

BEFORE THE IOWA PUBLIC INFORMATION BOARD

MICHAEL J. MERRITT,
Complainant,

v.

CITY OF MARSHALLTOWN, IOWA,
Respondent.

FORMAL COMPLAINT NO. 22FC:0025

**CITY OF MARSHALLTOWN, IOWA'S
RESPONSE TO COMPLAINT**

Respondent City of Marshalltown, Iowa (“City”) is in receipt of Complainant Michael Merritt’s (Mr. Merritt or “Complainant”) July 20, 2022 Complaint with the Iowa Public Information Board (“IPIB”) and submits the following response to Mr. Merritt’s formal complaint.

The City requests that the IPIB dismiss Mr. Merritt’s formal complaint against the City since Mr. Merritt has failed to state any violations of Chapter 22 committed by the City. This response is based on the information now known but may be supplemented or modified in the event the City becomes aware of new or additional facts.

FACTS

A. Players

The **City of Marshalltown** is a municipality located in Marshall County, Iowa. It has a population of 26,957 based on the 2020 census. **Michael Tupper** is the Police Chief for the City of Marshalltown Police Department. (Exhibit 11.) **Joel Greer** is the Mayor for the City of Marshalltown.

B. Mr. Merritt’s #001 Request (dated December 20, 2021)

On December 2, 2021, Mr. Merritt sent Mayor Greer and Chief Tupper, as well as several state officials, including the Attorney General, Auditor, and Ombudsman, a

request for certain records pursuant to Iowa's Open Records Act, Iowa Code Chapter 22. (Exhibit 1.) This included a request for (1) any City system end-user interaction with 24 individual URL's from January 1, 2018 until December 2, 2021; (2) end user information within the City's information system logs showing previous access to the 24 URL's listed in in the first request; (3) all City end-user e-mail, including attachments, mentioning the domains related to the 24 specific URL's listed in the first request regarding complaints filed by a list of approximately 23 names; (4) all City end-user e-mail and attachments including a list of 23 specific names between January 1, 2018 and November 29, 2027; (5) all City end-user e-mail and attachments that include four versions of Mr. Merritt's name and related to complaints filed by Hope United Methodist Church in Marshalltown, the Iowa Conference of the United Methodist Church, Johannes H. Moorlach, or Whitfield & Eddy Law firm; (6) all City incident reports involving Mr. Merritt related to the parties in items (4) and (5) of this request; and (7) all City end-user e-mail regarding coordination with the Newton Police Department for Incident #19-16725. Mr. Merritt requested the City produce the materials to him on a thumb drive at the City's published rate. Mr. Merritt further stated that he would not pay more than 10 hours or \$1,000.00 in fees without prior coordination and approval from him.

Chief Tupper responded to this request on December 21, 2021, writing that, upon discussion with legal counsel and the City's technology contractor, preliminarily they had determined that the request would cost more than \$1,000.00 to fulfill. (Exhibit 2.) Chief Tupper provided Mr. Merritt with responsive records available without those means. (Exhibit 3.)

C. Mr. Merritt's #002 Request (dated January 2, 2022, Updated March 13, 2022)

On January 2, 2022, Mr. Merritt send a second request to Chief Tupper. This request was also sent to the Iowa Attorney General, the Iowa State Auditor, and the Iowa Office of the Ombudsman. (Exhibit 4.) In this request, Mr. Merritt asked that the City provide him with the cost for this information systems search. Mr. Merritt's request included requests for the following records: (1) Marshalltown Police Department end-user e-mail and attachments sent to or received from dozens of individual names listed in the request for the time period January 1, 2018 through March 23, 2022, including the quantity of any e-mails and attachments that were not released; and (2) all Marshalltown Police Department end-user e-mail and attachments sent to or received from seven individual e-mail addresses from January 1, 2018 through March 23, 2022, including the quantity of any e-mails and attachments that were not released. Like the December 2021 request, Mr. Merritt requested this material in a thumb drive and stated he would not be responsible for costs over \$1,000.00 without prior approval.

Chief Tupper responded to this on March 14, 2022. (Exhibit 6.) Chief Tupper stated that the electronic searches required the use of an outside IT contractor and subsequent legal review, which could cause the request's costs to exceed \$1,000.00. Chief Tupper communicated to Mr. Merritt that he should let him know if he wanted to proceed.

D. Mr. Merritt's #003 Request (dated February 20, 2022)

On February 20, 2022, Mr. Merritt sent a third request to Chief Tupper. (Exhibit 5.) Mr. Merritt requested the following from the Marshalltown Police Department: (1) all

records related to Meghan Schumacker; (2) all Iowa incident reports/records related to case number ACGR077727; (3) all Iowa incident reports/records related to case number NTQA0021820; (4) all Iowa incident reports related to case number OWCR098171; (5) all Iowa incident reports related to case STA0021821; and (6) all law enforcement booking photos related to requested items (2)-(5). Mr. Merritt requested this information in a portable thumb drive at the City's published rate. Mr. Merritt stated he would not pay for costs over \$1,000.00 without his prior approval.

On March 9, 2022, Chief Tupper responded to this e-mail providing Mr. Merritt with e-mails responsive to his request and informing him that there were no other public records associated with his request. (Exhibit 7.)

E. Mr. Merritt's #004 Request (dated March 7, 2022)

On March 7, 2022, Mr. Merritt send a request to Chief Tupper, the Marshall County Attorney, and several state of Iowa officials. (Exhibit 8.) Mr. Merritt requested the following: (1) six separate incident reports identified by number in this request; (2) documentation from the Marshalltown Police Department regarding Newton, Iowa case number 19-16725-CFS; (3) an explanation for why an interaction with the Newton Police Department was not documented for a listed incident; and (4) authorization and expense report for City police officers traveling from Marshalltown, Iowa to Newton, Iowa. Mr. Merritt requested this information in a portable thumb drive at the City's published rate. Mr. Merritt stated he would not pay for costs over \$1,000.00 without his prior approval.

Chief Tupper responded to this request via e-mail and U.S. Mail on March 14, 2022. (Exhibit 6.) Chief Tupper provided Mr. Merritt with several records, including where incident reports did not exist as requested. Chief Tupper informed Mr. Merritt when items

did not exist and communicated to Mr. Merritt the requests that he did not understand. Chief Tupper made it clear that payment for this expense was required in advance.

Mr. Merritt responded to Chief Tupper on March 14, 2022. (Exhibit 6.) Mr. Merritt provided context for his requests. He then requested “all Iowa Incident Reports and electronic mail your department has received related to these Iowa Incident Reports documented in your Marshalltown Police Department Name Card for myself your department provided to me in a previous Iowa Open Records Request.” (Exhibit 6.)

F. Mr. Merritt’s March 17, 2022 E-mail

On March 17, 2022, Mr. Merritt e-mailed Chief Tupper and thanked him for the records he had sent him. (Exhibit 9.) He stated that Chief Tupper’s assistance helped him restore his faith in Marshalltown and told Chief Tupper that he had his respect and appreciation. (Exhibit 9.)

G. Mr. Merritt’s March 19, 2022 E-mail

On March 19, 2022 Mr. Merritt e-mailed Chief Tupper and indicated that the City had fulfilled his Request 004. (Exhibit 10.)

H. Mr. Merritt’s Complaint

Mr. Merritt filed a complaint with the Iowa Public Information Board (the “IPIB”) on July 20, 2022. Mr. Merritt alleges that the City violated Iowa Code chapter 22 with respect to his Request #002 when it failed to provide a fee for the request following Chief Tupper’s December 21, 2021 e-mail. Mr. Merritt alleges that he provided an updated request to Request #001 on March 13, 2022 (Request #002).

I. Requested Relief

Mr. Merritt requests that the IPIB assist him with providing a fee that “reflects the Iowa Code Chapter 22 requirements for an electronic mail search [he] requested of Chief Tupper earlier this year.”

Mr. Merritt further includes in his requested relief that he is requesting documentation of the trip Detective Tejada took to Mr. Merritt’s home to search it on June 6, 2019. Mr. Merritt claims that the Marshalltown Police Department did not document the trip in the records they provided but, rather, he found it in a call for service document provided by the Newton, Iowa Police Department.

LEGAL ANALYSIS

Iowa law requires that the IPIB only accept complaints that, on their face, appear legally sufficient or that they could have merit. Iowa Admin. Code 497—2.1(2)(a) (2022). However, if, after reviewing the complaint on its face, the IPIB determines that the complaint “is outside the board’s jurisdiction, appears legally insufficient, is frivolous, is without merit, involves harmless error, or relates to a specific incident that has previously been disposed of on its merits by the board or a court,” the law requires that the IPIB dismiss the complaint. Iowa Admin. Code 497—2.1(2)(b). For the reasons stated below Mr. Swarm’s complaint is legally insufficient, frivolous, and without merit and should be dismissed.

A. The City Has Responded to Mr. Merritt’s Requests #001 and #002.

Prior to July 1, 2022 and at all times relevant to Mr. Merritt’s request, Iowa law provided that “[a]ll expenses of the examination and copying shall be paid by the person

desiring to examine or copy.” Iowa Code § 22.3(2) (2021).¹ The law permitted a reasonable fee for examination and/or copying, however, the fee for copying service as determined by the lawful custodian could not exceed the actual cost of providing the service. *Id.* “Actual costs” were limited to “those expenses directly attributable to supervising the examination of and making and providing copies of public records.” *Id.* It did not exclude legal or IT fees charged to fulfill the request. *Id.*

Mr. Merritt’s requests almost exclusively involve peace officer investigative reports and correspondence between the Marshalltown Police Department and others that could involve peace officer investigative reports. Under Iowa law, peace officer investigative reports are confidential public records whether the investigation is closed or ongoing. Iowa Public Information Board Advisory Opinion, 22AO:0002 (Mar. 17, 2022). However, those confidential records may still be disclosed if the confidential materials do not satisfy a three-part balancing test. *Id.* Because of the balancing test required of these records, and because of the potential for legal and privacy violations if a peace officer investigative file were disclosed improperly, it is inevitable that legal review is required.

Mr. Merritt’s complaint is limited to Requests #001 and #002 only. Mr. Merritt characterizes Request #002 as an update to Request #001. He complains that, following the initial and updated request, Chief Tupper did not provide him a final quote following the December 21, 2021 e-mail.

¹ On July 1, 2022, new legislation amending this law became effective. The law provides that only “reasonable fees” communicated to the requestor in advance of incurring the fees can be charged to the Requestor. Iowa Public Information Board Advisory Opinion, 22AO:0003 (July 21, 2022). It limits attorney review to review of the records for the redaction or review of confidential information. *Id.* This law is not retroactive to Mr. Merritt’s request; however, any estimate provided by Chief Tupper would have complied with this as well as the actual cost of producing the records would have been well over \$1,000.00.

On December 21, 2021, Chief Tupper responded to Mr. Merritt's request, stating that preliminarily it appeared that the actual cost to produce the requested records would exceed \$1,000.00. (Exhibit 2.) On March 14, 2022, Chief Tupper responded to Request #002 stating "Per your document #002. As we have discussed, these electronic searches require use of our outside IT contractor and subsequent legal review of anything the IT contractor locates. You will be responsible for these research costs which very likely will exceed \$1,000.00. Payment is required up front. Let me know how you wish to proceed." (Exhibit 7.) Mr. Merritt responded with the March 17 and 19 e-mails where he appeared to be pleased with Chief Tupper's responses. The first response to Chief Tupper's "[l]et me know how you wish to proceed" was a complaint through the Iowa Public Information Board.

If Mr. Merritt wants a specific number, in his affidavit, Chief Tupper provides that a minimum estimate of the actual cost for this request is \$54,090.00 in IT costs and \$825.00 in legal costs, for which payment is required up front. (Exhibit 11.) However, as stated in the affidavit, the actual cost and required payment could exceed this amount. (Exhibit 11.)

Mr. Merritt's complaint fails to describe any legal violation and therefore his complaint should be dismissed.

B. The City does not have records documenting of the trip that Detective Tejada took to Mr. Merritt's home to search it on June 6, 2019.

While not part of Mr. Merritt's complaint, his requested relief includes a request for records documenting a trip a Marshalltown police detective took to his home as part of a search on June 6, 2019. Mr. Merritt claims that the City did not provide documentation of

this trip in the records it provided. Chief Tupper has provided Mr. Merritt with all information responsive to this request that the City possesses.

CONCLUSION

For all of the reasons set out above, the City of Marshalltown requests that the Iowa Public Information Board dismiss Michael Merritt's complaint on the basis that it is legally insufficient, frivolous, and without merit, and provide the City of Marshalltown with such other relief as the Iowa Public Information Board may deem necessary.

/s/ Holly A. Corkery
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