IN THE SUPREME COURT OF IOWA

No. 23–0373

HARVEY L. HARRISON,

Plaintiff–Appellee,

vs.

LISA MICKEY in her official capacity as Open Records Coordinator and CITY OF DES MOINES, IOWA,

Defendants–Appellants.

Appeal from the Iowa District Court
For Polk County, CVCV064414
The Honorable Coleman McAllister, District Judge

STATE OF IOWA'S AMICUS CURIAE BRIEF SUPPORTING APPELLANTS

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INTEREST AND FUNDING OF AMICUS CURIAE

The State of Iowa's executive branch includes the Iowa Department of Public Safety ("DPS"), "the largest law enforcement agency in the state." Press Release, Iowa Dep't of Public Safety, *DCI Assisting Oelwein PD with Death Investigation* (Apr. 30, 2024), https://perma.cc/E2WL-NWUS.

Like most law-enforcement agencies, DPS requires its officers complete use-of-force reports any time they use force or witness the use of force. *See* Iowa Dep't of Public Safety Order No. 20-138, *Use of Force*, 5–6 (Nov. 9, 2020), https://perma.cc/A2FY-NKMH. And like the use-of-force reports at issue, DPS's use-of-force reports contain confidential information such as details about medical treatment and supervisors' conclusions about whether the officers' use of force was appropriate.

The State has an interest in protecting that confidential information from disclosure: "[N]ondisclosure permits law enforcement officials the necessary privacy to discuss findings and theories about cases under investigation." *Hawk Eye v. Jackson*, 521 N.W.2d 750, 753 (Iowa 1994). Further, the type and amount of confidential information contained in use-of-force reports differs from department to department and officer to officer. The State has an interest in ensuring that courts accordingly analyze records requests on a report-by-report basis.

The issue presented—whether the City of Des Moines must disclose its officers' use-of-force reports—bears on these interests. The State's

unique perspective regarding the departmental differences between use-of-force reports will help the Court more fully understand the ramifications of any decision here. *See* Iowa R. App. P. 6.906(5)(*a*)(3). And the State's legal position differs from Defendants'. Rather than arguing that Iowa Code § 22.7(5) prevents disclosure of the Des Moines Police Department's (DMPD's) *entire* use-of-force reports, as the City does, Appellants Br. 34, the State contends that the outcome turns on the type of information Plaintiff seeks. *See* Iowa R. App. P. 6.906(5)(*a*)(1). The State thus adds the unique perspective that the analysis should be made on a case-by-case, report-by-report basis.

No party's counsel authored this brief in whole or in part. No party's counsel contributed money to fund the preparation or submission of this brief. No other person contributed money to fund the preparation or submission of this brief, except to the extent that all Iowa taxpayers fund the Iowa Attorney General's Office.

BACKGROUND

Not all use-of-force reports are the same. Most use-of-force reports contain the who, what, when, where, and why surrounding the incident or crime giving rise to the use of force. But even for these basic facts, reports differ. For example, DMPD leaves the level of detail up to an officer's discretion. D0010, Pl.'s Summ. J. App'x at 20 (08/22/2023) ("Use of force reports shall be comprehensive and provide the degree of specificity necessary to fully document and evaluate the use of force."). But the Waukee Police Department requires officers to include more information, such as "[n]ames and information of any known witnesses" and "[a]ny pictures taken of the injuries to either the officer or suspect." Waukee Police Dep't Policy No. 4.4, *Use of Force* 7 (July 22, 2022), https://perma.cc/E83F-PPKT.

That is even truer for more sensitive law-enforcement information. DPS requires supervisors and the Division Director to review each use-of-force report and "recommend whether the use of force was or was not in compliance with DPS Policy." DPS Order No. 20-138, at 6. So there is a field in DPS's use-of-force reports for supervisors' analyses of the appropriateness of an officer's use of force. The same is true for DMPD use-of-force reports. D0010 at 7. By contrast, other departments may use separate forms or forgo that analysis altogether.

So it is essential, in an Open Records Act case like this, to understand with precision what information is in the use-of-force reports a plaintiff seeks.

Plaintiff here seeks information contained in 387 DMPD use-of-force reports. D0001, Petition ¶ 20 (10/12/2022). The first page of a DMPD use-of-force report contains basic information about the details of the incident or crime: date, time, location, and weather, as well as a field for an "Incident Summary." D0010 at 6. There are also fields for the officer to note whether he or she was injured or taken to the hospital. D0010 at 6.

The second page has more sensitive law-enforcement information. D0010 at 7. There is a field for "Tasks," which likely refers to tasks that reviewers must complete on the report, a field for "Running Sheet Entries," which may include internal correspondence, and a space for "Attachments." D0010 at 7. And there is a field for "Assignment History." D0010 at 7. In his deposition, Des Moines Police Chief Dana Wingert confirmed this field would provide details on "who in the chain of command looked at [the report]," D0022, Wingert Dep. at 34:6–8 (12/11/2023). Finally, there is a field for "Chain of Command History," D0010 at 7, which Chief Wingert said is "where the supervisors would fill out what they thought about the use of force," D0022 at 34:9–12.

In his pleadings, Plaintiff specified that he is seeking only the basic information—like the date, time, location, and immediate circumstances.

See D0012, Pl.'s Summ. J. Br. at 9 (08/22/2023). But the district court's injunction went beyond that request. The court required the City of Des Moines to "provid[e] Plaintiff with a copy of all 387 use of force reports authored by its police officers in calendar year 2020." D0026, Order at 23 (02/15/2024). The only field the court allowed the City to redact was "information about whether the reporting officer was injured and/or went to the hospital." D0026 at 23.

The City appeals the district court's injunction, arguing that it should not have to produce any of its use-of-force reports. The City's main argument is that because the reports are used for performance reviews, they contain "[p]ersonal information [of government employees] in confidential personnel records of government bodies," and are thus exempt from disclosure under Iowa Code § 22.7(11)(*a*). Appellants Br. 10–28. Relatedly, the City also argues that the Police Officers' Bill of Rights, which protects against disclosure of statements relating to "disciplinary proceedings" and "complaints made against an officer" prohibits disclosure of the use-of-force reports because the reports can form the basis of a disciplinary action. Iowa Code § 80F.1(20); Appellants Br. 28–32.

Finally, the City argues that another section of Iowa's Open Records Act, which protects the confidentiality of "investigative reports," may prevent the disclosure of some use-of-force reports. Iowa Code § 22.7(5); Appellants Br. 32–34.

ARGUMENT

This Court should vacate the district court's injunction. Plaintiff pursued only the basic information from the use-of-force reports—the date, time, location, and immediate circumstances about the incidents giving rise to the use of force. He disclaimed any desire to obtain additional confidential information from the reports. Yet the district court required the City to produce essentially the entire use-of-force reports. This Court has long recognized that an injunction should not be broader than necessary. The district court's broad injunction contravenes that principle.

Even if Plaintiff did request that additional confidential information, the district court still erred by failing to apply this Court's public-interest balancing test. *See Hawk Eye*, 521 N.W.2d at 753. So if this Court does not vacate or modify the injunction as overbroad, it should at least remand the case and instruct the district court to apply the public-interest balancing test.

I. The district court's injunction was broader than necessary.

A. Plaintiff seeks only basic information surrounding the incidents or crimes giving rise to DMPD's use-of-force reports.

To understand Plaintiff's narrow request, some statutory background is necessary. Iowa's Open Records Act "lists specific categories of records that must be kept confidential." *Mitchell v. City of*

Cedar Rapids, 926 N.W.2d 222, 229 (Iowa 2019) (citation omitted). One of those categories, located in Iowa Code § 22.7(5), is "investigative reports." That includes use-of-force reports like the ones at issue in this case. *See Neer v. State*, 2011 WL 662725, at *3–4 (Iowa Ct. App. Feb. 23, 2011) (holding "use of force reports" and "pursuit reports" confidential under § 22.7(5)).

But section 22.7(5)'s second sentence creates a narrow exception to the rule that investigative reports must be kept confidential: "the date, time, specific location, and immediate facts and circumstances surrounding a crime or incident shall not be kept confidential under this section," unless there is a danger to the investigation or an individual. Iowa Code § 22.7(5). So the basic facts surrounding an incident or crime, despite their presence in a confidential investigative report, generally must be disclosed.

In this case, Plaintiff has been unequivocal that "[h]is request falls under the second sentence of § 22.7(5), not the first." D0012 at 9. In other words, he seeks only the portions of DMPD use-of-force reports containing "the date, time, specific location, and immediate facts and circumstances surrounding a crime or incident" giving rise to the use of force. Iowa Code § 22.7(5). As the district court put it, "the scope of [Plaintiff's] request is relatively narrow in that [he] is only requesting the basic information contained in the officer's use of force report and not any

subsequent investigation, discipline, or other records regarding supervisor review of such use of force reports." D0026 at 14.

The narrow scope of Plaintiff's request is important. DMPD use-of-force reports contain basic information about the crime or incident, such as the date, time, location, weather, and a summary of the incident. D0010 at 6–7. But they also contain information beyond these basic facts, including:

- Information regarding the officer's hospitalization, D0010 at 6;
- Information regarding outstanding "Tasks" to be completed by DMPD, D0010 at 7;
- Various "Attachments," which could include witness statements or pictures, D0010 at 7;
- "Assignment History," which Chief Wingert confirmed would detail "who in the chain of command looked at [the report]," D0022 at 34:6–8; D0010 at 7; and
- "Chain of Command History," which Chief Wingert explained includes supervisors' impressions and analysis of the officer's use of force, D0022 at 34:9–12; D0010 at 7.

Plaintiff never asked for this other non-basic information. Indeed, he explicitly disclaimed that he was requesting that type of information. *See* D0021, Pl.'s Summ. J. Reply Br. at 1 (12/11/2023) (Plaintiff stating that "[h]e has not requested any information regarding supervisory review or discipline"). So in ordering its disclosure the district court went too far.

B. The district court's injunction compels the City to produce information Plaintiff never asked for.

Though Plaintiff did not ask for any information beyond the basic facts, the district court enjoined the City of Des Moines to produce the more sensitive information anyway. It ordered the City to "provid[e] Plaintiff with a copy of all 387 use of force reports authored by its police officers in calendar year 2020; however, the City shall redact from each such report any information about whether the reporting officer was injured and/or went to the hospital." D0026 at 23. The only field the City may withhold is information about whether an officer was injured or went to the hospital. D0026 at 23. To comply with the injunction, the City must reveal information Plaintiff did not request, including information about supervisors' impressions and analysis of the use of force. *Cf.* D0021 at 1 (Plaintiff stating "[h]e has not requested any information regarding supervisory review or discipline").

But this Court has stressed that "[a]n injunction should be limited to the requirements of the case." *Matlock v. Weets*, 531 N.W.2d 118, 123 (Iowa 1995); *205 Corp. v. Brandow*, 517 N.W.2d 548, 552 (Iowa 1994) ("It is clear that an injunction should be limited to the requirements of the case."). The district court's injunction went beyond Plaintiff's narrow request by requiring the City to produce non-basic information. This is true no matter how use-of-force reports fit into the framework of Iowa's

Open Records Act. All that matters is what Plaintiff requested, and the district court's injunction went well beyond that request.

This Court should vacate the district court's injunction or modify it by narrowing the injunction to cover only the basic information Plaintiff requested.

II. Alternatively, the Court should remand the case because the district court failed to apply this Court's public-interest balancing test.

The district court erred for a second reason: it ordered the City of Des Moines to produce confidential information but never applied this Court's "case-specific balancing test to guard against the chilling effect public disclosure could have on police investigations." *Vaccaro v. Polk Cnty.*, 983 N.W.2d 54, 60 (Iowa 2022). So if this Court declines to vacate or narrow the injunction on the grounds the injunction is broader than necessary, it should vacate and remand to the district court to allow it to apply the required case-specific balancing test in the first instance.

A. Courts must apply the public-interest balancing test to records requests under Iowa Code section 22.7(5).

Section 22.7(5) requires that "peace officers' investigative reports" "shall be kept confidential." This covers use-of-force reports. *See Neer*, 2011 WL 662725, at *3–4 (holding that "use of force reports" are confidential under § 22.7(5)); *see also State ex rel. Standifer v. Cleveland*, 213 N.E.3d 665, 669 (Ohio 2022) (explaining that because use-of-force

reports "are required to be created," they are "part of the investigation conducted into an officer's use of force").

Section 22.7(5)'s confidentiality provision "is qualified, not absolute." *Hawk Eye*, 521 N.W.2d at 753. To assess confidentiality, this Court employs a "sensitive weighing process" that asks "whether the public interest would suffer by disclosure." *State ex rel. Shanahan v. Iowa Dist. Ct. for Iowa Cnty.*, 356 N.W.2d 523, 529 (Iowa 1984); *see also Hawk Eye*, 521 N.W.2d at 753 (applying this test). Because section 22.7(5) has been amended several times since this test was created, this Court "conclude[d] that the legislature has acquiesced in [its] interpretation" of the statute. *Mitchell*, 926 N.W.2d at 234.

Thus, before a district court can enjoin the government to produce confidential portions of investigative reports, it must first conduct a public-interest analysis. In *Vaccaro v. Polk County*, for example, the district court ordered Polk County to produce investigative reports as part of discovery in an Open Records Act proceeding—without ruling on whether they were protected under section 22.7(5) and without applying the balancing test. 983 N.W.2d at 56. So this Court reversed: "the district court short-circuited the proceedings by ordering the County to produce the records to [Plaintiff] before ruling on the exemption." *Id.* at 58. The district court should have "appl[ied] the balancing test to adjudicate whether the records [were] exempt from disclosure." *Id.* at 60.

B. The district court failed to apply the public-interest balancing test.

As in *Vaccaro*, the district court failed to conduct the public-interest balancing test before enjoining the City of Des Moines to produce confidential portions of use-of-force reports. Although the district court analyzed whether the City had shown that the release of *basic* information in the use-of-force reports would pose a danger to anyone's safety—an exception to section 22.7(5)'s second sentence requiring disclosure of basic information—it did not apply the balancing test to consider whether the *non-basic* confidential information in the use-of-force reports should be disclosed. *See* D0026 at 22–23.

This failure is important. The public-interest balancing test "guard[s] against the chilling effect public disclosure could have on police investigations," *Vaccaro*, 983 N.W.2d at 60, which harms law enforcement's effectiveness and ultimately the public. As this Court has recognized, "confidentiality encourages persons to come forward with information." *Hawk Eye*, 521 N.W.2d at 753. In the use-of-force context, confidentiality incentivizes an officer to provide a complete and candid narrative of the use of force.

The balancing test secures for "law-enforcement officials the necessary privacy to discuss findings and theories about cases under investigation," such as investigations into whether the use of force was appropriate. *Hawk Eye*, 521 N.W.2d at 753. That is essential for use-of-

force reports like DMPD's that contain supervisors' assessments of whether the officer's use of force was appropriate. D0010 at 7; D0022 at 34. In *Mitchell*, for example, this Court noted that the district court appreciated the "concern" that "disclosure would have a chilling effect on the candor expected for internal investigations," so it did not compel production of those portions of the "reports or memorandum generated solely for purposes of a police internal review of the incident." 926 N.W.2d at 235.

More generally, the balancing test ensures that courts scrutinize each field in a use-of-force report before issuing an injunction requiring the report's release. Use-of-force reports may contain different amounts and types of confidential information depending on the officer or department. The balancing test prevents a one-size-fits-all rule in favor of a case-by-case, report-by-report basis. In short, the balancing test protects law-enforcement's interest in confidentiality and incentivizes candor.

Finally, these considerations do not go away when the investigation closes. "Police investigative reports do not lose their confidential status when the investigation closes." *Mitchell*, 926 N.W.2d at 225; *Vaccaro*, 983 N.W.2d at 60 (reiterating this principle). So even though the portions of use-of-force reports that Plaintiff requested in this case pertain to events in 2020, the balancing test remains just as important now as it did then.

The district court's failure to apply this Court's balancing test means the injunction should be vacated and this case remanded to allow the court to fix its mistake.

CONCLUSION

The district court's injunction should be vacated or modified because it is broader than the needs of the case. If the Court concludes that the district court's injunction was not overbroad, then it should remand the case so that the district court can apply the public-interest balancing test.

Respectfully submitted,

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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), 6.903(1)(g)(1), and 9.906(4) because this brief has been prepared in a proportionally spaced typeface using Century Schoolbook in size 14 and contains 2,916 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(*i*)(1).

/s/ Patrick C. Valencia
Deputy Solicitor General

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on the 11th day of June, 2024, I, or a person acting on my behalf, filed this brief and served it on counsel of record to this appeal via EDMS.

/s/ Patrick C. Valencia
Deputy Solicitor General