

# SUNSHINE ADVISORY

A Bulletin on Iowa Open Meetings and Public Records Laws

By Attorney General Tom Miller – October 2004

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## Releasing Public Records: Can courts block the release of an open record?

Generally, government officials must decide whether a public record is open or confidential and then release the record if it is an “open record.” But are there any circumstances under which an open record cannot be released? Can the facts ever justify a court order restraining government officials from releasing an open record and restraining the public from examining and copying an open record? In fact, such injunctions are rare -- and they must meet strict statutory criteria.

A court may issue an injunction under Iowa Code section 22.8 to restrain the examination and copying of a specific open record or a narrow class of records in these circumstances:

- *Hearing:* The court must hold a hearing on the request for an injunction. A request may come from the government body, or from a third party who has an interest in the record. For example, an applicant for a government job might seek an injunction to keep a resume confidential if the government body intended to exercise its discretion to release the record.
- *Reasonable Notice:* Reasonable notice of the hearing must be provided to the persons requesting access to the record. It is the duty of the lawful custodian of the record to ensure compliance with the notice requirement.
- *Injunction:* The court may issue an injunction if the court finds BOTH of the following elements by clear and convincing evidence:
  - (1) that public examination would clearly not be in the public interest, and
  - (2) that public examination would substantially and irreparably injure any person or persons.

**In practice, courts very rarely restrain the public from examining public records which are not otherwise confidential under federal or state law, and will not do so simply because release of a record may cause a public official or others inconvenience or embarrassment.**

Citizens who have inquiries or complaints about public records or open meetings may call the Iowa Citizens' Aide/Ombudsman Office – toll-free at 888-IA-OMBUD (888-426-6283).

“Sunshine Advisory” bulletins provide information on Iowa’s public records and open meetings laws – our “Sunshine Laws.” The bulletins are a resource for public officials and citizens. Local officials should obtain legal advice from their counsel, such as the city or county attorney.

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**Iowa Attorney General’s Office: Hoover Building, Des Moines, Iowa 50319.**

On the Web: [www.iowaAttorneyGeneral.org](http://www.iowaAttorneyGeneral.org) . (Click on “open government.”)