IN THE SUPREME COURT OF IOWA

No. 24-0864

ANTOINE SMITH

Appellant,

vs.

CITY OF CEDAR RAPIDS,

Appellee.

APPEAL FROM THE IOWA DISTRICT COURT
FOR LINN COUNTY
THE HONORABLE JUDGE CHAD KEPROS
NO. LACV102698

APPELLANT'S AMENDED AND SUBSTITUTED BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

1. Iowa Code § 80F.1(3) requires an employing agency to "immediately" provide the written results of a formal administrative investigation to an officer "when the investigation is completed". What constitutes a "completed" investigation under the statute?
2. Did the district court err in interpreting Iowa Code section 80F.1(9)?
3. Did the district court err in applying the law to the undisputed material facts to conclude that the City did not violate Iowa Code section 80F.1 and was entitled to judgment as a matter of law?

ROUTING STATEMENT

This case concerns the interpretation and application of recently amended subsections of Iowa Code § 80F.1, the "Peace officer, public safety, and emergency personnel bill of rights". The Iowa Supreme Court should retain this case because it presents matters of first impression, questions of statutory interpretation, presents fundamental and urgent issues of broad public importance requiring prompt or ultimate determination by the Court, and presents substantial questions of enunciating or changing legal principles, including as to due process for police officers given the recent statutory amendments. Iowa R. App. P. 6.1101(2).

NATURE OF THE CASE

The "Peace Officer, Public Safety Officer, and Emergency Personnel Bill of Rights" (hereinafter "POBR") provides police officers substantive and procedural rights and governs complaints and administrative investigations of officers.

Once a law enforcement agency receives a "complaint", the commanding officer or his designee decides what to do with it, if anything. The commanding officer may order a "formal administrative investigation", conduct an "informal inquiry" to resolve the allegation or to decide whether to open a "formal administrative investigation", or take no action on the complaint.[1] If the officer who is subject to the complaint may be punished, then the agency must commence a "formal administrative investigation", afford the officer their rights under the POBR, collective bargaining agreement, and other applicable law, and complete the investigation "in a reasonable period of time". Iowa Code § 80F.1(1)(c); Iowa Code § 80F.1(3); Iowa Code § 80F.1(17). The officer has "the right to have the assistance of legal counsel", including during an "interview". Iowa Code § 80F.1(8)(a) (2023). When the investigation is completed, the POBR requires the agency to immediately notify the officer in writing with the results of the investigation. Iowa Code § 80F.1(3). Upon completion of the

[1] The law does not require a complaint to be investigated. See Iowa Code § 80F.1.

investigation, the officer's legal counsel may request copies of any witness statements and the complete investigative agency's report. Iowa Code § 80F.1(9) (2023). The agency must timely provide these records upon request. Id.

The legislature amended the POBR in 2021, 2022, and 2023. The 2021 amendments expanded the POBR. Sections of this statute read with other laws are at issue in this case.

Smith moved for summary judgment on the issue of liability. The City of Cedar Rapids (hereinafter "City") moved for summary judgment and resisted Smith's motion. Smith resisted the City's MSJ.

On April 22, 2024, the district court issued its ruling denying Smith's motion for summary judgment and motion to continue and granted the City's cross-motion for summary judgment. Smith appeals the district court's denial of his motions and granting of the City's MSJ. Smith filed a timely notice of appeal.

STATEMENT OF THE FACTS

CRPD's Policies

CRPD has no policy requiring their officers to get their photos taken. (D0018 Smith MSJ App. 94; Smith MSJ App. Doyle Deposition Transcript 94: 12-17 hereinafter "Doyle tr.").

CRPD has a "complaint procedure" policy. (D0026 City's MSJ App. 0457-0471, 0472-0486, 0511-0526). This policy has been in place since at least

April 20, 2017, and has received updates on September 9, 2021, and May 5, 2023. (D0026 City's MSJ App. 0511, 0457, 0472). Under the heading of "Reporting the Investigative Findings and Disposition (Form, Format and Filing)", this policy states,

> Upon completion of a line or internal investigation, the investigating commander will forward a comprehensive written summary of the investigative findings to the respective Division Captain. The memo shall include a summary of the incident describing the allegation of misconduct, the associated policy and legal issues, a summary describing the facts of the case revealed by the investigation, and the final determination of the investigation with one (1) of six (6) possible findings:
>
> - Exonerated – The employee acted properly;
> - Unfounded – The incident in question did not occur as stated by the complainant;
> - Unsubstantiated – There is insufficient evidence to prove or disprove the complaint; and
> - Sustained – The act did occur as alleged by the complainant,
> - Commended – The employee acted properly and should be commended in the handling of the situation
> - Policy failure – The employee acted within established policy, but policy needs to be changed.
>
> The Division Captain will then forward the Investigative Summary and a separate memo with a recommendation on any applicable disciplinary and correction to the Chief of Police…

(D0026 City's MSJ App. 0465-0466, 0480-0481, 0519-0520). Of note, comparing the 2017, 2021, and 2023 policies shows this language has remained the same without modification. Under the heading "Relaying the Findings to Interested Parties (Employee, Supervisors)", the policy states, "No line or

internal investigation shall be considered complete until it has been approved by the Chief of Police." (D0033 Ruling at 6, 8-9; D0026 City MSJ App. 0467, 0482). CRPD's policy is silent on when the Chief must review and/or approve the investigation, and it provides no rule, standard, or guideline for the timing of his review and/or approval. Id. It places the discretion with the Chief. Id.

Captain Abodeely Makes Complaint Against Officer Smith and Formal Administrative Investigation Is Commenced

On March 23, 2023, Captain Ryan Abodeely made a complaint against Smith concerning Smith's alleged violation of Abodeely's order to get his picture taken. (D0033, Ruling at 1). Interim Chief Jonker ordered a formal administrative investigation into Abodeely's complaint against Smith. (D0018, SOMF at 1). After Smith did not get his photo taken, on March 29, 2023, Lt. Doug Doyle commenced the investigation regarding Abodeely's complaint against Smith. (D0033, Ruling at 2; D0018, SOMF at 1; Smith MSJ App. Doyle tr. 96: 22-24).

The Formal Administrative Investigation

On April 4, 2023, Lt. Doyle provided a written notice of administrative interview to Smith. (D0033, Ruling at 2; D0018, SOMF at 1).

As part of the investigation, Doyle interviewed Smith on April 13, 2023. (D0033 Ruling at 2; D0018, SOMF at 1). During his interview, Smith provided

a number of supervisors' names whom he talked to with details. (D0033 Ruling at 1; D0018 MSJ App. Smith Interview Audio Recording 4/13/24 at 08:38-15:51, 21:06-23:39, "hereinafter Smith Int. Rec."; MSJ App. 357: 13-25 – 366). Doyle did not interview anyone besides Smith. (D0033, Ruling at 2; D0018 MSJ App. Doyle tr. 96: 3-10).

On April 18, 2023, Doyle prepared a written investigation report. (D0018, SOMF at 1; MSJ App. 66-67; see also D0033 Ruling at 2). Therein, Doyle sustained Abodeely's complaint against Smith, finding violations of the "orders" and "obedience to rules" directives. (D0018, SOMF at 2). Doyle put the formal administrative investigation report in a three-ring binder with a flash drive of the audio files from Smith's interview.[2] (D0018, SOMF at 2). Doyle then provided the investigation report to Captain Hembera for review later that day. (D0033 Ruling at 2; D0018, SOMF at 2).

After preparing his written report that day, Lt. Doyle did not perform any further investigation activities. (D0033, Ruling at 2). He did not interview or question anyone else. (Id.; D0018 MSJ App. Doyle tr. 96: 3-10). He did not gather any additional evidence. Id. He did not write any supplemental reports or memoranda. (D0033, Ruling at 2; D0018 Smith MSJ App. 99; Doyle Dep. tr.

[2] Smith's Statement of Undisputed Material Facts states Doyle also put the pre-discipline hearing audio recording in the binder, however, to be clear, this did not occur until after the pre-discipline hearing on May 25, 2023.

99: 16-19). Lt. Doyle admitted that after April 18, 2023, he was not directed to perform any additional investigation by the Captains or Interim Chief Jonker. (D0018 Smith MSJ App. 99; Doyle Dep. tr. 99: 20:24).

The first request for records is made and denied…

On Thursday, April 27, 2023, Smith's counsel submitted a written request for the results of the investigation under Iowa Code § 80F.1(3) and request for the copies of any witness statements and the complete investigative report with any recommendations or proposed discipline and attachments under Iowa Code § 80F.1(9). (D0018, SOMF at 2; Smith MSJ App. 65, 117-119, 153-155). The next day, Lt. Doyle responded to the request via email writing,

> *The investigation has been handed off to the Captains for their review but is not considered complete as they can request further follow up if needed.* If the Captains recommend disciplinary action that falls within guidelines of an Administrative Hearing, Officer Smith will be provided with documentation outlining their findings and setting up that appointment. If no disciplinary action is recommended, then he will be notified either by a "Coaching" form or a notification that the investigation is closed. Any further documentation will be provided in compliance with 80F.1(9) if the investigation results in discipline.

(D0018, SOMF at 2; MSJ App. 117, 154) (emphasis added).

CRPD Disciplinary Board

CRPD's disciplinary board was made up of the four Captains – Hembera, Long, Abodeely, and Estling. (D0033, Ruling at 2; D0018, SOMF at 2). Even

though Abodeely was the complainant, he did not recuse himself from the disciplinary board. Id. All four Captains reviewed Doyle's investigation report. Id.

On May 2, 2023, the disciplinary board submitted a written memo to Interim Chief Jonker regarding Smith. (D0018, SOMF at 2; MSJ App. 136-137). Jonker reviewed the investigation report and disciplinary board memorandum, concurring with it on or about May 12, 2023. (D0018, SOMF at 2; MSJ App. 136-137, 138-146).

From April 18, 2023, up to May 18, 2023, CRPD provided nothing to Smith. (D0018, SOMF at 2; MSJ App. 153-155).

Discipline Hearing Proceedings

On or about May 18, 2023, Lt. Doyle provided a notice of administrative hearing to him. (D0033, Ruling at 2; D0018, SOMF at 2-3). Therein, the notice states that Smith was "found to be in violation of" CRPD directives concerning orders and obedience to rules. (D0018 SOMF at 2-3). Also, the notice states "it was found that you committed a Category 'C' violation which outlines a 10-30 hour suspension from duty without pay, or removal from a part-time specialty unit, or restitution." Id. The notice indicates "It was the Disciplinary Boards recommendation that Officer Smith be suspended from duty without pay for a period of 10 hours." (Id.; D0033, Ruling at 2).

That same day, Smith's legal counsel acknowledged receipt of the notice and again requested Doyle to provide the remaining materials requested in the letter of April 27, 2023. (D0018, SOMF at 3; MSJ App. 60).

On May 22, 2023, counsel for Smith submitted a written request via email to Lt. Doyle seeking the witness statements and the complete investigative report, including any recommendations, proposed discipline, reasoning and rationale, opinions, and attachments pursuant to Iowa Code § 80F.1(9). (D0018 MSJ App. 62-63; Doyle Dep. tr. 62-63; MSJ App. 158, 162-164).

On May 23, 2023, Lt. Doyle responded that CRPD "requested a review of your request for the complete investigation with the City Attorney's Office. This investigation has not resulted in any disciplinary action, therefore no further information will be released at this time." (D0018, SOMF at 3; MSJ App. 63, Doyle Dep. tr. 63: 7-25; App. 121, 165).

On Friday, May 25, 2023, a pre-discipline hearing was held. (D0033, Ruling at 2; D0018, SOMF at 3).

Jonker, Doyle, Smith, and Smith's counsel appeared at the discipline hearing. (D0033, Ruling at 2; D0018, MSJ App. Smith Discipline Hearing tr. 414: 1-8, hereinafter "D.H. tr."). The hearing was audio recorded by both CRPD and Smith's legal counsel. (D0018 MSJ Appendix Smith Discipline Hearing Audio Recording 05/25/23 0819 AM hereinafter "Smith Disc. Hearing Rec.").

At the start of the hearing, Smith's counsel requested a continuance of the hearing and objected to proceeding. (D0033, Ruling at 2; D0018 MSJ App. D.H. tr. 415: 20-25 – 420: 1-9). Both Doyle and Jonker confirmed that they would not provide the requested documents or continue the hearing. (D0018 MSJ App. Smith Pre-Discipline tr. at 7). Smith objected to proceeding as well. (D0018 MSJ App. Smith Disc. Hearing Rec. at 07:40-08:07). Smith and his counsel objected to proceeding with this hearing without having the opportunity to respond to the completed investigation report. (Id.; D0033, Ruling at 2). The department proceeded with the hearing over the objection. (D0018 MSJ App. Smith D.H. tr. at 7; Smith Disc. Hearing Rec. at 06:00-06:42). During the hearing, Smith explained that he asked about the purpose of photo and what CRPD was going to do with it. (D0018 MSJ App. D.H. tr. 15-16). He also noted that no one ever told him that the prior photos were optional, whereas the photograph at issue was mandatory. (D0033 Ruling at 1; see also D0018 Smith Int. Rec. at 08:38-15:51; D0018 Doyle Dep. tr. 95: 14-25, 96:1-10; 102: 14-23; App. 360-362). Smith asked why other officers were allowed to not have their photos taken and others and Smith is not, and why do they get that privilege and Smith does not? (D0018 MSJ App. Smith D.H. tr. 29: 18-24; Smith Dep. tr. App. 309-310). Nobody had answers for Smith's questions. (D0018 MSJ App. Smith D.H. tr. 20-21; Smith Disc. Hearing Rec. at 09:48-10:18). Smith explained, "And here I sit, I got to try

to defend something that I don't know. Against what? I don't know what to say. I don't know which person I talked to that I can point you guys to that you might not know exists. I can help mitigate all of this. If I had that information, I could look at it and be like, 'You got this wrong,' or "I sent (said) this wrong,' so I can clarify." (D0018 MSJ App. Smith D.H. tr. 21: 2-9).

After the hearing, Smith had a certified court reporter transcribe the recording.[3] (D0018 Smith MSJ App. at 405-453)

Interim Chief Jonker Suspends Smith, CRPD provides records, and Smith's photo is displayed

On May 31, 2023, Smith was suspended for 10 hours without pay. (D0033, Ruling at 2; D0018, SOMF at 3). After May 31, 2023, CRPD made available the complete investigation report. (D0033, Ruling at 2; D0018, SOMF at 3). Smith's official photo was taken and displayed on the photo wall in the police station without his consent. (D0033, Ruling at 2; D0018, SOMF at 3).

Additional facts may be stated below.

[3] The audio recording is the best evidence of the discipline hearing. Some errors are recognized in the transcript, including reference to "Ed Doyle" instead of Doug Doyle and Iowa Code section 80F, mistakenly referenced as "ADF".

ARGUMENT

I. THE DISTRICT COURT ERRED IN ITS INTERPRETATION OF IOWA CODE § 80F.1.

Scope and Standard of Review

The standard of review for rulings on questions of statutory interpretation is for correction of errors at law. Sand v. An Unnamed Local Gov't Risk Pool, 988 N.W.2d 705, 708 (Iowa 2023); Zimmer v. Vander Waal, 780 N.W.2d 730, 730 (Iowa 2010); see also Beganovic v. Muxfeldt, 775 N.W.2d 313, 317 (Iowa 2009) ("We review the application and interpretation of statutes for errors at law.")

Likewise, the standard of review of the district court's grant of summary judgment is for corrections of errors at law. Teig v. Chavez, _ N.W.3d _ 2024 WL 2869282 *3 (Iowa 6/7/2024). The record is reviewed in the light most favorable to the party opposing the motion. Id.

Preservation of Error

Smith moved for summary judgment, arguing the City violated Smith's rights under Iowa Code § 80F.1(3). Smith argued that the City violated this section by not immediately providing Smith the results of the investigation when Lt. Doyle completed it on April 18, 2023. The City resisted and filed a cross-

motion for summary judgment. The City argued that they completed the investigation on May 31, 2023. (D0033 Ruling at 6-7; D0026 City's MSJ Brief at 2). The City asserted that CRPD's policy provides that the investigation is not complete until approved by the Chief of Police, and this did not occur until May 31st. Id. The City further asserted that they provided the results of the investigation the same day. Id.

Smith resisted the City's MSJ and replied to their resistance to his MSJ. (D0033 Ruling at 5-6; D0030 Smith's Resistance to City's Motion for Summary Judgment and Reply to City's Resistance to Smith's MSJ, hereinafter "Smith MSJ Res."). Therein, under Iowa Code § 364.2(1) and Iowa Code § 364.3(1) and Smith v. Des Moines Civil Serv. Com'n, 561 N.W.2d 75, 77-79 (Iowa 1997) and an unpublished court of appeals opinion[4], Smith argued that the City is not entitled to judgment as a matter of law because the City presented no record evidence to show the City Council formally considered and adopted CRPD's complaint procedure policy. (D0030 Smith MSJ Res. at 4). Smith argued that the complaint procedure policy is of no legal consequence. Id. at 5. Additionally, Smith contended, even if the City had adopted the policy, it is not a defense to liability in section 80F.1. Id. at 6. Smith pointed to flaws in the City's claim,

[4] Armstrong v. Davenport Civil Serv. Com'n, 789 N.W.2d 165, 2010 WL 2925896 (Iowa Ct. App. 2010) (unpublished).

and further argued that CRPD could not circumvent an officer's statutory rights via CRPD policy. Id. at 6-7. Smith also argued that the text, intent, and purpose of the law did not support the City's contention. Id. 6-12.

The district court concluded that the City complied with section 80F.1(3) as a matter of law and granted the City summary judgment. (D0033, Ruling at 6-8). In rejecting Smith's arguments regarding the City not adopting the complaint procedure policy, the district court distinguished the Smith case and the unpublished court of appeals opinion because they concerned Chapter 400, not section 80F.1. (D0033, Ruling at 6). The district court noted it "will consider the CRPD policy and do so under the application of Iowa Code § 80F.1." (D0033, Ruling at 6). The district court also rejected Smith's interpretation of section 80F.1 not recognizing a policy defense. Id. The district court wrote, "Plaintiff also fails to put forth any support to find § 80F.1(3) does not support Defendant's contention that the investigation is considered completed upon the Chief of Police's approval." (D0033, Ruling at 6). Additionally, the district court noted, "Plaintiff presents no basis for believing that the completion of the Report and the end of Lt. Doyle's investigation are relevant in determining when the overall formal administrative investigation is completed." Id. The district court concluded the formal administrative investigation was not completed until May 31, 2023. (D0033, Ruling at 6-7). The district court concluded the investigation

spans from the complaint until the officer is disciplined (punished) under the statute. (D0033, Ruling at 6-7). The district court reasoned that CRPD had a policy providing that the investigation is not complete until approved by the Chief of Police and Jonker did not approve the investigation and recommended discipline until May 31, 2023[5]. (D0033, Ruling at 6-7).

Simply put, Smith preserved error. He moved for summary judgment on the issue, resisted the City's MSJ, and the district court ruled on the issue and arguments.

A. The district court erred in interpreting Iowa Code § 80F.1(3).

1. The text, purpose, and legislative history of section 80F.1(3) does not support the district court's interpretation of the statute.

Section 80F.1(3)'s Text

The text of the statute states, "A formal administrative investigation of an officer shall be commenced and completed in a reasonable period of time. An officer shall be immediately notified in writing of the results of the investigation when the investigation is completed." Iowa Code § 80F.1(3) (2023). See Borst Bros. Constr., Inc. v. Fin. of Am. Com., LLC, 975 N.W.2d 690, 699 (Iowa 2022) (recognizing the statute's text is the starting point for statutory interpretation);

[5] The district court's April 22, 2024, ruling states May 31, 2024, which is a typo. (D0033, Ruling at 6).

Calcaterra v. Iowa Bd. of Med., 965 N.W.2d 899, 904 (Iowa 2021) ("When interpreting the meaning of a statute, we start with the statute's text.").

Here, the district court erred in reading language into the text of the statute that does not exist. See State v. Olsen, 618 N.W.2d 346, 351 (Iowa 2000) (explaining that when the legislature has spoken, the court's "role is to give effect to the law as written, not to rewrite it to reflect a policy different from that language"); City of West Branch v. Miller, 546 N.W.2d 598, 602 (Iowa 1996) (recognizing court is bound by what the legislature said, rather than what it should or might have said). The text of the statute does not state that the investigation is completed when approved by the Chief of Police. See Iowa Code § 80F.1(3). The statute employs the word "completed" to refer to "the investigation", not the review or approval of the investigation. If the general assembly intended the law to state that the investigation is complete when approved by the Chief of Police, it could have enacted the statute with the language to do so. But it didn't. Moreover, the plain language of the statute makes no mention of an agency's policy governing the completion of an investigation.[6] See Iowa Code § 80F.1(3). Nothing in the statute's text supports the district court's view that CRPD's policy

[6] The word "policy" is only used once in the POBR. See Iowa Code § 80F.1(24)(a) (2023) (requiring prosecuting agency that maintains a Brady-Giglio list to adopt a policy and setting minimum standards).

could impose a condition on the completion of the administrative investigation. It follows that the district court erred.

Also, in reading language into the statute, the district court impermissibly transformed the ordinary meaning of "completed". See State v. Zacarias, 958 N.W.2d 573, 582 (Iowa 2021) (stating it is not the role of courts to "change the meaning of a statute."). The statute is silent regarding when such an investigation is "completed" or what constitutes a "completed" investigation. Accordingly, the Court should give "completed" its ordinary meaning. See Kline v. Southgate Property Management, 895 N.W.2d 429, 438 (Iowa 2017) (When a word in a statute is undefined, the court assigns the word its common, ordinary meaning in the context in which it is used). Merriam-Webster's defines "complete" when used as an adjective as "(1) having all necessary parts, elements, or steps (2) fully carried out: thorough (3) brought to an end: concluded." Merriam-Webster's Dictionary.[7] When used as a verb, "completed" means "(1) to bring an end and especially into a perfected state, (2) to make whole or perfect, to mark the end of." Id. The district court did not give "completed" its usual meaning. Moreover, it did not give it the normal meaning in relation to "the investigation."

Statutory Purpose

[7] https://www.merriam-webster.com/dictionary/complete

The district court's interpretation of the POBR runs afoul of its main purpose; to provide "officers"[8] a variety of substantive and procedural rights[9] and protections[10]. This is evident in the title of the statute; "Peace Officer, Public Safety, and Emergency Personnel Bill of Rights." See T & K Roofing Co. v. Iowa Dep't of Educ., 593 N.W.2d 159, 163 (Iowa 1999) (the title of a statute can be considered in deciding the intent of statute). It is further evidenced by a plain reading of the statute. See Iowa Code § 80F.1(17) ("The *rights* enumerated in this section are in addition to any other *rights* granted pursuant to a collective bargaining agreement or other applicable law.") (emphasis added). The district court's interpretation tosses aside the central purpose of the law and provides unfettered discretion to CRPD to unilaterally decide when the investigation is completed. It cannot be said that the legislature intended this. See Iowa Code § 4.4(3) ("In enacting a statute, it is presumed that a just and reasonable result is intended"). Courts should liberally construe the statute to be consistent with its purpose. See Iowa Code § 4.2 (providing the code's "provisions and all

[8] "Officers" as defined in Iowa Code § 80F.1(1)(f) (2023) ("Officer means a certified law enforcement officer…")

[9] The rights afforded to officers under the statute are not limited to "complaints" and administrative investigations.

[10] While it's designed to protect officers' rights regardless of rank, another purpose of the POBR is to provide consistent rules for all law enforcement agencies across Iowa to adhere to. The POBR applies to state agencies, sheriffs' offices under Chapter 341A, and both civil service cities under Chapter 400 and non-civil service cities.

proceedings under it shall be liberally construed with a view to promote its objects and assist the parties in obtaining justice.") The district court erred in misconstruing the statute in light of its purpose.

Legislative History

Additionally, the district court's ruling ignores the legislative history of the POBR. Iowa Code section 80F.1(3), as originally enacted in 2007, provided, "A formal administrative investigation of an officer shall be commenced and completed in a reasonable period of time and an officer shall be immediately notified of the results of the investigation when the investigation is completed." See 2007 Iowa Acts ch. 160. The general assembly next amended this section until 2021 when it passed S.F. 342.[11] As amended by this bill, section 80F.1(3) provides, "A formal administrative investigation of an officer shall be commenced and completed in a reasonable period of time. An officer shall be immediately notified in writing of the results of the investigation when the investigation is completed." 2021 Iowa Acts ch. 183 § 18. The 2021 amendment split the sentences in two and added the requirement that the department provide the notice "in writing". Id. Hence, the legislature expanded officers' rights under

[11] S.F. 476 was originally the "Back the Blue Bill". House Public Safety Chair and Floor Manager Jarad Klein ditched S.F. 476 and "double-barreled" S.F. 342 (Officer Disciplinary Actions), striking S.F. 342 and replacing it with most of the provisions found in S.F. 476. Senator Dawson explains this in the Senate Floor debate on May 17, 2021. Senate Floor Debate Video, 5/16/2021 at 1:18:00

the statute. See Star Equip., Ltd. v. State, Iowa Dep't of Transp., 843 N.W.2d 446, 455 (Iowa 2014) (legislature's amendment of a statute creates presumption that legislature intended change in the law); State v. Snyder, 634 N.W.2d 613, 615 (Iowa 2001) (when the legislature amends a statute, a presumption arises that it intended to change it); State v. Dean, 357 N.W.2d 307, 309 (Iowa 1984); State v. Hauan, 361 N.W.2d 336, 339 (Iowa Ct. App. 1984) (the legislature did not insert words for no reason). While the legislature did not specifically explain the reasoning for the written requirement, the addition of the words "in writing" signals the intent to make the process more formal. Considering the context of S.F. 342's sweeping amendments to section 80F.1, other provisions including qualified immunity, and the general assembly and Governor Reynolds' overall theme of "Backing the Blue"[12][13], it is evident that the intent of adding "in writing" was to add formality to the law as support and protection for officers and to provide them more due process, not less.

In other areas of the law, the case law recognizes that the legislature has added written requirements to formalize processes. For example, in State v. Fischer, 785 N.W.2d 697, 703 (Iowa 2010), the Iowa Supreme Court reiterated

[12] Senator Dawson, the floor manager for S.F. 342, specifically references this bill as the "Back the Blue Bill" in floor debate on May 17, 2021. Senate Floor Debate Video, 5/17/2021 at 1:18:17.

[13] See "Flanked by Iowa Law Enforcement, Gov. Reynolds signs 'Back the Blue Act' into law", Governor Kim Reynolds Press Release, 6/17/2021

that the written request requirement for a withdrawal of a bodily substance for testing "provides a record of the relevant communication. This promotes accuracy and furnishes a record for subsequent review." Id. Moreover, the Court noted the significance of the written requirement in that statute as "the record must show the request was administered prior to the test, not contemporaneously with or following the test as a formality." Id. (internal citations omitted). Like in Fischer, the addition of the written requirement to section 80F.1(3) provides a record and documents the timing of the action.

In short, the district court erred in its interpretation of the text of section 80F.1(3). The court's ruling is not consistent with the text, purpose, context, or legislative history of the law. Accordingly, the City is not entitled to judgment as a matter of law.

2. The POBR separates the investigative process from the discipline process; the district court erred in concluding they are one in the same.

The statute defines a "formal administrative investigation" as "an *investigative process* ordered by a commanding officer of an agency or commander's designee during which the questioning of an officer is intended to gather evidence to determine the merit of a complaint *which may be the basis for seeking* removal, discharge, or suspension, or other disciplinary action against the officer." Iowa Code § 80F.1(1)(c) (2023) (emphasis added). This definition

and its sentence structure plainly separate the investigation process from the discipline process. "Removal, discharge, or suspension, or other disciplinary action", which could be demotion or a transfer, all refer to a punishment. A plain reading of the law shows the investigation must precede discipline as a matter of law.

What's more, because section 80F.1(3) refers to a "formal administrative investigation", this section must be read together with the definition of the phrase as it is defined in the POBR. See Save Our Stadiums v. Des Moines Indep. Cmty. Sch. Dist., 982 N.W.2d 139, 145 (Iowa 2022) (recognizing court reads related statutes together); Jorgensen v. Smith, 2 N.W.3d 868, 873 (Iowa 2024) (reiterating when the legislature defines its words, courts are bound by those definitions); The Sherwin-Williams Co. v. Iowa Dept. of Revenue, 789 N.W.2d 417, 425 (Iowa 2010) (recognizing it is significant that legislature chose to define the word "manufacturer" in statute and reaffirming courts are bound by the legislature's own definitions).

In this case, the district court misinterpreted the statute to conclude that the investigation was not separate from the discipline process. The district court's overlapping of the investigation process with the discipline process is inconsistent with the text of the statute as read together. In concluding the CRPD did not complete the formal administrative investigation until May 31, 2023, the

district court misread the definition of formal administrative investigation. The district court observed, "it is the May 31, 2023 communication, not the May 18, 2023 communication, that specifies the discipline being imposed and the overall result of the investigation." (D0033, Ruling at 7). The district court also wrote, "The formal administrative investigation did not end and discipline did not result until May 31, 2023." (D0033, Ruling at 8). Specifically, the district court ignored the part of the definition where it states "…the merit of a complaint *which may be the basis for seeking* removal, discharge, or suspension, or other disciplinary action against the officer." Iowa Code § 80F.1(1)(c). The district court impermissibly borrowed the "results in" phrase from section 80F.1(9) instead of using the definition of formal administrative investigation as written.[14] Nowhere does this definition provide that discipline has to result before the formal administrative investigation is complete. See Iowa Code § 80F.1(1)(c).

That an investigation precedes and does not overlap with disciplinary action is a commonsense interpretation of the statute. See Farmers Coop. Elevator v. Union State Bank, 409 N.W.2d 178, 181 (Iowa 1987) ("When construing a statute, we search for an interpretation that is sensible, workable, practical, and logical."). It would be inconsistent with the statute for an

[14] The only other provision in the POBR that employs the phrase "results in" is Iowa Code § 80F.1(19) (2023).

employing agency to force an officer to go through the discipline process and punish the officer without first having completed a formal administrative investigation. The law does not permit the employing agency to punish first and ask questions later. What's more, the district court's interpretation is unsound in that it assumes every investigation results in an officer being punished with some form of discipline.

The court must be mindful of its interpretation of the statute so that it is workable. See Save Our Stadiums, 982 N.W.2d at 147 ("Generally, we try to interpret statutes so they are reasonable and workable."). Interpreting the statute to conclude the investigation is completed within the meaning of the statute when the investigator ceases investigation activities is workable for agencies of all size. Then it becomes a question of the facts and circumstances. This may be a highly fact specific inquiry and vary case-by-case. In most cases, it is anticipated that the investigation is "completed" or ceases when the investigator finishes the written investigative report. Here, the district court's refusal to consider the completion of the report as a relevant fact in the analysis is illogical. (D0030 Ruling at 6-7). Also, while the district court is correct that the investigative report is a step in the formal administrative investigation[15], to conclude that the report

[15] The district court wrote, "The Report is just one step in the formal administrative investigation and is not the whole of the investigation." (D0030, Ruling at 7). Smith never argued that the report constitutes the whole

and the end of the investigator's investigation are irrelevant to the analysis of when the investigation is completed is nonsensical. (D0033, Ruling at 8). Concluding the investigation report is the end of the investigation absent exceptional circumstances that need not be addressed in this case is a simple, common sense, and easy rule to apply. It is a workable interpretation that will give effect to the statute as a whole. See Doe v. State, 943 N.W.2d 608, 610 (Iowa 2020) (quoting Scalia & Garner, *Reading Law* at 167 ("Perhaps no interpretive fault is more common than the failure to follow the whole-text canon, which calls on the judicial interpreter to consider the entire text, in view of its structure and of the physical and logical relation of its many parts.")).

Also, the structure and framework of the POBR demonstrates a line between the investigation into a complaint and the discipline process. As part of an administrative investigation, the agency has the right to compel an "interview"[16] of an officer subject to a complaint. Iowa Code § 80F.1(6) (2023).

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investigation. Smith argued Doyle finishing the report and providing it to his superiors indicates the investigation was complete. (D0018 Smith MSJ Brief at 8-10; see also D0030 Smith Resistance at 12, 16-18).

[16] "Interview" is defined as "the questioning of an officer who is the subject of a complaint pursuant to the formal administrative investigation procedures of the investigating agency, if such a complaint may be the basis for seeking removal, discharge, or suspension, or other disciplinary action against the officer. 'Interview' does not include questioning as part of any informal inquiry or questioning related to minor infractions of agency rules which will not result in removal, discharge, suspension, or other disciplinary action against the officer." Iowa Code § 80F.1(1)(e) (2023).

Before an interview, the POBR generally limits notice regarding a complaint to a written summary, Iowa Code § 80F.1(5), but as the investigation is completed, it immediately requires the agency to provide the written results of the investigation to the officer under section 80F.1(3) and opens the opportunity for the officer's legal counsel to request and timely receive the complete report and witness statements under Iowa Code § 80F.1(9). In other words, the framework provides limited information at the beginning and makes available full information at the end of the investigation.

What's more, the legislative history and purpose demonstrate the legislative intent to expand the POBR and further draw a line between the investigation and discipline processes. See Star Equip., Ltd., 843 N.W.2d at 455 (legislature's amendment of a statute creates presumption that legislature intended change in the law); Snyder, 634 N.W.2d at 615 (when the legislature amends a statute, a presumption arises that it intended to change it); Dean, 357 N.W.2d at 309 (Iowa 1984); Hauan, 361 N.W.2d at 339 (the legislature did not insert words for no reason).

Before the 2021 amendments, section 80F.1(9) only allowed the officer to request any witness statements and the investigative agency's report if the investigation "results in" discipline. 2007 Iowa Acts ch. 160; Iowa Code § 80F.1(9) (2007). In S.F. 342, the legislature amended section 80F.1(9) to state,

"If a formal administrative investigation results in the removal, discharge, or suspension, or other disciplinary action against an officer, copies of any witness statements and the complete investigative agency's report shall be timely provided to the officer upon the request of the officer or the officer's legal counsel upon request at the completion of the investigation." 2021 Iowa Acts ch. 183 § 18; see also Senate File 342 at p. 12. Iowa Code § 80F.1(9) (2023). The legislature added the word "complete" to modify "investigative agency's report" and added "or the officer's legal counsel upon request at the completion of the investigation." Id. Also, the legislature significantly expanded officers' representation rights. One notable change here is amending the officer's right to have legal counsel "present"[17] to providing the "right to have the assistance of legal counsel". 2007 Iowa Acts ch. 160; 2021 Iowa Acts ch. 183 § 18.

Next, from enactment in 2007 through June 30, 2021, section 80F.1(13) provided, "An officer shall have the right to pursue civil remedies under the law against a citizen arising from the filing of a false complaint against the officer."[18] 2007 Iowa Acts ch. 160; Iowa Code § 80F.1(13) (2007). In 2021, the legislature

[17] Of note, the district court's ruling references having counsel "present" but this was amended out of the statute as part of S.F.342 in 2021. D0033, Ruling at 5, 8.
[18] In an unpublished opinion, the Iowa Court of Appeals interpreted this statute to not provide a private right of action. Dautovic v. Bradshaw, 800 N.W.2d 755 2011 WL 1005432 (Iowa Ct. App. 2011) (unpublished, table). S.F. 342 abrogated this opinion.

amended section 80F.1(13) to create a new cause of action for officers. See Victoriano v. City of Waterloo, 984 N.W.2d 178, 182 (Iowa 2023) (court assumes the legislature is familiar with the existing state of the law when it enacts new legislation). As amended, this section provides, "An officer shall have the right to bring a cause of action against any person, group of persons, organization, or corporation for damages arising from the filing of a false complaint against the officer or any other violation of this chapter including but not limited to actual damages, court costs, and reasonable attorney fees." 2021 Iowa Acts ch. 183 § 18; Iowa Code § 80F.1(13) (effective 7/1/2021).

Reading these amendments together in the context of the POBR and its legislative history indicates the purpose of the amendment to section 80F.1(9) is two-fold: (1) to allow officers to prepare for discipline hearings with the assistance of their legal counsel and have a full and fair opportunity to respond; and (2) to allow officers with their legal counsel to gather the evidence to identify whether a person made a false complaint about the officer or violated the officer's rights under the POBR and file an action. Moreover, these amendments signal the legislature's intent to expand officers' rights plus demonstrate the legislature's understanding that officers would need the evidence to make these new rights meaningful. Without the evidence, the rights would be hollow. It

follows that the history and purposes of the 2021 amendments further drew a line between the investigation and discipline processes.

The district court's reading of the statute – that the investigation is complete when it results in discipline – cannot be reconciled with the statute's text, structure, or with its legislative history. Therefore, the district court erred in interpreting the statute to conclude the investigation and discipline processes overlap. This Court should recognize the line drawn by the statute between the two processes.

B. The district court erred in interpreting Iowa Code § 80F.1(9).

The text of section 80F.1(9) states, "If a formal administrative investigation results in the removal, discharge, or suspension, or other disciplinary action against an officer, copies of any witness statements and the complete investigative agency's report shall be timely provided to the officer upon the request of the officer or the officer's legal counsel upon request at the completion of the investigation." Iowa Code § 80F.1(9) (2023). Like section 80F.1(3), "completion of the investigation" is at issue here.

Similar to the district court's misinterpretation of section 80F.1(3), here, the court misconstrued "the completion of the investigation". As there is no difference between the completion of the investigation under this subsection,

Smith incorporates by reference his arguments under section "A", above, as to the interpretation of this phrase herein.

In concluding CRPD did not violate section 80F.1(9), the district court relied on the same flawed interpretation of when the investigation was completed as it had under section 80F.1(3). The district court concluded that Smith was not entitled to the report before his pre-discipline hearing because the investigation wasn't completed at that time. (D0030, Ruling at 8). The court further concluded that it is irrelevant whether it would have been an arduous burden on the City to provide Smith the report, but this fact cuts against the City.

Moreover, the district court concluded Smith was given all that he was required by CRPD before the discipline hearing under the United States Supreme Court's opinion in Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 546-47 (1985). But the district court's conclusion is fundamentally flawed in that this is an issue of due process established by the POBR, not the United States Constitution. It is well-settled that the legislature is free to enact legislation to provide persons rights in excess of rights recognized by the United States Constitution, but the legislature cannot deprive anyone of rights guaranteed by the constitution. Here, the legislature enacted the POBR in 2007 and passed substantial amendments to it in 2021. See supra. In doing so, as explained above, the law provides "officers", as defined in section 80F.1(1)(f) additional rights,

including substantive and procedural rights. See supra. The district court's task was to give effect to the law as a whole with Loudermill. See In re Marshall, 805 N.W.2d 145, 158 (Iowa 2011) (considering constitutional law and reiterating courts must give effect to the fair meaning of the law as written). The POBR plainly provides, "The rights enumerated in this section are in addition to any other rights granted pursuant to a collective bargaining agreement *or other applicable law*." Iowa Code § 80F.1(17). The district court missed the boat by not construing section 80F.1(9) with Smith's due process rights as recognized by the Loudermill opinion. The district court erred in viewing the Loudermill opinion in isolation rather than considering it in the context of the POBR. Loudermill exists independent of the POBR. What's more, in enacting the POBR, the legislature is presumed to know the law, including Loudermill. See supra. In amending section 80F.1(8), the legislature understood disciplinary hearings occur as is evidenced by the express reference to "hearings or other disciplinary or administrative proceedings relating to the complaint" in expanding the officer's right to representation. See Iowa Code § 80F.1(8)(a). But the district court simply did not interpret the provisions together or give consideration to the text, structure, context, or legislative history of the POBR.

The district court misunderstood the significance and operation of section 80F.1(9). As noted above, the structure of the statute provides an officer more

information as the process transitions from the investigation to the discipline process. Having the complete investigative report and witness statements assists the officer and legal counsel to prepare for the constitutionally required discipline hearing and to respond. See Loudermill, 470 U.S. at 546-47 (1985) (holding pre-discipline hearing is required for public employee before deprivation of property interest may occur); Iowa Code § 80F.1(8)(a) ("The officer shall have the right to have the *assistance of legal counsel*, at the officer's expense, during the interview of the officer and during hearings or other disciplinary or administrative proceedings relating to the complaint.") (emphasis added). Moreover, in cases where the officer has not retained legal counsel before receiving the results of the investigation[19], the officer may retain counsel for any hearings or disciplinary proceedings going forward, including a Loudermill hearing or veterans preference hearing. See id.; Iowa Code § 35C.6[20] (requiring

[19] Some officers do not retain counsel until they receive the results of the investigation. One factor in this decision is commonly the fact that officers must pay for their legal counsel. See Iowa Code § 80F.1(8)(a) (officer may have counsel at their own expense).

[20] "No person holding a public position by appointment or employment, and belonging to any of the classes of persons to whom a preference is granted under this chapter, shall be removed from such position or employment except for incompetency or misconduct shown after a hearing, upon due notice, upon stated charges, and with the right of such employee or appointee to a review by a writ of certiorari or at such person's election, to judicial review in accordance with the terms of the Iowa administrative procedure Act, chapter 17A, if that is otherwise applicable to their case." Iowa Code § 35C.6 (2023).

veteran's preference hearing for veterans charged with misconduct or incompetence prior to termination). Further, the officer and counsel may identify violations of the officer's rights and decide to bring an action against a person or seek an injunction. See Iowa Code § 80F.1(13) (providing officer right to bring cause of action and seek damages… "including but not limited to actual damages, court costs, and reasonable attorney fees").

Depriving an officer of the complete investigative report and witness statements invites the risk of mistakes in reaching decisions that can have a profound impact on the officers for whom the statute was intended, including mistaken decisions that cause other agencies, such as the Iowa Law Enforcement Academy, to seek revocation or suspension of the officer's certification. See Iowa Code § 80B.13(8) (granting ILEA council power to revoke or suspend officer's certification); Iowa Code § 80B.13A (governing revocation or suspension of certification and requiring departments to provide notice to ILEA, as well as providing employing agency power to recommend suspension or decertification); Iowa Admin. Code R. 501 – Ch. 6 (providing administrative rules for decertification). Moreover, forcing officers to go into a discipline hearing without the report and statements leaves the issues ill defined and does not give officers a meaningful opportunity to respond or invoke the discretion of the decision-maker. The point of section 80F.1(9) is to provide the officer the

ability to meaningfully respond rather than having to proceed blindly without knowing anything other than policy violations were found and the proposed discipline. Notably, officers should be given the chance to identify and addresses issues in a discipline hearing because it gives the department the opportunity to correct these issues and reduces the risk of wasting limited judicial resources. This is contemplated in City of Bettendorf v. Kelling, 465 N.W.2d 299, 301 (Iowa Ct. App. 1990). There, the court of appeals observed, "We also agree with the trial court that prior to the hearing on the merits before the commission, the City had the right, once it discovered procedural errors in the implementation of its discipline, to withdraw its discipline without prejudicing its right to reevaluate and, if it deemed necessary, to reissue the discipline. We concur with the trial court when it held, 'To require the City of Bettendorf to proceed with the disciplinary action knowing that procedural defects took place would put them in a position of denying its employees the very rights guaranteed to them under Chapter 400 of the Iowa Code.' " Id. While Bettendorf predates the POBR and was already in the civil service process, the principle illustrates the point of being able to address and correct issues.

Even in situations where the investigation is completed and the officer proceeds to a discipline hearing and provides additional information to respond to the information contained in the report or witness statements, the commanding

officer could simply order the investigation reopened. The investigator would perform the supplemental investigation activities, prepare a supplemental report, and provide amended results to the officer under section 80F.1(3).[21][22] (D0018 Smith MSJ App. 99 Doyle tr. 99: 5-19). Then the discipline process could reconvene, if need be. Such a scenario is consistent with due process as noted in Loudermill and Mathews v. Eldridge, 424 U.S. 319 (1976). And it is workable in practice. See supra.

In summary, it was not for the district court to second-guess the policy judgment of the legislature and Governor Reynolds in enacting the Back the Blue Bill or to not give effect to the phrase "or the officer's legal counsel upon request at the completion of the investigation" in the statute. See State v. Iowa Dist. Ct. for Scott Cnty., 889 N.W.2d 467, 474 (Iowa 2017) (court presumes statutes or rules do not contain superfluous words."). The court erred in interpreting section 80F.1(9); the City is not entitled to judgment as a matter of law.

II. THE DISTRICT COURT ERRED IN CONCLUDING THE CITY DID NOT VIOLATE IOWA CODE § 80F.1

Scope and Standard of Review

[21] The officer or officer's counsel would be able to submit the written request for the report. See Iowa Code § 80F.1(9).

[22] Supplemental reports are common in law enforcement investigations. (See D0018 Smith MSJ App. Doyle tr. 99: 5-15).

The standard of review of the district court's grant of summary judgment is for corrections of errors at law. Teig v. Chavez, _ N.W.3d _ 2024 WL 2869282 *3 (Iowa 6/7/2024). The record is reviewed in the light most favorable to the party opposing the motion. Id.

Preservation of Error

Smith preserved error. He moved for summary judgment on the issue, resisted the City's MSJ, and the district court ruled on the issue and arguments.

A. The district court erred in granting the City summary judgment because there is no record evidence that the City Council formally considered and approved CRPD's complaint procedure policy.

In alternative of Smith's statutory interpretation arguments, the district court erred in granting the City summary judgment because there was no record evidence to show that the City Council formally considered and adopted CRPD's complaint procedure policy. In other words, evening assuming *arguendo* that the City could enact a controlling standard, here, there is no record evidence that the City did.

As a matter of law, "[a] power of a city is vested in the city council except as otherwise provided by a state law." Iowa Code § 364.2(1). Moreover, a city's power must be exercised by its duly elected city council. See Iowa Code § 364.3(1) ("The following are limitations upon the powers of a city…A city

council shall exercise a power only by passage of a motion, a resolution, an amendment, or an ordinance.").

Case law indicates a personnel policy must be formally considered and approved by the City Council to be effective. In Smith, the Des Moines Fire Chief wrote a policy establishing minimum standards for spirometry testing for firefighters after consulting with a doctor. Smith v. Des Moines Civil Serv. Com'n, 561 N.W.2d 75, 77-79 (Iowa 1997). The Fire Chief did not submit the policy to the City Council for consideration or adoption. Id. The Fire Chief fired a firefighter for failing to pass a spirometry test under this policy. Id. at 77. The Iowa Supreme Court reversed the termination as arbitrary. Id. at 79. Relying on its opinion in Bryan v. City of Des Moines, 261 N.W.2d 685 (Iowa 1978), the Court reasoned that the power "to establish the controlling standard lies in the city council." Id. (*citing* Bryan at 687-88). The Court observed there was no evidence presented that the "significant personnel policy matter" was ever considered or formally adopted by the City Council. Id. at 79.

More recently, in an unpublished opinion, the Iowa Court of Appeals dealt with a policy that the Davenport Human Resources Department implemented concerning FMCSA DOT regulations on employees. See Armstrong v. Davenport Civil Serv. Com'n, 789 N.W.2d 165, 2010 WL 2925896 (Iowa Ct. App. 2010) (unpublished). Like Smith, the Davenport City Council did not

consider and approve the policy. Id. at *2-3. Despite this, Davenport argued it was "sufficient formal action" that the HR Department established the policy. Id. Davenport also argued Smith " 'expresses only that some type of formal action need to be taken, whether by the city council or' some other entity, like the city's human resources department." Id. The Court of Appeals rejected this argument under Smith. Several statutes were central to the Court's reasoning. The Court explained that Iowa Code § 364.2(1) provides that " 'a power of a city is vested in the city council except otherwise provided by a state law.' " Id. Relying on Iowa Code § 364.3, the Court also explained the regulations were not made applicable to city employees through a city ordinance, resolution, amendment, or motion. Id. The Court noted Davenport "needs to show some formal procedure for adoption of the standards by the **city**." Id. (emphasis in original) (internal citations and quotations omitted). That Davenport failed to do so was fatal to their contention.

Like Smith and Davenport, here, the City offered nothing to show the City Council considered and adopted CRPD's complaint procedure policy. Because a city's power lies in the duly elected city council as a matter of law and there is no record evidence to show the Cedar Rapids City Council considered and adopted the policy, the district court's reliance on CRPD's "complaint procedure" policy is fundamentally flawed. CRPD's policy is of no legal

consequence. It follows that the City is not entitled to judgment as a matter of law.

B. The district court erred in concluding that the administrative investigation was completed on May 31, 2023; no reasonable finder of fact could reach this conclusion.

The district court erred in concluding the investigation was completed on May 31, 2023. Applying the law correctly, no reasonable finder of fact could conclude that CRPD's investigation was completed later than April 18, 2023. Moreover, the district court, in granting *Defendant's* MSJ, did not construe the undisputed facts in the light most favorable to Smith as a nonmoving party. See Murtha v. Cahalan, 745 N.W.2d 711, 713–14 (Iowa 2008) (the evidence presented must be viewed in the light most favorable to the party opposing the motion for summary judgment.).

The undisputed material evidence establishes Lt. Doyle completed the formal administrative investigation on April 18, 2023. By this time, it is undisputed that Doyle had completed the interview of Smith (D0018 SOMF at 1), chose not to interview any other witnesses, including those identified by Smith in his interview (D0018 MSJ App. Smith Int. Rec.[23]), and finished his written report. (D0018, SOMF at 1). Therein, Doyle sustained Abodeely's complaint

[23] A timestamp is not provided due to the multiple references throughout the recording of other supervisors or "commanders" whom Smith spoke or communicated with. Some of them are discussed at 08:38-15:51, 21:06-23:39.

against Smith, finding violations of the "orders" and "obedience to rules" directives. (D0018, SOMF at 2). Doyle put the formal administrative investigation report in a three-ring binder with a flash drive of the audio files from Smith's interview.[24] (D0018, SOMF at 2). Doyle then provided the investigation report to Captain Hembera for review later that day. (D0018, SOMF at 2). After preparing his written report that day, Lt. Doyle did not perform any further investigation activities. He did not interview or question anyone else. He did not gather any additional evidence. He did not write any supplemental reports or memoranda. (D0033 Ruling at 2; Smith MSJ App. 99; Doyle Dep. tr. 99: 16-19). Lt. Doyle admitted that after April 18, 2023, he was not directed to perform any additional investigation by the Captains or Interim Chief Jonker. (D0033 Ruling at 2; Smith MSJ App. 99; Doyle Dep. tr. 99: 20:24). Contrary to the district court's ruling, the complaint procedure policy is not a material fact, rather it is irrelevant. (D0033 Ruling at 6-8).

Considering these undisputed material facts in the light most favorable to Smith, the district court should have concluded the investigation was completed on April 18, 2023, not May 31, 2023. Alternatively, the district court erred in not denying the MSJs and setting the matter for trial so that the finder of fact could

[24] Smith's Statement of Undisputed Material Facts states Doyle also put the pre-discipline hearing audio recording in the binder, however, to be clear, this did not occur until after the pre-discipline hearing on May 25, 2023.

decide what inferences and weight to give the evidence.[25] A genuine dispute of material fact exists as to when the investigation was completed in this case. IA R. Civ. P. 1.981. Therefore, the district court erred in granting the City judgment as a matter of law.

C. The district court erred in granting the City summary judgment because reasonable minds could differ on the resolution of the timing of completion of the investigation.

CRPD did not follow the law by waiting until Smith was suspended on May 31, 2023, to provide the results of the investigation. Here, the undisputed material facts show that Lt. Doyle finished his investigation and report on April 18, 2023, as noted above. Even assuming arguendo that CRPD's complaint procedure policy matters, which it doesn't, the City provides no explanation as to why Interim Chief Jonker did not review and approve Lt. Doyle's investigation at that time. If Chief Jonker simply would have reviewed the investigation when Lt. Doyle was finished with his investigation activities and report on April 18, 2023, then Lt. Doyle could have "immediately" provided the "written results of the investigation" to Smith in compliance with section 80F.1(3).[26] That CRPD

[25] Smith filed a unresisted motion to continue and the case deadlines as agreed upon with the City, which the district court inexplicably denied in its combined MSJ ruling. (D0029 Smith motion to continue; D0033 Ruling).

[26] If CRPD would have provided Smith the results of the investigation at that time, Lt. Doyle still could have provided his report to Captain Hembera for the Captains to consider discipline and make discipline recommendations to the Chief of Police. Once the Captains completed their written recommendations,

failed to provide the results to Smith at that time violated his rights under the statute. See Iowa Code § 80F.1(3). The district court misapplied the law in concluding otherwise as reasonable minds could reach a different outcome than the court. See Clinkscales v. Nelson Sec., Inc., 697 N.W.2d 836, 841 (Iowa 2005) (A genuine issue of material fact exists when reasonable minds may differ on the resolution of an issue).

CONCLUSION

The district court erred in interpreting Iowa Code section 80F.1. The district court's interpretation of the statute is inconsistent with the text, structure/context, purpose, and legislative history of the statute. The district court's analysis and application are unsound in that the court read language into the statute that does not exist and failed to correctly interpret the statute as a whole and give effect to the words used in the law. Moreover, the district court's reasoning, including reliance on the CRPD's complaint procedure policy, is misplaced in that there is no record evidence that the policy was approved as required by law. The policy has no relevance and it cannot trump or modify state law.

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they could submit them to Chief Jonker and he could review and consider the proposed discipline just as they did in this case. Of note, the district court mistakenly noted in its ruling that CRPD used a disposition panel, which it did not.

The court erred by not concluding that the undisputed material facts showed the investigation was completed on April 18, 2023, under sections 80F.1(3) and 80F.1(9). A reasonable trier of fact could conclude that the investigation was completed when the investigation activities ceased and Lt. Doyle submitted his report to Captain Hembera on April 18, 2023. The district court also erred in ruling that Smith was not entitled to the complete investigative agency's report and witness statements prior to the discipline hearing. In concluding the investigation was not complete until when Jonker punished Smith on May 31, 2023, the court misapplied the statute and erred in not viewing the undisputed material facts in the light most favorable to Smith as the resisting party. In the alternative, the district court erred in granting the City summary judgment because reasonable minds could disagree when the formal administrative investigation was complete.

This Court should interpret the statute as argued by Smith, including deciding that the investigation is completed when investigation activities cease absent some exception that need not be decided in this case, and, in usual cases, this is signified by the investigator finishing the written investigative report. The Court should conclude that the City is obligated to provide the results of the investigation immediately and at the same time as the report is provided to the Captains and Chief. Additionally, this Court should conclude Smith was entitled

to the report and statements before the discipline hearing and it was err as a matter of law to not provide them to him under section 80F.1(9). Moreover, this Court should conclude that the statute's purpose is to protect officers and provide additional substantive and procedural rights, including the right to receive the written investigative report and witness statements prior to a discipline hearing. Smith respectfully requests this Court to reverse the district court's ruling, grant Smith summary judgment as a matter of law on the issue of liability or remand this case with instructions to the district court to set this matter for trial.

REQUEST FOR ORAL ARGUMENT

Because this case presents issues of first impression, including regarding the interpretation and application of recently amended statutes, oral argument is requested.

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CERTIFICATE OF FILING/SERVICE

I hereby certify that a true and accurate copy of this instrument has been and will be filed electronically with the Clerk of the Iowa Supreme Court and forwarded to all counsel via the electronic filing system on this 1st of August, 2024, and by U.S. Mail for any party not registered to receive notice of filings via the ECF process.

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Iowa Rule of Appellate Procedure 6.903(1)(g)(1) because it contains 9,291 words, excluding the parts of the brief exempted.

2. This brief complies with the typeface requirement of Iowa Rule of Appellate Procedure 6.903(1)(e) because it has been prepared in proportionately spaced typeface using Microsoft Word in Times New Roman 14 point type.

/s/ Skylar J. Limkemann