

Question: Can there be more than one lawful custodian of a public record?



Editor's Note: This is a monthly column prepared by the Iowa Public Information Board to update Iowans on the IPIB's activities and provide information on some of the issues routinely addressed by the board.

ANSWER: Yes, there can be. A "lawful custodian" is defined as the "government body currently in physical possession of the public record." (Iowa Code Section 22.1(2)). If records are maintained outside the physical possession of the government body, such as a contracted service, the government body owning that record is the "lawful custodian." The government body cannot prevent the examination or copying of a public record by contracting with a nongovernment storage provider.

Here is an example of more than one lawful custodian: A report is generated by a state agency. Copies of the report are sent to a city department and a county department for review and input. When each review is completed, each local department returns all copies to the state agency.

If a record request is filed with this city or county department during the period of time that the department has physical possession of the record, that local department is an additional lawful custodian of the public record.

Similarly, an email communication can be in the physical possession of every person who sends or receives that email. If the records request is sent to multiple government bodies, the lawful custodian of each such government body should respond to the record request. It is bad practice, and a possible violation of Chapter 22, for one lawful custodian to assume that another custodian will respond appropriately to a request and fail to respond to a requestor independently.

The Iowa Supreme Court, in *Howard v. Des Moines Register and Tribune Co.*, 283 N.W.2d 289 (Iowa 1979), opined that "lawful possession" equals "lawful custodian."

In addition, a government body may be the lawful custodian of a record without having physical possession of a record. As part of an overall government policy, records might be stored in a climate controlled off-site storage facility. Even though the records are in the physical possession of a non-government body, the custodian of the records is the government office that initially generated those records.

Another situation that could arise is when a government body uses an internet service to store records 'in the cloud.' A records request would be directed to the government body responsible for the collection and maintenance of those records, not the internet company that is paid to store the records.

The lawful custodian of records relating to investment of public funds is the public body responsible for oversight of those funds.

BEST PRACTICES: When a request for records is filed, the designated officer or employee must determine whether that government body has physical possession of the record or has authorized storage of the record off-site. The lawful custodian should notify the requestor promptly of this determination.

Opinions, rulings, FAQs, monthly columns, and training documents are available on the IPIB website – www.ipib.iowa.gov. Questions for the IPIB can be posted on the website or by calling 515-725-1781.

IPIB Facts and Figures

During the month of March 2016, 84 contacts were made with the Iowa Public Information Board office.

<u>TYPE</u>	<u>MARCH 2016</u>	<u>2016 YEAR-TO-DATE</u>
Formal complaints	9	31
Advisory opinions	0	6
Declaratory orders	0	1
Informal complaints	13	28
Informal requests	58	158
Miscellaneous	4	4
TOTAL:	84	228

Who can contact the IPIB and how long does it take?

Any person can contact the IPIB for assistance by telephone (515-725-1781), by email, or on the website. So far, in 2016, 228 identifiable people have contacted the IPIB. Of these, 46% were private citizens, 40% were government officials or employees, and 14% were members of the media.

In the month of March 2016, 68% of the incoming contacts were resolved the same day, 12% were resolved in one to five days, and 20% were resolved in six or more days.