ELECTRONICALLY FILED OCT 20, 2025 CLERK OF SUPREME COURT

IN THE SUPREME COURT OF IOWA

JEREMY CHEDESTER and CHEDESTER PROPERTIES, LLC,
Plaintiffs-Appellants,

v.

CITY OF NEWTON, IOWA,
Defendant-Appellee,

No. 25-0750

REPLY BRIEF OF APPELLANTS

Appeal from the Iowa District Court for Jasper County
Hon. Terry Rickers, District Court Judge

Case No. CVCV123759

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STATEMENT OF ISSUES PRESENTED FOR REVIEW

The city, which did not make an improper-request argument below, struggles to defend the district court's decision on that basis. But in any event, the city cannot explain its failure to disclose the records for 141 days after learning it was sued under Chapter 22. Because precedent holds that a delay of 106 days is unreasonable under these circumstances, the district court's grant of summary judgment must be reversed.

ARGUMENT

The city, which did not make an improper-request argument below, struggles to defend the district court's decision on that basis. But in any event, the city cannot explain its failure to disclose the records for 141 days after learning it was sued under Chapter 22. Because precedent holds that a delay of 106 days is unreasonable, the district court's grant of summary judgment must be reversed.

A. The city told the district court it knew a records request had been made when it was sued under Chapter 22. Its failure to produce the records for 141 days after learning of the lawsuit is unreasonable delay.

The city labors to show the district court did not take on an advocate's role by researching its records policies and determining *sua sponte* that Chedester's request was not properly made. It admits—Appellee Br. 12—that the city's records policies were not cited by the parties in the summary judgment litigation. It also admits, as it must, that its policy web page had been changed between the email to the city attorney and the district court's decision granting summary judgment. Appellee Br. 15-16. That the city must expend so much effort citing web pages and its own ordinances—and not the summary judgment record—speaks loudly to the district court's frolic outside the city's motion papers.

But the city avoids its main problem. It disputes *now* that a proper records request was ever made. Appellee Br. 21. The city forgets it argued below that "[o]nce the lawsuit was filed, the City recognized that Plaintiffs' counsel's email to the City Attorney was intended as a records request. As such, prior to filing this motion, the City produced emails to the Plaintiffs responsive to the request." D0015, Brief in Support of Motion for Summary Judgment at 4 (1/20/2025). The city, having

prevailed below on this theory, cannot simply abandon it to defend the result it obtained. *Chicoine* v. *Wellmark, Inc.*, 2 N.W.3d 276, 286 (Iowa 2024) ("The rule of judicial estoppel prevents a party from changing its position after it has successful urged a different position to obtain a certain litigation outcome.") (cleaned up). The city admitted it knew of the records request under Chapter 22 when it was sued by Chedester. It cannot sing a different song now. *Winnebago Indus., Inc.* v. *Haverly*, 727 N.W.2d 567, 573-75 (Iowa 2006).

With this understood, the city's position collapses. It was sued on July 9, 2024. D0001, Petition (7/9/2024). It accepted service of the lawsuit on July 24, 2024. D0003, Acceptance of Service (7/24/2024). It did not provide discovery responses until December 11, 2024. D0011, Defendant's Notice of Serving Discovery Responses (12/11/2024). This was 141 days after the city accepted service of a petition which included the April 24, 2024, email to the city attorney.

The city cannot avoid the Court's treatment of an identical notice issue in *Kirkwood Institute, Inc.* v. *Sand*, 6 N.W.3d 1, 10 (Iowa 2024). ("Kirkwood put the Auditor's office on notice of the failure to produce this email when Kirkwood filed its petition by specifically identifying the email as improperly withheld.") *Id.* at 10. "Yet the Auditor's office still didn't produce the email until it responded to Kirkwood's discovery requests in the lawsuit—106 days after Kirkwood filed its petition and 216 days after the open records request." *Id.* "Kirkwood presented enough evidence to permit a factfinder to conclude that, as to this email, the Auditor's office's delay was unreasonable." *Id.*

Kirkwood leaves the city with no escape. Having admitted it was on notice, its delay of 141 days is a "refusal to produce" under Iowa Code § 22.10(2). *Kirkwood*, 6 N.W.3d at 8 (holding that a government entity may "refuse either by (1) stating that it won't produce records, or (2) showing that it won't produce records.") "A refusal of the second type…could be demonstrated 'through an unreasonable delay in producing records.'" *Id.* (citing *Belin* v. *Reynolds*, 989 N.W.2d 166, 174 (Iowa 2023)).

Because the city refused to produce records, it is liable under Chapter 22 and the district court's grant of summary judgment must be reversed. The case should be remanded to the district court for further proceedings.

B. The city cannot defend the grant of summary judgment by claiming here that its delay was in good faith and reasonable as a matter of law.

The city argues that its delay of production was not unreasonable and done in good faith. Appellee Br. 26-28. But it skips over any analysis of the procedural posture below. The city moved for summary judgment. Chedester, as the nonmoving party, was entitled to "every legitimate inference that [the court] may draw from the record." *Myers* v. *City of Cedar Falls*, 8 N.W.3d 171, 176 (Iowa 2024). Even if the city can distinguish the *Kirkwood* precedent of 106 days being unreasonable, it must do so at a trial where it bears the burden of proof. Iowa Code § 22.10(2). The city's assertion that its delay was reasonable does not, for summary judgment purposes, make it so. *C&J Vantage Leasing Co.* v. *Wolfe*, 795 N.W.2d 65, 84 (Iowa 2011) (perfunctory statements are not sufficient to satisfy burden of showing there are no genuine issues of material fact). Where reasonable minds can differ on how an issue

should be resolved, summary judgment is inappropriate. *Pillsbury Co., Inc.* v. *Wells Dairy, Inc.*, 752 N.W.2d 430, 434 (Iowa 2008). Such is our case.

CONCLUSION

The Court should reverse the grant of the city's motion for summary judgment and remand for further proceedings in the district court.

REQUEST FOR ORAL SUBMISSION

Chedester requests that this appeal be submitted for oral argument.

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) because it contains **926** words, excluding parts of the brief exempted by that rule.

This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the typestyle requirements of Iowa R. App. P. 6.903(1)(f) because it has been prepared in a proportionally spaced typeface using Microsoft Word in Equity A and Equity A Caps, 14-point type.

/s/ Alan R. Ostergren
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