to present defenses. The plaintiffs argued that the court imposed damages before determining whether the defendants knowingly violated the law, which would have triggered heightened penalties; erred in suspending the fines, and also in failing to award the plaintiffs attorney fees and costs.

The Iowa Court of Appeals found errors in the district court's ruling and remanded it. One of the issues that the appellate court said it expected the lower court to address on remand is whether counsel must be present at meetings closed to discuss current or imminent litigation — and concluded through its analysis of the law and legislative history that the government body's attorney must be present in order for the exception

**COURTS see pg. 10**

**COURTS, from pg. 9**

to apply.

[James W. Olinger and Larry C. Meyer v. Robert Smith, Walter Utman and Gaylord Pitt, Harrison County, Iowa, and Utman Drainage District, No. 14-0751, Iowa Court of Appeals, March 25, 2015]

### **Injunction granted to block release of development communications**

A Polk County District Court judge in March granted a Burlington developer's request for an injunction to block the release of some of his communications with the governor's office and the Iowa Economic Development Authority.

Developer Randy Danniell was sued in March 2014 by disgruntled investors in his Iowa Logistics Development Co. Liberal activist Matt Sinovic of Progress Iowa filed a public records request, requesting copies of communication between Danniell and the governor's office and the Iowa Economic Development Authority. Sinovic sought similar information regarding communication between the Lee County Economic Development Group and state officials.

Danniell and the Lee County development group sought injunctions barring release of the records. Danniell maintained that he had expected that his communications with state officials would be confidential. He argued that his com-

munication should be shielded as trade secrets, under Chapter 22.7(3), and as "communications not required by law, rule, procedure, or contract that are made to a government body" by persons outside of government, if the government could reasonably believe those persons would be discouraged from communicating if the records were made public (Chapter 22.7(18)).

Sinovic and Progress Iowa argued that even if an exception applied, release of the records would be in the public interest. The Iowa Attorney General's Office also argued that the petitioners should not have had any expectation that their communications with state officials were confidential.

While the court recognized that Danniell bore a high burden to overcome the presumption of openness and disclosure of public records, it said evidence showed that Daniel expected his communication would be confidential and that the state officials he dealt with also recognized the need for secrecy. The court also said that some of the information that Danniell provided to the state constituted trade secrets, the release of which would injure the developer.

[Randy Danniell, Iowa Logistics Development Co. Inc. v. Iowa Economic Development Authority and State of Iowa. Progress Iowa, Intervenor, Case No. EQCEO76937. Lee County Economic

Development Group Inc. v. Iowa Economic Development Authority, Iowa Governor Branstad's Office and State of Iowa. Progress Iowa, Intervenor. Case No. EQCEO76994. Ruling on Requests for Injunction in the Polk County District Court of Iowa]

### **Polk judge denies summary judgment in former DCI agent's records case**

A Polk County judge in January denied requests for summary judgment in the case of a former Division of Criminal Investigation agent who claims the state improperly released his personnel records.

Larry Hedlund sued the Iowa Department of Public Safety for wrongful termination. He alleges he was fired in retaliation after he complained that a state trooper was speeding while driving Gov. Terry Branstad in 2013. The governor later asked former Iowa Supreme Court Chief Justice Louis Lavorato to conduct an independent investigation into Hedlund's dismissal. As part of that investigation, Lavorato was given access to documents from Hedlund's personnel file, which is allowed to be kept confidential under Chapter 22.7(11). Even though Lavorato signed a non-disclosure agreement, Hedlund claims that the Department of Public Safety violated the public records law when it released his personnel

records.

Both plaintiff and defendant in the case asked Polk County District Court Judge Lawrence McLellan for summary judgment, but he denied the motions.

[Larry R. Hedlund v. Records Custodian, Iowa Department of Public Safety, Case No. EQCEO74849 in the Polk County District Court of Iowa]

### **Judge refuses to dismiss ISU students' First Amendment lawsuit**

Federal Judge James Gritzner in January denied Iowa State University's motion to dismiss a lawsuit filed by students in the campus chapter of the National Organization for the Reform of Marijuana Laws (NORML). The students claim that the university violated their First Amendment rights when it forbid them from using ISU logos on the organization's T-shirts. ISU argues that it is a trademark issue, but the students say they are being discriminated against because of their support for legalizing marijuana, a political issue. They say that even the campus bondage club was allowed to use ISU logos on their T-shirts.

[Paul Gerlich and Erin Furleigh v. Steven Leath, Warren Madden, Thomas Hill and Leesha Zimmerman, in the U.S. District Court for the Southern District of Iowa]