

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

<p>IOWA ATHEISTS AND FREETHINKERS, INC.,  Plaintiff,  v.  KIM REYNOLDS, in her official capacity as Governor of the State of Iowa, et al.,  Defendants.</p>	<p>Case No. CVCV069066  <b>PLAINTIFF’S RESPONSE TO DEFENDANTS’ STATEMENT OF FACTS</b></p>
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The Plaintiff, Iowa Atheists and Freethinkers, Inc., by and through undersigned counsel and pursuant to Iowa Rule of Civil Procedure 1.981(3), respectfully submits this response to Defendants’ “Statement of Undisputed Material Facts,”<sup>1</sup> and further incorporates by reference IAF’s contemporaneously filed Statement of Additional Material Facts, to the extent the same are responsive to the below:

1. Governors in Iowa have exerted executive privilege over sensitive documents for decades. *App. 39* (Memorandum of Understanding on the Culver/Judge Administration Records); *App. 42* (Memorandum of Understanding Branstad Administration Gubernatorial Records).

**RESPONSE: Disputed. Defendants fail to comply with their obligation under rule 1.981(8) to support this purported statement of material fact with evidentiary support. Neither document Defendants cite indicate that a Governor of Iowa has exerted executive privilege over sensitive documents in the past, let alone that this has been done repeatedly over decades.**

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<sup>1</sup> The Plaintiff preserves Defendants’ statements as set forth in their submission, including citations. The Plaintiff thereafter provides its response to each such statement, indicating whether such statement is disputed, undisputed, or disputed in part, and on what basis.

**In context, and while both lack proper authentication or foundation, the cited documents appear to be agreements between past administrations and the State Historical Society for the maintenance of such administrations’ respective records. (Defendants’ Appendix of Exhibits in Support of Mot. for Summ. J. at 39, 42 [hereinafter, “Def. App.”]). “Executive privilege” is mentioned, in each, only once. (Def. App. 40, 43). This occurs in a section concerning the Historical Society’s obligations in the event of a subpoena or other records request, and provide that upon receipt of such request, the Historical Society is to notify the Governor and provide them a “reasonable opportunity to review the requested materials for the purpose of determining whether such materials contain information that should be treated as confidential under Chapter 22 of the Code of Iowa” or other state or federal law, including isolated—and contradictory—references to a potential “executive privilege” and “deliberative privilege,” along with any other conceivable privilege or protection. (*Id.*) This necessarily does not indicate whether such reservation rights was ever, in fact, exercised, nor whether it was ever done so on the basis of an asserted “executive privilege.”**

2. Assertions of executive privilege have been made in Iowa beyond advisors to the Governor. In 2009, the Iowa Utilities Board, Iowa Insurance Division, Governor’s Office of Drug Control Policy, and the Department of Inspection and Appeals responded to the Legislature’s requests for records with assertions of executive privilege. Legislative Services Agency, Administration and Regulation Appropriations Subcommittee, Compilation of Department Responses to Subcommittee Questions (Feb. 11, 2009), available at <https://www.legis.iowa.gov/docs/publications/SD/19267.pdf>).

**RESPONSE: Disputed. Defendants fail to support the initial statement, “Assertions of executive privilege have been made in Iowa beyond advisors to the Governor,” with any citation to the record at all, in violation of rule 1.981(8). This statement assumes the similarly unsupported allegation that “advisors to the Governor” have historically asserted an executive privilege. To the extent Defendants claim the remainder of the statement, referencing a 2009 Legislative Services Agency document entitled, “Compilation of Department Responses to Subcommittee Questions,” offers evidentiary support for the initial statement, the claim lacks validity. The cited document appears to include references to various departments’ cooperation with the governor’s apparent request to respect a claim of executive privilege over suggested budget cuts, in response to a subcommittee inquiry on the topic. Legislative Services Agency, Administration and Regulation Appropriations Subcommittee, Compilation of Department Responses to Subcommittee Questions at 44, 48, 61, 63 (Feb. 11, 2009), available at <https://www.legis.iowa.gov/docs/publications/SD/19267.pdf>). Even if this occurrence is considered beyond reasonable dispute, it provides no relevant support for Defendants’ claim of executive privilege here. That this is the *only* document cited in which even such a vague assertion of executive privilege is made contradicts Defendants’ implicit claim that executive privilege is asserted either regularly or widely.**

3. On December 18, 2024, Iowa Atheists and Freethinkers member Jason Benell sent the Office of the Governor’s Records Custodian a request to inspect certain records. *App. 21-23* (Email of Jason Benell, dated December 14, 2025); *App. 24-26* (Letter from Megan Hall to Jason Benell, dated January 9, 2025).

**RESPONSE: Undisputed to the extent consistent with the allegations of Petition, including paragraphs 32 and 33, and with Exhibit A to the Petition, the Request at issue.**

4. That request sought “Any and all non-privilege documents, including but not limited to: electronic communications or records, containing, relating to, or concerning the cancellation, disposition, or discussion of the Satanic Temple of Iowa’s family event on December 14th, 2025.”. *App.* 22.

**RESPONSE: Undisputed to the extent consistent with the allegations of Petition, including paragraphs 32 and 33, and with Exhibit A to the Petition, the Request at issue.**

5. Defendants promptly reviewed the records consistent with their policy on the request and produced 611 pages of documents responsive to the request. *App.* 24-26; *App.* 27-38 (Letter from Steven Blankenship to Thomas Story, dated February 28, 2025).

**RESPONSE: Disputed as to both the “promptness” of the review, which is unsupported, and the responsiveness of the production provided, which is misleading. The overwhelming of the 611-page production file (520 pages out of 611, or around 85 percent) consisted of compilations of news clips, apparently regularly prepared and circulated with Defendant Governor’s Office and included in the production due to references within them to subject matter of the request. (Petition, ¶¶ 37–38).**

6. The responses included hundreds of pages of responsive emails, including from high-level Governor’s staff, as well as many media responses and other documents. *App.* 27-28.

**RESPONSE: Disputed. Defendants’ citation to unsupported claims made in response to a demand letter does not constitute support for this statement here. (Def. App. 27-28). Defendants provide no support for the vague claim that the emails were from “high-level Governor’s staff,” nor do they attempt to define that term or specify to which emails they**

**claim to refer. Moreover, only 91 pages of the production were other-than the aforementioned news summaries, contradicting the “hundreds of pages” claim made in this statement. (Petition, ¶¶ 37–39).**

7. Due to the sensitive nature of seven documents’ contents, Defendants asserted executive privilege and withheld producing those seven documents. *App.* 27-28.

**RESPONSE: Disputed. Defendants fail to provide support for the claim that seven documents included contents of a “sensitive nature.” Again, Defendants cite only the equally unsupported claims made in response to a demand letter. (Def. App. 27–28). It is, however, undisputed that Defendants are collectively culpable for the decision to withhold the requested records and the asserted claim of executive privilege in response to the request.**

8. Plaintiffs [sic.] produced a log explaining the basis for the withholdings. *App.* 38.

**RESPONSE: Disputed. The privilege log Defendants produced does not explain “the basis for the withholdings”; it states merely, “executive privilege.” (Def. App. 38).**

9. The privilege log shows that the email senders and recipients included Governor Reynolds’s senior staff, cabinet level directors, attorneys, and the Governor. *App.* 38.

**RESPONSE: Disputed. Defendants’ statement generalizes the claims made in the privilege log as to multiple, separate records, including those that are not emails at all. The implication made is that only “senior staff, cabinet level directors, attorneys, and the Governor,” sent and received the relevant records, which is false. (Plaintiff’s Statement of Additional Material Facts at ¶¶ 15, 20, 23, 27, 32, 36, 39, 45).**

10. The subject of the withheld emails includes “DAS Executive Agency Report,” and “Media Prep Doc,” *App.* 38.

**RESPONSE: Disputed.** The privilege log’s identification of the “subject” of the records is not consistent with the actual subject line used in the withheld emails, but appears to be shorthand given by the counsel preparing the log. (*Compare* Def. App. 38, with Plaintiff’s Appendix in Support of Resistance to Mot. for Summ. J. at 121-124, 125-130, 213-218, 344-348, 612-615, 616-619 [hereinafter, “Plf. App.”]). Separately, Defendants’ statement, as with other statements made here, fails to account for the text messages similarly withheld on asserted grounds of executive privilege. (Def. App. 38); (Plf. App. 725-728).

11. Dissatisfied with the assertion of executive privilege, Plaintiff retained counsel and responded, contending that executive privilege does not exist at all under Iowa law. *App. 11*, ¶ 43.

**RESPONSE: It is undisputed that, as alleged in the cited paragraph of the Petition, “Despite further demand by IAF, which noted, through counsel, the absence of any recognized executive privilege in Iowa Code chapter 22, Iowa common law, or the Iowa Constitution, Defendants declined to withdraw their assertion of executive privilege over these seven documents.” (Petition, ¶ 43). To the extent Defendants attempt to imply anything beyond that expressly asserted in said paragraph, it is disputed.**

12. Plaintiff then filed a Petition under Iowa Code chapter 22 for Declaratory and Injunctive Relief, or, in the alternative, Writ of Mandamus. *App. 4-20*.

**RESPONSE: It is undisputed that Plaintiff filed the referenced Petition.**

13. Plaintiff put forward in its petition the basis for why the documents should be produced: in short, because Plaintiff contends they are government records and there is not an exception under section 22.7 for their disclosure. *App. 12-14*, ¶¶ 52-65.

**RESPONSE: It is undisputed that the records at issue are government records and there is no exception under Iowa Code section 22.7 authorizing their nondisclosure. To the extent**

**Defendants' statement attempts to characterize the entirety of Plaintiff's position in this matter, it is disputed.**

Respectfully submitted,

/s/ Thomas D. Story  
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**ATTORNEYS FOR PLAINTIFF**

**CERTIFICATE OF SERVICE**

The undersigned certifies that the foregoing instrument was served upon all parties of record via EDMS on February 20, 2026.

/s/ Thomas D. Story  
Thomas D. Story