

IN THE SUPREME COURT OF IOWA  
Supreme Court No: 17-1961

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OTTUMWA POLICE  
DEPARTMENT,  
and CITY OF OTTUMWA, IOWA,

Defendants-Appellants,

vs.

MARK LEONARD MILLIGAN,

Plaintiff-Appellee.

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APPELLEE'S FINAL BRIEF

APPEAL FROM THE IOWA DISTRICT COURT FOR WAPELLO  
COUNTY THE HONORABLE RANDY DEGEEST  
NO. EQEQ110695

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## STATEMENT OF ISSUES

### I. THE DISTRICT COURT CORRECTLY ORDERED THE CITY OF OTTUMWA TO PRODUCE OPEN RECORDS REQUESTED BY MILLIGAN

#### AUTHORITY

##### Standard of Review; Preservation of Error:

Iowa Code Chapter 22

ACLU of Iowa v. Records Custodian, 818 N.W.2d 231 (Iowa 2012)

Zimmer v. Vander Waal, 780 N.W.2d 730 (Iowa 2010)

Estate of Ryan v. Heritage Trails Assocs., Inc.,  
745 N.W.2d 724, 728 (Iowa 2008)

##### Introduction:

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Ottumwa Municipal Code § 23-13.2(c)(d)

Ottumwa Municipal Code § 23-13.2(e)(f)(g)

Ottumwa Municipal Code § 23-13.1(d)(1)

Iowa Code § 22.7(5)

18 U.S.C. 2721, Drivers' Privacy Protection Act (DPPA)

American Civil Liberties Foundation of Iowa v. Records Custodian,  
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**3. DPPA Only Applies to Department of Vehicle Records:**

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Davis v. Freedom of Information Commission,  
47 CONNP supp. 309, A.2d 1188 (Judicial District of New Britain,  
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Cieslack v. Easley,  
2018 U.S. Dist. LEXIS (U.S. Dist. Ct. for the District of Minnesota,  
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218 U.S. Dist. LEXIS 97183 (U.S. Dist. Ct. for Western District of  
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II. THE DISTRICT COURT CORRECTLY AWARDED  
REASONABLE ATTORNEY FEES AND COSTS TO THE  
PLAINTIFF

**Authority**

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764 F. Supp.2d 1037 (S.D. Iowa 2011)  
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Sims v. NCI, 759 N.W.2d 333 (Iowa 2009)  
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Nace v. Pella Corporation, et al.,

Marion County No. EQCV092949 (Findings of Fact, Conclusions of Law, and Ruling by Judge Randy Hefner, 2011)

## **ROUTING STATEMENT**

This case should be transferred to the Iowa Court of Appeals as it involves issues involving the application of existing legal principals and issues that are appropriate for summary disposition. Iowa R. App. P. 6.1101(3).

## **STATEMENT OF THE CASE**

Appellee agrees with the Appellants' Statement of the Case.

## **STATEMENT OF THE FACTS**

The facts surrounding this open records case are largely not in dispute. The City of Ottumwa enacted a municipal code ordinance for the automated traffic enforcement of the speed laws of the City. (Am. App. pp. 167-173). The purpose of the ordinance is to enforce speed laws within the city limits. (Am. App. p. 373). The City of Ottumwa then entered into a contract with RedSpeed Iowa LLC to enforce the city ordinance. (Am. App. pp. 79-154).

The Appellant appears to have properly described and explained how the municipal ordinance is enforced through the contract with RedSpeed and use of the procedures contained in the municipal ordinance. (See

Appellant's Brief, pp. 9-10). The Appellant accurately sets forth the circumstances of a RedSpeed citation given to Milligan. (See Appellant's Brief p. 10). (See Am. App. pp. 174-176).

On July 10, 2016, Milligan made an open records request for RedSpeed records under Iowa Code Chapter 22. (Am. App. pp. 74-78). Most importantly and relevant to this appeal, Milligan requested all information the City received from RedSpeed, the names of all violators issued citations from the Ottumwa Police Department under the RedSpeed ordinance and the names of all violators not issued citations after being reported as violations to the Ottumwa Police Department. (Am. App. p. 76). The City of Ottumwa responded to those two particular requests claiming that the records concerning these speed traffic violations were confidential information under state and federal law (Am. App. p. 77).

As a result of the City's refusal to provide the requested open records, Milligan brought suit against the City of Ottumwa under Iowa Code Chapter 22. (Am. App. pp. 8-16). The City responded by filing its Answer, claiming the speed citations issued under the municipal ordinance are not public records or subject to production under Iowa and/or federal law. (Am. App. pp. 17-21).

The Ottumwa Municipal Ordinance provides for speed enforcement against the **registered owner** of a vehicle radared and photographed by the RedSpeed equipment. Ottumwa Municipal Ordinance § 23 – 13.2(b) (Am. App. pp. 167-173). RedSpeed determines the identity of the vehicle owner. RedSpeed gathers this information. RedSpeed then forwards the speed violation to the City of Ottumwa for approval by an officer. (Am. App. pp. 374-375; 167-173).

RedSpeed obtains its owner information from a system entitled “NLETS” which provides RedSpeed the registered vehicle owner information. (App. p. 376). The NLET’s system is a data collection system across the country that allows state and federal law enforcement to communicate with regard to driver information and has access to each state’s individual system. (Am. App. p. 376). Of particular importance in the record in this case is the City of Ottumwa’s admission that any information contained in a court record **“or things of that nature”... “is obviously public information”**. (Am. App. p. 379).

In fact, the City’s publication “Frequently Asked Questions: City of Ottumwa Automated Speed Enforcement Program” also admits the enforcement records are public:



“Isn’t it a violation of my privacy to have a camera photograph my vehicle without my permission?”

No. Individuals applying for a Driver’s License are agreeing to abide by the established Rules of the Road. Speed Enforcement Cameras only capture images of vehicles whose drivers have chosen to violate the established laws by speeding, and according to established Court doctrine, individuals who are breaking the law forfeit their privacy rights.

In addition, a “Violation” of the automated speed enforcement ordinance, means a speed violation as defined by Iowa State Law. (Am. App. p. 90).

A vehicle owner who has been issued an automated traffic citation is entitled to contest the citation. (Am. App. pp. 168-169). This entitles the owner to an administrative hearing before an administrative appeals board or the issuance of a municipal infraction to be heard in the small claims division of the District Court. (Am. App. pp. 168-169).

In his lawsuit, Milligan claimed that records of the speed citations issued by RedSpeed are open public records. The District Court held the requested information was open records subject to Iowa Code Chapter 22. (Am. App. pp. 201-207). The City of Ottumwa’s appeal followed. (Notice of Appeal) (Am. App. pp. 517-518).

## ARGUMENT

### I. THE DISTRICT COURT CORRECTLY ORDERED THE CITY OF OTTUMWA TO PRODUCE OPEN RECORDS REQUESTED BY MILLIGAN

**Standard of Review.** Open records cases under Iowa Code Chapter 22 are tried in equity and appellate review is de novo. ACLU of Iowa v. Records Custodian, 818 N.W.2d 231 (Iowa 2012). The standard of review of questions of statutory construction is for correction of errors at law. Zimmer v. Vander Waal, 780 N.W.2d 730, 733 (Iowa 2010); Estate of Ryan v. Heritage Trails Assocs., Inc., 745 N.W.2d 724, 728 (Iowa 2008).

**Preservation of Error.** The Appellee (Hereinafter “Milligan”) agrees that the City has preserved error.

## INTRODUCTION

This case involves a claim by Plaintiff Mark Milligan alleging violations of Iowa Open Records Act, Chapter 22 of the Code of Iowa, against the City of Ottumwa, requesting the court require production of requested records and order the equitable relief provided for in Chapter 22. The issue before the court is to whether the Plaintiff as a public citizen is

entitled to the relief requested and awarded by the District Court. (Am. App. pp. 201-207; 306-311).

The City of Ottumwa has adopted a municipal ordinance for automated speed traffic enforcement. See Ottumwa Municipal Code § 23-13.2, (Am. App. pp. 167-173). This ordinance permits the City to deploy an automated speed traffic enforcement system which makes video images of vehicles allegedly failing to obey speed regulations within the city. The ordinance provides for the issuance of automated traffic citations which include notice of a fine. The ordinance enables the City to contract with an automated traffic enforcement contractor to provide equipment and services in connection with this automated traffic enforcement system. The ordinance further provides for vehicle owners civil liability for “traffic offenses” in order to avoid payment of state court costs. See § 23-13.2(c)(d). A vehicle owner who is issued an automated traffic citation has the option of paying the civil fine, appealing the citation to an administrative appeal board, or refusing to pay the same, upon which a municipal infraction (traffic citation) may be filed by the City Police Department. This would

result in a criminal traffic citation and subject the citizen to possible liability for state court costs if convicted. See § 23-13.2(e)(f)(g).

The City of Ottumwa has contracted with “RedSpeed” as the contract vendor to enforce the mobile speed enforcement program for the City of Ottumwa. (Am. App pp. 79-154). Although the municipal ordinance requires that “notice of the violation will be mailed to the vehicle owner for each violation recorded by an automated traffic enforcement system” (§ 23-13.1(d)(1)), this municipal process is in truth not followed until the City Police Department reviews the photograph of the license plate along with the name of the registered owner. Rather, if the contract vendor RedSpeed, measures the speed of a vehicle in excess of the speed limit, the violation is thereafter mailed to the City of Ottumwa and the violation is reviewed and approved or disapproved by an Ottumwa Police Officer. Only if it is approved, a citation including a violation photo and the vehicle’s speed is thereafter sent to the registered owner by “RedSpeed”. (Am. App. pp. 167-173).

The Plaintiff’s open records request sought the City produce all records from RedSpeed, the names and circumstances for violators issued

citations as well as the names of violators not issued citations after the same have been reported to the Ottumwa Police Department and reviewed by their office. These are matters of public record. See Iowa Code § 22.7(5) (“however, the date, time, specific location, and immediate facts and circumstances surrounding a crime or incident shall not be kept confidential under this section...”).

The Defendants’ claim that the requested open records are protected from disclosure by the Drivers’ Privacy Protection Act (DPPA), 18 U.S.C. 2721, et seq. The clear and unambiguous language of the DPPA does not protect the disclosure of the requested information nor is it privileged under the statute. The DPPA does not apply to the records request in this case and is not a legitimate or valid defense to the disclosure of these open records.

## IOWA OPEN RECORDS ACT

### CHAPTER 22

The Iowa Open Records Act allows public examination of government records to insure the governments activities are more transparent to the public it represents. American Civil Liberties Foundation of Iowa v. Records Custodian, Atlantic Community School District, 818

N.W.2d 231(Iowa 2012). The purpose of the open records 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 of its duty to act. Horsfield Materials, Inc. v. City of Dyersville, 834 N.W.2d 444 (Iowa 2013). There is a presumption of openness and disclosure under the statute. *Id.* The right of persons to view public records is to be interpreted liberally to provide broad public access to public records. Gannon v. Board of Region, 692 N.W.2d 31, 38 (Iowa 2005). Exceptions to the general rules of disclosure are to be narrowly construed. *Id.* Finally, a government body cannot prevent the examination or copying of public records by contracting with a non-governing body to perform any of its duties or functions. See Iowa Code § 22.2(2).

## THE DRIVER'S PRIVACY PROTECTION ACT

(18 U.S.C. § 2721 et seq.)

The DPPA was enacted in 1994 to limit the release of an individual's personal information contained in his or her driver's license record and, in general, regulates the authority of **State Motor Vehicle Departments** to disclose personal information maintained in their records. DeVere v.

Attorney General, 781 A.2d 24, 28 (2001). The act was enacted largely in

response to the mounting public safety concerns over easy access by stalkers and other criminals of personal information maintained by state motor vehicle departments and also to curb the common practice by many states of selling information in motor vehicle records to business, marketers and individuals. Locate.Plus.Com, Inc v. Iowa Department of Transportation, 650 N.W.2d 609, 614 (Iowa 2002). Although the Act has a general prohibition against disclosure of personal information contained in motor vehicle records, congress carved out exceptions for both mandatory and permissive disclosure of personal information. Id. The DPPA therefore prohibits the release or use by any state department of motor vehicles of personal information about an individual obtained by the department in connection with the motor vehicle record. 18 U.S.C. § 2721(a).

**1. Exclusions from the DPPA.**

In defining “personal information” protected by the DPPA, the act specifically excludes “information on vehicular accidents, **driving violations**, and driver’s status.” 18 U.S.C. § 2725(3). Iowa has specifically codified the DPPA into Iowa law. See Iowa Code § 321.11. There, it provides that all records of the department shall be open to public inspection

with the exception of those made confidential or not permitted to be open records in accordance with (the DPPA) 18 U.S.C. § 2721 et seq. Iowa Code § 321.11(1). It further codifies the “personal information” definition and the exclusions found at 18 U.S.C. 2725(3). Iowa Code § 321.11(2) (“as used in this section, personal information” means information that identifies a person, including a person’s photograph, social security number, driver’s license number, name, address, telephone number, and medical or disability information, but does not include information on vehicular accidents, **driving violations**, and driver’s status or a person’s zip code.”)

Automated traffic enforcement systems have been enacted by municipalities to assist the municipality in the enforcement of its traffic laws. Hughes v. City of Cedar Rapids, 112 F. Supp 3d 817, 842 (N.D. Iowa 2015). The process authorizes a city officer to enforce a city code regulation by issuance of a civil citation. Iowa Code 364.22(4). An automated enforcement system is merely an additional forum having concurrent jurisdiction for driving violations. Behn v. City of Cedar Rapids, 2017 WL 706347 (Iowa App 2017); Hughes, 112 F. Supp 3d at 849; Brooks v. City of Des Moines, 844 F.3d 978, 980 (8<sup>th</sup> Cir. 2016). Thus, under the plain



language of Iowa Code § 321.11, records concerning driving violations are not “personal information” prohibited from disclosure by the DPPA.

There can be little doubt that the Iowa Open Records law makes information contained in reports involving crimes or incidents, including the date, time, specific location, and immediate facts and circumstances surrounding the same are not confidential and are public records within the meaning of Chapter 22. See Iowa Code § 22.7(5). It is equally clear that Iowa Code § 321.11 sets forth state law that information on vehicular accidents, driving violations, and driver’s status are exempt from the prohibited disclosure by DPPA. The United States District Court for the District of Colorado determined that the plain language of the 18 U.S.C. § 2725(3), formerly § 2725(e), exempts such information from the prohibited disclosure of the DPPA. Mattivi v. Russell, 2002 WL31949898 (U.S. D.C. Colorado 2002) (“finally, I also include that the plain language of exception in Section 2725(e) makes clear that congress did not intend “information on vehicular accidents” to be included in the Acts prohibition of disclosure of personal information”).

In almost identical fashion, the Supreme Court of Arkansas recently held that vehicle accident reports are exempt from the prohibited disclosure of the DPPA. Arkansas State Police v. Wren, 401 S.W.3d 124 (S. Ct. Ark. 2016). There, the Arkansas Supreme Court noted that personal information in accident reports are public records within the meaning of the Arkansas Freedom of Information Act. Id. at 126. In this case, such records are public records within the meaning of the Iowa Open Records law in an identical fashion. Iowa Code § 22.7(5). The Arkansas Supreme Court then noted that information on vehicular accidents, driving violations and driver’s status is not “personal information” under § 2725(3). Id. at 127. The Arkansas Supreme Court ruled that the DPPA does not prohibit information contained in these reports released under the Arkansas Freedom of Information Act. Id. at 128.

In similar fashion, the Federal District Court in Connecticut held that the plain language of § 2725(3) makes clear that driving violations and driver’s status are not “personal information” and therefore are not protected by the DPPA. Camara v. Metro-North Railroad Company, 596 F.Supp.2d 517, 523 (U.S.D.Ct. D. Connecticut 2009). There the Court concluded that a

driving history which contains an operator's traffic violations as well as information pertaining to the status of the operator's license and registration are not prohibited from disclosure by the DPPA. Id. at 522. It went on to hold that "Congress explicitly allowed public access to information regarding an individual's vehicular accidents, driving violations, and driver's status. Id. at 525.

In its Brief, the City of Ottumwa fails to mention the fact that Iowa Code § 321.11(2) exempts information on driving violations from the definition of personal information. In fact, Iowa Code § 321.11(2) is identical to the language of the DPPA which also excludes information on driving violations from the definition of personal information. 18 U.S.C. § 2725(3). Both the Federal and Iowa Statutes plain language provides for the dissemination of information on driving violations. In addition, the Freedom of Information Statute in Iowa (open records) requires that the date, time, specific location, and immediate facts and circumstances surrounding a crime or incident shall **not be kept confidential**. Iowa Code § 22.7(5).

2. **Exceptions to the DPPA.** Secondly, despite the general prohibition on disclosure, the DPPA provides fourteen exceptions which permit

disclosure, including “use by any government agency, including any court or law enforcement agency in carrying out its functions...” (“GOVERNMENT FUNCTION EXCEPTION”). 18 U.S.C. § 2721(b)(1); Bass v. Fewless, 2016 WL 6879081 (U.S. Dist. Ct., M.D. Florida 2016). This exception applies to law enforcement and crime prevention strategies. Id. The federal district court in Florida noted, “Courts have routinely found that accusing and distributing driver’s license records for more traditional law enforcement functions are within the bounds of the Government Function Exception.” Id. The DPPA was not intended to hinder or restrict law enforcement and crime prevention strategies even if that includes releasing personal information to the public. McQuarter v. City of Montgomery, 2008 WL 401360 (U.S. Dist. Ct., M.D. Alabama 2008). There the federal court in Alabama went on to hold the exception allows disclosure of the license information to the general public. Id. See also Darling v. Falls, 2017 WL 664037 (U.S. Dist. Ct. M.D. N.C. 2017) (disclosure of motor vehicle information while carrying out law enforcement duties permitted); Watts v. City of Miami, 2017 WL 5260042 (11<sup>th</sup> Cir. 2017) (access to motor vehicle information for law enforcement purpose does not violate clearly established law under DPPA); Gilday v. City of Indianapolis, 54 N.E.3d 378 (Ct. App.

Ind. 2016) (disclosure of personal information on parking tickets does not violate DPPA).

Finally, while not addressing the exemptions set forth in § 2725(3), because unnecessary, the Wisconsin Court of Appeals quite recently also determined that the DPPA does not prohibit police department disclosure of accident and violation information. New Richmond News v. City of New Richmond, 370 Wis.2d 75, 109 (Wis. Court of Appeals 2016). In addition to excluding accident and violation information from “personal information”, the Wisconsin Court found that DPPA specifically authorizes disclosure when authorized under state law if related to the operation of motor vehicle or public safety. Id. at 82, 101; 18 U.S.C. § 2721(d)(14). The Wisconsin Court specifically noted that Wisconsin law requires release of accident reports. New Richmond News v. City of New Richmond, 370 Wis.2d at 82. The Wisconsin Court therefore concluded that a police department was permitted to release unredacted reports related to operation of motor vehicle and public safety and was required to do so in an open records request. Id. Iowa law specifically authorizes release of vehicular accident and driving

violation information in an identical fashion as Wisconsin law. Iowa Code § 321.11(2).

**3. DPPA Only Applies to Department of Motor Vehicle Records.**

Additionally, the DPPA only applies to the state Department of Motor Vehicles and not to other government agencies. Davis v. Freedom of Information Commission, 787 A.2d 530 (Supreme Ct. of Connecticut 2002), adopting the decision in Davis v. Freedom of Information Commission, 47 CONNP supp. 309, 790 A.2d 1188, 1192 (Judicial District of New Britain, Ct. 2001). There, the Supreme Court of Connecticut found that both Connecticut state law and the Federal statute (DPPA) permitted other government agencies to disclose information pursuant to a state law freedom of information request. Id. There, as here in Iowa, Connecticut law required disclosure of the information in the possession of other government agencies, whether state or local. Id. at 1194.

“RedSpeed” is not the Iowa Department of Motor Vehicles and is not an officer, employee or contractor thereof. See 18 U.S.C. § 2721(a). Nor have Defendants’ presented any claim or evidence that “RedSpeed” has any relationship whatsoever with the Iowa Department of Motor Vehicles.

“RedSpeed” obtains the name of the registered owner and the circumstances of the speeding violation from NLETS independently of the Iowa Department of Motor Vehicles. (Am. App. pp. 373-375). The “RedSpeed” records of the incident are therefore not subject to the nondisclosure requirements of the DPPA. Davis v. Freedom of Information Commission, 790 A.2d at 1192. The refusal by the Police Department and the City to produce these “RedSpeed” records impedes the transparency of police department activities in enforcing Municipal Code § 23-13.2. The nondisclosure of these activities prevents public scrutiny and allows the police department to secrete its decision making activities from the public.

As recently indicated by a United States District Court for our Eighth Circuit, the DPPA “was intended to prohibit **only** the disclosure or redisclosure of information originating from the State Department of Motor Vehicle Record.” (Cieslack v. Easley, 2018 U.S. Dist. LEXIS (U.S. Dist. Ct. for the District of Minnesota, June 11, 2018) (citing Siegler v. Best Buy Company, 519 F. App’x 604, 605 (11<sup>th</sup> Cir. 2013)). It only regulates the resale and redisclosure of drivers’ personal information by private persons who have obtained that information from a state department of motor

vehicles. Id. Thus, the owner registration records obtained from RedSpeed are not subject to the prohibitions of the DPPA. See also Kresal v. SECURA Ins. Holdings, Inc., 218 U.S. Dist. LEXIS 97183 (U.S. Dist. Ct. for Western District of Wisconsin, June 11, 2018). The DPPA prescribes only the publication of personal information that has been obtained for motor vehicle records. The origin of the information is thus crucial to the illegality of its publication thus the statute is agnostic to the dissemination of the very same information acquired from the lawful source.

II. THE DISTRICT COURT CORRECTLY AWARDED  
REASONABLE ATTORNEY FEES AND COSTS TO THE  
PLAINTIFF

**Preservation of Error.** Milligan agrees that the City of Ottumwa preserved error on this issue.

**Standard of Review.** The District Court's award of attorney fees and costs is reviewed for an abuse of discretion. In Re. Herrera, 2018 Iowa Sup. LEXIS 47; Simon Seeding and Sod, Inc. v. Dubuque Human Rights Commission, 895 N.W.2d 446 (Iowa 2017). There is no abuse of discretion in an attorney fee award unless it is shown that such discretion was exercised



on grounds clearly untenable, to an extent clearly unreasonable. Id. (quoting State v. Morrison, 323 N.W.2d 254, 256 (Iowa 1982)).

**Argument.** The District Court award of attorney fees and expenses was reasonable, clearly not untenable and not an abuse of discretion. The award by the District Court should be affirmed. In addition, Milligan should be entitled to appellate attorney fees to be determined by the District Court. The District Court has authority to award appellate attorney fees under the authority of the fee shifting statute. In Re. Herrera, 2018 Iowa Sup. LEXIS 47; Simon Seeding and Sod, Inc. v. Dubuque Human Rights Commission, 895 N.W.2d 446 (Iowa 2017).

Iowa Code § 22.10(3)(c) provides in relevant part:

“3. Upon a finding by a preponderance of the evidence that a lawful custodian has violated any provision of this chapter, a court:...(c) 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....”

This code provision requires the court to award reasonable attorney fees to the prevailing citizen who proves a violation of Chapter 22. City of Riverdale v. Diercks, 806 N.W.2d 643, 653 (Iowa 2011).

The fee shifting statute in the Iowa Civil Rights Act (Iowa Code § 216.15(9)(a)(8)) is materially similar to the fee shifting statute in the Iowa open records statute (Iowa Code § 22.10). Supreme Court interpretation of § 216.15 is persuasive. D.D. v. Davenport Cmty. Sch. Dist., 2013 Iowa App. Lexis 993 (citing Lynch v. City of Des Moines, 464 N.W.2d 236 (Iowa 1990)). The purpose of the statute is to provide the injured party, not only attorney fees incurred obtaining the relief, but also fees incurred while attempting to collect the fees. Id. Statutory attorney fees motivate lawyers to step up and fight city hall on behalf of citizens whose elected officials refuse requests for disclosure. This in turn shines “the light of day on actions of our public officials” and “deters misconduct that thrives in darkness.” City of Riverdale v. Diercks, 806 N.W.2d 643, 645 (Iowa 2011).

The starting point in this analysis is determining the lodestar amount of attorney fees. Johnson v. Georgia Highway Express, Inc., 488 F.2d 714 (5<sup>th</sup> Cir. 1974). The “lodestar” amount of fees is computed by multiplying the number of hours reasonably expended on the litigation times the reasonable hourly rates of the attorneys. Blum v. Stenson, 465 U.S. 886 (1984). Courts are to look to the marketplace as a guide in determining what

is a reasonable attorney fee. Id. Reasonableness of rates requested is to be determined with reference to rates prevailing in the community for similar work by attorneys of comparable skill, experience, and reputation. Id.

The **minimum** award for attorneys' fees should generally not be less than the number of hours worked times the attorney's regular hourly rate. Zoll v. Eastern Allamakee Community School District, 588 F.2d 246 (8<sup>th</sup> Cir. 1978). "There is a 'strong presumption' that a prevailing lawyer is entitled to his lodestar fee." Hoge v. Honda of Am. Mfg., Inc., 384 F.3d 238, 255 (6<sup>th</sup> Cir. 2004). An award of fees in an amount less than the lodestar amount can serve to undermine the remedial purposes of fee shifting statutes. Gabelmann v. NFO, Inc., 606 N.W.2d.339, 342-343 (Iowa 2000).

**Evidence of employer stonewalling and vigorous litigation tactics further justify an appropriate fee award. The risks of such tactics should rest with the party best equipped to financially bear it. Id.** ("[t]he Supreme Court has stated '[t]he government cannot litigate tenaciously and then be heard to complain about the time necessarily spent by the plaintiff in response.' " Loggins v. Delo, 999 F.2d 364, 368 (8<sup>th</sup> Cir. 1993) (quoting City of Riverside v. Rivera, 477 U.S. 561, 580 n.11 (1986)).

Milligan’s counsel efficiently prepared this case and expended a reasonable amount of time successfully litigating this case. This is especially true considering the complexities of this litigation and the vigorous although misplaced defense by Defendants.

Fees awarded to a prevailing party should be in line with those fees traditionally received by the lawyer from fee-paying clients. McDonald v. Armontrout, 860 F.2d 1456, 1459 (8<sup>th</sup> Cir. 1988). The Eighth Circuit described the rate to which lawyers are entitled as one for which “attorneys of quality and experience with other profitable demands upon their time will not need to sacrifice income available in alternative enterprises in order to affect a public policy intended to protect all citizens.” Casey v. City of Cabool, Mo., 12 F.3d 799, 805 (8th Cir.1993).

The relevant market is not confined to Ottumwa, Iowa, nor the entire state of Iowa, because attorneys from the surrounding metropolitan areas in the Midwest regularly appear in Iowa courts in many cases. Baker v. John Morrell & Co., 263 F. Supp. 2d 1161, 1191 (N.D. Iowa 2003). “In addition, when fixing hourly rates, courts may draw on their own experience and knowledge of prevailing market rates.” Warnock v. Archer, 397 F.3d 1024,

1027 (8<sup>th</sup> Cir. 2005). Finally, “lawyers who fetch above-average rates are presumptively entitled to them, rather than to some rate devised by the Court.” Gusman v. Unysis Corp., 986 F.2d 1146, 1150 (7<sup>th</sup> Cir. 1993).

Also, relevant to the reasonableness of the requested fee is the fact that this case was accepted solely on a successful result and a court ordered award of attorney fees. Here, Milligan’s counsel took a substantial risk that he would recoup no money for his services in this case, as Milligan was under no obligation to pay him should his claim have failed. Counsel for Milligan took on a financially risky task in pursuing this claim against the defenses posed by Defendants, as only a successful result and an award of attorney fees would result in compensation.

When the Seventh Circuit reversed a trial court’s reduction of the hourly rate of two attorneys from Chicago who successfully tried a case in southern Illinois. Mathur v. Bd. of Tr. of S. Ill. Univ., 317 F.3d 738 (7<sup>th</sup> Cir. 2003), the Court stated:

For that reason, our preference is to compensate attorneys for the amount that they would have earned from paying clients, *i.e.*, the standard hourly rate.... An attorney may charge higher than the

community's average if she possesses an unusual amount of skill, the ability to emphasize [sic] with the jury, investigative abilities, or other qualities which command a premium.... Only if an attorney is unable to provide evidence of actual billing rates should a district court look to other evidence, including "rates similar experienced attorneys in the community charge paying clients for similar work.... *However just because the proffered rate is higher than the local rate does not mean that a district court may freely adjust that rate downward.* When a local attorney has market rates that are higher than the local average, "[a] judge who departs from this presumptive rate must have some reason other than the ability to identify a different average rate in the community....

Id. at 743-744 (emphasis added).

The documentation attached to the Plaintiff's Motion for Attorney fees must be sufficient in detail and probative of value to enable the Court to determine with a high degree of certainty that such hours were actually and reasonably expended. H.J., Inc. v. Flygt Corp., 925 F.2d 257, 260 (8<sup>th</sup> Cir. 1991). It is not necessary to record in great detail exactly how every minute of attorney time was expended, as long as counsel identifies the general subject matter of his time expenditures. Hensley v. Eckerhart, 461 U.S. 424, 437 n.12 (1983). Plaintiff has provided such documentation, showing in

detail how the hours requested were spent. Consequently, the lodestar in this matter is \$51,475.12.

The lodestar fee amount is universally held to be the **minimum fee that should be awarded by the Court.** Lewis v. Heartland Inns of America LLC, 764 F. Supp.2d 1037 (S.D. Iowa 2011); Zoll v. Eastern Allamakee Community School District, 588 F.2d 246 (8<sup>th</sup> Cir. 1978).

Finally, as briefly mentioned earlier, the factual and legal complexities of this open records case cannot be ignored. Two of the more important factors to be considered by a Court are (1) the novelty and difficulty of the issues and (2) the skill requisite to perform the legal services properly. Zoll v. Eastern Allamakee Community School District, 588 F.2d 246 (8<sup>th</sup> Cir. 1978).

This novelty and complexity is exemplified by the vast array of legal resources invested in this case by Defendants' claiming the information sought was privileged and confidential under federal and state law. Milligan had one (1) lawyer to pursue this lawsuit to protect his and the public's statutory rights to public information while fending against the resources employed by Defendants against him.

Milligan's counsel has many years of experience and skill in the litigation field. See Tullis v. Merrill, 574 N.W.2d 236 (Iowa 1998); Sims v. NCI, 759 N.W.2d 333 (Iowa 2009). He successfully tried the first Americans with Disabilities Act jury trial in Iowa in 1993. Rockhold v Bloomfield Foundry, U.S. Dist. Ct. S. Dist. Iowa, No. 4-93-cv-80496 (1993). He has successfully tried numerous employment drug testing cases to successful completion, both before Iowa District Courts and then the Iowa Supreme Court while also resolving a number of other drug testing cases short of trial. See Sims v. NCI, 759 N.W.2d 333 (Iowa 2009) (counsel was awarded \$250 per hour for work performed in 2008); Buseman v. Vermeer Manufacturing, Marion County No. LACV0088526 (Findings of Fact, Conclusion of Law and Judgment Entry by Judge J. W. Jordan, August 2, 2001); Eakins v. Bloom Builders, Mahaska County No. LALA073683 (Findings of Fact, Conclusions of Law and Judgment Entry by Judge James Blomgren, 2002); Nace v. Pella Corporation, et al., Marion County No. EQCV092949 (Findings of Fact, Conclusions of Law, and Ruling by Judge Randy Hefner, 2011). Such experience and skills were, and remain, essential to the protection of Milligan's statutory rights. An award of attorney fees and expenses under the lodestar method is therefore justified.



Finally, the difficulty that exists in obtaining a successful result against an adversary with such vast resources as the Defendants cannot be questioned. Winning an open records case, can be a daunting task, especially where the public entity has ample resources to battle a case with novel defenses. The disparate financial resources of the parties pales in comparison to the even more daunting task of overcoming the availability of multiple managerial and supervisory witnesses presenting an organized and concerted defense theory that flies in the face of the undeniable facts. Milligan on the other hand faced this task with little to no resources and no type of organized support.

This case was tried by an experienced litigator against formidable municipal litigation defense lawyers. The hourly rate requested is commensurate with other lawyers in this field of law. The hourly rate requested is commensurate with that awarded by other courts in Iowa. This case was complicated by aggressive defense tactics and strategies. The time expended was reasonable. Most importantly, counsel was successful in obtaining the relief sought. The Court should award the fees requested.

## CONCLUSION

In summary, the City of Ottumwa intentionally failed to disclose public records which are specifically declared open records under Iowa law and in compliance with the DPPA. The City's argument that this information is prohibited from disclosure by Federal and state law is without merit. In fact, the identities of Iowa drivers who are proposed to receive traffic citations or who actually receive traffic citations through the RedSpeed system is exactly the type of public information deemed particularly important under the Iowa Open Records Act. These are the type of records required to be disclosed in order to open the doors of government to public scrutiny and to prevent government from secreting its decision making activities from the public. Defendants' claim that the requested information is protected by the DPPA is without merit. Such reliance is solely an effort to conceal public information about civil traffic enforcement records from the requirement of Iowa Code Chapter 22.

Milligan's counsel was successful in obtaining the relief sought for Milligan in this Iowa Code Chapter 22 lawsuit. There is no evidence of an abuse of discretion in the District Court's award of attorney fees nor has it been shown that such discretion was exercised on grounds untenable or

unreasonable. The District Court award of attorney fees should be affirmed. In addition, this court should remand to the District Court for an appropriate determination of appellate attorney fees.

Respectfully submitted,

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## **REQUEST FOR ORAL ARGUMENTS**

Appellee requests Oral Argument.

Dated August 22, 2018

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REQUIREMENTS AND TYPE-VOLUME LIMITATION**

The brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)g(1) or (2) because:

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Dated August 22, 2018.

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## CERTIFICATE OF SERVICE

The undersigned certifies a copy of the Plaintiff/Appellee's Proof Brief was served on the 22<sup>nd</sup> day of August, 2018, electronically upon the clerk of the Supreme Court pursuant to Iowa R. Civ. P. 1.442(2) and that all parties in this case are electronic filers.

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