

**THE IOWA DISTRICT COURT FOR POLK COUNTY**

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**HARVEY HARRISON,**

**Plaintiff,**

**vs.**

**PAUL PARIZEK, in his official capacity  
as Public Information Officer for the  
Des Moines Iowa Police Department,  
CITY OF DES MOINES, IOWA,**

**Defendants.**

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**Case No. CVCV057957**

**RULING ON MOTION FOR SUMMARY  
JUDGMENT**

**I. INTRODUCTION**

Before the Court is a Motion for Summary Judgment filed by Plaintiff Harvey Harrison (“Plaintiff”) on June 12, 2020. Defendants Paul Parizek (“Parizek”) and the City of Des Moines (“City”) (together “Defendants”) filed their Resistance to Plaintiff’s Motion for Summary Judgment on July 2, 2020. Plaintiff filed his Reply Brief in Support of Motion for Summary Judgment on July 9, 2020. The Court heard the parties’ arguments regarding the Motion for Summary Judgment at a hearing on July 22, 2020. Following the hearing, the parties submitted briefs regarding damages, costs, and attorney fees. The Court now enters its Ruling on the Motion for Summary Judgment.

**II. FINDINGS OF FACT**

The following facts are either undisputed or viewed in the light most favorable to Defendants as non-movants.

On October 27, 2018, at 6:22 a.m., Brian Bell (“Bell”) began drawing the attention of the public and of the Des Moines Police Department. Pl.’s Resp. to Defs.’ Statement of Undisputed Material Facts & Disputed Fact ¶ 1. He was behaving incoherently at the Casey’s General Store at 3501 East Euclid for 20 minutes, leading staff there to assume he was high. *Id.* The staff called the Des Moines Police Department for assistance. *Id.* Bell fled southbound. *Id.* at ¶ 2.

Around 9:00 a.m., security at Grandview College called the Des Moines Police Department because Bell was at a bus stop acting in a way that led security to believe that he was high. *Id.* at ¶ 3. Bell was “bouncing all over the place with his conversation” and “acting strangely.” *Id.* at ¶ 4. Police officers responded and Bell told them that he was bipolar. *Id.* at ¶ 5. The officers found that he was having a mental health episode, but did not appear to be a harm to himself or others, so the officers appropriately took no further action. *Id.*

At approximately 10:22 a.m., Bell was downtown near the Iowa Events Center on 3<sup>rd</sup> Street. *Id.* at ¶ 6. A caller reported to the Des Moines Police Department that Bell told an Iowa Events Center employee he had a gun, and that Bell was putting his hand in his pants as if he had a gun, but that no one actually saw a gun. *Id.* at ¶¶ 6–7. Then, a different caller reported that Bell was walking back and forth outside the Hilton Hotel yelling obscenities. *Id.* at ¶ 8.

Next, Bell headed toward the downtown Farmers’ Market, where thousands of people attended. *Id.* at ¶ 9. Officers Garth House (“House”) and Kenneth Robinson (“Robinson”) were on foot patrol in an off-duty capacity. *Id.* at ¶ 10. Dispatch contacted them and advised that Bell was in the area of the Farmers’ Market and that he was hostile and combative. *Id.* at ¶ 11. House observed Bell at one point, but Bell, though agitated and talking to himself, was not acting aggressively, so House took no action. *Id.* at ¶ 12.

Shortly after, a woman reported to House and Robinson that Bell was “causing trouble and starting fights.” *Id.* at ¶ 13. Several other people reported the same issues about causing trouble and starting fights, including that Bell attempted to start a fight with a man in a wheelchair. *Id.* at ¶ 14.

The officers located Bell sitting on a retaining wall near the downtown HyVee. *Id.* at ¶ 15. Because there were thousands of people in attendance and given the reports of aggression and hostility, the officers moved quickly to place Bell in custody. *Id.* at ¶ 16. The officers directed Bell to get up from his seated position and attempted to handcuff him. *Id.* at ¶ 17. The officers took Bell to the ground. See Body Camera. Bell pulled free and stood up. *Id.* The officers used pepper spray and a taser to take Bell to the ground again and handcuff him. *Id.* The struggle lasted approximately one minute and thirty seconds. Pl.’s Resp. to Defs.’ Statement of Undisputed Material Facts & Disputed Fact ¶ 19.

While escorting Bell to a vehicle, House called for assistance from IDENT and a medic. *Id.* at ¶ 20. A medic attended to Bell and IDENT took him to Methodist Hospital. *Id.* at ¶ 21. IDENT tech Krystal Kriegshauser (“Kriegshauser”) was dispatched to the scene. *Id.* at 22. She took photographs of the officers and collected the deployed taser cartridge and barbs. *Id.*

Kriegshauser also went to Methodist Hospital to photograph Bell, but he was initially uncooperative. *Id.* at ¶ 23. After Bell was medicated, Kriegshauser photographed an abrasion and laceration on the right side of Bell’s forehead and an area of redness on his abdomen. *Id.* at ¶ 24.

Bell was charged with misdemeanor disorderly conduct and interference with official acts. *Id.* at ¶ 25. Bell was released from jail on October 28, 2018, after pleading guilty to both charges and receiving a sentence of one day in jail, with credit for one day served. *Id.* at ¶ 26.

On November 13, 2018, Plaintiff submitted a request to Parizek requesting all audio and video records related to the Bell incident on October 27, 2018. *Id.* at ¶ 27. Parizek provided certain documents in response to the request, but did not provide the body camera recordings from House or Robinson. *Id.* at ¶ 28.

Plaintiff filed his Petition with this Court on April 11, 2019, alleging a violation of Iowa Code chapter 22. Pet. 5–6. Plaintiff requested the Court to (1) enter a writ of mandamus pursuant to Iowa Code § 22.5 compelling Defendants to make available to Plaintiff the body camera recordings, (2) order Defendants to refrain for one year from any future violations of Iowa Code Chapter 22 pursuant to Iowa Code § 22.10(3)(a), (3) order Defendants to pay damages pursuant to Iowa Code § 22.10(3)(b), and (4) order Defendants to pay Plaintiff's costs and attorney fees pursuant to Iowa Code § 22.10(3)(c). *Id.* On June 12, 2020, Plaintiff filed a Motion for Summary Judgment, asserting that there is no genuine issue of material fact as to whether the requested records are confidential under Iowa Code § 22.7(5), and that Plaintiff is entitled to summary judgment as a matter of law. Mot. for Summ. J. ¶ 4.

### III. STANDARD OF REVIEW

Summary judgment is appropriate when the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits show there is no genuine issue of material fact, and the moving party is entitled to a judgment as a matter of law. Iowa R. Civ. P. 1.981(3); *Walderbach v. Archdiocese of Dubuque, Inc.*, 730 N.W.2d 198, 199 (Iowa 2007). “The summary judgment procedure seeks to expedite litigation when there is no factual issue and to forestall delaying tactics when defendant has no meritorious defense.” *Nagle Lumber Co. v. Better Built Homes*, 160 N.W.2d 446, 447 (Iowa 1968). A fact question arises if reasonable minds can differ on how the issue should be resolved. *Walderbach*, 730 N.W.2d at 199. No fact question arises if

the only conflict concerns legal consequences flowing from undisputed facts. *Grinnell Mut. Reinsurance Co. v. Jungling*, 654 N.W.2d 530, 535 (Iowa 2002). A fact issue is considered material only when the dispute surrounding said issue concerns facts that might affect the outcome of the case. *Junkins v. Branstad*, 421 N.W.2d 130, 132 (Iowa 1988). “The requirement of a ‘genuine’ issue of fact means that the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Id.*

The moving party has the burden to show the nonexistence of a material fact, and the evidence must be viewed in the light most favorable to the resisting party. *Smith v. Shagnasty’s Inc.*, 688 N.W.2d 67, 71 (Iowa 2004). A nonmoving party is entitled to every legitimate inference that can be reasonably deduced from the record in a motion for summary judgment. *Green v. Racing Ass’n of Cent. Iowa*, 713 N.W.2d 234, 246 (Iowa 2006). “An inference is legitimate if it is rational, reasonable, and otherwise permissible under the governing substantive law. On the other hand, an inference is not legitimate if it is based upon speculation or conjecture.” *Phillips v. Covenant Clinic*, 625 N.W.2d 714, 718 (Iowa 2001) (citation omitted). If the motion is properly supported, however, the resisting party “may not rest upon the mere allegations or denials in the pleadings” but “must set forth specific facts showing that there is a genuine issue for trial.” Iowa R. Civ. P. 1.981(5).

The resistance must set forth specific facts which constitute competent evidence showing a *prima facie* claim. By requiring the resister to go beyond generalities, the basic purpose of summary judgment procedure is achieved: to weed out “[p]aper cases and defenses” in order “to make way for litigation which does have something to it.”

*Thompson v. City of Des Moines*, 564 N.W.2d 839, 841 (Iowa 1997) (quoting *Fogel v. Trustees of Iowa College*, 446 N.W.2d 451, 454 (Iowa 1989)).

#### IV. CONCLUSIONS OF LAW

##### **A. There Is Not A Material Factual Dispute.**

Plaintiff asserts that there is no genuine issue of material fact as to whether the requested records are confidential under Iowa Code § 22.7(5) and that Plaintiff is entitled to summary judgment as a matter of law. Mot. for Summ. J. ¶ 4. Defendants claim that there is one disputed material fact that precludes summary judgment. Mem. of Authorities in Supp. of Resistance to Pl.'s Mot. for Summ. J. 4. Defendants point to a statement by a witness in an article that Plaintiff includes in his Statement of Facts. *Id.* The witness stated, “‘It just appeared to me that he was a harmless person,’ said Shelly Nurse, who was attending the last Farmer’s Market of the season with her daughter. ‘I may be wrong about that.’” *Id.* Defendants say that this statement creates a material fact issue about the motivation for the arrest that precludes summary judgment. *Id.* Whether or not the parties dispute this fact, the motivation for the arrest is not material to the question of whether the body camera recordings are confidential. The outcome would not be different if the officers’ motivation for the arrest was racially motivated versus if it was not racially motivated. The public interest in having access to the body camera footage would be the same: to increase government transparency and to help avoid police abuses of power. Therefore, resolution of the confidentiality of the body camera recordings is appropriate at the summary judgment stage.

##### **B. The Body Camera Recordings Are Not Confidential.**

Plaintiff argues that the body cam recordings are not investigative reports or, alternatively, the recordings are investigative reports, but the public interest in government transparency weighs in favor of disclosure. Br. in Supp. of Mot. for Summ. J. 6–11. Defendants counter that the recordings are investigative reports and that the public interest in the secrecy of police

investigations and the protection of witnesses precludes disclosure. Br. in Supp. of Resistance to Pl.'s Mot. for Summ. J. 7–14.

Iowa Code chapter 22 is the Iowa Open Records Act. The purpose of the Act is “to open the doors of government to public scrutiny and to prevent government from secreting its decision-making activities from the public, on whose behalf it is its duty to act.” *Mitchell v. City of Cedar Rapids*, 926 N.W.2d 222, 229 (Iowa 2019) (citation omitted). The Act establishes that public records are generally available to the public, subject to specified exceptions. *Id.* “There is a presumption in favor of disclosure and a liberal policy in favor of access to public records. *Id.* (citation omitted). A government body seeking to prevent disclosure of a public record bears the burden of proving the applicability of an exception. *Id.*

In the present case, Defendants have identified Iowa Code § 22.7(5) as their basis for withholding the footage.

The following public records shall be kept confidential, unless otherwise ordered by a court, by the lawful custodian of the records, or by another person duly authorized to release such information:

...

5. Peace officers' investigative reports, privileged records or information specified in section 80G.2, and specific portions of electronic mail and telephone billing records of law enforcement agencies if that information is part of an ongoing investigation, except where disclosure is authorized elsewhere in this Code. However, the date, time, specific location, and immediate facts and circumstances surrounding a crime or incident shall not be kept confidential under this section, except in those unusual circumstances where disclosure would plainly and seriously jeopardize an investigation or pose a clear and present danger to the safety of an individual. Specific portions of electronic mail and telephone billing records may only be kept confidential under this subsection if the length of time prescribed for commencement of prosecution or the finding of an indictment or information under the statute of limitations applicable to the crime that is under investigation has not expired.

Iowa Code § 22.7(5).

Iowa Code § 22.7(5) creates a qualified privilege that is intended to provide “assurance to all persons upon whom law enforcement officials rely that official confidentiality attends their conversations and may protect from public access the officers’ reports of what they have said.” *Mitchell*, 926 N.W.2d at 230 (citation omitted). “An official claiming the privilege must satisfy a three-part test: (1) a public officer is being examined, (2) the communication was made in official confidence, and (3) the public interest would suffer by disclosure.” *Id.* at 232 (citation omitted). This is the *Hawk Eye* balancing test. *Hawk Eye v. Jackson*, 521 N.W.2d 750, 753 (Iowa 1994).

Determining where the line falls between public harm and public good requires weighing the relative merits of the interests at stake. We have long recognized that confidentiality encourages persons to come forward with information, whether substantiated or not, that might be used to solve crimes and deter criminal activity. Secrecy is especially vital where reports are based on confidential informants, persons indispensable to successful police work but who frequently fear intimidation and reprisal. Furthermore, nondisclosure permits law enforcement officials the necessary privacy to discuss findings and theories about cases under investigation.

*Mitchell*, 926 N.W.2d at 233 (citation omitted). “Other case-specific factors, such as the nature of the investigation and whether it is completed or ongoing, may tip the balance in favor of public disclosure.” *Id.*

*Neer v. State*, an unpublished Iowa Court of Appeals case, held that police body cam recordings are investigative reports within the meaning of Iowa Code § 22.7(5), and that the recordings were not subject to disclosure.. *Neer v. State*, 798 N.W.2d 349 (Table), at \*3 (Iowa Ct. App. 2011). Once the determination is made that the recordings are investigative reports, however, the *Hawk Eye* balancing test must be applied. The *Hawk Eye* balancing test was not applied in *Neer*. *Id.* The parties here dispute whether the Court should follow *Neer* or should make its own determination about whether the body cam recordings are investigative reports. Defendants argue that the Court is bound to follow Court of Appeals precedent, or even if it is not binding, that the



Court should give great weight to the unpublished opinion. Br. in Supp. of Resistance to Pl.’s Mot. for Summ. J. 9–10. Plaintiff argue that unpublished opinions of the Court of Appeals are not binding on the Court. Reply Br. in Supp. of Mot. for Summ. J. 1–2; *see* Iowa R. App. P. 6.904(2)(c) (“Unpublished opinions or decisions shall not constitute controlling legal authority.”). Plaintiff further argue that the Court should give no deference to *Neer* because the Court of Appeals clearly made a legal error, by incorrectly interpreting the term “investigative report” and by failing to mention the *Hawk Eye* test. Reply Br. in Supp. of Mot. for Summ. J. 1–2.

While the Court agrees with Plaintiff’s argument and believes it is not bound to follow *Neer*, the Court does not need decide this question to resolve this case. If *Neer* is binding or deserves weight, the outcome here is the same as if *Neer* is not binding. Whether or not the police body cam recordings are investigative reports, Defendants must disclose the body cam recordings of the Bell incident.

*1. Neer as not controlling.*

If the Court is free to disregard *Neer*, then Plaintiff is not requesting investigative reports. The plain meaning of “investigative reports” does not include body camera video and dispatch recordings. “Statutory words are presumed to be used in their ordinary and usual sense and with the meaning commonly attributable to them.” *State v. Anderson*, 782 N.W.2d 155, 158 (Iowa 2010) (citation omitted). Ordinary meaning is determined by looking at the dictionary definition. *State v. Hearn*, 797 N.W.2d 577, 583 (Iowa 2011). “Investigate” means “to observe or study by close examination and systematic inquiry.” *Investigate*, Merriam-Webster Online, <https://www.merriam-webster.com/dictionary/investigate> (last visited Sept. 29, 2020). A “report” is “a usually detailed account or statement.” *Report*, Merriam-Webster Online, <https://www.merriam-webster.com/dictionary/report> (last visited Sept. 29, 2020). A body cam

does not involve close examination or systematic inquiry by a person, but simply a recording of whatever an officer encounters. A body cam is also not a detailed account or statement, because it does not contain details or analysis created or shaped by a person, simply an undirected recording. An investigative report must constitute documentation containing details or analysis created as part of an investigation.

By contrast, the Iowa Supreme Court's holding in *AFSCME/Iowa Council 61* that laboratory reports are "investigative reports" is consistent with the plain meaning. *AFSCME/Iowa Council 61 v. Iowa Dep't of Pub. Safety*, 434 N.W.2d 401, 403 (Iowa 1988). A report of laboratory analysis in a criminal case is both investigative and a report, because it involves people recording details and analysis in the course of an investigation.

"Legislative intent is expressed by omission as well as by inclusion of statutory terms." *Oyens Feed & Supply, Inc. v. Primebank*, 808 N.W.2d 186, 193 (Iowa 2011) (citation omitted). In the Open Records chapter, the legislature defined "public records" to include "all records, documents, tape, or other information, stored or preserved in any medium." Iowa Code § 22.1(3)(a). Yet the legislature did not write the first sentence of § 22.7(5) so broadly. Instead, the legislature specified a different, limited list in § 22.7(5): "investigative reports, privileged records or information specified in section 80G.2, and specific portions of electronic mail and telephone billing records of law enforcement agencies if that information is part of an ongoing investigation." "The use of such a phrase in one definition but not the other indicates the legislature was selective in choosing. . . ." *Hawkeye Land Co. v. Iowa Utilities Bd.*, 847 N.W.2d 199, 215 (Iowa 2014). This omission indicates that "investigative reports" is narrower than "public records" and only includes records that are both "investigative" and "reports."

In this same vein, the second sentence of § 22.7(5) requires disclosure of the “immediate facts and circumstances surrounding a crime or incident.” Body camera footage and dispatch recordings qualify as the immediate facts and circumstances surrounding a crime or incident. It would be inappropriate to shoehorn body camera footage and dispatch recordings into “investigative reports” when there is language in the second sentence of § 22.7(5) that easily includes such materials. For the foregoing reasons, the body cam recordings are not “investigative reports.”

The audio and video records Plaintiff requests pertain to the “immediate facts and circumstances surrounding a crime or incident.” Iowa Code § 22.7(5). Those records “shall not be kept confidential . . . except in those unusual circumstances where disclosure would plainly and seriously jeopardize an investigation or pose a clear and present danger to the safety of an individual.” *Id.*

As a matter of law, Defendants cannot establish that the Bell records present “unusual circumstances” where disclosure would jeopardize an investigation or pose a danger. There is no pending investigation. Bell was charged and pled guilty to disorderly conduct and interference with official acts on October 28, 2018. There is no basis to conclude that disclosure would jeopardize anyone’s safety. Consequently, these records are subject to disclosure.

## 2. *Neer* controlling.

*Neer* held that body cam recordings are investigative reports, therefore, the body cam recordings Plaintiff is requesting are investigative reports. The Court now must apply the *Hawk Eye* balancing test. “An official claiming the privilege must satisfy a three-part test: (1) a public officer is being examined, (2) the communication was made in official confidence, and (3) the public interest would suffer by disclosure.” *Mitchell*, 926 N.W.2d at 232 (citation omitted).

The first prong is satisfied, since Plaintiff wishes to examine public officers, House and Robinson. The second prong is not satisfied, because the communication was not made in official confidence. The purpose of body cams is to provide transparency and accountability of police officers at least as much as their purpose is to provide evidence for use in criminal prosecution. Body cam recordings are not like statements from confidential informants, which § 22.7(5) contemplates. While disclosure of statements by confidential informants may chill the willingness of informants to assist police, body cam recordings pose no such danger. Body cam recordings are also unlike traditional investigative reports, where police privately discuss findings and theories about investigations, since the recordings are simply video of the incident without police analysis. The recordings were not made with the expectation that they would remain confidential.

The third prong is also not satisfied, because the public interest weighs heavily in favor of disclosure. Defendants have provided no downsides to disclosing the body cam footage. The investigation and the entire case is already closed, so the case against Bell would not be harmed. There are no witnesses or other innocent people that might be compromised by the disclosure. Even if there were witnesses that needed protection, Plaintiff has stated he would accept redaction of identifying information of any individuals who contacted the police about Bell. Reply Br. in Supp. of Mot. for Summ. J. 5. On the other side, the public has great interest in keeping police accountable, especially where potential police brutality is concerned. Plaintiff requested the Bell records to investigate the use of force by police on an unarmed African-American man. The use of force against African-Americans has been a matter of public concern for years and is perhaps at its peak at the current moment. The public has a tremendous interest in evaluating whether police officers use force appropriately and accurately report the use of force. The public also has an interest in how police respond to individuals with mental health issues. Even if the police

responded correctly to the Bell incident, the public has an interest in knowing about it. The *Hawk Eye* test does not require disclosure only when the police have done something wrong. The public has an interest in how police respond to calls for service. Police departments are funded by the public and answer to the public. Defendants cannot satisfy the *Hawk Eye* test, and Defendants must disclose the body cam footage.

Whether or not the Court follows the holding in *Neer*, Defendants must disclose the body cam recordings to Plaintiff.

**C. Defendants Must Refrain From Violations of Chapter 22 For One Year**

Plaintiff asks the Court to order Defendants to refrain for one year from any future violations of Iowa Code chapter 22 pursuant to § 22.10(3)(a). Pet. 5–6. “Upon a finding by a preponderance of the evidence that a lawful custodian has violated any provision of this chapter, a court: . . . if appropriate, may order the lawful custodian and other appropriate persons to refrain for one year from any future violations of this chapter.” Iowa Code § 22.10(3)(a). Because the Court has concluded that Defendants violated chapter 22, and because of the important public interests in disclosure of police body cam recordings, the Court orders Defendants to refrain for one year from any future violations of Iowa Code chapter 22.

**D. Parizek Must Pay Damages to the City of Des Moines.**

Plaintiff argues that Parizek must pay damages in the amount of \$1000 to \$2500 pursuant to Iowa Code § 22.10(3)(b), because Parizek knowingly violated the Iowa Open Records Act. Pl.’s Br. Regarding Damages 3–4. Parizek argues that any violation was not knowing and that statutory exceptions to the damages requirement apply. Defs.’ Br. Regarding Damages and Att’y Fees 2–4.

The Act includes a “civil enforcement” section that orders the court to impose damages on individuals who violate the chapter. Specifically, Iowa Code § 22.10(3)(b) states:

Upon a finding by a preponderance of the evidence that a lawful custodian has violated any provision of this chapter, a court:

...

Shall assess the persons who participated in its violation damages in the amount of not more than five hundred dollars and not less than one hundred dollars. However, if a person knowingly participated in such a violation, damages shall be in the amount of not more than two thousand five hundred dollars and not less than one thousand dollars. These damages shall be paid by the court imposing them to the state of Iowa if the body in question is a state government body, or to the local government involved if the body in question is a local government body. A person found to have violated this chapter shall not be assessed such damages if that person proves that the person did any of the following:

- (1) Voted against the action violating this chapter, refused to participate in the action violating this chapter, or engaged in reasonable efforts under the circumstances to resist or prevent the action in violation of this chapter.
- (2) Had good reason to believe and in good faith believed facts which, if true, would have indicated compliance with the requirements of this chapter.
- (3) Reasonably relied upon a decision of a court, a formal opinion of the Iowa public information board, the attorney general, or the attorney for the government body, given in writing, or as memorialized in the minutes of the meeting at which a formal oral opinion was given, or an advisory opinion of the Iowa public information board, the attorney general, or the attorney for the government body, given in writing.

Iowa Code § 22.10(3)(b).

Parizek is the person who participated in the violation of the Open Records law. The police department told Plaintiff to communicate directly with Parizek. Parizek responded to one of Plaintiff's requests but ignored the request for the audio and video records.

Because Parizek violated the Open Records law, the Court must assess damages against Parizek. This is not discretionary. *See Willett v. Cerro Gordo Cty. Zoning Bd. of Adjustment*, 490 N.W.2d 556, 559 (Iowa 1992) (recognizing "shall" imposes a duty and is not discretionary). Only the amount of damages is discretionary.

Parizek has no legal excuse for failing to turn over the records. Iowa Code § 22.10(3)(b) provides three exceptions to the damages requirement. None of them applies. Parizek did not resist or try to prevent the violation of Plaintiff's chapter 22 rights, did not rely on a written legal opinion

stating he did not have to turn these records over, and did not have a good faith basis to believe he was complying with chapter 22. If Parizek wanted to rely on an exception, he should have submitted an affidavit or other evidence explaining that he relied on a specific written legal opinion or that he acted on a specific good faith basis. In the absence of any evidence showing the application of an exception, Parizek must pay damages. Because a local official committed the violation, Parizek must pay damages to the local government, in this case the City.

Plaintiff has not shown sufficient evidence that Parizek's violation of the Open Records law was a knowing violation. There is no evidence in the record demonstrating that Parizek believed he had to turn over the body cam recordings but intentionally chose not to do so. Parizek's state of mind when he did not fulfill Plaintiff's request is unclear. Therefore, the Court has discretion to choose a damages amount between \$100 and \$500. Parizek's violation in this case implicates particularly important public interests in the transparency and accountability of police officers and in avoiding police brutality. Parizek has given no compelling reasons for keeping the body cam recordings away from the public. Given the context of this case, the Court assesses damages for \$100.00 against Parizek to be paid to the City.

**E. Parizek Must Pay Costs and Attorney Fees for Plaintiff.**

Plaintiffs argue that Parizek is required to pay costs and attorney fees pursuant to Iowa Code § 22.10(3)(c). Pl.'s Br. Regarding Damages 5–6. Parizek responds that the Court should not require him to pay costs and attorney fees because, during the initial records request, Plaintiff did not explain to him why he wanted the records. Defs.' Br. Regarding Damages and Att'y Fees 5–6.

“Statutory attorney-fee awards motivate lawyers to step up and fight city hall on behalf of residents whose elected officials refuse requests for disclosure.” *City of Riverdale v. Diercks*, 806

N.W.2d 643, 645 (Iowa 2011). Accordingly, Iowa Code § 22.10(3)(c) provides:

Upon a finding by a preponderance of the evidence that a lawful custodian has violated any provision of this chapter, a court:

...

Shall order the payment of all costs and reasonable attorney fees, including appellate attorney fees, to any plaintiff successfully establishing a violation of this chapter in the action brought under this section. The costs and fees shall be paid by the particular persons who were assessed damages under paragraph “b” of this subsection. If no such persons exist because they have a lawful defense under that paragraph to the imposition of such damages, the costs and fees shall be paid to the successful plaintiff from the budget of the offending government body or its parent.

Iowa Code § 22.10(3)(b).

An applicant for attorney fees must show “that the services were reasonably necessary and that the charges were reasonable in amount.” *Diercks*, 806 N.W.2d at 659 (citation omitted). The Court should consider:

the time necessarily spent, the nature and extent of the service, the amount involved, the difficulty of handling and importance of the issues, the responsibility assumed and results obtained, the standing and experience of the attorney in the profession, and the customary charges for similar service.

*Id.* (affirming attorney-fee award of \$64,732 in open records lawsuit). An attorney is entitled “to collect fees incurred while attempting to collect the fees guaranteed by law.” *D.D. v. Davenport Cmty. Sch. Dist.*, 839 N.W.2d 676 (Table), at \*4 (Iowa Ct. App. 2013). “A reasonable attorney fee is initially calculated by multiplying the number of hours reasonably expended on the winning claims times a reasonable hourly rate. This calculation, known as the lodestar amount, is presumed to be the reasonable attorney fee envisioned by the relevant statutes.” *Boyle v. Alum-Line, Inc.*, 773 N.W.2d 829, 832 (Iowa 2009) (citations omitted). “The district court is considered an expert in what constitutes a reasonable attorney fee.” *Id.* (citation omitted).

The Court has concluded that Parizek violated the Open Records law and has ordered Parizek to pay damages. Once the Court makes that conclusion and orders damages to be paid, the



statute requires Parizek to pay costs and attorney fees. Plaintiff's reasons for requesting the body cam recordings are irrelevant. The Court orders Parizek to pay Plaintiff's costs and attorney fees.

## **V. RULING**

The Motion for Summary Judgment is **GRANTED**.

The Court orders the following:

- (1) The Court enters a writ of mandamus pursuant to Iowa Code § 22.5 compelling Defendants to make available to Plaintiff the body camera recordings.
- (2) The Court orders Defendants to refrain for one year from any future violations of Iowa Code Chapter 22 pursuant to Iowa Code § 22.10(3)(a).
- (3) The Court orders Paul Parizek to pay damages in the amount of \$500 to the City of Des Moines pursuant to Iowa Code § 22.10(3)(b).
- (4) The Court orders Paul Parizek to pay Plaintiff's costs and attorney fees pursuant to Iowa Code § 22.10(3)(c).



State of Iowa Courts

**Type:** OTHER ORDER

<b>Case Number</b>	<b>Case Title</b>
CVCV057957	HARVEY HARRISON VS PAUL PARIZEK ET AL

So Ordered

A handwritten signature in dark ink, appearing to read 'Paul D. Scott', written over a horizontal line.

Paul D. Scott, District Court Judge,  
Fifth Judicial District of Iowa