

MEMORANDUM

To: SUI Presidential Search Committee
Re: Committee Operation and Applicable Iowa Law
Date: October 22, 2020

IOWA OPEN MEETINGS LAW

Open Meetings and Closed Sessions

Iowa Code Chapter 21 requires that all actions and discussions at meetings of the Board of Regents and committees formally and directly created by the Board of Regents shall be conducted and executed in open session, unless otherwise specifically provided by law.

"Meeting" means a gathering in person or by electronic means, formal or informal, of a majority of the members of the Board or its committees where there is deliberation or action upon any matter within the scope of the body's policy-making duties. Excluded from Chapter 21's requirements are purely social gatherings where there is no discussion of policy or no intent to avoid the purposes of this Chapter. Iowa Code § 21.2.2.

"Open session," means a meeting to which all members of the public have access. Iowa Code § 21.2.3.

Meetings of a government body shall be preceded by public notice of the time, date, and place of each meeting and a tentative agenda. Advance notice of a reconvened meeting is also required, unless the meeting reconvenes within four hours, the agenda is not amended, and an announcement of the time, date and place for the reconvened meeting is made in open session during the original meeting. Iowa Code § 21.4.

Minutes of each meeting shall be kept. The minutes must reflect each vote taken and contain sufficient information to indicate the vote of each member present. Iowa Code § 21.3.

The government body may hold closed sessions only by affirmative public vote of either two-thirds of the members of the body or all of the members present at the meeting. Reasons for holding closed sessions are listed in Iowa Code Section 21.5(1). Written minutes and an audio recording of the closed session are required to be maintained. Final action on any matter discussed in closed session must be taken in open session, unless otherwise permitted by law. Iowa Code § 21.5.

One reason for the Board or its committees to conduct closed sessions, as set forth in Iowa Code Section 21.5.1.i, is:

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.

Electronic Meetings (Iowa Code § 21.8)

The Board or its committees may conduct meetings by electronic means only in circumstances where meetings in person are impossible or impractical, and only if the Board or its committees comply with all of the following:

1. Public access is provided to the conversation of the meeting to the extent reasonably possible.
2. Public notice requirements are met.
3. Minutes are kept of the meeting.

Enforcement and Penalties (Iowa Code § 21.6)

Aggrieved individuals may seek judicial enforcement of the open meetings requirements by filing suit in district court¹. Once an aggrieved individual establishes that the public body is subject to the open meetings requirements and has held a closed session, the burden shifts to the public body and its members to demonstrate compliance with the law.

Upon a finding of a violation, the court shall assess damages of \$100 to \$500 against each member who participated in the meeting. An enhanced penalty of \$1,000 to \$2,500 shall be assessed against members who knowingly participate in a violation of the law. Members may also be assessed all court costs and attorney fees associated with the enforcement action and be subject to removal from the government body.

A member of a government body found in violation of the open meetings requirements shall not be assessed damages if the member proves he/she either:

1. Voted against entering into closed session.
2. Had good reason to believe and in good faith believed the government body was in compliance with the open meetings requirements.
3. Reasonably relied on the decision of a court; a formal opinion of the public information board, the attorney general or the attorney for the government body, given in writing or memorialized in the meeting minutes; or an advisory opinion of the public information board, the attorney general, or the attorney for the governmental body given in writing.

Operation of the SUI Presidential Search Committee

In order to conduct business, a quorum of the Search Committee must be in attendance. A quorum of a committee consists of a majority of the appointed committee members. The SUI Presidential Search Committee shall follow Roberts Rules of Order and the requirements of the Iowa Open Meetings Act. This includes:

¹ Complaints may also be initiated with the Iowa Public Information Board (IPIB). Statutes and rules outlining the authority of IPIB are contained in Iowa Code Chapter 23 and Iowa Administrative Code Chapter 497.

1. Providing public notice of committee meetings.
2. Meeting in open session, except when permitted by law to enter into closed session.
3. Maintaining minutes that include:
 - a. The date, time, and meeting location
 - b. The members present
 - c. The action taken at each meeting, if any
 - d. The results of each vote taken, including sufficient information to indicate the vote of each member present

Minutes of the open session portions of Search Committee meetings are public records available for public inspection.

IOWA OPEN RECORDS LAW

Iowa Code Chapter 22

Iowa Code Chapter 22 provides the public with the right to “examine and copy a public record and to publish or otherwise disseminate a public record or the information contained in a public record. Iowa Code § 22.2.1. The term “public record” includes “all records, documents, tape, or other information, stored or preserved in any medium, of or belonging to this state or any county, city, township, school corporation, political subdivision...or any branch, department, board, bureau, commission, council or committee of any of the foregoing.” Iowa Code § 22.3.a.

The term “public records” includes records produced by or originating from a government body, and records that originate from outside sources but are held by a public officer in his/her official capacity. *City of Dubuque v. Dubuque Racing Ass’n, Ltd.*, 420 N.W.2d 450, 452 (Iowa 1998). This includes any comprehensible writing developed and/or maintained by a government body as a convenient, appropriate, or customary method by which to discharge a public duty. 1982 Op. Atty. Gen. 215.

The records of the Board of Regents, the institutions under its jurisdiction, and its committees are generally considered public records. These records must be made available for public inspection, unless they fall within one of the categories of confidential records enumerated in Iowa Code section 22.7. The primary exception related to the business of the Search Committee is contained in Iowa Code section 22.7.18, which provides:

Communications not required by law, rule, procedure, or contract that are made to a government body or to any of its employees by identified persons outside of government, to the extent that the government body receiving those communications from such persons outside of government could reasonably believe that those persons would be discouraged from making them to that government body if they were available for general public examination are confidential.

Applications for employment are considered confidential under this exemption where the employer reasonably believes potential candidates will not apply for the position if the candidate's identity and application information is made publicly available. *City of Sioux City v. Greater Sioux City Press Club, et al.*, 421 N.W.2d 895 (Iowa 1988). The exemption does not apply where an applicant has authorized disclosure of his/her identity or application information.

Board of Regents Rules and Policies

Iowa Code section 305.13 provides that all records made or received by or under the authority or possession of public officials in the course of their public duties are property of the state and shall not be mutilated, destroyed, transferred, removed or otherwise damaged or disposed of, in whole or in part except as provided by law or by rule. Chapter 305 requires that the Board of Regents adopt rules addressing the management and disposition of its records.

The Board of Regents Records Retention Policy is contained in Regent Policy Manual section 1.5. This Policy outlines the management and disposition of official and transitory/convenience records belonging to the Board of Regents. The policy covers all records of the Board of Regents, including:

Anything containing information which is made, produced, executed, or received in connection with the transactions and official activities of the Board of Regents or executed in the conduct of Board of Regents business. Examples include documents, books, paper, electronic records, photographs, videos, sound recordings, databases, and other data compilations that are used for multiple purposes, or other material, regardless of physical form or characteristics.

Iowa Administrative Code section 681.17.13 (1) and (2) provide that Regent records are open for public inspection and copying unless otherwise provided by rule or law, and further specifies the type of records that shall be kept confidential. Iowa Administrative Code section 681.17.1 specifically delegates to the Executive Director of the Board of Regents authority to release public records for the State Board of Regents.

Application to the SUI Presidential Search Committee

All records, including e-mails, that members of the Search Committee generate or maintain in the course of their official duties are considered public records belonging to the Board of Regents. If these records do not meet the requirements of one of the exemptions listed in Iowa Code section 22.7, they are subject to public examination. Customarily, public records requests are submitted to the Executive Director, or his designee, for response. In the event a public records request is directed to the Search Committee or an individual Search Committee member, it should be forwarded to the Executive Director and Board of Regents Senior Communications Director for review and response.