

IN THE IOWA DISTRICT COURT IN AND FOR POLK COUNTY, IOWA

Upon the petition of GRAHAM GILLETTE, Petitioner V. RECORDS CUSTODIAN, Des Moines Independent Public Schools, Board of Directors Respondent.	CASE NO.: EQ <u>CE 72582</u> PETITION IN EQUITY
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COMES NOW, the Petitioner, who sets forth his cause for statutory and equitable relief as follows:

I. NATURE OF PROCEEDING

This is an action brought pursuant to provisions of Iowa Code Chapters 21 and 22 relating to open meetings and open records. The Petitioner seeks disclosure of certain records, transcripts, and audio recordings under the control of the Des Moines Public School District pertaining to a meeting of the Des Moines School Board held May 10, 2012 to discuss the resignation and departure of Superintendent Dr. Nancy Sebring and the appointment of Acting Superintendent Thomas Ahart. Petitioner seeks an *in camera* review of the documents pursuant to Iowa Code Chapter 21, permanent equitable relief in the form of declaratory rulings, and such injunctions as may be necessary to satisfy his right to information under Iowa open records and open meeting laws.

II. PARTIES

1. Petitioner Graham Gillette (“Gillette”) is a citizen and taxpayer residing in Des Moines, Iowa and a former member of the Des Moines Public School Board.
2. Respondent, Des Moines Public School Board (the “School Board”) is the governing body for Des Moines Public Schools and is a school corporation established under the laws of Iowa and operating in Polk County. Des Moines Public School Policy 200 (2008); Iowa Code Section 274.1 (2011).
3. Patricia Lantz (“Lantz”) is the current General Counsel of Des Moines Public Schools and has responded to open records requests that are the subject of these proceedings on behalf of the School Board.

III. FACTS & SPECIFICATIONS

4. On April 2, Superintendent Nancy Sebring was hired to become the superintendent of Omaha Public Schools. On April 3, Dr. Sebring’s resignation was announced at the school board meeting. A formal vote was never held on her resignation, which was to have been effective June 30.
5. At 11:30 am, on May 9, 2012, pursuant to Iowa Law, the School Board published notice to the media that they would hold a closed meeting on May 10. The School Board did not announce the purpose for the meeting.
6. On May 9, 2012 just before midnight, Dr. Nancy Sebring sent an email to the School Board, asking the Board to accept her resignation as superintendent of the Des Moines Independent Community School District, effective immediately, citing “personal reasons.”

7. Following Sebring's resignation, Thomas Ahart took over as acting-superintendent, pursuant to a pre-existing Des Moines School Board Resolution, adopted July 11, 2011, putting in to place a secession plan if the superintendent was unable to preform his or her duties or resigned. *See* Des Moines Public Schools, Superintendent Sebring Makes Resignation Effective Today; Tom Ahart to Serve As Acting Superintendent, <http://tiny.cc/bqgehw> (Published May 10, 2012).

8. On May 10, 2012 the School Board met in a closed session pursuant to Iowa Code 21.5(1)(i) (A public body may conduct a closed session to "evaluate the professional competency of an individual whose appointment, hiring, performance, or discharge is being considered when necessary to prevent needless and irreparable injury to that individuals reputation and that individual requests a closed session"). After the closed session, the Board returned to a public session and voted to accept Dr. Sebring's resignation and for Thomas Ahart to serve as acting superintendent.

9. In public comments following the May 10 meeting, Chair of the Respondent School Board Teree Caldwell-Johnson stated that neither Dr. Sebring's performance nor potential discharge had been discussed during the closed session, and that the session had been closed pursuant to Sebring's request despite the law's wording. Caldwell-Johnson also indicated that she did not know whether open session "would have caused anyone any harm [*to their reputations*]," and that closing the session was "just a procedural thing." *Sebring quits early ...*, Des Moines Register, May 11, 2012.

10. In her remarks following the May 10 Meeting board president Caldwell-Johnson indicated that Dr. Sebring's accelerated resignation date was

due to personal reasons and her need to prepare for her move to Omaha, and did not reveal the fact that her hasty departure was the result of Sebring's use of the Districts' email system to send and receive private sexually explicit emails.

11. On or about May 11, 2012, Petitioner Gillette provided a letter to Lantz, by email, formally requesting "a copy of the complete audio recording from the Des Moines School Board meeting of May 10, 2012" and "copies of all emails and written documents constituting requests to close the May 10 Board meeting and responses to those requests."

12. At a meeting on May 15, 2012, the School Board appointed Thomas Ahart interim superintendent in a public session.

13. On or about May 15, 2012, Lantz resisted in writing the release of "a copy of the complete audio recording from the Des Moines School Board meeting of May 10, 2012", stating that the meeting had been closed pursuant to Iowa Code Section 21.5(1)(i). Copies of Dr. Nancy Sebring and Thomas Ahart's requests to have the meeting closed were attached to the response.

14. On June 1st as reported by the Des Moines Register, it was publicly disclosed that Dr. Sebring's accelerated resignation from her position with Des Moines Public Schools was prompted by the discovery of sexually explicit emails which she had posted through the district's email system.

15. In the wake of the disclosures, Sebring admitted in her "Petition for Declaratory and Injunctive Relief," filed in Polk County District Court on June 4, 2012, that her personal and professional reputation had been harmed. .
See, Dr. Nancy Sebring v. The Des Moines Independent Community School

District (CE 71688) Iowa District Court for Polk County, Iowa..

16. By June 4th, 2012, it was apparent that the goal of continuing to protect Dr. Sebring's reputation could no longer stand as a reason for concealing the discussions that took place at the May 10th closed board session.

17. By June 4th, 2012, it was also apparent that, although the Board entered closed sessions for the avowed purpose of evaluating "the professional competency of an individual whose appointment, hiring, performance, or discharge is being considered" it had not done so with respect to Dr. Sebring, and it probably had not done so with respect to Thomas Ahern who had already assumed control of the school district pursuant to the pre-existing July 11, 2011 succession policy.

18. All of the reasons for concealing the discussions of the Des Moines Public School Board discussions at its May 10th, 2012 closed sessions have either not materialized or have been mooted by subsequent developments.

19. Accordingly, on or about June 8, 2012 Petitioner Gillette renewed his request for production of the documents, citing a Des Moines Register article in which Chair of Respondent School Board Teree Caldwell-Johnson asserted that Dr. Sebring's performance as superintendent was not discussed during the closed session. *See* The Record Herald, Sebring Quits Early; Ahart Will Take Over, <http://tiny.cc/nopjhw> (Last Accessed May 23, 2012).

20. On or about June 11, 2012 Lantz resisted, in writing, the release of the portions of the transcripts, audiotapes, and emails relating to the closed May 10, 2012 meeting of the School Board, citing Iowa Code Section 21.5(1)(i).

21. A true account of the email conversation between Petitioner Gillette and Lantz is marked "Petition, Exh. A" and is appended to this petition.

IV. CLAIMS ASSERTED

22. The continued refusal of the Des Moines Public School board to release records and recordings of the closed May 10th session constitute violations of Iowa's Open meetings and open records statutes, to wit:
- a. The purpose of Iowa Code Section 21.5(1)(i) is to protect the reputation of the candidate from any harmful information that might be disclosed in the meeting. Thus, it appears that the criteria for closing the meeting pursuant to Iowa Code Section 21.5(1)(i) were not met.
 - b. Thus by June 1, 2012 the grounds for closing the record of the School Board meeting held on May 10, 2012 were no longer operative:
 - i. The Board had already decided to appoint Thomas Ahart to serve as the interim district superintendent.
 - ii. Ms. Sebring had already resigned her position.
 - iii. Any additional damage to Ms. Sebring's reputation in the course of discussions would be *de minimus* or could not be fairly characterized as "needless"
 - iv. There are indications that the discussion which subsequently took place in that meeting was not addressed at assessing Ms. Sebring's performance
 - v. The petitioner has agreed that discussions regarding Mr. Ahart could be redacted from the records requested.
 - c. The May 10, 2012 closed session lasted for 80 minutes, so it is evident that other matters may have been discussed.

23. Under Iowa Code, the Des Moines School Board bears the burden of proving that there was a legitimate, legal reason for closing the meeting. Iowa Code Section 21.6.

24. Pursuant to Iowa Code Section 21.5(4) this court should forthwith issue an order for an *in camera* inspection of the sealed School Board detailed minutes and audio recordings, and, after weighing the statutory criteria, and finding that it is in the public interest for disclosure of the minutes and recordings, issue an order which may permit similar inspection by the Petitioners to this action.

V. PRAYER FOR RELIEF

WHEREFORE, Petitioner prays for:

- A. An interim procedural order requiring the Respondent to produce to this court all requested records, detailed minutes, and recordings of the May 10th meeting for the court to review *in camera* pursuant to Iowa Code Chapter 21.
- B. Orders requiring the Respondent to release all such records, detailed minutes and recordings, subject to any court ordered redactions.
- C. An award of reasonable costs and attorneys fees as permitted by law.

Respectfully Submitted:



Randall C. Wilson, Esq. PK 0007857
ACLU of Iowa Foundation
901 Insurance Exchange Bldg.
Des Moines, IA 50309-2316
Telephone: 515.650.1980
email: randall.wilson@aclu-ia.org
Counsel for Petitioner Graham Gillette

Petitioner's Exhibit A

From: Graham Gillette [mailto:grahamgillette@gmail.com]
Sent: Friday, May 11, 2012 8:49 AM
To: Lantz, Patricia
Cc: Taylor, Sarah
Subject: Request for Audio Recordings and Information

This email serves as a formal request for a copy of the complete audio recording from the Des Moines School Board meeting of May 10, 2012.

Iowa Code allows a closed session "to evaluate the professional competency of an individual whose appointment, hiring, performance or discharge is being considered when necessary to prevent needless and irreparable injury to that individual's reputation."

The Code requires a number of conditions be met before a meeting is closed. A request to close the meeting by Nancy Sebring and Thomas Ahart does not alone permit denying the public access to this meeting. The official statement released by Board President Teree Caldwell-Johnson and her comments following the closed session clearly indicate the meeting was closed improperly. In her comments to the Des Moines Register, Caldwell-Johnson affirmed that neither Sebring or Ahart's reputations would have been harmed had the meeting been held in open session.

I am requesting Des Moines Public Schools immediately release to me and the public the full unedited audio recording of yesterday's meeting. I would also like copies of all emails and written documents constituting requests to close the May 10 Board meeting and responses to those requests.

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Thanks,
Graham Gillette
515-244-1900

Gillette Strategic Resources, LLC
505 Fifth Avenue, Suite 300
Des Moines, Iowa 50309

From: Lantz, Patricia [mailto:patricia.lantz@dmschools.org]
Sent: Tuesday, May 15, 2012 3:27 PM
To: Graham Gillette
Cc: Taylor, Sarah
Subject: RE: Request for Audio Recordings and Information

Mr. Gillette,

The Board held a closed session upon affirmative public vote pursuant to Iowa Code section 21.5.

As a result, the Board is not allowed to open the minutes for public inspection.

I have attached the requests for closed session submitted and signed by Dr. Sebring and Mr. Ahart.

Sincerely,
Patricia Lantz

From: Graham Gillette [mailto:grahamgillette@gmail.com]
Sent: Wednesday, May 16, 2012 8:52 AM
To: Lantz, Patricia
Cc: Taylor, Sarah
Subject: RE: Request for Audio Recordings and Information

Thank you. That is most helpful.

What time on May 9 was the meeting notice posted for May 10 meeting?

Also, would you mind adding my email to the list of those receiving email notifications when school board meetings are posted?

Thank you,
Graham Gillette

From: Lantz, Patricia [mailto:patricia.lantz@dmschools.org]
Sent: Wednesday, May 16, 2012 2:52 PM
To: Graham Gillette
Cc: Taylor, Sarah
Subject: RE: Request for Audio Recordings and Information

Mr. Gillette,

The meeting notice was posted at 11:30 a.m. on May 9, 2012. It was sent to the media at 11:37 a.m. on May 9, 2012.

The only e-mailing list we have is to the media. Requirements for notification to the public are pursuant to Iowa Code section 21.4, and those are the ones we follow. The notice was posted to the bulletin board in the lobby of our administrative offices (which in this case is also where the meeting was held) at 901 Walnut.

Please contact me with any further questions you may have.

Sincerely,
Patricia Lantz

From: Graham Gillette [mailto:grahamgillette@gmail.com]
Sent: Wednesday, May 16, 2012 3:45 PM
To: 'Lantz, Patricia'
Cc: 'Taylor, Sarah'
Subject: RE: Request for Audio Recordings and Information

Thank you for forwarding copies of the Request for a Closed Session consent forms signed by Nancy Sebring and Thomas Ahart. I also appreciate the information about when the meeting notice was posted.

Meeting Notification

However, I am troubled by your denial of my request to have my email address added to the list of those notified when public meetings of the School Board are scheduled. I find it odd the District would refuse to send information about public meetings to interested members of the public, opting to communicate exclusively with members of the media.

While I am not sure why I have to prove such a thing in order to be placed on a list about public meetings; please know I am a paid contributor to the Des Moines Register. If that additional fact fails to qualify me for the District's exclusive media only list, please let me know what other qualifications are required as I am sure I can satisfy your strict policies.

Revised Request to Release Audio Recording

After reviewing the School Board statement and the comments made by Board President Caldwell-Johnson following the May 10 meeting, it appears the Board may have discussed Mr. Ahart's performance. He would have the ability to request a closed session if that was the case. I am hoping he will rescind the request in light of the Board President's assurance nothing was discussed that could have harmed Mr. Ahart's reputation, but rescinding the request is solely for Mr. Ahart to decide. I am hopeful he will do so.

On the other hand, Nancy Sebring resigned her position prior to the meeting. The Board's discussion of Dr. Sebring's resignation during a closed session was not permissible under Iowa Law. The Board did not discuss the appointment, hiring, performance, or discharge of Dr. Sebring. Employment law stipulates there is a difference between a resignation and a discharge. And, Caldwell-Johnson confirmed this was a resignation when she said the following about Dr. Sebring's departure, "This is not a situation in which she has been dismissed, and we are not required to kick in any of the severance clauses. She's now come to the conclusion that there were some things that she needed to accomplish before she started at Omaha, and that's what brought this about"

I would like to request a copy of the audio recordings of all portions of the May 10 DMPS Board meeting that are not covered under Mr. Ahart's request to close the meeting.

Thank you for your continued assistance.

Thanks,
Graham Gillette
515-244-1900

From: Graham Gillette [mailto:grahamgillette@gmail.com]
Sent: Friday, June 08, 2012 12:26 PM
To: Lantz, Patricia
Cc: Taylor, Sarah
Subject: RE: Request for Audio Recordings and Information

Dear Ms. Lantz:

This letter is a follow-up to my Email of May 16 in which I requested a copy of the audio recordings of all portions of the May 10 DMPS Board meeting not covered under Mr. Ahart's request to close the meeting.

The May 10 Board meeting was closed citing Iowa Code Chapter 21.5 (i): "To evaluate the professional competency of an individual whose appointment, hiring, performance, or discharge is being considered when necessary to prevent needless and irreparable injury to that individual's reputation and that individual requests a closed session."

The documents you provided indicate two individuals requested the meeting be closed, Nancy Sebring and Thomas Ahart.

Nancy Sebring resigned via email at 11:30 p.m., May 9. Since Nancy Sebring was no longer an employee of the District, the school board had no reason to evaluate her performance. Sebring was not being considered for appointment, hiring or discharge. Therefore, any and all discussion by the School Board regarding Nancy Sebring could not have been conducted during a closed session.

Considering comments made by the board president and District officials following the meeting and the subsequent release of emails that led to Sebring's resignation, it is likely the Des Moines Public School Board may have used the closed meeting to improperly discuss political strategy in addition to the appointment, hiring, performance, or discharge of Mr. Ahart. One thing is clear, any and all discussion regarding Nancy Sebring falls outside of what could have been legally discussed behind closed doors. Following the meeting, board president Terre Caldwell Johnson misled the public by saying, "She's (Sebring) now come to the conclusion that there were some things that she needed to accomplish before she started at Omaha, and that's what brought this about." Caldwell Johnson also said this about the meeting, "I don't know if it would have caused anyone any harm." And, Caldwell Johnson said the Board had not discussed Sebring's performance.

I continue to seek the release of all portions of the audio recording of the May 10 Des Moines Public School Board meeting that do not include the appointment, hiring, performance, or discharge of Thomas Ahart. I again request I be added to list of those

notified when board public notices are posted. Additionally, I would like copies of all emails and written documents pertaining to the May 10 Board meeting prepared, sent and received between May 1 and May 22, 2012.

Graham Gillette

(Copy is being mailed as well)

From: Lantz, Patricia [mailto:patricia.lantz@dmschools.org]

Sent: Friday, June 08, 2012 1:59 PM

To: Graham Gillette

Cc: Taylor, Sarah

Subject: RE: Request for Audio Recordings and Information

Mr. Gillette:

You are correct in that Dr. Sebring submitted her resignation on May 9; however, until the Board accepted it by a vote taken in open session on May 10, Dr. Sebring was still an employee of the District.

Your request for records will be considered and acted upon accordingly.

Sincerely,

Patricia Lantz

From: Graham Gillette [mailto:grahamgillette@gmail.com]

Sent: Friday, June 08, 2012 2:51 PM

To: Lantz, Patricia

Cc: Taylor, Sarah

Subject: RE: Request for Audio Recordings and Information

I appreciate your quick response.

Dr. Sebring's submission of a resignation is relevant not because it ended her employment, but because the resignation made her ineligible to request a closed meeting for the reasons defined by law.

The board president stated for the record Dr. Sebring's performance was not discussed during the meeting. Dr. Sebring's resignation proves she was not being considered for appointment, hiring or discharge. Therefore, the Board had no grounds to discuss Dr. Sebring during a closed meeting.

Again, I ask for the audio recording of the May 10 meeting that does not pertain to Mr. Ahart's professional competency.

Thank you,
Graham Gillette

From: Lantz, Patricia [mailto:patricia.lantz@dmschools.org]
Sent: Monday, June 11, 2012 1:40 PM
To: Graham Gillette
Cc: Taylor, Sarah
Subject: RE: Request for Audio Recordings and Information

Mr. Gillette – the meeting was closed to the public in accordance with Iowa Code section 21.5. The Code does not provide me with the authority to release the tape to you.

Your request for records is noted, and we'll provide an estimate of costs soon.

Sincerely,
Patricia Lantz

From: Graham Gillette [mailto:grahamgillette@gmail.com]
Sent: Monday, June 11, 2012 2:19 PM
To: 'Lantz, Patricia'; 'teree56@yahoo.com'
Cc: 'Taylor, Sarah'
Subject: RE: Request for Audio Recordings and Information

Ms. Lantz, I am sorry to bother you again and it is my hope this will be my last question.

In order to expedite this request and allow us all to move on to other things, I have copied Teree Caldwell Johnson on this email. It is my hope she will fill in the blanks you cannot.

Teree, I would appreciate your response to the question posed below.

Was the Des Moines School Board considering Nancy Sebring's professional competency for appointment, hiring, performance or discharge during the May 10 meeting?

While I appreciate Ms. Lantz's assertion the meeting was closed in accordance with the law, Mrs. Caldwell Johnson has stated on the record that neither Dr. Sebring's performance nor potential discharge was discussed during the meeting. I would value knowing under which provision of the law Dr. Sebring was allowed to request the May 10 meeting be closed.

Thank you kindly for both of your responses.

Graham Gillette

From: Lantz, Patricia [mailto:patricia.lantz@dmschools.org]
Sent: Monday, July 02, 2012 9:00 AM
To: grahamgillette@gmail.com
Cc: Taylor, Sarah
Subject: open records request

Dear Mr. Gillette:

Upon review of your open records request, it appears this will take our IT department a substantial amount of time. You have requested "all emails" pertaining to the May 10 meeting. To appropriately capture all emails that may have referenced the meeting, this will require us to search all employees' emails, as well as the Board members' email boxes. This type of a request could run into a substantial amount of time from our IT staff, review and other applicable charges. Other entities that have made broad requests have been provided estimates of \$500 to \$2000 or more. We have required payment prior to the release of records, also.

Documents generated for the meeting were already sent to you. Redacted minutes from the meeting which reflect the open or public portion of the meeting are available, and will be sent to you later today.

Sincerely,
Patricia Lantz

From: Lantz, Patricia [mailto:patricia.lantz@dmschools.org]
Sent: Monday, July 02, 2012 4:24 PM
To: Graham Gillette
Cc: Taylor, Sarah
Subject: RE: open records request

Mr. Gillette, I have attached the minutes from the open portion of the May 10 meeting.

Sincerely,
Patricia Lantz

From: Graham Gillette [mailto:grahamgillette@gmail.com]
Sent: Monday, July 02, 2012 2:17 PM
To: Lantz, Patricia
Cc: Taylor, Sarah
Subject: RE: open records request

Thank you for responding.

I do not want to waste valuable District time handling a request for an overly broad search. Let me give some thought to revising the request so the search is as efficient as possible. I will be back in touch with you soon with a revised request.

I look forward to receiving the minutes you mentioned. I assume these are from the open session of the May 10 meeting, but will await receipt.

Thank you again. I hope you have an enjoyable Independence Day.

Graham Gillette
515-244-1900