IN THE IOWA SUPREME COURT

Supreme Court No. 22–1444
District Court No. CVCV062900

SUMMIT CARBON SOLUTIONS, LLC,
Petitioner-Appellant,

vs.

IOWA UTILITIES BOARD,
Respondent-Appellee,

and

SIERRA CLUB IOWA CHAPTER &
OFFICE OF CONSUMER ADVOCATE,
Intervenors-Appellees.

APPEAL FROM THE IOWA DISTRICT COURT IN AND FOR POLK COUNTY
THE HONORABLE DAVID NELMARK

REPLY BRIEF OF SUMMIT CARBON SOLUTIONS, LLC

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ARGUMENT

Sierra Club Iowa Chapter ("the Sierra Club") seeks an absurd result in this appeal. Under the statutes governing various public infrastructure permits issued by the Iowa Utilities Board ("Board"), applicants must gather landowner information for use in sending legally required notices of public informational meetings that must be held *before* they may begin negotiating easements with landowners. *See, e.g.*, Iowa Code § 478.2(4) (2021) (transmission lines); *id.* § 479.5(5) (intrastate pipelines); *id.* § 479B.4(6) (interstate hazardous liquid pipelines). Absent protection from public disclosure, the landowner information they are required by law to gather for the purpose of providing Iowans notice of such projects would be available for use by private opposition — before applicants themselves can use it to provide the statutorily required notice and before they contact a single landowner about negotiating a voluntary easement.

The public disclosure of such landowner information would not serve the core purpose of open records laws "to enlighten the public about the operation or activities of the government." *Clymer v. City of Cedar Rapids*, 601 N.W.2d 42, 47 (Iowa 1999). Quite the contrary: such public disclosures would serve only to hamper public infrastructure development in Iowa while simultaneously invading the privacy of scores of landowners whose personal

information will be publicly disclosed without their knowledge. In this case alone, the Sierra Club demanded that the names and addresses of over 10,000 Iowans be publicly disclosed in connection with a project opposed by a very vocal, highly organized opposition (the "Landowner Information").

The district court erred by failing to recognize either of the two paths to protecting such information that Iowa law provides — the exemption from public disclosure for voluntary communications to the government in Iowa Code section 22.7(18) and the balancing test that determines when individual privacy interests not protected by statute are nonetheless entitled to protection under common-law privacy principles under the present analytical framework articulated in *American Civil Liberties Union Foundation of Iowa, Inc. v. Records Custodian, Atlantic Community School District*, 818 N.W.2d 231, 234 (Iowa 2012). Summit Carbon Solutions, LLC ("Summit") asks this Court to reverse the district court's erroneous decision denying a permanent injunction to protect the privacy, peace, and security of the 10,000 Iowans whose information was sought in this case — and the many thousands more who stand to be impacted by the precedent set in this appeal.

I. The District Court Erred in Concluding the Record Failed to Establish the Statutory Exemption in Iowa Code Section 22.7(18) Protects the Landowner Information From Disclosure.

Error Preservation.

Rule 1.904(2) motions are necessary to preserve error only "when the district court *fails to resolve* an issue." *Meier v. Senecaut*, 641 N.W.2d 532, 538–41 (Iowa 2002) (emphasis original) (quoting *Explore Info. Servs. v. Iowa Ct. Info. Sys.*, 636 N.W.2d 50, 57 (Iowa 2001)). In deciding whether the exemption in Iowa Code section 22.7(18) applies, the district court separately ruled on each element contested in this appeal, therefore no motion was required to preserve error. *See id.* Any contrary contention by Sierra Club is wholly without merit.

Standard of Review.

The parties agree that because this case was tried in equity, review is de novo except as to matters of statutory construction, for which review is for correction of errors at law. *See* Sierra Club Br. at 18. In a de novo review of an action in equity, the appellate court finds the facts anew. *See, e.g.*, *Dental Prosthetic Servs., Inc. v. Hurst*, 463 N.W.2d 36, 37 (Iowa 1990); *Fencl v. City of Harpers Ferry*, 620 N.W.2d 808, 811 (Iowa 2000).

Argument.

At issue in this appeal is the statutory exemption from mandatory disclosure under the Open Records Act that protects useful, voluntary communications to government bodies. That exemption applies to,

> Communications not required by law, rule, procedure, or contract that are made to a government body or to any of its employees by identified persons outside of government, to the extent that the government body receiving those communications from such persons outside of government could reasonably believe that those persons would be discouraged from making them to that government body if they were available for general public examination.

Iowa Code § 22.7(18). Sierra Club and Summit agree that just two questions before the district court control whether this exemption applies to the Landowner Information: (1) whether Summit was required to communicate it to the Board by "procedure" and (2) whether the Board "could reasonably believe" that entities like Summit "would be discouraged" from disclosing such information knowing that it would be disclosed to the public. *See* Sierra Club Br. at 19; *see also* App. 283 (Order Denying Motion for Permanent Injunction).

As to the first question, the evidence admitted at trial established that (1) whether or not the Board informally requested landowner information in reviewing a particular application was not determined by any discernable pattern or practice, and (2) submitting landowner information was not

required when it was requested because there was no penalty for failure to comply with such requests. The district court thus correctly found that Summit was *not* required by procedure to communicate the Landowner Information to the Board. App. 285–87; *see also* Summit Br. at 31–39. Sierra Club does not challenge this finding on appeal. *See* Sierra Club Br. at 19–20.

Thus, whether the Landowner Information qualifies as exempt from disclosure pursuant to section 22.7(18) turns on the second question, whether the Board *could* reasonably believe that parties like Summit would be discouraged from providing such information if they knew it would be made publicly available. Contrary to the facts and the law, the district court found "the Board could not reasonably believe that applicants would be discouraged from voluntarily providing landowner lists to the Board if those lists were available for general public examination." App. 293.

In granting a *temporary* injunction, the district court correctly found that the Board *could* reasonably believe that voluntary disclosure of landowner information would be deterred by its public disclosure:

> The Court finds that, given Summit's request to treat the information as confidential, and the fact that other similar companies did not voluntarily submit the information, the Board could reasonably believe that such communications would not be voluntarily provided if they would become available for general public examination.

App. 138 (quotation marks omitted). The court made that finding, which was consistent with the evidence in the record when the court later ruled on the *permanent* injunction, without any uncertainty or limitation. But the court arrived at the opposite conclusion to deny the permanent injunction anyway, despite its assessment that the record contained "nothing further . . . regarding the Board's viewpoint." App. 289. If the record really did contain no further evidence relevant to the question of what the Board could reasonably believe, then the court had no basis for arriving at a different conclusion on that question post-trial.

Determining what a records custodian "could reasonably believe" calls for the application of "an objective test, from the perspective of the record custodian." *Ripperger v. Iowa Pub. Info. Bd.*, 967 N.W.2d 540, 553 (Iowa 2021). Consequently, this Court instructed in *Ripperger* that in considering whether section 22.7(18) applies, district courts "should not independently decide whether the communications at issue would be deterred by disclosure, but rather should decide whether some evidence existed to support the custodian's belief." *Id.* at 553 n.6. In other words, when there is "some evidence" to support a belief that voluntarily providing information would be deterred by disclosure, that satisfies the "could reasonably believe" prong of section 22.7(18). Instead of considering whether the record evidence

supported such a belief, however, the district court inappropriately fixated on whether the evidence established what the Board *subjectively* believed — questioning whether Summit could prove the exemption applied absent evidence proving its actual belief. App. 289 n.7.[1]

Preoccupied with the wrong question, the district court ignored evidence relevant to deciding the right one: whether there was "some evidence" to support a belief that permit applicants like Summit would be deterred from providing landowner information to the Board if they believed that information would be publicly disclosed. At a minimum, the record before the court contained the following evidence relevant to that question:

- Summit raised concerns about disclosing its potential host landowners' information and potentially exposing them to unwanted publicity but was wary of refusing a request from the regulator from whom it required a permit for the project. Summit therefore decided to file the requested information with a request for confidential treatment explaining that it believed the information was exempt from disclosure under the Open Records Act. *See* App. 7 (Petition); App. 13–14 (Petition Exhibit); App. 299–300 (Summit Request for Confidential Treatment); App. 303 (Affidavit of Jake Ketzner).

[1] Summit argued the Landowner Information was exempt from disclosure pursuant to Iowa Code section 22.7(18) in its motion for reconsideration and in its notice of supplemental authority in support of that motion after this Court issued the *Ripperger* decision on December 17, 2021. App. 305–15 (Summit Motion to Reconsider); 316–18 (Summit Notice of Supplemental Authority Regarding Motion to Reconsider). Without ruling on whether section 22.7(18) applies, the Board denied the motion because the case was pending before the district court. App. 83–84 (Summit Exhibit B).

- The Office of Consumer Advocate ("OCA") shared Summit's concerns for the privacy, safety, and security of landowners whose information had been provided to the Board. App. 35–36 (Sierra Club Exhibit 1).

- Consistent with Summit's and OCA's shared concerns, in its order granting the request for confidential treatment, the Board itself concluded the "gravity of the personal privacy invasion" that would occur if the Landowner Information was made public weighed "strongly in favor of granting the confidentiality request." App. 40–41 (Sierra Club Exhibit 1).

- On September 30, 2021, the Board informally requested landowner information from at least one of the two other pipeline companies presently engaged in seeking a permit.[2] *See* App. 198 (Summit Trial Exhibits); App. 231–34, 239 (Trial Transcript Day 2 at 11:3–14:21, 19:10–19:24).

- As of December 16, 2021, neither of the other pipeline companies had voluntarily provided their landowner information to the Board, and the Board ordered them both to file their landowner information by December 28, 2021. App. 231–34 (Trial Transcript Day 2 at 11:3–14:21); App. 79–81 (Summit Exhibit A); App. 60–64 (Sierra Club Exhibit 5); App. 183–87 (Sierra Club Trial Exhibits); App. 139 (Order Granting Motion for Temporary Injunction).

- The other pipeline companies resisted disclosing their landowner information even *after* the Board ordered them to file it, seeking to

[2] Two other pipeline companies were engaged in the process of holding the statutorily required informational meetings around the same time as Summit was, NuStar Pipeline Operating Partnership L.P. ("NuStar") in Docket No. HLP-2021-0002 and Navigator Heartland Greenway, LLC ("Navigator") in Docket No. HLP-2021-0003. *See* App. 184–85 (Sierra Club Trial Exhibits). Though the Board Chair testified at trial that she believed landowner information was informally requested from Navigator, for purposes of its analysis herein Summit assumes that the Board only informally requested such information from NuStar, as indicated in the Board's discovery responses. *See* App. 184 (Sierra Club Trial Exhibits); App. 197–98 (Summit Trial Exhibits); *see also* App. 231–34 (Trial Transcript Day 2 at 11:3–14:21).

delay rather than comply with their deadline for filing the information until after the district court ruled below. *See* App. 79–81 (Summit Exhibit A).

- The Board denied the requests to extend the other pipeline companies' filing deadline until the district court below ruled in this action as they had requested, ordering them to file the landowner information by December 30, 2021. In doing so, the Board *assumed* the other pipeline companies would request confidential treatment for their landowner information. App. 79–81 (Summit Exhibit A).

- In denying the requests to extend the deadline, the Board assured the other pipeline companies that it would reserve ruling on their requests for confidential treatment and hold their landowner information confidential until after district court ruled below. Thus, the other pipeline companies complied with the orders requiring them to file their landowner information *only after* being assured that it would remain confidential pending the outcome of this case. *See* App. 80 (Summit Exhibit A).

- The Board imposed no penalties on the other pipeline companies for their refusal to submit their landowner information voluntarily and allowed them to hold informational meetings without providing the landowner information in advance. App. 231–34, 239 (Trial Transcript Day 2 at 11:3–14:21, 19:10–19:24).

At a minimum, the record before the district court reflected a shared hesitancy on the part of Summit and similarly situated companies to submit their landowner information to the Board knowing it could be subject to public disclosure, as well as a shared understanding among those parties, the Board, and OCA that public disclosure of the information threatened to harm the privacy, safety, and security of individual landowners. That is, it was "some evidence" to support the belief that public disclosure of landowner information would discourage applicants like Summit from voluntarily

providing such information to the Board. The record evidence was therefore sufficient to satisfy the reasonable belief requirement of section 22.7(18) under *Ripperger*. *See* 967 N.W.2d at 553 n.6.

Because the district court failed to perceive what the *proper* test was, in the end it hastily considered and dismissed evidence relevant to critical question of what the Board could reasonably believe. Consider, for example, the following testimony by the Board Chair:

> Q. Has any applicant for a permit — either for hazardous liquid pipeline, or electric transmission, or a natural gas pipeline — ever refused to provide a landowner list if it was requested, as far as you know?
>
> A. I would have to check with general counsel, but I do believe that an applicant has declined to provide us with that information.
>
> Q. Do you recall any specific instances?
>
> A. No.
>
> Q. Well, what would happen if an applicant refused to provide the information?
>
> A. It depends on what context the request was made. If it's informal and part of a planning meeting versus in an order, they have different meanings.

App. 230 (Trial Transcript Day 2 at 10:7–10:23). The Board Chair's recollection that not every informal request had been complied with was corroborated by a table the Board attached to its discovery responses identifying the dockets in which it had informally requested or ordered

applicants to provide landowner information. App. 198 (Summit Trial Exhibits); App. 184–85 (Sierra Club Trial Exhibits). But the district court dismissed the Board Chair's testimony outright despite the corroborating evidence and hastily misinterpreted one of the Board's written discovery responses in doing so.[3] App. 290.

In ruling that the Board could *not* reasonably believe applicants would be discouraged from voluntarily providing landowner information that would be subject to public disclosure, the district ignored evidence that applicants actually *had been* discouraged. That evidence was sufficient to establish that the possibility the Landowner Information would be publicly disclosed discouraged Summit and others from voluntarily providing such information to the Board.[4] That was, under *Ripperger*, sufficient to establish the Board

[3] Admittedly, the Board failed in the written response to expressly distinguish between "responsive replies" it received in response to *informal* requests for information and the responsive reply it received only after it *ordered* another pipeline company to file landowner information that was not voluntarily provided upon request. But without explanation, the district court disregarded the ample record evidence that clarified its intended meaning, including even the table expressly referenced therein. *See* App. 290 (Order Denying Motion for Permanent Injunction); App. 198 (Summit Trial Exhibits); App. 61–64 (Sierra Club Exhibit 5); App. 184–85 (Sierra Club Trial Exhibits); App. 79–81 (Summit Exhibit A).

[4] *See Godfrey v. State*, 962 N.W.2d 84, 102 (Iowa 2021) (explaining that even purely circumstantial evidence is "sufficient to establish a fact" when it has "sufficient force to allow a factfinder to draw a legitimate inference").

"could reasonably believe" that applicants "would be discouraged" by public disclosure from voluntarily providing it. *See* 967 N.W.2d at 553 n.6.

The district court expressly declined to employ *Ripperger*'s objective test based on its own inappropriately policy-based, results-oriented assessment that deciding otherwise "would allow the Board and its applicants to withhold numerous documents from public scrutiny." *See* App. 292–93. But as *Ripperger* explains, the legislature intended section 22.7(18) to be "broadly inclusive" and "permit public agencies to keep confidential a broad category of useful incoming communications." 967 N.W.2d at 551 (quoting *City of Sioux City v. Greater Sioux City Press Club*, 421 N.W.2d 895, 897 (Iowa 1988)).[5] The district court was obligated to determine what the Board "could reasonably believe" from an objective standpoint, applying the same straightforward, rational analysis required of countless other objective tests

[5] Further, to the extent some documents *should* routinely be made available for public scrutiny, the better practice is for them to be "required by law, rule, procedure, or contract." *See* Iowa Code § 22.7(18). Here, there was no procedure. The information was informally requested only sporadically because it was not necessary to the underlying proceeding, as is evident from the Board's past practice and its administrative rules, which still do not require applicants to file such information though they were updated after Board staff informally requested the information at issue in this appeal. *Compare* Iowa Admin. Code ch. 199—13 (2020), *with* Iowa Admin. Code ch. 199—13 (2021). In this case, Sierra Club seeks to gain a windfall due to the random fortuity of information being requested by Board staff solely to further a private agenda, not to shed light on government decision-making.

under the law. As the evidence outlined above demonstrates, under that analysis, the record could lead to only one conclusion — that the Board could reasonably believe applicants like Summit would be discouraged from voluntarily providing landowner information subject to public disclosure.

Because the Board "could reasonably believe disclosure would deter the communications at issue, reversal is required." *Ripperger*, 967 N.W.2d at 549. This Court should therefore reverse the district court ruling that Iowa Code section 22.7(18) did not protect the Landowner Information from disclosure.

II. The District Court Erred in Concluding That Application of the Common-Law Balancing Test Was Not Required By the Present Analytical Framework to Determine Whether the Landowner Information Was Exempt From Disclosure.

Error Preservation.

Sierra Club concedes that Summit preserved error on the issue of whether the Landowner Information is protected from disclosure pursuant to the common-law balancing test. *See* Sierra Club Br. at 32. As to that issue, the district court conclusively ruled at the temporary injunction stage and reasserted that ruling in denying the permanent injunction, therefore error is preserved. App. 144 (Order Granting Motion for Temporary Injunction); App. 283 & n.2 (Order Denying Motion for Permanent Injunction). Summit presents no argument regarding Iowa Code section 22.8 in this appeal.

Standard of Review.

Sierra Club agrees that de novo review applies. *See* Sierra Club Br. at 32. Statutory construction is irrelevant to the asserted grounds for relief.

Argument.

Contrary to Sierra Club's serious misrepresentations, the Board dutifully considered *both* the Open Records Law *and* the controlling precedents of this Court in holding the Landowner Information was entitled to confidential treatment:

> The Board finds Summit Carbon has not provided a legal or factual basis upon which it can be found that its competitors would receive an advantage should the mailing lists not be held in confidence. Therefore, the Board finds that Summit Carbon has not met the burden of Iowa Code § 22.7(6) for holding the mailing lists in confidence.
>
> This finding, however, does not end the Board's analysis. In *Clymer v. City of Cedar Rapids*, the Court recognized that individuals can have a substantial privacy interest in personal information, including personal addresses, held by the government that outweighs the public's interest in disclosure of that information. 601 N.W.2d 42, 47 (Iowa 1999). Where the legislature has not specifically listed the requested information as an exemption, a balancing test may be necessary to consider these privacy interests. *American Civil Liberties Union Foundation of Iowa, Inc. v. Records Custodian, Atlantic Community School District*, 818 N.W.2d 231, 240 (Iowa 2012) (Cady, C.J., dissenting). If a public record contains personal information, which is not specifically exempted from disclosure by statute and "the disclosure of which would constitute an invasion of personal privacy, the courts will often apply general privacy principles, which examination involves a balancing of conflicting interests — the interest of the individual in privacy on

> the one hand against the public's need to know on the other." *Id.* at 234 (Wiggins, J., writing for the majority) (quoting Andrea G. Nadel, Annotation, *What Constitutes Personal Matters Exempt from Disclosure by Invasion of Privacy Exemption Under State Freedom of Information Act*, 26 A.L.R. 4th 666, 670 (1983)).

App. 38–39 (Sierra Club Exhibit 1). Sierra Club accuses the Board of "saying that it was not bound by the Open Records Law" and "acting without any attempt to comply with the Open Records Law."[6] Sierra Club Br. at 33. But after concluding the statutory exemption raised in the request for confidentiality did not apply, the Board correctly applied the next step in the "present analytical framework" pursuant to a binding precedent of this Court, *Atlantic Community School District*.

In *Atlantic Community*, this Court held that the "present analytical framework" for determining when records are exempt from disclosure under the Open Records Act requires courts to apply the common-law balancing test *only after* determining that no statutory exemption from disclosure applies. 818 N.W.2d at 234–35. The Court had previously acknowledged that courts commonly apply general privacy principles to balance conflicting interests in determining when public records are entitled to protection from disclosure when no statutory exemption from disclosure applies. *DeLaMater v. Marion*

[6] Since this is an appeal from the original action filed in the district court rather than a judicial review proceeding, it is unclear why Sierra Club attacks the Board's decision.

Civ. Serv. Comm'n, 554 N.W.2d 875, 877 (Iowa 1996) (citing Nadel Annotation, 26 A.L.R.4th at 670–71). But its prior cases had employed the common-law balancing test only in the context of determining whether the statutory exemption for "personal information in confidential personnel records" applied. *See Atl. Comm. Sch. Dist.*, 818 N.W.2d at 233, 235 (majority opinion) (citation omitted); *id.* at 237 (Cady, C.J., dissenting). The *Atlantic Community* majority determined that the proper analytical framework instead requires applying the balancing test later — after the court has determined whether the statutory exemption at issue applies. That determination was both at the heart of the disagreement between the *Atlantic Community* majority and the dissent and outcome determinative, as application of the framework announced therein resulted in the case-specific holding. *Compare id.* at 234–36 (majority opinion), *with id.* at 237–42 (Cady, C.J., dissenting). Applying the present analytical framework described there was therefore binding on the district court here; its articulation was not just *dicta* the court could decline to follow as it incorrectly asserted. *See* App. 142; *see also, e.g.*, *Sherwin-Williams Co. v. Iowa Dep't of Revenue*, 789 N.W.2d 417, 427 (Iowa 2010) (discussing *dicta*).

When *Atlantic Community* was decided, the Court undoubtedly understood that the majority's binding articulation of the proper analytical

framework necessarily required applying the balancing test separate and apart from any statutory exemption, as that was the chief complaint expressed in the dissenting opinion. *See* 818 N.W.2d at 237 (Cady, C.J., dissenting). In fact, as this Court explained in a subsequent unanimous opinion, the *Atlantic Community* majority concluded that applying the balancing test while considering whether a particular statutory exemption applied "would undermine the legislature's intent in categorically removing . . . documents from public view." *Mitchell v. City of Cedar Rapids*, 926 N.W.2d 222, 235–36 (Iowa 2019).

The district court wrongly rejected the present analytical framework based on older cases applying the balancing test only in the context of construing a single statutory exemption. App. 141–43. In doing so, it failed to accord the majority opinion in *Atlantic Community* its appropriate status as binding precedent, merely because the justices were sharply divided. App. 143. And it did so even after this Court had unanimously affirmed the controlling significance of the present analytical framework set forth therein by explaining that the case had "clarified" the "approach to section 22.7's exemption**s**." *Mitchell*, 926 N.W.2d at 233 (emphasis added). Like Sierra Club, the district court unjustifiably accorded the *Atlantic Community* dissent, rather than its majority, the force of binding precedent.

In the end, Sierra Club offers no real, substantive response to Summit's argument that the district court was bound to apply the "present analytical framework" from *Atlantic Community* in this case. The precise circumstances in prior cases in which the balancing test was applied,[7] or in which it was not,[8] are irrelevant rather than controlling. *See* Sierra Club Br. at 36–37. What matters is the purpose the test serves: to ensure that when no statutory exemption applies but significant privacy interests are at stake, the law allows some means of protecting them.

As this Court observed decades ago, courts commonly balance competing interests using common-law privacy principles to determine whether public records are exempt from disclosure under open records laws when no statutory exemption clearly applies:

> [T]he courts will usually first examine the specific statutory provision involved to see if the statute delineates exactly what types of records or other information are considered private and thus subject to the public disclosure exemption. If, however, the particular record, report, or other information sought to be disclosed is not specifically listed in the personal privacy

[7] *See, e.g.*, *Clymer v. City of Cedar Rapids*, 601 N.W.2d 42 (Iowa 1999); *DeLaMater v. Marion Civil Serv. Comm'n*, 554 N.W.2d 875 (Iowa 1996). While *DeLaMater* and *Clymer* remain leading authorities on *what the balancing test is*, they are no longer relevant authority as to the question of *when the balancing test applies*.

[8] *See, e.g.*, *Ripperger v. Iowa Pub. Info. Bd.*, 967 N.W.2d 540 (Iowa 2021); *Des Moines Indep. Cmty. Sch. Dist. Pub. Recs. v. Des Moines Reg. & Trib. Co.*, 487 N.W.2d 666 (Iowa 1992); *City of Sioux City v. Greater Sioux City Press Club*, 421 N.W.2d 895 (Iowa 1988).

> provision as a personal matter, or if the provision does not define those matters, the disclosure of which would constitute an invasion of personal privacy, the courts most often will apply general privacy principles, which examination involves a balancing of conflicting interests—the interest of the individual in privacy on the one hand against the interest of the public's need to know on the other.

DeLaMater, 554 N.W.2d at 879 (citing Nadel, 26 A.L.R.4th at 670–71). The general practice and this Court's present analytical framework simply reflect that common-law privacy principles remain relevant when determining whether records not contemplated in any statutory exemption from disclosure are entitled to protection under the law. The balancing test provides a backstop when the balance of conflicting interests suggests the records in question share the same qualities the statutory exemptions to open records laws are generally intended to protect.

Notably, Sierra Club does *not* contest that the balancing test weighs in favor of protecting the Landowner Information from public disclosure. And rightly so, as every relevant factor weighs against requiring disclosure.[9] The first factor weighs against disclosure because Sierra Club does not contest that

[9] The relevant factors in applying the balancing test include "(1) the public purpose of the party requesting the information; (2) whether the purpose could be accomplished without the disclosure of personal information; (3) the scope of the request; (4) whether alternative sources for obtaining the information exist; and (5) the gravity of the invasion of personal privacy." *Clymer*, 601 N.W.2d at 45 (quoting *DeLaMater*, 554 N.W.2d at 879).

it sought the Landowner Information solely to organize private objection to the project, which is not a public purpose. The second factor weighs against disclosure because Sierra Club could accomplish that purpose by gathering the same information in the same manner as Summit originally did without the public disclosure of the Landowner Information.[10] The third factor weighs against disclosure because the scope of the requested information encompasses the personal information of approximately 10,000 Iowans, including many whose property ultimately will never host the project and who will never be approached to negotiate an easement. The fourth factor weighs against disclosure because, as Sierra Club well knows from its participation in the ongoing permitting proceeding, the publicly available permit application components provide alternate sources for obtaining the Landowner Information.[11] The fifth and final factor weighs decisively against

[10] *See* App. 144–45 (Order Granting Motion for Temporary Injunction). As Summit pointed out in its reply supporting its motion for temporary injunction, Sierra Club did in fact generate its own list, as evidenced by a mailer opposing the project it had already done. App. 76 (Summit Reply in Support of Temporary Injunction); App. 85–86 Summit Exhibit D).

[11] For example, the application components include a legal description and detailed map of the pipeline route and the names and contact information of all the parties along the route who had not signed easement agreements for the project when the application was filed with the Board. *See* Iowa Admin. Code r. 199—13.3(1)(a), (b), & (h) (2021) (describing exhibits that are required to be provided to the Board); *see also* Iowa Admin. Code r. 199—13.2(1)(a), (b), & (h) (2020) (same). Revisions to the governing administrative rules were underway when Summit sought to hold its informational meetings, but neither

release because publicly identifying 10,000 people by their names and addresses would represent a significant invasion of privacy that fails to serve the purpose of open records laws. *See Clymer*, 601 N.W.2d at 47.

In this case, the balancing test factors weighed only in favor of protecting the Landowner Information from disclosure, and the district court erroneously disregarded the binding precedent of this Court in refusing to apply it. Accordingly, if the Court concludes that the statutory exemption in Iowa Code section 22.7(18) did not protect the Landowner Information from disclosure, this Court should apply the common-law balancing test and reverse the decision denying the permanent injunction. By reversing the erroneous decision of the district court, this Court will protect the privacy, peace, and security of the 10,000 Iowans whose information is at stake in this appeal — and the countless others whose information will be at stake in future permitting proceedings of the Board should that decision be allowed to stand on appeal.

CONCLUSION

For the foregoing reasons, Summit asks this Court to reverse the district court order denying the motion for permanent injunction and remand the case

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the original nor the revised rules mandate the filing of the landowner information gathered to provide the informational meeting notice. *See* Iowa Admin. Code ch. 199—13 (2020); Iowa Admin. Code ch. 199—13 (2021).

for entry of an order permanently restraining the Board from releasing the landowner information or such further relief as it deems necessary and appropriate.

Respectfully submitted this 11th day of July, 2023.

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CERTIFICATE OF COST

The undersigned certifies that the cost for printing and duplicating paper copies of this brief was $0.00.

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CERTIFICATE OF COMPLIANCE

This 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) because it has been prepared in a proportionally spaced typeface using 14-point Times New Roman font in Microsoft Word for Microsoft 365 MSO (Version 2304 Build 16.0.16327.20324) and contains 5,321 words, excluding the parts of the brief exempted from the type-volume requirements by Iowa R. App. P. 6.903(1)(*g*)(1).

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CERTIFICATE OF SERVICE

The undersigned certifies the foregoing document was electronically served on the Clerk of the Supreme Court using the Electronic Document Management System on July 11, 2023, which will serve a notice of electronic filing to all registered counsel of record.

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