Office of the
Attorney General

Idaho
Public Records Law
Manual

Idaho Code §§ 74-101 through 74-127



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INTRODUCTION

Open government is the cornerstone of a free society. The Idaho Legislature affirmed Idaho's commitment to open government by enacting the Idaho public records law in 1990. The public records law protects each citizen's right to monitor the actions of state and local government entities by providing access to government records. The Legislature is continually balancing the competing interests of public access and an individual's right to privacy, through its adoption and amendments to Idaho's public records law. This balance is achieved by exempting (from the disclosure requirement) certain records, or portions thereof.

In 2015, the Legislature re-codified the public records law to provide one place for citizens to find laws relating to government transparency. Those changes are incorporated in this new edition of the Idaho Public Records Law Manual.

One of my duties as Attorney General is to encourage compliance with the Idaho public records law by agencies and officials of state government. The 44 elected county prosecuting attorneys have the same duty with regard to agencies and officials of local government. I am committed to ensuring that public documents are accessible to the public. Toward that end, my office regularly conducts training sessions for state and local officials throughout Idaho.

The Idaho public records law provides for private enforcement. Where an individual or organization is improperly denied access to public records, it is up to the individual to challenge the government agency's refusal to provide access to the record.

Effective private enforcement can occur only when citizens understand their rights. The Office of the Attorney General prepared this manual to educate citizens, the news media and government employees about the public records law. I hope this manual helps in avoiding

misunderstandings and protecting the public's legitimate access to government records.

If you have further questions, feel free to call your city or county prosecuting attorney.

Sincerely,

RAÚL R. LABRADOR
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IDAHO PUBLIC RECORDS LAW

QUESTIONS AND ANSWERS

PURPOSE

Question No. 1: What is the purpose of the Idaho public records law?

Answer: The intent of the law is that all records maintained by state and local government entities be available for public access and copying. At the same time, the Legislature recognized the need to balance this policy of openness against the equally important need for privacy of certain information provided by citizens and businesses that is necessary for the conduct of the government's business.[1] This balance is contained in Idaho Code § 74-102, which states that "all public records in Idaho are open at all reasonable times for inspection except as otherwise expressly provided by statute."

THE STRUCTURE OF THE IDAHO PUBLIC RECORDS LAW

Question No. 2: What does the Idaho public records law provide?

Answer: The law includes definitions and a simple, uniform procedure for inspection and copying of records. Sections 74-104 through 74-111 list the records that are exempt from disclosure.[2] Finally, more than one hundred sections of existing Idaho Code relating to confidentiality of records are cross-referenced to the law.

PUBLIC BODIES OR AGENCIES COVERED BY THE PUBLIC RECORDS LAW

Question No. 3: What government entities are subject to the public records law?

Answer: The law applies to all "public agencies." Public agency is defined as any state or local agency.[3]

"Local agency," includes "a county, city, school district, municipal corporation, district, public health district, political

[1] Idaho Code § 74-102.
[2] Idaho Code §§ 74-104 to 74-111.
[3] Idaho Code § 74-101(11).

subdivision, or any agency thereof, or any committee of a local agency, or any combination thereof."[4]

"State agency," includes "every state officer, department, division, bureau, commission and board or any committee of a state agency including those in the legislative or judicial branch, except the state militia and the Idaho state historical society library and archives."[5]

Thus, essentially every entity of state and local government is expected to comply with the Idaho public records law.

Question No. 4: Does the public records law apply to the Governor, the Legislature, and the Judiciary?

Answer: Yes. The definition of "state agency" includes all of the above. The only state entity omitted from coverage of the law is the military division of the governor's office.[6]

Question No. 5: Are law enforcement entities treated differently by the public records law?

Answer: Yes, to some extent. Section 74-124, relating to the investigatory records of law enforcement agencies, has been in effect since 1986 and is incorporated into the Public Records Law.[7] It contains the standards under which certain information may be released to the public. Sections 74-124(1) through 74-124(4) provide:

74-124. Exemptions from disclosure – Confidentiality.

(1) Notwithstanding any statute or rule of court to the contrary, nothing in this chapter nor chapter 10, title 59, Idaho Code, shall be construed to require disclosure of investigatory records compiled for law enforcement purposes by a law enforcement agency, but such exemption from disclosure applies only to the extent that the production of such records would:

(a) Interfere with enforcement proceedings;

[4] Idaho Code § 74-101(8).
[5] Idaho Code § 74-101(15).
[6] *Id.*
[7] Idaho Code § 74-105(1).

(b) Deprive a person of a right to a fair trial or an impartial adjudication;

(c) Constitute an unwarranted invasion of personal privacy;

(d) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement agency in the course of a criminal investigation, confidential information furnished only by the confidential source;

(e) Disclose investigative techniques and procedures;

(f) Endanger the life or physical safety of law enforcement personnel; or

(g) Disclose the identity of a reporting party maintained by any law enforcement entity or the department of health and welfare relating to the investigation of child abuse, neglect or abandonment unless the reporting party consents in writing to the disclosure or the disclosure of the reporting party's identity is required in any administrative or judicial proceeding.

(2) Notwithstanding subsection (1) of this section, any person involved in a motor vehicle collision which is investigated by a law enforcement agency, that person's authorized legal representative and the insurer shall have a right to a complete, unaltered copy of the impact report, or its successors, and the final report prepared by the agency.

(3) An inactive investigatory record shall be disclosed unless the disclosure would violate the provisions of subsection (1)(a) through (g) of this section. Investigatory record as used herein means information with respect to an identifiable person or group of persons compiled by a law enforcement agency in the course of conducting an investigation of a specific act or omission and shall not include the following information:

(a) The time, date, location, and nature and description of a reported crime, accident or incident;

(b) The name, sex, age, and address of a person arrested, except as otherwise provided by law;

(c) The time, date, and location of the incident and of the arrest;

(d) The crime charged;

(e) Documents given or required by law to be given to the person arrested;

(f) Informations and indictments except as otherwise provided by law; and

(g) Criminal history reports.

As used herein, the term "law enforcement agency" means the office of the attorney general, the office of the state controller, the Idaho state police, the office of any prosecuting attorney, sheriff or municipal police department.

(4) Whenever it is made to appear by verified petition to the district court of the county where the records or some part thereof are situated that certain investigative records are being improperly withheld from a member of the public, the court shall order the officer or person charged with withholding the records to disclose the investigative record or show cause why he should not do so. The court shall decide the case after examining the record in camera, papers filed by the parties, and such oral argument and additional evidence as the court may allow.

If the court finds that the public official's decision to refuse disclosure is not justified, he shall order the public official to make the record public. If the judge determines that the public official was justified in refusing to make the record public, he shall return the item to the public official without disclosing its content with an order supporting the decision refusing disclosure. Any person who fails to obey the order of the court shall be cited to show cause why he is not in contempt of court. The court may, in its discretion, award costs and fees to the prevailing party.[8]

Other entities with law enforcement responsibilities, such as the Department of Fish and Game, have the same confidentiality

[8] Idaho Code §§ 74-124(1-4).

standards.[9] "Law enforcement agency" is defined as any state or local agency that is "given law enforcement powers or which has authority to investigate, enforce, prosecute or punish violations of state or federal criminal statutes, ordinances or regulations."[10] For further discussion of this topic, *see* Attorney General Opinion No. 86-7.[11]

Idaho Code now allows the Department of Health and Welfare to disclose records of investigations associated with actions pursuant to the provisions of title 16, chapter 16. This disclosure may occur if it is for reasons of health and safety, in the best interests of the child, or in the public interest. Records dealing with adoptions, however, remain exempt from disclosure.[12]

RECORDS COVERED BY THE LAW

Question No. 6: What are public records?

Answer: "Public record," as defined by the Idaho Code, is an extremely broad concept.[13] It "includes, but is not limited to, any writing containing information relating to the conduct or administration of the public's business prepared, owned, used or retained by any state agency, independent public body corporate and politic or local agency regardless of physical form or characteristics. Provided, however, that personal notes created by a public official solely for his own use shall not be a public record as long as such personal notes are not shared with any other person or entity."[14]

"Writing" means information maintained in many forms, including typewritten or hand written documents as well as pictures, maps, tapes, magnetic or punched cards, and computer media.[15]

In 1990, the Idaho Supreme Court held that the Boundary County clerk's handwritten notes taken during commission meetings were not "a personal notation for random observations or memoranda concerning events undertaken at a meeting," but were part of her statutory duty to record all proceedings of the commissioners.[16]

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[9] Idaho Code § 74-105(1).
[10] Idaho Code § 74-101(7).
[11] 1986 Idaho Att'y Gen. Ann. Rpt. 40.
[12] Idaho Code § 74-105(7).
[13] Idaho Code § 74-101(13).
[14] *Id.*
[15] Idaho Code § 74-101(17).
[16] Fox v. Estep, 118 Idaho 454 (1990).

"Working papers," "raw notes," "preliminary drafts" and the like are not necessarily exempt from disclosure.[17]

To date, e-mail (electronic mail) and text messaging have not been separately addressed by the Legislature. E-mail and texts are considered public records and are subject to the same laws as any other public record.

Consistent with the law's intent – to provide access to *existing* records, nothing in the public records law requires the creation of a record in order to provide it.[18]

Question No. 7: Who are the custodians of public records?

Answer: "Custodian" is defined as the "person having personal custody and control of the public records in question."[19] "Public agencies shall designate at least one (1) person as custodian to receive public records requests and shall provide an alternate custodian or alternative custodians for contingencies."[20]

Question No. 8: What responsibility does the public agency have for providing access to records?

Answer: The right to inspect and to receive a copy of public records at all reasonable times is absolute unless the record is exempt from disclosure by law.[21] In addition, public agencies are required to extend reasonable comfort and facility to the individual requesting public records.[22]

The concept of a "copy" of a public record is comprehensive, including "transcribing by handwriting, photocopying, duplicating machine and reproducing by any other means so long as the public record is not altered or damaged."[23] Additionally, a certified copy, if feasible to produce, must be provided upon request.[24]

A public agency may not refuse access to records "by contracting with a nongovernmental body to perform any of its duties or

[17] *Id*. at 456.
[18] *See* Idaho Code §§ 74-101(13), 74-102.
[19] Idaho Code § 74-101(3).
[20] Idaho Code §74-119.
[21] Idaho Code § 74-102(1).
[22] Idaho Code § 74-102(6).
[23] Idaho Code § 74-101(2).
[24] Idaho Code § 74-102(3).

functions."[25] Furthermore, public agencies are required, without exception, to separate exempt information from records when a request is made, and to provide access to the nonexempt material.[26] Agencies are prohibited from denying requests because a record contains both exempt and nonexempt information.[27]

The law does not require the agency to provide copies of records in a format not used by the agency in the normal course of business.[28] For example, the agency need not alphabetize information upon request, or engage the services of a computer programmer to provide the information in a format desired by the requesting party.

Question No. 9: Does the public agency have a responsibility to protect the integrity of records?

Answer: Yes. In Adams County Abstract Co. v. Fisk, a title company wanted to set up its own copier in the county offices in order to make its own records of title documents. There was also a dispute about allowing the title company to copy original documents with its own equipment prior to the microfilming of the records. The Idaho Court of Appeals held that the county recorder could not be compelled to allow private photocopying of public records in the courthouse, that he could reasonably restrict the physical handling of original documents, and he could require that the county's copying equipment be used.[29]

The concepts of the Adams County case were preserved in the public records law.[30] The Idaho Code provides the right to examine public records "at all reasonable times," and the right to receive photographs or other copies "using equipment provided by the public agency or independent public body corporate and politic or using equipment designated by the custodian."[31] By this language, the Legislature determined that the public agency may decide, for example, what degree of access would be allowed to its computer system. The Idaho Code also provides that, "[n]othing herein

[25] Idaho Code § 74-102(13).
[26] Idaho Code § 74-112.
[27] *Id*.
[28] *See* Idaho Code § 74-103(1) (agency may determine it is necessary to convert record into different format, but law does not require agency to provide record in requested format).
[29] Adams County Abstract Co. v. Fisk, 117 Idaho 513 (Ct.App. 1990).
[30] Idaho Code §§ 74-102(1-2).
[31] *Id*.

contained shall prevent the custodian from maintaining such vigilance as is required to prevent alteration of any public record while it is being examined."[32]

Question No. 10: For how long must a public record be retained?

Answer: Idaho's cities[33] and counties[34] are governed by statutes that define how records should be classified and retained, as well as the procedure for destruction of public records. State agencies should adopt policies that are consistent with best business practices and generally accepted principles of accounting to classify and retain records. Record retention policies and procedures shall remain consistent with the principles of the Idaho public records law.

Question No. 11: How do I make a public records request?

Answer: A public agency or independent public body corporate and politic may require that a request for public records be submitted to it in writing that specifically describes the subject matter and records sought, including a specific date range for when the records sought were created. The requesting party shall be as specific as possible and provide sufficient detail when requesting records to enable the public body to locate such records with reasonable effort. This writing typically must provide the requester's name, mailing address, e-mail address and telephone number. A request for public records and delivery of the public records may be made by electronic mail.[35]

Question No. 12: When I make a public records request, what type of response should I expect?

Answer: The public agency or independent public body corporate and politic may provide the requester information to help the requester narrow the scope of the request or to help the requester make the request more specific when the response to the request is likely to be voluminous or require payment as provided in section 74-102(10), Idaho Code.[36]

[32] Idaho Code § 74-102(7).
[33] Idaho Code § 50-907.
[34] Idaho Code § 31-871.
[35] Idaho Code § 74-102(4).
[36] Idaho Code § 74-102(9).

Question No. 13: What fees may be charged for the cost of copying public records?

Answer: The concept of the law is that examination and copying of public records is part of the public business, already funded by taxpayers. An agency may establish separate copying fee schedules for Idaho residents and non-residents[37]. These fees "may not exceed the actual cost to the agency of copying the record . . . ."[38] The section contains an exception to preserve fees already established by other laws, such as recorders' fees and fees for court records.[39]

Some state and local agencies provide information in the form of computer tapes and disks. The law permits charging for the "direct cost of copying the information in that form."[40] The language of the law regarding the cost of providing computer or similar records is rendered somewhat unclear, however, by language, which also allows the agency to collect "the standard cost, if any, for selling the same information in the form of a publication."[41] It is the belief of the attorney general's office that this language permits a public agency to offer the requested information in an already-printed publication, and to charge the standard cost of selling the publication.

Question No. 14: May the agency recover the cost of mailing or faxing copies of public records?

Answer: The law requires an agency to provide public records to members of the public; the agency is not required to send the records to the person making the request. The law does not prevent the recovery of actual mailing or telecommunications costs if there is a request to mail or fax information to someone.

Question No. 15: What fees may be charged for any labor costs incurred in locating, redacting, copying, and providing access to public records?

[37] Idaho Code § 74-102(10)(c).
[38] Idaho Code § 74-102(10)(c),(g).
[39] Idaho Code § 74-102(10)(a).
[40] Idaho Code § 74-102(10)(d)(i)(1).
[41] Idaho Code § 74-102(10)(d)(i)(2).

Answer: Agencies may establish separate fee schedules for Idaho residents and non-residents to recover such labor costs incurred in responding to the request.[42]

In addition, if an agency must incur additional expenses to provide access to records during other than normal working hours, or requires the services of outside contract copying companies, or overtime on the part of its own employees, the agency may require advance payment to compensate for this additional expense.[43]

Question No. 16: Are all members of the public required to pay copying fees and labor costs?

Answer: Agencies are allowed to waive any cost or fee for copies or labor when the requester demonstrates an inability to pay, when the request "[i]s not primarily in the individual interest of the requester including, but not limited to, the requester's interest in litigation in which the requester is or may become a party," and "demonstrates that the requester's examination and/or copying of public records [i]s likely to contribute significantly to the public's understanding of the operations or activities of the government."[44]

Question No. 17: May the agency require advance payment of fees?

Answer: Agencies are allowed to require advance payment of the costs of copying and labor costs.[45]

RECORDS EXEMPT FROM DISCLOSURE

Question No. 18: What information is exempt from disclosure under the law?

Answer: With the exception of section 74-124, relating to law enforcement records, most exemptions from disclosure in the public records law are contained in Idaho Code sections 74-104 through 74-111. Even if an exemption applies to a record, the law does not prevent the disclosure of statistical information that identifies a particular person, unless such disclosure is otherwise prohibited by law.[46]

It must be noted that nothing in the law limits the availability of

[42] Idaho Code § 74-102(10)(e).
[43] Idaho Code § 74-102(8).
[44] Idaho Code § 74-102(10)(f).
[45] Idaho Code § 74-102(12).
[46] Idaho Code § 74-102(14).

documents and records for discovery in the normal course of judicial or administrative adjudicatory proceedings, subject to the law and rules of evidence and of discovery governing such proceedings.[47]

Idaho Code section 3-201(5) codifies the attorney client privilege. As identified within the public records law, Idaho Code section 74-104(1) expressly exempts records recognized by other state laws such as this one. Additionally, the attorney-client privilege is well-recognized in state and federal case law. Exclusion of records falling under the privilege is consistent with the public records law[48] and established precedent.

A number of provisions in the public records law exclude records of a personal nature, but with fairly specific qualifiers.[49]

Also, all information exchanged between the Idaho Transportation Department and insurance companies, any database created, all information contained in the verification system and all reports, responses or other information generated for the purposes of the verification system are now exempt from disclosure.[50]

Question No. 19: What are the law's requirements relating to employee or personnel records?

Answer: There is one standard for disclosure of personnel information for all public employers: required disclosure of a current or former employee's or public official's "employment history, classification, pay grade and step, longevity, gross salary and salary history, including bonuses, severance packages, other compensation or vouchered and unvouchered expenses for which reimbursement was paid, status, workplace and employing agency."[51] The Legislature acknowledges that there is some loss of privacy when one accepts a position supported by public money.

All other information in an employee's or applicant's personnel file is not available to the public without the written consent of the individual to whom the file pertains. Thus, information of a more personal nature, including home addresses, phone numbers, social

[47] Idaho Code § 74-115(3).
[48] *See* Idaho Code §§ 74-104(1), 74-105(18), 74-107(11).
[49] *See* Idaho Code §§ 74-106(4), (6), (8), (28), (33).
[50] Idaho Code § 74-106(31).
[51] Idaho Code § 74-106(1).

security and driver's license numbers, grievance information and the like is not normally disclosed.

All information in an employee's file is accessible to the employee or a designated representative, except for "material used to screen and test for employment."[52] A similar exemption relating to test questions in licensing, employment, academic or other examination situations is in place to protect the integrity of the test results.[53]

In addition, there is a section of the Idaho Code that pertains only to school district employees.[54] This section contradicts, to some extent, the provisions of the public records law on employee records, and provides, in part:

> Personnel files are declared to be confidential and excepted from public access under any provision of the Idaho Code, including, but not limited to, sections 74-102 and 59-1009, Idaho Code, provided that each employee or designated representative shall be given access to his own personnel file upon request and shall be provided copies of materials contained therein, with the exception of recommendation letters, in a timely manner upon request.[55]

Question No. 20: Does the exemption restricting disclosure of most information in a public employee's personnel file apply to applicants for public employment?

Answer: It depends. The exemption covers "[a]ll other personnel information relating to a public employee or applicant . . . ."[56]

In Federated Publications v. Boise City, the Idaho Supreme Court distinguished the terms "public official" and "public employee," holding that applications and résumés submitted by applicants for a vacant city council seat are subject to disclosure.[57] However, in Federated Publications, Inc. v. City of Meridian, the Fourth District

[52] *Id*.
[53] Idaho Code § 74-108(6).
[54] Idaho Code § 33-518.
[55] *Id*.
[56] Idaho Code § 74-106(1).
[57] Federated Publications v. Boise City, 128 Idaho 459 (1996).

ruled that the résumés of applicants for an appointed public office do not need to be disclosed under the public records law.[58] Thus, résumés for a vacant elected office are likely subject to disclosure while those for an unelected employee may not be.

Question No. 21: What are the law's requirements regarding distributing, selling or using lists of persons for mailing or telephone number lists?

Answer: Agencies are prohibited from distributing or selling, for use as a mailing or telephone number list, any list of persons without first securing the permission of those on the list.[59] Moreover, no list of persons prepared by an agency can be used as a mailing or telephone number list except by the agency or another agency, without first securing permission of those on the list.[60]

Individuals, however, are not prevented from compiling a mailing or telephone number list through their own research by copying public records, original documents or applications, which are otherwise open to public inspection.[61]

Certain agencies and types of records do not fall within the general prohibition: (1) lists of registered electors and lists of names of employees who are within the state of Idaho personnel systems; (2) agencies that issue occupational or professional licenses; (3) public records dealing with motor vehicle registration; (4) certain corporate information lists developed by the secretary of state, business information lists developed by the department of agriculture used to promote food and agricultural products produced in Idaho; (5) lists used for ordinary utility purposes which are requested by a supplier of utility services in the state; (6) lists to be used to give notice required by any statute, ordinance, rule, law or by any governing agency; (7) student directory information used for military recruiting purposes.[62]

There are civil penalties in an amount not in excess of one thousand dollars ($1,000) to be awarded against a person or public

[58] Federated Publications v. City of Meridian, Case No. CV OC 97 06708D.
[59] Idaho Code § 74-120(1)(a).
[60] Idaho Code § 74-120(1)(b).
[61] Idaho Code § 74-120(2).
[62] Idaho Code §§ 74-120(3-9).

official who has deliberately and in bad faith violated the provisions of section 74-120(1)(a) or 74-120(1)(b).[63]

Question No. 22: May a governmental entity refuse to disclose administrative investigative reports prepared in anticipation of litigation at the direction of its attorney?

Answer: Yes.[64] The Idaho Supreme Court, however, recognized that if the report is merely summarized information that is available in other disclosed public records, it may not be protected from disclosure. If, on the other hand, the record contains information regarding personnel information exempt under Idaho law, or is compiled at the direction of the agency's attorney in anticipation of litigation, the entire record may be exempt from disclosure.

PROCEDURE FOR REQUESTING PUBLIC RECORDS

Question No. 23: Must an individual fill out a written request for inspection or copying of public records?

Answer: Agencies are permitted to require requests for access to public documents be made in writing that specifically describes the subject matter and records sought, including a specific date range for when the records sought were created.[65] If a written request is required by the public agency, the individual may be required to provide a mailing address and telephone number.[66] This information may assist the public agency to clarify a request and provide a document as soon as possible.

Question No. 24: Who is a public records request made to?

Answer: Under Idaho Code section 74-103(1), all requests for public records must be made to the designated custodian. Under the law, public agencies are required to designate a custodian to whom public records requests must be addressed. If the agency has not designated a custodian, the request may be made of any employee of the public agency. Failure to address a public records request to the custodian

[63] Idaho Code § 74-120(11).
[64] Idaho Code § 74-105(18).
[65] Idaho Code § 74-102(4).
[66] *Id*.

may result in a public records request not being responded to and without penalty to the public agency.

Question No. 25: May the agency ask the purpose of the request?

Answer: Public agencies generally are not allowed to ask why a person wants public records.[67] Moreover, "[t]he custodian shall not review, examine or scrutinize any copy, photograph or memoranda in the possession of any such person. . . ."[68]

Nevertheless, legislators did expect that requests for documents could be discussed. For example, without inquiring why an individual is making a request, a custodian could explain exactly what information is available and allow the person to examine nonexempt documents, so that the person would be better able to describe the requested records.[69] Further, an inquiry by the agency is allowed in order to make sure its information is not to be used as a mailing or phone list.[70]

Question No. 26: What are the time limits for a public agency to respond to a request for information?

Answer: The intent of the law is that documents be provided upon request whenever possible. A public agency has three (3) working days from the date of the receipt of the request from an Idaho resident to grant or deny the information, and has twenty-one (21) calendar days for non-residents.[71] However, public agencies should not delay three (or twenty-one) days to provide information that is readily available.

Employees of the public agency are allowed to determine that a longer period of time is needed to locate or retrieve information, notify the individual in writing that more time is needed, and then grant or deny the request in whole or in part within ten (10) working days following the request, if such person is a resident, and no later than thirty-five (35) working days following a request from a non-resident.[72] The Legislature believed that these time periods would be adequate in the vast majority of cases, and that individuals would

[67] Idaho Code § 74-102(5).
[68] Idaho Code § 74-102(6).
[69] Idaho Code § 74-102(9).
[70] Idaho Code § 74-102(5)(b).
[71] Idaho Code § 74-103(2).
[72] *Id*.

understand that agencies might occasionally need additional time to respond.

Question No. 27: What happens if the agency does not respond?

Answer: If the public agency or custodian fails to respond within the time allotted for the response, the request shall be deemed denied..[73] The 180-day period to seek court relief begins at that point.[74]

DENIAL OF A REQUEST FOR PUBLIC RECORDS

Question No. 28: Who determines if a request for records must be denied?

Answer: "[T]he person legally responsible for administering the public agency or independent public body corporate and politic or that person's designee" will determine if a request is to be denied in whole or in part.[75] The public agency is also encouraged to have an attorney review the request if the information appears to be exempt from disclosure.[76]

Question No. 29: Must a public agency provide a written denial?

Answer: Yes. It is required that a written denial be provided to the individual requesting the information.[77] However, failure to respond in writing does not extend the time period for response. It is deemed denied after 10 days.[78]

Question No. 30: What information must a public agency provide if a request is denied?

Answer: The written denial for all or part of a request for information must state the statutory authority for the denial, and include a clear statement of the right to appeal and the time for doing so.[79]

In addition, it is also required that the public agency state "that the attorney for the public agency or independent public body corporate and politic has reviewed the request or shall state that the

[73] Idaho Code § 74-103(3).
[74] Idaho Code § 74-115(1).
[75] Idaho Code § 74-103(4).
[76] Idaho Code § 74-103(5).
[77] Idaho Code § 74-103(2).
[78] Idaho Code § 74-103(3).
[79] Idaho Code § 74-103(5).

public agency or independent public body corporate and politic has had an opportunity to consult with an attorney regarding the request for examination or copying of a record and has chosen not to do so."[80]

It is the opinion of the attorney general's office that the only legitimate reason for the agency not to consult with an attorney is that the exemption from disclosure is clear. If that is the case, the letter of denial should so state. Above all, if there is *any* doubt about whether the information is exempt from disclosure, it is imperative that the public agency seek legal advice.

Question No. 31: What happens to the requested records if access has been denied?

Answer: The public agency must retain the documents in question until the end of the 180-day period, until a decision has been issued by the court on an appeal, or for a longer period if required by any other law.[81]

Question No. 32: When a public agency or public official is a party to a proceeding governed by the rules of discovery, may another party to the litigation use the public records law to obtain records instead of complying with the discovery process?

Answer: No. The public records law is not "available to supplement, augment, substitute or supplant discovery procedures" in any criminal appeal, post-conviction civil action, federal or state civil action, or other administrative process governed by the rules of discovery.[82]

PROTEST OF A DENIAL OF A REQUEST FOR PUBLIC RECORDS

Question No. 33: What recourse does an individual have if a request for public records is denied?

Answer: A person aggrieved by the denial of a request for records is authorized to file a petition in the district court of the county where the records or some part of them are located. The petition to compel

[80] *Id*.
[81] Idaho Code § 74-115(2).
[82] Idaho Code § 74-115(3).

disclosure of the records must be filed within 180 days from the date of mailing of the denial notice.[83]

Question No. 34: Must public agency appeal processes also be followed?

Answer: No. Some public agencies have internal administrative appeal processes that must normally be followed before an appeal can be taken to court. However, the Legislature determined that there should be one uniform appeal procedure regarding public records. The "sole remedy" for denial of a request is the court process described in the public records law.[84]

Question No. 35: What happens once a petition is filed?

Answer: The court must set a time for the public agency to file a response and for a hearing at the earliest possible time, not later than twenty-eight (28) calendar days after the petition is filed.[85]

The court then has the discretion to examine the documents in chambers, and shall consider the written and oral presentations from the individual requesting the record, as well as those from the public agency.

If the court finds that the records are not exempt from disclosure, the public agency will be required to make them available. If the court finds in favor of the public agency, the records will be returned to the public agency without being disclosed to the individual requesting them.

Question No. 36: May attorney fees and costs be awarded by the court?

Answer: Yes, under certain circumstances. The award of reasonable costs and attorney fees is provided to whichever party prevails, if the court "finds that the request or refusal to provide records was frivolously pursued."[86]

[83] Idaho Code § 74-115(1).
[84] *Id*.
[85] *Id*.
[86] Idaho Code § 74-116(2).

INSPECTION AND AMENDMENT OF RECORDS PERTAINING TO AN INDIVIDUAL

Question No. 37: Do individuals have a right to inspect records that pertain to themselves?

> **Answer:** Yes, with some exceptions. Inspection and copying of records pertaining to oneself is permitted, "even if the record is otherwise exempt from public disclosure." However, there exist some limitations on that access: otherwise exempt investigatory records of a public agency or independent public body corporate and politic if the investigation is ongoing; information that is compiled in reasonable anticipation of a civil action or proceeding, which is not otherwise discoverable; the information relates to adoption records; information which is otherwise exempt from disclosure by statute or court rule; and records of a prisoner maintained by the state or local agency having custody of the prisoner or formerly having custody of the prisoner or by the commission of pardons and parole.[87]

Question No. 38: What right does an individual involved in a motor vehicle collision have to an unaltered copy of the accident report prepared by a law enforcement agency?

> **Answer:** Individuals involved, as well as their attorney, or insurance company, have the right to a complete, unaltered copy of the impact report and any subsequent final report prepared.[88]

Question No. 39: May individuals request correction of records that pertain to themselves?

> **Answer:** Yes. An individual can make a written request to correct or amend any record maintained by a public agency about that person. Within ten (10) days of the request, the public agency must make the correction, or explain in writing why the request is not granted.[89]

Question No. 40 : What happens if a request for correction of a record is denied?

> **Answer:** An individual has the right to protest the denial by using the same appeal procedure as for denial of access to a record, which is to

[87] Idaho Code §§ 74-113(3)(a-e).
[88] Idaho Code § 74-124(2).
[89] Idaho Code §§ 74-113(2)(a-b).

file a petition in district court as described in Questions 30-33.[90]

PENALTIES FOR BAD FAITH NONCOMPLIANCE; IMMUNITY

Question No. 41: Is there any penalty for a public official who refuses to provide a public record?

Answer: A civil penalty of up to $1,000 can be assessed against a public official who the court finds has deliberately and in bad faith improperly refused a legitimate request for inspection or copying of a public record.[91]

Question No. 42: Is there any protection for a public official who attempts to comply in good faith with the public records law?

Answer: Yes. The statute provides immunity for any public agency, public official or custodian from liability for any loss or damage based upon the release of a public record if the individual acted in good faith in attempting to comply with the law. Good faith compliance is best demonstrated by consulting with an attorney whenever there is any doubt whether the information can be disclosed.[92]

[90] Idaho Code § 74-113(2)(b).
[91] Idaho Code § 74-117.
[92] Idaho Code § 74-118.

THE STATUTE

(Idaho Code §§ 74-101 through 74-127)

74-101. Definitions. As used in this chapter:

(1) "Applicant" means any person formally seeking a paid or volunteer position with a public agency. Applicant does not include any person seeking appointment to a position normally filled by election.

(2) "Copy" means transcribing by handwriting, photocopying, duplicating machine or reproducing by any other means as long as the public record is not altered or damaged.

(3) "Custodian" means the person or persons having personal custody and control of the public records in question.

(4) "Independent public body corporate and politic" means the Idaho housing and finance association as created in chapter 62, title 67, Idaho Code.

(5) "Inspect" means the right to listen, view and make notes of public records as long as the public record is not altered or damaged.

(6) "Investigatory record" means information with respect to an identifiable person, group of persons or entities compiled by a public agency pursuant to its statutory authority in the course of investigating a specific act, omission, failure to act, or other conduct over which the public agency has regulatory authority or law enforcement authority.

(7) "Law enforcement agency" means any state or local agency given law enforcement powers or that has authority to investigate, enforce, prosecute or punish violations of state or federal criminal statutes, ordinances or regulations.

(8) "Local agency" means a county, city, school district, municipal corporation, independent public body corporate and politic, district, public health district, political subdivision, or any agency thereof, or any committee of a local agency, or any combination thereof.

(9) "Person" means any natural person, corporation, partnership, firm, association, joint venture, state or local agency or any other recognized legal entity.

(10) "Prisoner" means a person who has been convicted of a crime and is either incarcerated or on parole for that crime or who is being held in custody for trial or sentencing.

(11) "Public agency" means any state or local agency as defined in this section.

(12) "Public official" means any state, county, local district, independent public body corporate and politic or governmental official or employee, whether elected, appointed or hired.

(13) "Public record" includes, but is not limited to, any writing containing information relating to the conduct or administration of the public's business prepared, owned, used or retained by any state agency, independent public body corporate and politic or local agency regardless of physical form or characteristics. Provided, however, that personal notes created by a public official solely for his own use shall not be a public record as long as such personal notes are not shared with any other person or entity.

(14) "Requester" means the person requesting examination and/or copying of public records pursuant to section 74-102, Idaho Code.

(15) "Resident" means a person whose domicile has been within Idaho continuously for a period of at least thirty (30) days, excluding a full-time student who is a resident of another state, and shall also include a domestic entity as provided in section 30-21-102, Idaho Code. Establishment of residency shall include a spouse and dependent children who reside with that person in the domicile. A domicile shall not be a person's workplace, vacation residence, or part-time residence.

(16) "State agency" means every state officer, department, division, bureau, commission and board or any committee of a state agency, including those in the legislative or judicial branch, except the state militia and the Idaho state historical society library and archives.

(17) (a) "Unwarranted invasion of personal privacy" means:

(i) Disclosure of information used to identify, locate, or harass a juvenile, a victim of an alleged crime of mass violence or domestic violence, or a victim of physical or sexual abuse; or

(ii) Disclosure where release of information is likely to violate legitimate and substantial privacy interests of the

person identified when such interests are weighed against general public information.

(b) Release of the name, age, sex, and hometown of any deceased person after notification of next-of-kin shall not constitute an unwarranted invasion of personal privacy and shall be disclosed unless otherwise exempt under this chapter.

(18) "Writing" includes, but is not limited to, handwriting, typewriting, printing, photostating, photographing and every means of recording, including letters, words, pictures, sounds or symbols or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums or other documents.

74-102. Public records – Right to examine.

(1) Every person has a right to examine and take a copy of any public record of this state and there is a presumption that all public records in Idaho are open at all reasonable times for inspection except as otherwise expressly provided by statute.

(2) The right to copy public records shall include the right to make photographs or photographic or other copies while the records are in the possession of the custodian of the records using equipment provided by the public agency or using equipment designated by the custodian.

(3) Additionally, the custodian of any public record shall give the person, on demand, a certified copy of it if the record is of a nature permitting such copying or shall furnish reasonable opportunity to inspect or copy such record.

(4) A public agency may require that a request for public records be submitted to it in a writing that specifically describes the subject matter and records sought, including a specific date range for when the records sought were created. The requesting party shall be as specific as possible when requesting records. A request shall describe records sought in sufficient detail to enable the public body to locate such records with reasonable effort. A request shall also provide the requester's name, mailing address, email address, telephone number, and a written declaration by the requesting party attesting or affirming under oath whether such requester is a resident. A request for public records and delivery of the public records may be made by electronic mail.

(5) The custodian shall make no inquiry of any person who requests a public record, except:

(a) To verify the identity of the requester in accordance with section 74-113, Idaho Code; or

(b) To ensure that the requested record or information will not be used for purposes of a mailing or telephone list prohibited by section 74-120, Idaho Code, or as otherwise provided by law; or

(c) As required for purposes of protecting personal information from disclosure under chapter 2, title 49, Idaho Code, and federal law.

(6) The custodian shall not review, examine or scrutinize any copy, photograph or memoranda in the possession of any such person and shall extend to the person all reasonable comfort and facility for the full exercise of the right granted under this act.

(7) Nothing herein contained shall prevent the custodian from maintaining such vigilance as is required to prevent alteration of any public record while it is being examined.

(8) Examination of public records under the authority of this section must be conducted during regular office or working hours unless the custodian shall authorize examination of records in other than regular office or working hours. In this event, the persons designated to represent the custodian during such examination shall be entitled to reasonable compensation to be paid to them by the public agency having custody of such records, out of funds provided in advance by the person examining such records, at other than regular office or working hours.

(9) The public agency may provide the requester information to help the requester narrow the scope of the request or to help the requester make the request more specific when the response to the request is likely to be voluminous or require payment as provided in subsection (10) of this section.

(10)(a) Except for fees that are authorized or prescribed under other provisions of Idaho law, no fee shall be charged for the first two (2) hours of labor in responding to a request submitted by a resident for public records, or for copying the first one hundred (100) pages of paper records that are requested by a resident.

(b) A public agency or public official may establish fees to recover the actual labor and copying costs associated with locating and copying documents if:

(i) The request is for more than one hundred (100) pages of paper records; or

(ii) The request includes records from which nonpublic information must be deleted; or

(iii) The actual labor associated with responding to requests for public records in compliance with the provisions of this chapter exceeds two (2) person hours.

(c) A public agency or public official may establish separate copying fee schedules for requests submitted by residents and requests submitted by persons who are not residents. The fee for residents may not exceed the actual cost to the agency of copying the record if another fee is not otherwise provided by law.

(d) (i) For providing a duplicate of a computer tape, computer disc, microfilm or similar or analogous record system containing public record information, a public agency or public official may charge a fee, uniform to all residents, that does not exceed the sum of the following:

1. The agency's direct cost of copying the information in that form;

2. The standard cost, if any, for selling the same information in the form of a publication;

3. The agency's cost of conversion, or the cost of conversion charged by a third party, if the existing electronic record is converted to another electronic form.

(ii) A public agency or public official may charge additional fees, uniform to all persons who are not residents, for requests involving duplication of a computer tape, computer disc, microfilm or similar or analogous record system containing public record information.

(e) Fees for requests made by residents shall not exceed reasonable labor costs necessarily incurred in responding to a public records request and if charged, shall reflect the personnel and quantity of time that are reasonably necessary to process a request. Fees for requests

made by residents for labor costs shall be charged at the per hour pay rate of the lowest paid administrative staff employee or public official of the public agency who is necessary and qualified to process the request. If a request from a resident requires redactions to be made by an attorney who is employed by the public agency, the rate charged shall be no more than the per hour rate of the lowest paid attorney within the public agency who is necessary and qualified to process the public records request. If a request from a resident is submitted to a public agency that does not have an attorney on staff, and requires redactions by an attorney, the rate shall be no more than the usual and customary rate of the attorney who is retained by the public agency for that purpose.

(f) The public agency shall not charge any cost or fee for copies or labor when the requester demonstrates that the requester's examination and/or copying of public records:

(i) Is likely to contribute significantly to the public's understanding of the operations or activities of the government;

(ii) Is not primarily in the individual interest of the requester including, but not limited to, the requester's interest in litigation in which the requester is or may become a party; and

(iii) Will not occur if fees are charged because the requester has insufficient financial resources to pay such fees.

(g) Notwithstanding any provision of law to the contrary, a public agency or public official may charge fees for labor and copying costs associated with locating and copying documents requested by a person who is not a resident or an employee of a resident. The fee rates and schedule for requests made by persons who are not residents or employees of residents shall be at the discretion of the public agency or public official as long as such fees do not exceed actual costs of the public agency or public official.

(h) Statements of fees by a public agency shall be itemized to show the per page costs for copies, and hourly rates of employees and attorneys involved in responding to the request, and the actual time spent on the public records request. No lump sum costs shall be assigned to any public records request. If a separate fee schedule is adopted for requests from persons who are not residents or employees of residents, the separate fees for such nonresidents shall be separately identified.

(11) A requester may not file multiple requests for public records solely to avoid payment of fees. When a public agency reasonably believes that one (1) or more requesters is segregating a request into a series of requests to avoid payment of fees authorized pursuant to this section, the public agency may aggregate such requests and charge the appropriate fees. The public agency may consider the time period in which the requests have been made in its determination to aggregate the related requests. A public agency shall not aggregate multiple requests on unrelated subjects from one (1) requester.

(12) The custodian may require advance payment of fees authorized by this section. Any money received by the public agency shall be credited to the account for which the expense being reimbursed was or will be charged, and such funds may be expended by the agency as part of its appropriation from that fund. Any portion of an advance payment in excess of the actual costs of labor and copying incurred by the agency in responding to the request shall be returned to the requester.

(13) A public agency shall not prevent the examination or copying of a public record by contracting with a nongovernmental body to perform any of its duties or functions.

(14) Nothing contained herein shall prevent a public agency from disclosing statistical information that is descriptive of an identifiable person or persons, unless prohibited by law.

(15) Nothing contained herein shall prevent a public agency from providing a copy of a public record in electronic form if the record is available in electronic form and if the person specifically requests an electronic copy.

(16) A public agency or elected official shall designate a custodian or custodians for all public records, which includes any public official having custody of, control of, or authorized access to public records and also includes all delegates of such officials, employees or representatives.

74-103. Request and response to request for examination of public records.

(1) All requests to examine public records shall be made to the designated custodian of such records as defined in section 74-101(3), Idaho Code. A public agency, a public official, or an employee of a public agency shall have no obligation and shall not be deemed to have assumed any obligation to respond to a public records request that fails to comply

with the requirements of this subsection. A public records request must clearly indicate that it is a public records request.

(2) A public agency or custodian shall either grant or deny a resident's request to examine or copy public records within three (3) working days of the date of the receipt of the request for examination or copying. A public agency or custodian shall either grant or deny a request from a person who is not a resident and not employed by a resident to examine or copy public records within twenty-one (21) days of the dates of the receipt of the request for examination or copying. If it is determined by employees of the public agency that a longer period of time is needed to locate or retrieve the public records, the public agency shall so notify in writing the person requesting to examine or copy the records and shall provide the public records no later than ten (10) working days following the person's request, if such person is a resident, and no later than thirty-five (35) days following a request from a nonresident.. Additionally, if it is determined that the existing electronic record requested will first have to be converted to another electronic format by the agency or by a third party and that such conversion cannot be completed within the time allotted for the response, the agency shall so notify in writing the person requesting to examine or copy the records. The agency shall provide the converted public record at a time mutually agreed upon between the agency and the requester, with due consideration given to any limitations that may exist due to the process of conversion or due to the use of a third party to make the conversion.

(3) If the public agency or custodian fails to respond within the time allotted for the response, the request shall be deemed to be denied.

(4) If the public agency denies the person's request for examination or copying the public records or denies in part and grants in part the person's request for examination and copying of the public records, the person legally responsible for administering the public agency or that person's designee shall notify the person in writing of the denial or partial denial of the request for the public record.

(5) The notice of denial or partial denial shall state that the attorney for the public agency has reviewed the request or shall state that the public agency has had an opportunity to consult with an attorney regarding the request for examination or copying of a record and has chosen not to do so. The notice of denial or partial denial also shall indicate the statutory authority for the denial and indicate clearly the person's right to appeal the denial or partial denial and the time periods for doing so.

74-104. Records exempt from disclosure — Exemptions in federal or state law – Court files of judicial proceedings –Office of Administrative Hearings – Judicial Council.

(1) The following records are exempt from disclosure:

a) Any public record exempt from disclosure by federal or state law or federal regulations to the extent specifically provided for by such law or regulation.

b) Records contained in court files of judicial proceedings, the disclosure of which is prohibited by or under rules adopted by the Idaho supreme court, but only to the extent that confidentiality is provided under such rules, and any drafts or other working memoranda related to judicial decision-making, provided the provisions of this subsection making records exempt from disclosure shall not apply to the extent that such records or information contained in those records are necessary for a background check on an individual that is required by federal law regulating the sale of firearms, guns or ammunition.

c) Any writings, drafts, notes, or working memoranda related to decision-making in any proceeding before the office of administrative hearings pursuant to sections 67-5280 through 67-5286, Idaho Code, as well as any records that are otherwise exempt from disclosure under this chapter that are filed or submitted to the office of administrative hearings in the course of any proceedings before it. Orders issued by the office of administrative hearings are not exempt from disclosure under this section, unless otherwise exempt from disclosure under this chapter.

(2) The judicial council ratings and tabulated scores from attorney questionnaires of candidates for a judicial vacancy whose names are submitted to the governor and the summary prepared pursuant to section 1-2102(4), Idaho Code, shall be public.

74-105. Records exempt from disclosure — Law enforcement records, investigatory records of agencies, evacuation and emergency response plans, worker's compensation. The following records are exempt from disclosure:

(1) Investigatory records of a law enforcement agency as defined in section 74-101(7), Idaho Code, under the conditions set forth in section 74-124, Idaho Code.

(2) Juvenile records of a person maintained pursuant to chapter 5, title 20, Idaho Code, except that facts contained in such records shall be

furnished upon request in a manner determined by the court to persons and governmental and private agencies and institutions conducting pertinent research studies or having a legitimate interest in the protection, welfare and treatment of the juvenile who is thirteen (13) years of age or younger. If the juvenile is petitioned or charged with an offense that would be a criminal offense if committed by an adult, the name, offense of which the juvenile was petitioned or charged, and disposition of the court shall be subject to disclosure as provided in section 20-525, Idaho Code. Additionally, facts contained in any records of a juvenile maintained pursuant to chapter 5, title 20, Idaho Code, shall be furnished upon request to any school district where the juvenile is enrolled or is seeking enrollment.

(3) Records of the custody review board of the Idaho department of juvenile corrections, including records containing the names, addresses and written statements of victims and family members of juveniles, shall be exempt from public disclosure pursuant to section 20-533A, Idaho Code.

(4) (a) The following records of the department of correction:

(i) Records of which the public interest in confidentiality, public safety, security and habilitation clearly outweighs the public interest in disclosure as identified pursuant to the authority of the state board of correction under section 20-212, Idaho Code;

(ii) Records that contain any identifying information, or any information that would lead to the identification of any victims or witnesses;

(iii) Records that reflect future transportation or movement of a prisoner;

(iv) Records gathered during the course of the presentence investigation;

(v) Records of a prisoner as defined in section 74-101(10), Idaho Code, or probationer shall not be disclosed to any other prisoner or probationer.

(b) Records, other than public expenditure records, related to proposed or existing critical infrastructure held by or in the custody of any public agency only when the disclosure of such information is reasonably likely to jeopardize the safety of persons, property or the public safety.

Such records may include emergency evacuation, escape or other emergency response plans, vulnerability assessments, operation and security manuals, plans, blueprints or security codes. For purposes of this paragraph, "system" includes electrical, computer and telecommunication systems, electric power, (including production, generating, transportation, transmission and distribution), heating, ventilation, and air conditioning. For purposes of this subsection, "critical infrastructure" means any system or asset, whether physical or virtual, so vital to the state of Idaho, including its political subdivisions, that the incapacity or destruction of such system or asset would have a debilitating impact on state or national economic security, state or national public health or safety, or any combination of those matters.

(c) Records of the Idaho commission of pardons and parole shall be exempt from public disclosure pursuant to section 20-1003, Idaho Code, and section 20-1005, Idaho Code. Records exempt from disclosure shall also include those containing the names, addresses and written statements of victims.

(5) Voting records of the former sexual offender classification board. The written record of the vote to classify an offender as a violent sexual predator by each board member in each case reviewed by that board member shall be exempt from disclosure to the public and shall be made available upon request only to the governor, the chairman of the senate judiciary and rules committee, and the chairman of the house of representatives judiciary, rules and administration committee for all lawful purposes.

(6) Records of the sheriff or Idaho state police received or maintained pursuant to sections 18-3302, 18-3302H and 18-3302K, Idaho Code, relating to an applicant or licensee, except that any law enforcement officer and law enforcement agency, whether inside or outside the state of Idaho, may access information maintained in the license record system as set forth in section 18-3302K(16), Idaho Code.

(7) Records of investigations prepared by the department of health and welfare pursuant to its statutory responsibilities dealing with the protection of children, the rehabilitation of youth, adoptions and the commitment of mentally ill persons. For reasons of health and safety, best interests of the child or public interest, the department of health and welfare may provide for the disclosure of records of investigations associated with actions pursuant to the provisions of chapter 16, title 16, Idaho Code, prepared by the department of health and welfare pursuant to

its statutory responsibilities dealing with the protection of children, except any such records regarding adoptions shall remain exempt from disclosure.

(8) Records, including but not limited to investigative reports, resulting from investigations conducted into complaints of discrimination made to the Idaho human rights commission unless the public interest in allowing inspection and copying of such records outweighs the legitimate public or private interest in maintaining confidentiality of such records. A person may inspect and copy documents from an investigative file to which he or she is a named party if such documents are not otherwise prohibited from disclosure by federal law or regulation or state law. The confidentiality of this subsection will no longer apply to any record used in any judicial proceeding brought by a named party to the complaint or investigation, or by the Idaho human rights commission, relating to the complaint of discrimination.

(9) Records containing information obtained by the manager of the Idaho state insurance fund pursuant to chapter 9, title 72, Idaho Code, from or on behalf of employers or employees contained in underwriting and claims for benefits files.

(10) The worker's compensation records of the Idaho industrial commission, provided that the industrial commission shall make such records available:

(a) To the parties in any worker's compensation claim and to the industrial special indemnity fund of the state of Idaho; or

(b) To employers and prospective employers subject to the provisions of the Americans with disabilities act, 42 U.S.C. 12112, or other statutory limitations, who certify that the information is being requested with respect to a worker to whom the employer has extended an offer of employment and will be used in accordance with the provisions of the Americans with disabilities act, 42 U.S.C. 12112, or other statutory limitations; or

(c) To employers and prospective employers not subject to the provisions of the Americans with disabilities act, 42 U.S.C. 12112, or other statutory limitations, provided the employer presents a written authorization from the person to whom the records pertain; or

(d) To others who demonstrate that the public interest in allowing inspection and copying of such records outweighs the public or private interest in maintaining the confidentiality of such records, as determined by a civil court of competent jurisdiction; or

(e) Although a claimant's records maintained by the industrial commission, including medical and rehabilitation records, are otherwise exempt from public disclosure, the quoting or discussing of medical or rehabilitation records contained in the industrial commission's records during a hearing for compensation or in a written decision issued by the industrial commission shall be permitted; provided further, the true identification of the parties shall not be exempt from public disclosure in any written decision issued and released to the public by the industrial commission.

(11) Records of investigations compiled by the commission on aging involving vulnerable adults as defined in section 18-1505, Idaho Code, alleged to be abused, neglected or exploited.

(12) Criminal history records and fingerprints as defined in section 67-3001, Idaho Code, and compiled by the Idaho state police. Such records shall be released only in accordance with chapter 30, title 67, Idaho Code.

(13) Records furnished or obtained pursuant to section 41-1019, Idaho Code, regarding termination of an appointment, employment, contract or other insurance business relationship between an insurer and a producer.

(14) Records of a prisoner or former prisoner in the custody of any state or local correctional facility, when the request is made by another prisoner in the custody of any state or local correctional facility.

(15) Except as provided in section 72-1007, Idaho Code, records of the Idaho industrial commission relating to compensation for crime victims pursuant to chapter 10, title 72, Idaho Code.

(16) Records or information identifying a complainant maintained by the department of health and welfare pursuant to section 39-3556, Idaho Code, relating to certified family homes, unless the complainant consents in writing to the disclosure or the disclosure of the complainant's identity is required in any administrative or judicial proceeding.

(17) Records of any certification or notification required by federal law to be made in connection with the acquisition or transfer of a firearm, including a firearm as defined in 26 U.S.C. 5845(a).

(18) The following records of the state public defense commission:

(a) Records containing information protected or exempted from disclosure under the rules adopted by the Idaho supreme court,

attorney work product, attorney-client privileged communication, records containing confidential information from an individual about his criminal case or performance of his attorney, or confidential information about an inquiry into an attorney's fitness to represent indigent defendants.

(b) Records related to the administration of the extraordinary litigation fund by the state public defense commission pursuant to section 19-850(2)(e), Idaho Code, to the extent that such records contain information protected or exempted from disclosure under rules adopted by the Idaho supreme court, attorney work product or attorney-client privileged communication. This exemption does not include the amount awarded based upon an application for extraordinary litigation funds.

(19) Records and information received by the office of the state controller from any local government, state agency and department, or volunteer nongovernmental entity for purposes of entry into the criminal justice integrated data system pursuant to section 19-4803, Idaho Code, and all records created by persons authorized to research and analyze information entered into the criminal justice integrated data system, regardless of whether such records were previously exempted from disclosure or redacted pursuant to state or federal law or court order. This exemption does not apply to projects, reports, and data analyses approved for release by the data oversight council and issued by persons authorized to conduct research and analysis as set forth in chapter 48, title 19, Idaho Code. Records and information relating to the management of the criminal justice integrated data system shall not be exempt from disclosure except as otherwise provided in law.

(20) Records, other than public expenditure records, relating to the nature, location, or function of cybersecurity devices, programs, or systems designed to protect computer, information technology, or communications systems against terrorist or other attacks.

(21) Records that contain any identifying information or any information that could lead to the identification of any persons or entities that participate in or assist with an execution of a death sentence as described in section 19-2716A, Idaho Code.

(22) Any index, report, or records of any person arrested for, prosecuted for, or convicted of a crime in this state who has successfully petitioned a court to have his records shielded from disclosure pursuant to section 67-3004(11), Idaho Code.

(23) Any record of an unlawful detainer under section 6-303, Idaho Code, if shielded by the court pursuant to section 6-303A, Idaho Code.

(24) The report required in section 67-5775A, Idaho Code, until a settlement is reached or the claim is otherwise closed.

(25) Any photographs or images of a decedent taken as part of a coroner death investigation or law enforcement investigation regardless of whether such investigation is active or not; however, such photographs or images may be disclosed upon request to a decedent's next of kin once the coroner death investigation, law enforcement investigation, and criminal case, including all appeals and all civil proceedings related to the criminal case, are no longer active. As used in this subsection, "next of kin" means the closest living relative in the order of spouse, adult children, parents, siblings, and grandparents.

74-106. Records exempt from disclosure — Personnel records, personal information, health records, professional discipline. The following records are exempt from disclosure:

(1) Except as provided in this subsection, all personnel records of a current or former public official other than the public official's public service or employment history, classification, pay grade and step, longevity, gross salary and salary history, including bonuses, severance packages, other compensation or vouchered and unvouchered expenses for which reimbursement was paid, status, workplace and employing agency. All other personnel information relating to a public employee or applicant including but not limited to information regarding sex, race, marital status, birth date, home address and telephone number, social security number, driver's license number, applications, testing and scoring materials, grievances, correspondence and performance evaluations, shall not be disclosed to the public without the employee's or applicant's written consent. Names of applicants to classified or merit system positions shall not be disclosed to the public without the applicant's written consent. Disclosure of names as part of a background check is permitted. Names of the five (5) final applicants to all other positions shall be available to the public. If such group is less than five (5) finalists, then the entire list of applicants shall be available to the public. A public official or authorized representative may inspect and copy his personnel records, except for material used to screen and test for employment.

(2) Retired employees' and retired public officials' home addresses, home telephone numbers and other financial and nonfinancial membership records; and active and inactive member financial and membership records and mortgage portfolio loan documents maintained by the public employee retirement system. Financial statements prepared by retirement system staff, funding agents and custodians concerning the

investment of assets of the public employee retirement system of Idaho are not considered confidential under this chapter.

(3) Information and records submitted to the Idaho state lottery for the performance of background investigations of employees, lottery retailers and major procurement contractors; audit records of lottery retailers, vendors and major procurement contractors submitted to or performed by the Idaho state lottery; validation and security tests of the state lottery for lottery games; and business records and information submitted pursuant to sections 67-7412(8) and (9) and 67-7421(8) and (9), Idaho Code, and such documents and information obtained and held for the purposes of lottery security and investigative action as determined by lottery rules, unless the public interest in disclosure substantially outweighs the private need for protection from public disclosure.

(4) Records of a personal nature as follows:

(a) Records of personal debt filed with a public agency and politic pursuant to law;

(b) Personal bank records compiled by a public depositor for the purpose of public funds transactions conducted pursuant to law;

(c) Records of ownership of financial obligations and instruments of a public agency , such as bonds, compiled by the public agency pursuant to law;

(d) Records with regard to the ownership of or security interests in registered public obligations;

(e) Vital statistics records;

(f) Military records as described in and pursuant to section 65-301, Idaho Code.

(g) Social security numbers; and

(h) The following personal data identifiers for an individual may be disclosed only in the following redacted format:

(i) The initials of any minor children of the individual;

(ii) A date of birth in substantially the following format: XX/XX/birth year;

(iii) The last four (4) digits of a financial account number in substantially the following format: XXXXX1234;

(iv) The last four (4) digits of a driver's license number or state-issued personal identification card number in substantially the following format: XXXXX350F; and

(v) The last four (4) digits of an employer identification number or business's taxpayer identification number.

(5) Information in an income or other tax return measured by items of income or sales that is gathered by a public agency for the purpose of administering the tax, except such information to the extent disclosed in a written decision of the tax commission pursuant to a taxpayer protest of a deficiency determination by the tax commission, under the provisions of section 63-3045B, Idaho Code.

(6) Records of a personal nature related directly or indirectly to the application for and provision of statutory services rendered to persons applying for public care for people who are elderly, indigent or have mental or physical disabilities or participation in an environmental or a public health study, provided the provisions of this subsection making records exempt from disclosure shall not apply to the extent that such records or information contained in those records are necessary for a background check on an individual that is required by federal law regulating the sale of firearms, guns or ammunition.

(7) Employment security information, except that a person may agree, through written, informed consent, to waive the exemption so that a third party may obtain information pertaining to the person, unless access to the information by the person is restricted by subsection (3)(a), (b) or (d) of section 74-113, Idaho Code. Notwithstanding the provisions of section 74-113, Idaho Code, a person may not review identifying information concerning an informant who reported to the department of labor a suspected violation by the person of the employment security law, chapter 13, title 72, Idaho Code, under an assurance of confidentiality. As used in this section and in chapter 13, title 72, Idaho Code, "employment security information" means any information descriptive of an identifiable person or persons that is received by, recorded by, prepared by, furnished to or collected by the department of labor or the industrial commission in the administration of the employment security law.

(8) Any personal records, other than names, business addresses and business phone numbers, such as parentage, race, religion, sex, height, weight, tax identification and social security numbers, financial worth or

medical condition submitted to any public agency pursuant to a statutory requirement for licensing, certification, permit or bonding.

(9) Unless otherwise provided by agency rule, information obtained as part of an inquiry into a person's fitness to be granted or retain a license, certificate, permit, privilege, commission or position and private association peer review committee records authorized in title 54, Idaho Code. Any agency that has records exempt from disclosure under the provisions of this subsection shall annually make available a statistical summary of the number and types of matters considered and their disposition.

(10) The records, findings, determinations and decisions of any prelitigation screening panel formed under chapters 10 and 23, title 6, Idaho Code.

(11) Complaints received by the board of medicine and investigations and informal proceedings, including informal proceedings of any committee of the board of medicine, pursuant to chapter 18, title 54, Idaho Code, and rules adopted thereunder.

(12) Records of the department of health and welfare or a public health district that identify a person infected with a reportable disease.

(13) Records of hospital care, medical records, including prescriptions, drug orders, records or any other prescription information that specifically identifies an individual patient, prescription records maintained by the board of pharmacy under sections 37-2726 and 37-2730A, Idaho Code, records of psychiatric care or treatment and professional counseling records relating to an individual's condition, diagnosis, care or treatment, provided the provisions of this subsection making records exempt from disclosure shall not apply to the extent that such records or information contained in those records are necessary for a background check on an individual that is required by federal law regulating the sale of firearms, guns or ammunition.

(14) Information collected pursuant to the directory of new hires act, chapter 16, title 72, Idaho Code.

(15) Personal information contained in motor vehicle and driver records that is exempt from disclosure under the provisions of chapter 2, title 49, Idaho Code.

(16) Records of the financial status of prisoners pursuant to subsection (2) of section 20-607, Idaho Code.

(17) Records of the Idaho state police or department of correction received or maintained pursuant to section 19-5514, Idaho Code, relating to DNA databases and databanks.

(18) Records of the department of health and welfare relating to a survey, resurvey or complaint investigation of a licensed nursing facility. Such records shall, however, be subject to disclosure as public records as soon as the facility in question has received the report, and no later than the fourteenth day following the date that department of health and welfare representatives officially exit the facility pursuant to federal regulations. Provided however, that for purposes of confidentiality, no record shall be released under this section which specifically identifies any nursing facility resident.

(19) Records and information contained in the registry of immunizations against childhood diseases maintained in the department of health and welfare, including information disseminated to others from the registry by the department of health and welfare.

(20) Records of the Idaho housing and finance association (IHFA) relating to the following:

(a) Records containing personal financial, family, health or similar personal information submitted to or otherwise obtained by the IHFA;

(b) Records submitted to or otherwise obtained by the IHFA with regard to obtaining and servicing mortgage loans and all records relating to the review, approval or rejection by the IHFA of said loans;

(c) Mortgage portfolio loan documents;

(d) Records of a current or former employee other than the employee's duration of employment with the association, position held and location of employment. This exemption from disclosure does not include the contracts of employment or any remuneration, including reimbursement of expenses, of the executive director, executive officers or commissioners of the association. All other personnel information relating to an association employee or applicant, including but not limited to, information regarding sex, race, marital status, birth date, home address and telephone number, applications, testing and scoring materials, grievances, correspondence, retirement plan information and performance evaluations, shall not be disclosed to the public without the employee's or applicant's written consent. An employee or authorized representative may inspect and copy that employee's personnel records, except for material

used to screen and test for employment or material not subject to disclosure elsewhere in the Idaho public records act.

(21) Records of the department of health and welfare related to child support services in cases in which there is reasonable evidence of domestic violence, as defined in chapter 63, title 39, Idaho Code, that can be used to locate any individuals in the child support case except in response to a court order.

(22) Records of the Idaho state bar lawyer assistance program pursuant to chapter 49, title 54, Idaho Code, unless a participant in the program authorizes the release pursuant to subsection (4) of section 54-4901, Idaho Code.

(23) Records and information contained in the time-sensitive emergency registry created by chapter 20, title 57, Idaho Code, together with any reports, analyses and compilations created from such information and records.

(24) Records contained in the court files, or other records prepared as part of proceedings for judicial authorization of sterilization procedures pursuant to chapter 39, title 39, Idaho Code.

(25) The physical voter registration application on file in the county clerk's office; however, a redacted copy of said application shall be made available consistent with the requirements of this section. Information from the voter registration card maintained in the statewide voter registration database, including age, will be made available except for the voter's driver's license number, date of birth and, upon a showing that the voter comes within the provisions of subsection (30) of this section or upon showing of good cause by the voter to the county clerk in consultation with the county prosecuting attorney, the physical residence address of the voter. For the purposes of this subsection, good cause shall include the protection of life and property and protection of victims of domestic violence and similar crimes.

(26) File numbers, passwords and information in the files of the health care directive registry maintained by the secretary of state under section 39-4515, Idaho Code, are confidential and shall not be disclosed to any person other than to the person who executed the health care directive or the revocation thereof and that person's legal representatives, to the person who registered the health care directive or revocation thereof, and to physicians, hospitals, medical personnel, nursing homes, and other persons who have been granted file number and password access to the documents within that specific file.

(27) Records in an address confidentiality program participant's file as provided for in chapter 57, title 19, Idaho Code, other than the address designated by the secretary of state, except under the following circumstances:

(a) If requested by a law enforcement agency, to the law enforcement agency; or

(b) If directed by a court order, to a person identified in the order.

(28) Except as otherwise provided by law relating to the release of information to a governmental entity or law enforcement agency, any personal information, including but not limited to names, personal and business addresses and phone numbers, sex, height, weight, date of birth, social security and driver's license numbers, or any other identifying numbers or information related to any Idaho fish and game licenses, permits and tags unless written consent is obtained from the affected person.

(29) Documents and records related to alternatives to discipline that are maintained by the Idaho board of veterinary medicine under the provisions of section 54-2118(1)(b), Idaho Code, provided the requirements set forth therein are met.

(30) The Idaho residential street address and telephone number of an eligible law enforcement or judicial officer and such officer's residing household members as provided for in chapters 58 and 62, title 19, Idaho Code, except under the following circumstances:

(a) If directed by a court order, to a person identified in the court order;

(b) If requested by a law enforcement agency, to the law enforcement agency;

(c) If requested by a financial institution or title company for business purposes, to the requesting financial institution or title company; or

(d) If the law enforcement or judicial officer provides written permission for disclosure of such information.

(31) All information exchanged between the Idaho transportation department and insurance companies, any database created, all

information contained in the verification system and all reports, responses or other information generated for the purposes of the verification system, pursuant to section 49-1234, Idaho Code.

(32) Nothing in this section shall prohibit the release of information to the state controller as the state social security administrator as provided in section 59-1101A, Idaho Code.

(33) Personal information including but not limited to property values, personal and business addresses, phone numbers, dates of birth, social security and driver's license numbers or any other identifying numbers or information maintained by the administrator of the unclaimed property law set forth in chapter 5, title 14, Idaho Code. Nothing in this subsection shall prohibit the release of names, last known city of residence, property value ranges and general property information by the administrator for the purpose of reuniting unclaimed property with its owner.

(34) Any personal information collected by the secretary of state, pursuant to section 67-906(1)(b), Idaho Code, for the purpose of allowing individuals to access the statewide electronic filing system authorized in section 67-906, Idaho Code, except campaign contact phone numbers for candidates or committees, which shall be publicly available upon request; and any notification email addresses submitted as part of a lobbyist's registration under section 67-6617, Idaho Code, of an employer, client, or designated contact for the purpose of electronic notification of that employer, client, or designated contact of a report filed under section 67-6619, Idaho Code.

74-107. Records exempt from disclosure — Trade secrets, production records, appraisals, bids, proprietary information, tax commission, unclaimed property, petroleum clean water trust fund. The following records are exempt from disclosure:

(1) Trade secrets including those contained in response to public agency requests for proposal, requests for clarification, requests for information and similar requests. "Trade secrets" as used in this section means information, including a formula, pattern, compilation, program, computer program, device, method, technique, process, or unpublished or in progress research that:

(a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; and

(b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

(2) Production records, housing production, rental and financing records, sale or purchase records, catch records, mortgage portfolio loan documents, or similar business records of a private concern or enterprise required by law to be submitted to or inspected by a public agency or submitted to or otherwise obtained by an independent public body corporate and politic. Nothing in this subsection shall limit the use which can be made of such information for regulatory purposes or its admissibility in any enforcement proceeding.

(3) Records relating to the appraisal of real property, timber or mineral rights prior to its acquisition, sale or lease by a public agency.

(4) Any estimate prepared by a public agency that details the cost of a public project until such time as disclosed or bids are opened, or upon award of the contract for construction of the public project.

(5) Examination, operating or condition reports and all documents relating thereto, prepared by or supplied to any public agency responsible for the regulation or supervision of financial institutions including, but not limited to, banks, savings and loan associations, regulated lenders, business and industrial development corporations, credit unions, and insurance companies, or for the regulation or supervision of the issuance of securities.

(6) Records gathered by a local agency or the Idaho department of commerce, as described in chapter 47, title 67, Idaho Code, for the specific purpose of assisting a person to locate, maintain, invest in, or expand business operations in the state of Idaho.

(7) Shipping and marketing records of commodity commissions used to evaluate marketing and advertising strategies and the names and addresses of growers and shippers maintained by commodity commissions.

(8) Financial statements and business information and reports submitted by a legal entity to a port district organized under title 70, Idaho Code, in connection with a business agreement, or with a development proposal or with a financing application for any industrial, manufacturing, or other business activity within a port district.

(9) Names and addresses of seed companies, seed crop growers, seed crop consignees, locations of seed crop fields, variety name and

acreage by variety. Upon the request of the owner of the proprietary variety, this information shall be released to the owner. Provided however, that if a seed crop has been identified as diseased or has been otherwise identified by the Idaho department of agriculture, other state departments of agriculture, or the United States department of agriculture to represent a threat to that particular seed or commercial crop industry or to individual growers, information as to test results, location, acreage involved and disease symptoms of that particular seed crop, for that growing season, shall be available for public inspection and copying. This exemption shall not supersede the provisions of section 22-436, Idaho Code, nor shall this exemption apply to information regarding specific property locations subject to an open burning of crop residue pursuant to section 39-114, Idaho Code, names of persons responsible for the open burn, acreage and crop type to be burned, and time frames for burning.

(10) Information obtained from books, records and accounts required in chapter 47, title 22, Idaho Code, to be maintained by the Idaho oilseed commission and pertaining to the individual production records of oilseed growers.

(11) Records of any risk retention or self-insurance program prepared in anticipation of litigation or for analysis of or settlement of potential or actual money damage claims against a public entity and its employees or against the industrial special indemnity fund except as otherwise discoverable under the Idaho or federal rules of civil procedure. These records shall include, but are not limited to, claims evaluations, investigatory records, computerized reports of losses, case reserves, internal documents and correspondence relating thereto. At the time any claim is concluded, only statistical data and actual amounts paid in settlement shall be deemed a public record unless otherwise ordered to be sealed by a court of competent jurisdiction. Provided however, nothing in this subsection is intended to limit the attorney-client privilege or attorney work product privilege otherwise available to any public agency.

(12) Records of laboratory test results provided by or retained by the Idaho food quality assurance laboratory. Nothing in this subsection shall limit the use which can be made, or availability of such information if used, for regulatory purposes or its admissibility in any enforcement proceeding.

(13) Reports required to be filed under chapter 13, title 62, Idaho Code, identifying electrical or natural or manufactured gas consumption data for an individual customer or account.

(14) Voluntarily prepared environmental audits, and voluntary disclosures of information submitted on or before December 31, 1997, to

an environmental agency, which are claimed to be confidential business information.

(15) Computer programs developed or purchased by or for any public agency for its own use. As used in this subsection, "computer program" means a series of instructions or statements which permit the functioning of a computer system in a manner designed to provide storage, retrieval and manipulation of data from the computer system, and any associated documentation and source material that explain how to operate the computer program. Computer program does not include:

(a) The original data including, but not limited to, numbers, text, voice, graphics and images;

(b) Analysis, compilation and other manipulated forms of the original data produced by use of the program; or

(c) The mathematical or statistical formulas that would be used if the manipulated forms of the original data were to be produced manually.

(16) Active investigative records and trademark usage audits of the Idaho potato commission specifically relating to the enforcement of chapter 12, title 22, Idaho Code, until the commencement of formal proceedings as provided by rules of the commission; purchase and sales information submitted to the Idaho potato commission during a trademark usage audit, and investigation or enforcement proceedings. Inactive investigatory records shall be disclosed unless the disclosure would violate the standards set forth in subsections (1)(a) through (f) of section 74-124, Idaho Code. Nothing in this subsection shall limit the use which can be made, or availability of such information if used, for regulatory purposes or its admissibility in any enforcement proceeding.

(17) All records copied or obtained by the director of the department of agriculture or his designee as a result of an inspection pursuant to section 25-3806, Idaho Code, except:

(a) Records otherwise deemed to be public records not exempt from disclosure pursuant to this chapter; and

(b) Inspection reports, determinations of compliance or noncompliance and all other records created by the director or his designee pursuant to section 25-3806, Idaho Code.

(18) All data and information collected by the division of animal industries or the state brand board pursuant to the provisions of section 25-207B, Idaho Code, or rules promulgated thereunder.

(19) Records disclosed to a county official by the state tax commission pursuant to subsection (4)(c) of section 63-3029B, Idaho Code.

(20) Records, data, information and materials collected, developed, generated, ascertained or discovered during the course of academic research at public institutions of higher education if the disclosure of such could reasonably affect the conduct or outcome of the research, or the ability of the public institution of higher education to patent or copyright the research or protect intellectual property.

(21) Records, data, information and materials collected or utilized during the course of academic research at public institutions of higher education provided by any person or entity other than the public institution of higher education or a public agency.

(22) The exemptions from disclosure provided in subsections (20) and (21) of this section shall apply only until the academic research is publicly released, copyrighted or patented, or until the academic research is completed or terminated. At such time, the records, data, information, and materials shall be subject to public disclosure unless: (a) another exemption in this chapter applies; (b) such information was provided to the institution subject to a written agreement of confidentiality; or (c) public disclosure would pose a danger to persons or property.

(23) The exemptions from disclosure provided in subsections (20) and (21) of this section do not include basic information about a particular research project that is otherwise subject to public disclosure, such as the nature of the academic research, the name of the researcher, and the amount and source of the funding provided for the project.

(24) Records of a county assessor, the state tax commission, a county board of equalization or the state board of tax appeals containing the following information: (i) lists of personal property required to be filed pursuant to section 63-302, Idaho Code, and operating statements required to be filed pursuant to section 63-404, Idaho Code; and (ii) confidential commercial or financial information including trade secrets. Except with respect to lists of personal property required to be filed pursuant to section 63-302, Idaho Code, and the operator statements required to be filed pursuant to section 63-404, Idaho Code, it shall be the responsibility of the taxpayer to give notice of its claim to exemption by stamping or marking

each page or the first page of each portion of documents so claimed. No records that are exempt pursuant to this subsection shall be disclosed without the consent of the taxpayer except as follows:

(a) To any officer, employee or authorized representative of the state or the United States, under a continuing claim of confidentiality, as necessary to carry out the provisions of state or federal law or when relevant to any proceeding thereunder.

(b) In the publication of statistics or reports as long as the statistics or reports do not reasonably lead to the identification of the specific taxpayer or information submitted by taxpayers exempt pursuant to this subsection.

(c) To the board of tax appeals or the district court as evidence or otherwise in connection with an appeal of the taxpayer's property tax assessment, but only if the board or the court, as applicable, has entered a protective order specifying that the taxpayer information may not be disclosed by any person conducting or participating in the action or proceeding, except as authorized by the board or the court in accordance with applicable law.

(d) Nothing in this subsection shall prevent disclosure of the following information:

(i) Name and mailing address of the property owner;

(ii) A parcel number;

(iii) A legal description of real property;

(iv) The square footage and acreage of real property;

(v) The assessed value of taxable property;

(vi) The tax district and the tax rate; and

(vii) The total property tax assessed.

(25) Results of laboratory tests which have no known adverse impacts to human health conducted by the Idaho state department of agriculture animal health laboratory, related to diagnosis of animal diseases of individual animals or herds, on samples submitted by veterinarians or animal owners unless:

(a) The laboratory test results indicate the presence of a state or federally reportable or regulated disease in animals;

(b) The release of the test results is required by state or federal law; or

(c) The test result is identified as representing a threat to animal or human health or to the livestock industry by the Idaho state department of agriculture or the United States department of agriculture. Nothing in this subsection shall limit the use which can be made, or availability of such information if used, for regulatory purposes or its admissibility in any enforcement proceeding, or the duty of any person to report contagious or infectious diseases as required by state or federal law.

(26) Results of laboratory tests conducted by the Idaho state department of agriculture seed laboratory on samples submitted by seed producers or seed companies. Nothing in this subsection shall limit the use which can be made, or availability of such information pursuant to the provisions of subsections (9) and (10) of section 22-418, Idaho Code.

(27) For policies that are owned by private persons, and not by a public agency of the state of Idaho, records of policies, endorsements, affidavits and any records that discuss policies, endorsements and affidavits that may be required to be filed with or by a surplus line association pursuant to chapter 12, title 41, Idaho Code.

(28) Individual financial statements of a postsecondary educational institution or a proprietary school submitted to the state board of education, its director or a representative thereof, for the purpose of registering the postsecondary educational institution or proprietary school pursuant to section 33-2402 or 33-2403, Idaho Code, or provided pursuant to an administrative rule of the board adopted pursuant to such sections.

(29) Information submitted by insurance companies pursuant to section 41-612(17), Idaho Code.

(30) Documents, materials or other information submitted to the director of the department of insurance as provided in chapter 64, title 41, Idaho Code.

(31) Reports, information and other materials exempted by chapter 63, title 41, Idaho Code.

(32) Records that identify the method by which the Idaho state tax commission selects tax returns for audit review.

(33) Records that identify the method by which the administrator of the unclaimed property law set forth in chapter 5, title 14, Idaho Code, selects reports for audit review or conducts audit review of such reports and the identity of individuals or entities under audit.

(34) Underwriting and claims records of the Idaho petroleum clean water trust fund obtained pursuant to section 41-4905, 41-4909, 41-4911A, 41-4912, or 41-4912A, Idaho Code. Provided, however, that this subjection shall not prevent the Idaho petroleum clean water trust fund's submittal to the Idaho department of environmental quality or other regulatory agencies of information necessary to satisfy an insured's corrective action requirement under applicable federal or state standards in the event of a release into the environment from a petroleum storage tank; and provided further that nothing in this subsection shall prevent the Idaho petroleum clean water trust fund from providing auditing, reporting, or actuarial information as otherwise required of it pursuant to section 41-4919, 41-4925A, 41-4928, 41-4930, 41-4932, 41-4937, or 41-4938, Idaho Code.

74-108. Exemptions from disclosure — Archaeological, endangered species, libraries, licensing exams. The following records are exempt from disclosure:

(1) Records, maps or other records identifying the location of archaeological or geophysical sites or endangered species, if not already known to the general public.

(2) Archaeological and geologic records concerning exploratory drilling, logging, mining and other excavation, when such records are required to be filed by statute for the time provided by statute.

(3) Documents and data related to oil and gas production submitted to the department of lands or the oil and gas conservation commission under the provisions of chapter 3, title 47, Idaho Code, provided that the records qualify for confidential status under section 47-327, Idaho Code, under the conditions and for the time provided by statute.

(4) The records of a library that, when examined alone, or when examined with other public records, would reveal the identity of the library patron checking out, requesting, or using an item from a library.

(5) The material of a library, museum or archive which has been contributed by a private person, to the extent of any limitation that is a condition of the contribution.

(6) Test questions, scoring keys, and other data used to administer a licensing examination, employment, academic or other examination or testing procedure before the examination is given if the examination is to be used again. Records establishing procedures for and instructing persons administering, grading or evaluating an examination or testing procedure are included in this exemption, to the extent that disclosure would create a risk that the result might be affected.

(7) Land management plans required for voluntary stewardship agreements entered into pursuant to law and written agreements relating to the conservation of all species of sage grouse entered into voluntarily by owners or occupiers of land with a soil conservation district.

(8) Records identifying telemetry frequencies, remote camera locations, or precise or specific locations of any individual terrestrial wildlife, including but not limited to global positioning system, telemetry, or remote camera data. A state agency's sharing of such records on an individual case basis for agency or regulatory environmental review or management of wildlife damage or population does not constitute a waiver or this exemption. This exemption does not apply to records identifying aggregated or otherwise generalized locations of individual terrestrial wildlife or populations.

74-109. Records exempt from disclosure — Draft legislation, research, personal communications, personally identifying information, work papers, and draft redistricting plans. The following records are exempt from disclosure:

(1) Records consisting of draft legislation and documents related to draft legislation, including requests for research or analysis submitted to the legislative services office by a member of the Idaho legislature and any documents related to such request.

(2) Records consisting of personal communication by a member of the Idaho legislature or between members of the Idaho legislature that does not relate to the conduct or administration of the public's business.

(3) Personally identifying information relating to a private citizen contained in a writing to or from a member of the Idaho legislature. As used in this subsection, "private citizen" does not include a lobbyist registered with the office of the secretary of state, public official, or an individual who is communicating on behalf of an organization. As used in this subsection, "public official" has the same meaning as in section 74-101(12), Idaho Code, except that it does not include elected or appointed members of the Idaho legislature and legislative staff.

(4) Records consisting of or that are related to the work papers in the possession of the director of legislative performance evaluations prior to the release of the final performance evaluation.

(5) Records consisting of or that are related to the work papers in the possession of the division of legislative audits prior to release of the related final audit.

(6) Records consisting of draft congressional and legislative redistricting plans and documents specifically related to such draft redistricting plans or research requests submitted to the commission staff by a member of the commission for reapportionment for the purpose of placing such draft redistricting plan into form suitable for presentation to the full membership of the commission, unless the individual commission member having submitted or requested such plans or research agrees to waive the provisions of confidentiality provided by this subsection.

74-110. Exemption from disclosure — Records of court proceedings regarding judicial authorization of abortion procedures for minors. In accordance with section 18-609A, Idaho Code, the following records are exempt from public disclosure: all records contained in court files of judicial proceedings arising under section 18-609A, Idaho Code, are exempt from disclosure.

74-111. Exemption from disclosure — Records related to the uniform securities act. Except as otherwise determined by the director of the department of finance pursuant to section 30-14-607(c), Idaho Code, the following records are exempt from disclosure:

(1) A record obtained or created by the director of the department of finance or a representative of the director in connection with an audit or inspection under section 30-14-411(d), Idaho Code, or an investigation under section 30-14-602, Idaho Code;

(2) A part of a record filed in connection with a registration statement under section 30-14-301, Idaho Code, and sections 30-14-303

through 30-14-305, Idaho Code, or a record under section 30-14-411(d), Idaho Code, that contains trade secrets or confidential information if the person filing the registration statement or report has asserted a claim of confidentiality or privilege that is authorized by law;

(3) A record that is not required to be provided to the director of the department of finance or filed under chapter 14, title 30, Idaho Code, and is provided to the director only on the condition that the record will not be subject to public examination or disclosure;

(4) A nonpublic record received from a person specified in section 30-14-608(a), Idaho Code; and

(5) Any social security number, residential address unless used as a business address, and residential telephone number unless used as a business telephone number, contained in a record that is filed pursuant to chapter 14, title 30, Idaho Code.

74-112. Exempt and nonexempt public records to be separated. If any public record contains material which is not exempt from disclosure as well as material which is exempt from disclosure, the public agency shall, upon receipt of a request for disclosure, separate the exempt and nonexempt material and make the nonexempt material available for examination, provided that a denial of a request to copy nonexempt material in a public record shall not be based upon the fact that such nonexempt material is contained in the same public record as the exempt material.

74-113. Access to records about a person by a person.

(1) A person may inspect and copy the records of a public agency pertaining to that person, even if the record is otherwise exempt from public disclosure.

(2) A person may request in writing an amendment of any record pertaining to that person. Within ten (10) days of the receipt of the request, the public agency shall either:

(a) Make any correction of any portion of the record which the person establishes is not accurate, relevant, or complete; or

(b) Inform the person in writing of the refusal to amend in accordance with the request and the reasons for the refusal, and indicate clearly the person's right to appeal the refusal and the time period for doing so. The procedures for appealing a refusal to amend shall be the same as

those set forth in sections 74-115 and 74-116, Idaho Code, and the court may award reasonable costs and attorney's fees to the prevailing party or parties, if it finds that the request for amendment or refusal to amend was frivolously pursued.

(3) The right to inspect and amend records pertaining to oneself does not include the right to review:

(a) Otherwise exempt investigatory records of a public agency if the investigation is ongoing;

(b) Information that is compiled in reasonable anticipation of a civil action or proceeding which is not otherwise discoverable;

(c) The information relates to adoption records;

(d) Information which is otherwise exempt from disclosure by statute or court rule;

(e) Records of a prisoner maintained by the state or local agency having custody of the prisoner or formerly having custody of the prisoner or by the commission of pardons and parole.

74-114. Access to air quality, water quality and hazardous waste records – Protection of trade secrets.

(1) To the extent required by the federal clean air act, the federal clean water act and the resource conservation and recovery act for state primacy over any delegated or authorized programs, even if the record is otherwise exempt from disclosure under this chapter, any person may inspect and copy:

(a) Air pollution emission data;

(b) The content of any title V operating permit;

(c) The name and address of any Idaho pollutant discharge elimination system (IPDES) applicant or permittee;

(d) The content of any IPDES permit;

(e) IPDES permit applications, and information required to be submitted by IPDES application forms, whether the information is submitted on the application forms themselves or in attachments used to supply information required by the application forms;

(f) Effluent data or a standard or limitation, as defined in 40 CFR 2.302;

(g) The name and address of any applicant or permittee for a hazardous waste treatment, storage, or disposal facility permit pursuant to chapter 44, title 39, Idaho Code; and

(h) Any other record required to be provided to or obtained by the department of environmental quality pursuant to the federal clean air act, the federal clean water act and the resource conservation and recovery act, and the implementing state statutes, federal regulations and state rules, unless the record is a trade secret.

(2) For purposes of this section, a record, or a portion of the record, is a "trade secret" if the information contained in the record is a trade secret within the meaning of the Idaho trade secrets act, sections 48-801, et seq., Idaho Code, including commercial or financial information which, if disclosed, could cause substantial competitive harm to the person from whom the record was obtained.

(3) Any record, or portion of a record, provided to or obtained by the department of environmental quality and identified by the person providing the record as a trade secret shall not be disclosed to the public and shall be kept confidential according to the procedures established in this section.

(4) Nothing in this section shall be construed as limiting the disclosure of a trade secret by the department of environmental quality:

(a) To any officer, employee, or authorized representative of the state or the United States, under a continuing claim of confidentiality, as necessary to carry out the provisions of state or federal law, or when relevant to any proceeding thereunder;

(b) As determined necessary by the director of the department of environmental quality (under a continuing confidentiality claim) to protect the public health and safety from imminent and substantial endangerment;

(c) As required by state or federal law, including section 74-115(3), Idaho Code, under a continuing claim of confidentiality and subsection (1) of this section; or

(d) With the consent of the person from whom the record is obtained.

(5) It shall be the responsibility of any person providing a record to the department of environmental quality to give notice of the existence of a trade secret on each page or other portion of information at the time of submittal, and such person shall have the burden of demonstrating that the information is a trade secret.

(6) Notwithstanding the time frames set forth in section 74-103(2), Idaho Code, when a request is made to the department of environmental quality pursuant to the provisions of this chapter for the disclosure of information for which a trade secret claim has been made, and the information has not been demonstrated to be a trade secret to the satisfaction of the director of the department of environmental quality, within three (3) working days of receipt of the request for the disclosure of the information, the department of environmental quality shall provide a written request for substantiation to the person making the confidentiality claim. A response shall be submitted to the department of environmental quality by the person claiming the trade secret protection within ten (10) working days after receipt of the request for substantiation, or the information subject to the claim shall be disclosed without further notice. Upon receipt of a timely response to the request for substantiation, the director of the department of environmental quality shall determine whether the information is a trade secret subject to protection.

(a) If it is determined that the information, or any portion of the information, is a trade secret, within three (3) working days after receipt of the response, the director of the department of environmental quality shall notify the person requesting the information that the request is denied pursuant to subsections (4) and (5) of section 74-103, Idaho Code.

(b) If it is determined that the information, or any portion of the information, is not a trade secret and is, therefore, subject to disclosure, within three (3) working days after receipt of the response, the director of the department of environmental quality shall inform the person making the confidentiality claim of the determination. The decision shall be a final agency action directly appealable, de novo, to the district court of the county where the records or some part thereof are located. An appeal contesting the decision of the director of the department of environmental quality to release information claimed to be a trade secret shall be filed within ten (10) working days from the date of receipt of the written notice of decision. The information claimed to be a trade secret shall not be disclosed until the period for appeal has expired with no appeal being taken, or a court order has been issued finding that the information is not a trade secret and all appeals of that order have been exhausted.

(7) In any appeal taken pursuant to this section, the court may award reasonable costs and attorney's fees to the prevailing party if it finds the claim of confidentiality or the decision of the director of the department of environmental quality to provide records was frivolously pursued.

(8) The department of environmental quality shall adopt rules which include:

(a) Appropriate measures to safeguard and protect against improper disclosure of trade secrets, including procedures to train all employees on the proper handling of trade secrets; and

(b) Any other provisions necessary to carry out this section.

(9) As it relates to the department of environmental quality, or to agents, contractors, or other representatives of the department, the immunity created in section 74-118, Idaho Code, shall apply only when disclosure of a trade secret is made consistent with this section.

74-115. Proceedings to enforce right to examine or to receive a copy of records — Retention of disputed records.

(1) The sole remedy for a person aggrieved by the denial of a request for disclosure is to institute proceedings in the district court of the county where the records or some part thereof are located, to compel the public agency to make the information available for public inspection in accordance with the provisions of this chapter. The petition contesting the public agency's decision shall be filed within one hundred eighty (180) calendar days from the date of mailing of the notice of denial or partial denial by the public agency. In cases in which the records requested are claimed as exempt pursuant to section 74-107(1) or (24), Idaho Code, the petitioner shall be required to name as a party and serve the person or entity that filed or provided such documents to the agency, and such person or entity shall have standing to oppose the request for disclosure and to support the decision of the agency to deny the request. The time for responsive pleadings and for hearings in such proceedings shall be set by the court at the earliest possible time, or in no event beyond twenty-eight (28) calendar days from the date of filing.

(2) The public agency shall keep all documents or records in question until the end of the appeal period, until a decision has been rendered on the petition, or as otherwise statutorily provided, whichever is longer.

(3) Nothing contained in this chapter shall limit the availability of documents and records for discovery in the normal course of judicial or administrative adjudicatory proceedings, subject to the law and rules of evidence and of discovery governing such proceedings. Additionally, in any criminal appeal or post-conviction civil action, this chapter shall not make available the contents of prosecution case files where such material has previously been provided to the defendant nor shall this chapter be available to supplement, augment, substitute or supplant discovery procedures in any other federal, civil or administrative proceeding.

74-116. Order of the court – Court costs and attorney fees.

(1) Whenever it appears that certain public records are being improperly withheld from a member of the public, the court shall order the public official charged with withholding the records to disclose the public record or show cause why he should not do so. The court shall decide the case after examining the pleadings filed by the parties and such oral arguments and additional evidence as the court may allow. The court may examine the record in camera in its discretion.

(2) If the court finds that the public official's decision to refuse disclosure is not justified, it shall order the public official to make the requested disclosure. If the court determines that the public official was justified in refusing to make the requested record available, he shall return the item to the public official without disclosing its content and shall enter an order supporting the decision refusing disclosure. In any such action, the court shall award reasonable costs and attorney fees to the prevailing party or parties, if it finds that the request or refusal to provide records was frivolously pursued.

74-117. Additional penalty. If the court finds that a public official has deliberately and in bad faith improperly refused a legitimate request for inspection or copying, a civil penalty shall be assessed against the public official in an amount not to exceed one thousand dollars ($1,000), which shall be paid into the general account.

74-118. Immunity. No public agency, public official, or custodian shall be liable, nor shall a cause of action exist, for any loss or damage based upon the release of a public record governed by the provisions of this chapter if the public agency, public official or custodian acted in good faith in attempting to comply with the provisions of this chapter.

74-119. Agency guidelines. By January 1, 2019, every state agency shall adopt guidelines that identify the general subject matter of all public records kept or maintained by the state agency, the custodian or custodians,

and the physical location of such documents. Public agencies shall designate at least one (1) person as custodian to receive public records requests and shall provide an alternate custodian or alternate custodians for contingencies. If a public agency has a website, the agency shall note the name and contact information of its custodian of records on its website and shall promptly update such information when it changes.

74-120. Prohibition on distribution or sale of mailing or telephone number lists – Penalty.

(1) Except as provided in subsections (2), (3), (4), (5), (6), (7), (8) and (9) of this section, in order to protect the privacy of those who deal with public agencies:

(a) No agency may distribute or sell for use as a mailing list or a telephone number list any list of persons without first securing the permission of those on the list; and

(b) No list of persons prepared by the agency may be used as a mailing list or a telephone number list except by the agency or another agency without first securing the permission of those on the list.

(2) Except as may be otherwise provided in this chapter, this section does not prevent an individual from compiling a mailing list or a telephone number list by examination or copying of public records, original documents or applications which are otherwise open to public inspection.

(3) The provisions of this section do not apply to the lists of registered electors compiled pursuant to title 34, Idaho Code, or to lists of the names of employees governed by chapter 53, title 67, Idaho Code.

(4) The provisions of this section shall not apply to agencies which issue occupational or professional licenses.

(5) This section does not apply to the right of access either by Idaho law enforcement agencies or, by purchase or otherwise, of public records dealing with motor vehicle registration.

(6) This section does not apply to a corporate information list developed by the office of the secretary of state containing the name, address, registered agent, officers and directors of corporations authorized to do business in this state or to a business information list developed by the department of commerce containing the name, address, telephone number or other relevant information of Idaho businesses or individuals

requesting information regarding the state of Idaho or to business lists developed by the department of agriculture, market development division, used to promote food and agricultural products produced in Idaho.

(7) This section does not apply to lists to be used for ordinary utility purposes which are requested by a person who supplies utility services in this state. Ordinary utility purposes, as used in this chapter only, do not include marketing or marketing research.

(8) This section does not apply to lists to be used to give notice required by any statute, ordinance, rule, law or by any governing agency.

(9) This section does not apply to student directory information provided by colleges, universities, secondary schools and school districts to military recruiters for military recruiting purposes pursuant to the requirements of federal laws.

(10) Nothing in this section shall prohibit the release of information to the state controller as the state social security administrator as provided in section 59-1101A, Idaho Code.

(11) If a court finds that a person or public official has deliberately and in bad faith violated the provisions of subsection (1)(a) or (1)(b) of this section, the person or public official shall be liable for a civil penalty assessed by the court in an amount not in excess of one thousand dollars ($1,000) which shall be paid into the general fund.

74-121. Replevin – public records – improper or unlawful transfer or removal.

(1) Public records of the state and/or territory of Idaho are the property of the citizens of the state in perpetuity and they may not be improperly or unlawfully transferred or removed from their proper custodian. For purposes of this section, the terms "public record" and "record," or plurals thereof, shall have the same meaning as "public record" as provided in section 74-101, Idaho Code.

(2) For the purpose of this section, where public records of a county or local district thereof are involved, all references to the state archivist also refer to any responsible public official or records custodian and all references to the attorney general also refer to county prosecutors.

(3) Whenever the state archivist or their designee has reasonable grounds to believe that records belonging to the state, county or local district thereof are in the possession of a person or entity not authorized by

law to possess those records, and such possession was acquired on or after July 1, 2011, he or she may issue a written notice demanding that person or entity to do either of the following within ten (10) calendar days of receiving the notice:

(a) Return the records to the office of origin or the Idaho state archives; or

(b) Respond in writing and declare why the records do not belong to the state or a local agency.

(4) The notice and demand shall identify the records claimed to belong to the state or local agency with reasonable specificity, and shall specify that the state archivist may undertake legal action to recover the records if the person or entity fails to respond in writing within the required time or does not adequately demonstrate that the records do not belong to the state or a local agency.

(5) If a person or entity that receives a written notice and demand from the state archivist pursuant to this chapter fails to deliver the described records, fails to respond to the notice and demand within the required time, or does not adequately demonstrate that the records do not belong to the state or a local agency, the state archivist may ask the attorney general to petition a court of competent jurisdiction for an order requiring the return of the records.

(6) The court may issue any order necessary to protect the records from destruction, alteration, transfer, conveyance or alienation by the person or entity in possession of the records, and may order that the records be surrendered into the custody of the state archivist pending the court's decision on the petition.

(7) After a hearing, and upon a finding that the specified records are in the possession of a person or entity not authorized by law to possess the records, the court shall order the records to be delivered to the state archivist or other official designated by the court.

(8) If the attorney general recovers a record under this section, the court may award attorney's fees and court costs.

(9) Notwithstanding any other provision of this section, any public record that is in the custody of an organization or institution shall not be subject to the provisions of this section provided:

(a) That professional standards recognized by the society of American archivists for the management and preservation of historical records are maintained; and

(b) Such records are accessible to the public in a manner consistent with this chapter.

(10) When a record is returned pursuant to subsection (3)(a) of this section, upon the request of the person, organization or institution that returned the record, the record custodian that receives the record shall issue to that person, organization or institution a copy or digital image of the record which shall be certified as a true copy of the record that was returned to the state or local agency, and dated on the same day the record was returned.

74-122. Confidentiality language required in this chapter. On and after January 1, 2016, any statute which is added to the Idaho Code and provides for the confidentiality or closure of any public record or class of public records shall be placed in this chapter. Any statute which is added to the Idaho Code on and after January 1, 2016, and which provides for confidentiality or closure of a public record or class of public records and is located at a place other than this chapter shall be null, void and of no force and effect regarding the confidentiality or closure of the public record and such public record shall be open and available to the public for inspection as provided in this chapter.

74-123. Idaho Code is property of the state of Idaho.

(1) The Idaho Code is the property of the state of Idaho, and the state of Idaho and the taxpayers shall be deemed to have a copyright on the Idaho Code. If a person reproduces or distributes the Idaho Code for the purpose of direct or indirect commercial advantage, the person shall owe to the Idaho code commission, as the agent of the state of Idaho, a royalty fee in addition to the fee charged for copying the Idaho Code. Any person who reproduces or distributes the Idaho Code in violation of the provisions of this section, shall be deemed to be an infringer of the state of Idaho's copyright. The Idaho code commission, through the office of the attorney general, is entitled to institute an action for any infringement of that particular right committed while the Idaho code commission or its designated agent has custody of the Idaho Code.

(2) A court having jurisdiction of a civil action arising under this section may grant such relief as it deems appropriate. At any time while an action under this section is pending, the court may order the impounding, on such terms as it deems reasonable, of all copies claimed to have been

made or used in violation of the Idaho code commission's copyright pursuant to this section.

(3) An infringer of the state of Idaho's copyright pursuant to this section is liable for any profits the infringer has incurred by obtaining the Idaho Code for commercial purposes or is liable for statutory damages as provided in subsection (4) of this section.

(4) The Idaho code commission, as agent of the copyright owner, may elect, at any time before final judgment is rendered, to recover, instead of actual damages and profits, an award of statutory damages for all infringements involved in the action, with respect to the Idaho Code for which any one (1) infringer is liable individually, or for which any two (2) or more infringers are liable jointly and severally, in a sum of not less than two hundred fifty dollars ($250) or more than ten thousand dollars ($10,000), as the court considers just.

(5) In any civil action under this section, the court may allow the recovery of full costs by or against any party and may also award reasonable attorney's fees to the prevailing party as part of the costs.

(6) The Idaho code commission is hereby authorized to license and charge fees for the use of the Idaho Code. The Idaho code commission may grant a license for the use of the Idaho Code to a public agency in the state and waive all or a portion of the fees. All fees recovered by the Idaho code commission shall be deposited in the general account.

74-124. Exemptions from disclosure – Confidentiality.

(1) Notwithstanding any statute or rule of court to the contrary, nothing in this chapter nor chapter 10, title 59, Idaho Code, shall be construed to require disclosure of investigatory records compiled for law enforcement purposes by a law enforcement agency, but such exemption from disclosure applies only to the extent that the production of such records would:

(a) Interfere with enforcement proceedings;

(b) Deprive a person of a right to a fair trial or an impartial adjudication;

(c) Constitute an unwarranted invasion of personal privacy;

(d) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement agency in the

course of a criminal investigation, confidential information furnished only by the confidential source;

(e) Disclose investigative techniques and procedures;

(f) Endanger the life or physical safety of law enforcement personnel; or

(g) Disclose the identity of a reporting party maintained by any law enforcement entity or the department of health and welfare relating to the investigation of child abuse, neglect or abandonment unless the reporting party consents in writing to the disclosure or the disclosure of the reporting party's identity is required in any administrative or judicial proceeding.

(2) Notwithstanding subsection (1) of this section, any person involved in a motor vehicle collision which is investigated by a law enforcement agency, that person's authorized legal representative and the insurer shall have a right to a complete, unaltered copy of the impact report, or its successors, and the final report prepared by the agency.

(3) An inactive investigatory record shall be disclosed unless the disclosure would violate the provisions of subsection (1)(a) through (g) of this section. Investigatory record as used herein means information with respect to an identifiable person or group of persons compiled by a law enforcement agency in the course of conducting an investigation of a specific act or omission and shall not include the following information:

(a) The time, date, location, and nature and description of a reported crime, accident or incident;

(b) The name, sex, age, and address of a person arrested, except as otherwise provided by law;

(c) The time, date, and location of the incident and of the arrest;

(d) The crime charged;

(e) Documents given or required by law to be given to the person arrested;

(f) Informations and indictments except as otherwise provided by law; and

(g) Criminal history reports.

As used herein, the term "law enforcement agency" means the office of the attorney general, the office of the state controller, the Idaho state police, the office of any prosecuting attorney, sheriff or municipal police department.

(4) Whenever it is made to appear by verified petition to the district court of the county where the records or some part thereof are situated that certain investigative records are being improperly withheld from a member of the public, the court shall order the officer or person charged with withholding the records to disclose the investigative record or show cause why he should not do so. The court shall decide the case after examining the record in camera, papers filed by the parties, and such oral argument and additional evidence as the court may allow.

If the court finds that the public official's decision to refuse disclosure is not justified, he shall order the public official to make the record public. If the judge determines that the public official was justified in refusing to make the record public, he shall return the item to the public official without disclosing its content with an order supporting the decision refusing disclosure. Any person who fails to obey the order of the court shall be cited to show cause why he is not in contempt of court. The court may, in its discretion, award costs and fees to the prevailing party.

74-125. Evidence from preliminary hearing – Admission – Requirements.

Prior to admitting into evidence recorded testimony from a preliminary hearing, the court must find that the testimony offered is:

1. Offered as evidence of a material fact and that the testimony is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and

2. That the witness is, after diligent and good faith attempts to locate, unavailable for the hearing; and

3. That at the preliminary hearing, the party against whom the admission of the testimony is sought had an adequate opportunity to prepare and cross-examine the proffered testimony.

74-126. Public Records Requests – Legislature.

(1) A public records request for the legislature shall be made to the speaker of the house of representatives and the president pro tempore of

the senate. A copy of such request shall be contemporaneously submitted to the legislative services office.

(2) A public records request for the house of representatives shall be made to the speaker of the house of representatives, and a copy of such request shall be contemporaneously submitted to the legislative services office. A public records request for the senate shall be made to the president pro tempore of the senate, and a copy of such request shall be contemporaneously submitted to the legislative services office.

(3) A public records request for an individual legislator shall be made to such individual legislator, and a copy of such request shall be contemporaneously submitted to the legislative services office.

(4) For purposes of this section, "contemporaneously" means that a copy of a request for public records shall be submitted to the legislative services office on the same business day as the request is made.

(5) The legislature, either house of the legislature, or an individual legislator shall not be obligated to respond to a public records request that does not comply with the requirements of this section.

74-127. Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act.

SUMMARY OF DECISIONS INTERPRETING THE IDAHO PUBLIC RECORDS STATUTE

IDAHO ATTORNEY GENERAL'S OFFICE

Reported Decisions

1. Adams County Abstract Co. v. Fisk, 117 Idaho 513, 788 P.2d 1336 (Ct. App. 1990) (title company did not have the right to make photocopies with its own private equipment in the courthouse).

2. Bolger v. Alan G. Lance, Idaho State Attorney General, 137 Idaho 792, 53 P.3d 1211 (2002). (Under the Public Records Law, the office of the Attorney General is considered a law enforcement agency. An individual does not have the right to examine investigatory records about himself during an ongoing investigation.)

3. Cowles Publishing Co. v. Kootenai County Board of Commissioners, 144 Idaho 259, 159 P.3d 896 (2007) (e-mail correspondence, even though of a personal nature, may constitute a public record if it relates to the conduct or administration of public business and provides an explanation for a public official's actions, provided that the document is owned, used, or retained by a public agency).

4. Dalton v. Idaho Dairy Products Comm'n, 107 Idaho 6, 684 P.2d 983 (1994) (list of names of state farmers was a public record subject to disclosure).

5. Federated Publications, Inc. v. Boise City, 128 Idaho 459, 915 P.2d 21 (1996) (under Idaho Code § 9-340(3)(a) [now Idaho Code § 9-340C(1)], the names and resumes of applicants for appointment to a vacancy in city council, and an internal review of a police shooting incident, may be subject to disclosure).

6. Fox v. Estep, 118 Idaho 454, 797 P.2d 854 (1990) (county clerk's "raw notes" of meeting of county commissioners could be public records within the scope of the law).

7. Henry v. Taylor, 152 Idaho 155 (2012) (records regarding prosecuting attorney's private bank account were public records).

8. Hymas v. Meridian Police Dept., 156 Idaho 739, 330 P.3d 1097 (2014) (on going nature of investigation into decedent's death was not a sufficient basis for police department to categorically deny petitioners' public records request in its entirety).

9. Wade v. Taylor, 156 Idaho 91, 320 P.3d 1250 (2014) (district court lacked statutory authority to limit disclosure of public records to petitioner and his attorney).

10. Ward v. Portneuf Medical Center, Inc., 150 Idaho 501 (2011) (Agency's sale of its medical center to a private entity did not alter status of agency's public records that were subject to disclosure under Public Records Act at time of petitioner's request).

Unreported Decisions
(On File with the Office of Attorney General)

1. APG Media of the Rockies, LLC, dba The Post Register v. Ronald Nate, Case No. CV-2016-435 (7th Dist.-Tingey 2017) (whether a recording of a conversation between legislators should be disclosed as a public record).

2. Benson v. Industrial Comm'n, Case No. 94600 (4th Dist.-Carey 1993) (workers compensation files were medical records exempt under Idaho Code § 9-340(26)); *Benson v. Industrial Comm'n,* Case No. 94600 (4th Dist.-Carey 1992) (statistical compilations are public records and may be subject to disclosure even though they may be used to blacklist prospective employees).

3. Bingham v. Blackfoot School District #55, Case No. CV-2012-0002123 (7th Dist.-Nye 2012) (whether a school district separation contract is a personnel record exempt from disclosure).

4. Boise State University v. Smith, Case No. 97785 (4th Dist. 1995) (sweeping public records request, subsequently made more specific by the requester, but still "extremely broad," must nonetheless be filled under the public records statute).

5. CNN v. Blaine County, Case No. CV-2014-437 (5th Dist.-Elgee 2014) (whether an agency in charge of a record has the discretion to determine whether disclosure of a particular reported "crime, accident or incident" may be prohibited because disclosure would constitute an "unwarranted invasion of privacy.")

6. Doe v. Garcia, Case No. 95805 (4th Dist.-McKee 1993) (court grants motion to quash subpoena for taking deposition duces tecum, and "does not wish to encourage the practice of using the Prosecutor's files as a source of preparation for civil lawsuits").

7. Eugene Television, Inc. v. Montgomery, Case No. 90556 (4th Dist.-Schwartzman 1988) (under Idaho Code § 9-335(1)(e), tape recordings made by police dispatch center were exempt from public records disclosure because disclosure would divulge police investigative techniques used during bank robberies).

8. Federated Publications, Inc. v. Carvino, Case No. 96459 (4th Dist.-Carey 1994) (where state had decided not to prosecute, police reports were subject to disclosure except identifying information relating to witnesses was exempt under Idaho Code § 9-335(1)(c) and all references to mental commitment of the potential defendant were exempt under Idaho Code § 66-348) (internal report of investigation of police shooting exempt as personnel records under Idaho Code § 9-340(3) [now Idaho Code § 9-340C]).

9. Federated Publications, Inc. v. City of Meridian, Case No. 06708 (4th Dist.-McKee 1998) (documents submitted in connection with applications for employment, including application forms or resumes for the position of director of parks and recreation, are exempt under Idaho Code § 9-340(3)(a)[1997] because director does not serve a fixed term, is not elected, is not required to take an oath of office, has no responsibility or authority to set policy and is, therefore, an "employee" as opposed to a "public official").

10. Federated Publications, Inc. v. Schroeder, Case No. 98036 (4th Dist.-Carey 1994) (assessor's list subject to disclosure so long as requester complied with Idaho Code § 9-348(1); assessor was required to provide public records only in a reasonable format, not necessarily in the particular format requested).

11. Hampel v. The City of Boise, Case No. 08148 (4th Dist.-Neville 2011) (examining the law enforcement exemption to the Public Records Act).

12. Howe v. City of Boise, Case No. 98224 (4th Dist.-Carey 1995) (city could designate county as its public records custodian under Idaho Code § 9-338(9)) (county could ask the identity of the person making the request) (under Idaho Code § 9-335, county properly deleted identifying information from accident reports disclosed, except for certain names, sex, ages, and addresses of persons who were arrested, which should have been disclosed).

13. Idaho Press Club, Inc. v. Ada County, Case No. CV 01-19-16277 (4th Dist.-Bail) (A public record can only be withheld if there is a clear and statutorily-grounded justification.)

14. In re: Petition of Elaine Maybury, Case No. 95412 (4th Dist.-Newhouse 1992) (initial police report was exempt under Idaho Code § 9-335(2)(a), but affidavits received by police after initial investigation were subject to disclosure).

15. Lepin v. Hall, Case No. 92780 (4th Dist.-Schwartzman 1990) (requested criminal file exempt under Idaho Code § 9-335(1)(c) because public disclosure would not shed "light on a governmental agency's performance of its statutory obligations," and would constitute an unwarranted invasion of personal privacy).

Attorney General's Office Analyses

1. Attorney General Opinion No. 95-06, October 26, 1995 (under Idaho Code § 9-343(3) an exemption from disclosure under public records law does not limit the requirement to comply with a subpoena issued in an administrative adjudicatory proceeding and compelling the production of public records).

2. Attorney General's Legal Guideline, March 7, 1996 (draft minutes and tape recordings of the meetings of state regulatory boards are "public records" under public records statute, whether or not the board has approved or reviewed the records).

3. Attorney General's Legal Guideline, October 5, 1995 (membership list of Idaho Historical Society was public record but excluded from disclosure in this case under Idaho Code § 9-348).

4. Attorney General's Legal Guideline, August 9, 1995 (draft administrative rules in the possession of administrative rules coordinator are "public records" under public records statute and, under Idaho Code § 9-338(8), access to the record may not be restricted by charging a fee beyond the copying cost).

5. Attorney General's Legal Guideline, January 25, 1993 (city may not pass ordinance to allow it to charge a fee in excess of actual cost of reproducing requested public records despite the "otherwise provided by law" language of Idaho Code § 9-338(8)).

SAMPLE LETTERS

SAMPLE EMAIL REQUEST - RESIDENT

From: Jane Q. Public [redacted]
Sent: Wednesday, June 29, 2022 12:00 PM
To: publicrecordsrequests@publicentity.gov (sample email)
Subject: Public Records Request

Dear Public Records Custodian,

I would like to make a public records request for all data breach information submitted to your office between January 1, 2022 and January 10, 2022. If possible, I would prefer digital delivery of any responsive materials.

DECLARATION OF RESIDENCY

I, [Full Name], hereby declare and affirm under penalty of perjury, pursuant to the laws of the State of Idaho, that I am a legal resident of the State of Idaho, as described in Idaho Code § 74-101(15) and have been for at least 30 days.

Acknowledgement: I understand that this declaration is made under oath and that any false statement herein may subject me to penalties for perjury under Idaho law.

I solemnly affirm that the information provided in this declaration is true and accurate to the best of my knowledge and belief.

Declared and Affirmed this [Day] day of [Month], [Year].

J ane P ublic
Jane Public [Name]
1234 W. 1st St. [Address]
Boise, ID 83720 [Address]
208-XXX-XXXX [Telephone]

Requester names and personal contact details redacted by Oversight Archive.

SAMPLE EMAIL REQUEST – NON-RESIDENT

From: Frank Fredricks [redacted]
Sent: Wednesday, June 29, 2022 12:00 PM
To: publicrecordsrequests@publicentity.gov (sample email)
Subject: Public Records Request

Dear Public Records Custodian,

I would like to make a public records request for all data breach information submitted to your office between January 1, 2022 and January 10, 2022. If possible, I would prefer digital delivery of any responsive materials.

F rank F redricks

Frank Fredricks [Name]
USA News Corp. [Company]
5678 W. Main Street [Address]
Washington, D.C. 20001 [Address]
202-XXX-XXXX [Telephone]

Requester names and personal contact details redacted by Oversight Archive.

SAMPLE 10 DAY EXTENSION LETTER - RESIDENT



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
RAÚL R. LABRADOR

July 1, 2022

TRANSMITTED VIA EMAIL

Ms. Jane Q. Public
1234 W. 1st Street
Boise, Idaho 83702
janeqpublic@email.com

Dear Ms. Public:

This letter is in response to the public records request you submitted to our office on June 29, 2022.

We are working to respond to your request. However, we will need additional time – up to ten working days as provided by law for review and to prepare the response.

Please be assured that we will respond to your request as promptly as possible.

Sincerely,

John Doe
Public Records Custodian

EXECUTIVE OFFICE
P.O. BOX 83720, BOISE, IDAHO 83720-0010
TELEPHONE: (208) 334-2400, FAX: (208) 854-8071
LOCATED AT 700 W. JEFFERSON STREET, SUITE 210

SAMPLE 35 DAY EXTENSION LETTER – NON-RESIDENT

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
RAÚL R. LABRADOR

July 1, 2022

TRANSMITTED VIA EMAIL

Mr. Frank Fredricks
USA News Corp.
5678 W. Main Street
Washington, D.C. 20001
frank[redacted]

Dear Mr. Fredricks:

This letter is in response to the public records request you submitted to our office on June 29, 2022.

We are working to respond to your request. However, we will need additional time – up to thirty-five (35) days as provided by law – for review and to prepare the response.

Please be assured that we will respond to your request as promptly as possible.

Sincerely,

John Doe
Public Records Custodian

EXECUTIVE OFFICE
P.O. BOX 83720, BOISE, IDAHO 83720-0010
TELEPHONE: (208) 334-2400, FAX: (208) 854-8071
LOCATED AT 700 W. JEFFERSON STREET, SUITE 210

Requester names and personal contact details redacted by Oversight Archive.

SAMPLE DENIAL LETTER

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
RAÚL R. LABRADOR

July 9, 2022

TRANSMITTED VIA EMAIL

Mr. Frank Fredricks
USA News Corp.
5678 W. Main Street
Washington, D.C. 20001
frank[redacted]

Dear Mr. Fredricks:

This letter is in response to the public records request you submitted to our office on June 29, 2022.

Your request was reviewed by a deputy attorney general. The public documents you requested are attached. However, some documents to your request are exempt from disclosure under Idaho Code § 74-105(1), as they are investigatory records of a law enforcement agency.

As provided in Idaho Code § 74-115(1), you can contest the denied portions of this response by filing a petition in the district court of the county where the records are located within 180 calendar days from the date of this letter.

Sincerely,

John Doe
Public Records Custodian

EXECUTIVE OFFICE
P.O. BOX 83720, BOISE, IDAHO 83720-0010
TELEPHONE: (208) 334-2400, FAX: (208) 854-8071
LOCATED AT 700 W. JEFFERSON STREET, SUITE 210

Requester names and personal contact details redacted by Oversight Archive.