

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

<p>RECORDS CUSTODIAN OF THE GOVERNOR and IOWA OFFICE OF THE GOVERNOR, Plaintiffs,</p> <p>v.</p> <p>THE DES MOINES REGISTER & TRIBUNE COMPANY d/b/a THE DES MOINES REGISTER and d/b/a DES MOINES REGISTER MEDIA, Defendant.</p>	<p>Case No. _____</p> <p>PETITION FOR INJUNCTIVE RELIEF UNDER IOWA CODE § 22.8</p>
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Introduction

1. The Des Moines Register contends that the Governor may not communicate with or privately correspond with her most senior advisors without those communications being open public records. That is not—and cannot be—the law.
2. Neither Iowa’s Constitution nor Iowa’s statutes impose on the Governor such a stringent requirement that would preclude candid advice from her closest advisors.
3. Responding to a public records request, the Governor’s Office and Records Custodian of the Governor turned over more than 800 pages of documents. But they withheld four documents containing candid private advice and counsel from her most senior advisors. The Register contends that no executive privilege exists under Iowa law. But that is wrong.

4. The Iowa Supreme Court has acknowledged as much. Claims brought against the Governor under Chapter 22 must be careful about “invading executive privilege.” *Belin v. Reynolds*, 989 N.W.2d 166, 178 (Iowa 2023); *see also AgriVest Partn. v. C. Iowa Prod. Credit Ass’n*, 373 N.W.2d 479, 483 (Iowa 1985) (recognizing in dicta that “executive privilege is ‘an exception to the unusually broad scope of discovery’”) (citation omitted).
5. The Iowa Constitution vests in the Governor the “Supreme Executive power of this State.” Iowa Const. art. IV, § 1. The Constitution recognizes that the Governor “may require information” from executive officers to fulfill her constitutional duties. *See* Iowa Const. art. IV, §§ 8–9. And the Iowa Constitution vests separated powers in each coordinate branch of government. Iowa Const. art. III, § 1.
6. Narrow privileges guaranteed by the Iowa Constitution’s Separation-of-Powers Clause are vital to ensure that elected officials can speak candidly with senior advisors or constituents without fear of their communications being disclosed. *See Smith v. Iowa Dist. Ct. for Polk Cnty.*, 3 N.W.3d 524, 534–35 (Iowa 2024).
7. On February 11, 2025, the Register sent a records request asking for emails and communications sent by many of the Governor’s top advisors. Ex. A (“Blankenship Affidavit”). And one month later, the Governor’s Records Custodian produced more than 800 pages of documents. In the same response, the custodian explained that four documents were withheld based on executive privilege. *Id.*
8. The Records Custodian also sent a privilege log, explaining the sender, responsive nature of the document, and precisely why the documents were withheld: to ensure that the confidential documents would not be disclosed and thus “inhibit the governor’s ability to receive candid, fulsome, and robust information in the future.” Ex. B (“Privilege Log”). The Custodian did not need

to share such a privilege log but did so out of respect for transparency, the purpose underlying Chapter 22, and to assuage concerns about the narrow nature of the Governor's executive privilege assertion.

9. But the Register contested the "assertion of 'executive privilege' to justify withholding four emails." Ex. C ("Register Response"). Mischaracterizing a production of more than 825 pages of documents from the Governor's senior advisors and description of the privilege protecting four documents as "a pattern of evasion," the Register demanded that the Governor produce the four privileged documents by April 25, 2025.
10. The Governor has a constitutional mandate and duty to seek information from her closest advisors. Without candid advice and support it would be impossible for the Governor to do her job. Here, the Governor carefully balanced a narrow assertion of privilege justified on that basis with her duty to produce documents. Such an approach follows both the Iowa Constitution and longstanding analogues recognized in other States and by the federal courts.
11. Understanding that good-faith disputes may arise, Chapter 22 authorizes "the lawful custodian of a government record, or [] another government body or person who would be aggrieved or adversely affected" to seek injunctive relief to stop disclosure of a privileged document. Iowa Code § 22.8.
12. Plaintiffs here seek an injunction under Iowa Code section 22.8 to stop Defendant from demanding production of the documents protected by executive privilege.

I. Jurisdiction

13. This Court has jurisdiction over this matter under Iowa Code section 22.8.
14. Plaintiffs are authorized to seek an injunction. Iowa Code §§ 22.8(1), (4)(e).
15. Plaintiffs' principal place of business is in Polk County.

II. Parties

16. Plaintiffs are the Iowa Office of the Governor's Records Custodian and the Iowa Office of the Governor. Plaintiffs are threatened with substantial and irreparable injury if the protected documents are disclosed.
17. Defendant The Des Moines Register & Tribune Company, d/b/a The Des Moines Register and d/b/a Des Moines Register Media ("the Register") is an Iowa corporation with its principal place of business in Polk County, Iowa and requested records from Plaintiffs.

III. Background

18. Chapter 22 recognizes that information in the possession of the government should generally be made available to the public—irrespective of whether it is in the possession of the executive or judicial branch.
19. But until the Legislature enacted a law, that broad access to government information was not the norm in Iowa. Rather, such access—and the presumption of openness—is a recent legislative innovation. In Iowa, Senate File 537 was approved on July 28, 1967, by Governor Harold E. Hughes. Thus what is now codified at Chapter 22 became law more than a century after the Iowa Constitution was adopted.
20. In fact, the concept of executive privilege predates open record laws by more than 115 years, and, like the legislative privilege recognized by the Iowa Supreme Court in *Smith v. District Court*, is incorporated into Iowa Public Records laws. These laws were designed to get information that was neither confidential nor privileged to the public—not all information. The State values transparency but the release of such information should not limit the chief executive's ability to either obtain information or detract from the performance of her constitutional duties.

21. Executive power is an inherent power within the Iowa Constitution. Neither the Iowa Supreme Court nor the Iowa Court of Appeals have ever held that there is not an executive privilege in Iowa. To the contrary: the Iowa Supreme Court has recognized such a privilege's existence, although without defining its scope.
22. The General Assembly (Third) enacted the Iowa Code 1851, effective July 1, 1851. *See* 3 G.A., Ch. 98, § 5. That first Iowa Code recognized that “[a] public officer cannot be examined as to communications made to him in official confidence, when the public interests would suffer by the disclosure.” Iowa Code § 2395 (1851). And that law has remained unchanged for more than 173 years. *Compare* Iowa Code § 622.11 (2025) *with* Iowa Code § 2395 (1851). Reading Chapter 22 to have silently abrogated that law would lead to an absurd result.
23. Iowa executive-privilege law does not refer to public-records requests for an obvious reason: it predates the proliferation of those transparency laws by more than a century.
24. Iowa's third constitutional convention adopted Iowa's Constitution on March 5, 1857. It is a bedrock principle that a three-tiered government, like Iowa's, creates checks and balance between the branches. The separation-of-powers doctrine requires that a branch of government not impair another in the performance of its constitutional duties. *Klouda v. Sixth Jud. Dist. Dept. of Corr. Servs.*, 642 N.W.2d 255, 260 (Iowa 2002) (internal citations omitted); *see* Iowa Const. art. III, § 1.
25. The Iowa Constitution adds that “[t]he supreme executive power of this state shall be vested in a chief magistrate, who shall be styled the governor of the state of Iowa.” Iowa Const. art. IV, § 1. The Governor's duty is to “take care that the laws are faithfully executed.” Iowa Const. art. IV, § 9. The Constitution recognizes that the Governor may require written communication

from executive officers to fulfill these duties and conduct executive business. See Iowa Const. art. IV, § 8.

26. It is a fundamental principle that one branch of government is not permitted to intrude upon the powers of another branch of government. *State v. Ragland*, 836 N. W.2d 107, 117 (Iowa 2013); see also *Schwarzkopf v. Sac County Bd. of Sup'rs*, 341 N.W.2d 1, 5 (Iowa 1983) (The separation-of-powers principle is violated if the Legislature purports to use powers not granted to it by Constitution or usurps powers granted by it to another branch.).
27. When Chapter 22 creates conflicts with the Iowa Constitution, its application in those contexts would be void. See Iowa Const. art. 12, § 1.
28. In the federal context, the United States Supreme Court has recognized the vital importance of executive privilege. *United States v. Nixon*, 418 U.S. 683, 708 (1974). “The expectation of a President to the confidentiality of his conversations and correspondence, like the claim of confidentiality of judicial deliberations, for example, has all the values to which we accord deference for the privacy of all citizens and, added to those values, is the necessity for protection of the public interest in candid, objective, and even blunt or harsh opinions in Presidential decisionmaking.” *Id.* And that executive privilege derives from “the supremacy of each branch within its own assigned area of constitutional duties.” *Id.* at 705. That privilege is “fundamental to the operation of the Government and inextricably rooted in the separation of powers.” *Id.* at 708.
29. Governors have long asserted executive privilege in Iowa. See, e.g., Jonathan Roos, *Vilsack Restricts Public from Accessing Documents*, DES MOINES REGISTER (Oct. 15, 2005) (citing executive privilege, governors have exerted control over certain records); Clark Kauffman, *Consultant’s Report Not Ready for Public, Governor’s Office Says*, DES MOINES REGISTER (Sept. 4, 2009) (Gov. Culver asserting executive privilege to keep records confidential). Despite such

use, in the 57 years following Chapter 22's enactment, the Iowa Supreme Court has *never* held that governors do not have executive privilege.

30. Indeed, both of Iowa's most recent former governors include in their memoranda of understanding related to transferring their official records to the State Historical Society of Iowa an explicit recognition of executive privilege as a basis to find certain records are confidential. *See* Ex. F ("Culver MOU"); Ex. G ("Branstad MOU").
31. One need not map the outer contours of the privilege to recognize the chief executive has some form of executive privilege. The State asserted executive privilege in *State ex rel. Shanahan v. Iowa Dist. Court for Iowa County*, 356 N.W.2d 523, 526–527 (Iowa 1984). In *Shanahan*, the Division of Criminal Investigation for the Department of Public Safety argued some documents were protected by executive privilege, which was "derived from the doctrine of separation of powers in both our State and federal constitutions." *Id.* (citing Iowa Const. art. III, § 1; U.S. Const. art. I, § 1; Art II, § 1; Art. III, § 1; *Nixon*, 418 U.S. at 706, ("[T]he privilege can be said to derive from the supremacy of each branch within its own assigned area of constitutional duties.")). The Iowa Supreme Court resolved the case on narrower grounds so did not need to address executive privilege.
32. And more recently in *Belin v. Reynolds*, the Iowa Supreme Court noted that the response to the record requester did not require inquiring into the Governor's "thinking" nor "internal conversations" nor yet "any of the inner workings of the Governor's office." 989 N.W.2d at 177. That acknowledgment would not be necessary if records that do evidence a governor's "thinking," involve "internal conversations," or the "inner workings of the office" were wholly unprotected. *Id.* And while that case did require the Governor to timely respond to document requests, the Court explained that it saw "no reason why the plaintiffs cannot advance timeliness claims without inquiring into political questions or invading executive privilege." *Id.* at 178.

33. Notably, the Iowa Supreme Court has itself used a deliberative privilege to protect records—unrelated to how a justice reached a decision on a case or controversy—from disclosure related to legislative affairs. *See, e.g., Off. of Citizens' Aide/Ombudsman v. Edwards*, 825 N.W.2d 8, 19 (Iowa 2012); *see also* Jacob Hall, *Chief Justice Cady Guts Iowa Open Records Law to Hide his Political Activity*, Iowa Standard (July 30, 2019).

IV. Factual Allegations

34. On February 11, 2025, the Office of the Governor's Records Custodian received a request from Des Moines Register reporter Tyler Jett to inspect certain records. *See* Ex. D.
35. The request sought:
- a. "1. Any emails from Feb. 5 through Feb. 10 to or from Taryn Frideres, Jacob Nicholson, Molly Severn, Jen Green, Mason Mauro, and Damian Bell to or from renee.hardman@lsiowa.org, renee.hardman@wdm.iow.org, and rhardman09@gmail.com."
 - b. "2. Any emails from Feb. 5 through Feb. 10 to or from Taryn Frideres, Jacob Nicholson, Molly Severn, Jen Green, Mason Mauro, and Damian Bell that contain any of the following key words: Lutheran, Money-laundering, Money laundering, moneylaundering, raja, and krishnamoorth."

Id.

36. Plaintiffs promptly reviewed records based on the search terms provided to determine whether they were responsive to the request and what records need to be redacted or withheld based on confidentiality or privilege. *See* Ex. A.
37. On March 13, Plaintiffs produced 825 pages of documents responsive to the two public records requests. *See* Ex. A.

38. Those documents included hundreds of pages of responsive emails including potentially newsworthy concerns related to the subject of the records requests (Lutheran Services in Iowa) and media responses to an exigent political circumstance. *See, e.g.*, Ex. E at 10 (“IGOV IFOIA R414-2025-000010”).
39. In the same response, Plaintiffs asserted executive privilege over four documents that they withheld. Plaintiffs also sent Defendant a privilege log including details on the four privileged documents.
40. On April 17, the Register responded through retained counsel, formally contesting the assertion of executive privilege. *See* Ex. C.
41. In that letter, the Register asserted that there is no executive privilege exception codified at Iowa Code § 22.7. And the Register contended that there is no basis to assert executive privilege under Iowa Law. *Id.*
42. The Register continued in mistakenly asserting that the Iowa Supreme Court had never “recognized the existence of executive privilege.” And argued that asserting the long-standing privilege recognized in both many states and the by the federal courts was a “pattern of evasion.” *Id.*
43. The Register asserted that even if it was wrong and that the well-recognized executive privilege existed in Iowa, it would not apply to the four emails sent containing advice for the Governor from her high-ranking staff. The Register explained that, in its view, executive privilege cannot include documents sent between senior staff intended for the Governor. Instead, presumably, the Governor must be CC’ed or otherwise included on an email or other communication directly to assert privilege over highly confidential communications. *See id.*
44. The Register concluded that invoking executive privilege over communications intended to advise the Governor on a high-profile issue of public importance was “legally indefensible.” *Id.*

45. The Register concluded by demanding emails no later than six business days later, on April 25. *Id.*
46. On April 24, one day before the demand deadline, Plaintiffs filed this lawsuit to protect the public interest and ability of the Governor to communicate with senior staff.

Count I: Iowa Code section 22.8

47. “The district court may grant an injunction restraining the examination, including copying, of a specific public record or a narrowly drawn class of public records.” Iowa Code § 22.8(1). To issue an injunction, the Complaint must be accompanied by an affidavit explaining that producing the documents would “clearly not be in the public interest” and that the examination “would substantially and irreparably injure any person or persons.” *Id.*
48. Attached to this complaint is an affidavit explaining that violating executive privilege is against the public interest and substantially injures Plaintiffs. *See* Ex. A.
49. “Good-faith, reasonable delay by a lawful custodian in permitting the examination and copying of a government public record is not a violation of this chapter if the purpose of the delay is . . . [t]o seek an injunction under this section.” *Id.* 22.8(4).
50. “Actions for injunctions under this section may be brought by the lawful custodian of a government record, or by another government body or person who would be aggrieved or adversely affected by the examination or copying of such a record.” *Id.* 22.8(4)(e).
51. The State respectfully asks the Court to exercise its discretion and waive the bond accompanying the injunction. *See* Iowa Code § 22.8(2).

Conclusion and Prayer

Plaintiffs request that the Court render judgment in their favor and:

- A. Enter an injunction restraining the examination of the four documents over which the Office of the Governor has asserted executive privilege; and
- B. Grant all other relief necessary or appropriate to remedy the effects of Defendant's acts or to which Plaintiffs may be entitled.

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