

**The Idaho Department of Fish and Game considers the following document to be an agency guidance document for purposes of Idaho Executive Order 2020-002. The guidance document is not new law; it is the Department's interpretation or implementation of existing law.**

Department Point of Contact (to obtain additional information or provide input):

Deputy Director, Programs and Policy  
Idaho Department of Fish and Game  
P.O. Box 25  
Boise, ID 83707  
Phone: (208) 334-3771  
Email: [rules@idfg.idaho.gov](mailto:rules@idfg.idaho.gov)



## IDAHO DEPARTMENT OF FISH AND GAME

### Public Records Requests POLICY NO. C-4.0

Revision Date: January 2020

#### POLICY STATEMENT

The Idaho Public Records Act ("Act"), Idaho Code sections 74-101 et. seq. was enacted by the Legislature in 1990. The Act governs the disclosure of information by all state and local government entities. The intent of the Act is that all records maintained by public agencies are open to the public for inspection and copying at all reasonable times, unless the information is specifically exempted from disclosure by law. This Policy establishes the procedures for processing and responding to public record requests.

#### A. Definitions

1. Idaho Code section 74-101 sets forth the definition of key terms under the Act.

#### B. Form of Public Records Requests

1. Public records requests must be submitted to the Department in writing by mail, facsimile or Email. All public records requests must include the requester's name, mailing address, Email address (if an Email response is an option and the records can be sent electronically), and telephone number. Idaho Code section 74-102(4). The requester may submit a public records request to [RecordsRequest@idfg.idaho.gov](mailto:RecordsRequest@idfg.idaho.gov) (which will be administered by the Director's Office Executive Assistant). The requester may use the Department's *Request to Examine and/or Copy Public Record* form available on the Department's website [<http://fishandgame.idaho.gov/>] or available upon request. (See this link <https://idfg.idaho.gov/old-web/docs/licenses/publicInfoRequest.pdf> for the Request to Examine and/or Copy Public Record.) Use of this form is not required.
2. Requests for records routinely provided by the Department, such as forms or copies of laws and rules, do not require an official written request.
3. Logging in the Request

All public records requests will be promptly forwarded to the Director's office (Executive Assistant), who will log in each request, coordinate the request with legal staff, the Bureaus and Regions (custodians), and follow-up with each such Bureau and Region to ensure requests are processed in accordance with the Act. The Director's Office will also maintain records of itemized assessed fees and the date of response for each request.

#### 4. Required Response Time

- a. Pursuant to Idaho Code section 74-103, the custodian receiving a written request for public records will have three (3) working days to respond in writing to the person making the request. If the custodian determines that three (3) working days are not adequate to locate or retrieve the public records, the custodian will so notify in writing the requester. The custodian will then provide the public records to the requesting person no later than ten (10) working days following receipt of the request. If the custodian is unclear on the response times, then coordinate with legal staff.



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- b. If the custodian determines that the existing electronic record responsive to the request will first have to be converted to another electronic format by the Department or by a third party and such conversion cannot be completed within ten (10) working days, the custodian will so notify the requester. The Department will provide the converted electronic record at a time mutually agreed upon between the Department and the requester, with due consideration given to any limitation that may exist due to the process of conversion or due to the use of a third party to make the conversion.

### C. Scope of the Public Records Request

1. The Department 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 is likely to be voluminous or require payment of fees. The custodian may not inquire as to why the information is being sought. The custodian should not scrutinize or examine the records requested, but should maintain vigilance to see that the records are not altered or destroyed. For example, the custodian could tell the requester the type of records that are available (i.e. a type of report or chart) or what years of records are available electronically in order to help the requester narrow the scope of a request.
  - a. The Department will generally not create documents that did not previously exist in order to respond to a public records request.
2. Examination of Public Records
  - a. Under Idaho Code section 74-102, public records may be examined at Department offices where the records are maintained during regular office or working hours. The custodian may authorize examination of records in other than regular or working hours for a fee (see Fee Section). The examination may be reasonably restricted to allow the custodian to retain control of the records and to prevent removal, alteration, or destruction of the records. During an examination of records, Department staff will not review, examine, or scrutinize any copy, photograph, or memoranda in the requester's possession that is not a Department record.
  - b. Upon a request to examine public records, the custodian will coordinate with the requester a mutually agreeable time to examine the records. Prior to the examination of the records, the custodian will provide the requester an estimate of the labor costs, if any, associated with locating the records and redacting exempt information from the records. The requester must pay the estimated costs prior to examining the records. Any overpayment will be refunded to the requester (see Fee Section).
3. Response to Public Records Request
  - a. The custodian will respond to the requester within three (3) working days either by a) granting/denying or partially denying the request; or b) notifying the requester in writing that additional time is needed to locate or retrieve the records (in which case the records must be provided within ten (10) working days).



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- b. If the public records request is granted, the custodian will respond to the requester by letter or Email, and notify the Director's office. For voluminous requests, fees may be required (see Fee Section). The Director's office does not need a copy of the records provided – just the fact that the request has been responded to and the date. The Director's office will need an itemized statement of any fees charged.

#### 4. Denial of Public Records Request

- a. A request may be denied in whole, or in part, by the Director's office, a Regional Supervisor, or a Bureau Chief. The denial notice shall state the statutory basis for the denial and indicate the requester's right to appeal and the time limits for an appeal. The denial notice shall also state that an attorney for the agency has reviewed the request.
- b. The time period for filing an appeal is 180 days from the date of the mailing of the denial or partial denial of the request. The appeal shall be filed in the district court of the county where the records, or some part of the records, are located. If the court finds that a public official deliberately, and in bad faith, improperly refused a legitimate request, a civil penalty shall be assessed against the public official in an amount not to exceed one thousand dollars.
- c. If a record contains exempt and nonexempt material, the exempted material may be redacted and the requester supplied with the nonexempt record. A denial cannot be based on the fact that the record contains both types of material.

#### 5. Exemptions From Disclosure

- a. Information in public records may be exempt from disclosure under the specific provisions in Idaho Code sections 74-101 et. seq. Public records may contain both exempt and nonexempt information. The Department is responsible for redacting the exempt information in a record and supplying the nonexempt record to the requester.
- b. If there is any question concerning whether information in a public record is exempt, contact an attorney assigned to the Department. The exemptions which generally apply to Department records include the following:
  1. Record exempted by federal or state law to the extent provided by the law;
  2. Law enforcement investigatory records, under the conditions set forth in Idaho Code sections 74-105(1) and 74-124;
  3. All personnel records other than employment history, classification, pay grade, longevity, gross salary and salary history, status, work place, and employing agency;
  4. Retired employees', retired public officials', and active employees' home addresses, home telephone numbers, and other financial information and nonofficial membership records;
  5. Personal records other than name, business address and business telephone number submitted for licensing, certification, permit, or bonding;



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6. Information relating to any Idaho fish and game licenses, permits and tags; 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 identifying numbers and/or information (such information may only be released if written consent is obtained from the affected person);
  7. Trade secrets, including those contained in response to agency requests for proposals, requests for clarification or information;
  8. Location of endangered species;
  9. Appraisals of real property, timber, or mineral rights prior to acquisition, sale, or lease by the agency;
  10. Estimate of the cost of a public project prior to its disclosure, or bids are opened, or a contract is awarded; and
  11. Computer programs developed or purchased by, or for, the agency for its own use. This does not include the original data, analyses, mathematical, or statistical formulae.
6. Lists
- The Department will not release any list of names, addresses, or telephone numbers of persons identified on a list unless such persons have given their permission for the Department to release this information for use as a mailing (including Email) or telephone list. See Idaho Code sections 74-120(1).
7. Inspection and Correction of a Person's Own Records
- a. Under Idaho Code section 74-113, a person may inspect and copy the public records pertaining to that person, even if the record is otherwise exempt from public disclosure. A person requesting to inspect and copy records pertaining to that person must provide proper identification to the custodian. A person's right to inspect and amend records pertaining to that person is limited by the circumstances set forth in Idaho Code section 74-113.
  - b. A person may request in writing an amendment of any record pertaining to that person. The Department will respond to requests to amend a record of that person within ten (10) calendar days of receiving the request. In response to a request to amend a record, The Department will 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 notice of refusal must provide the statement of appeal rights and be in substantially the same format as the denial letter (see Denial of Public Records Request section).



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**8. Fee Schedule**

Under Idaho Code section 74-102(10), the Department is authorized to establish a fee schedule. The fee may not exceed the actual cost of copying the record. The Act further provides that the Department shall not charge any fee for the first two (2) hours of labor in responding to a request for public records, or for copying the first one hundred (100) pages of paper records that are requested. The Department may charge fees to recover the actual labor and copying costs associated with locating and copying records if:

- a. The request is for more than one hundred (100) pages of paper records;
- b. The request includes records from which nonpublic information must be deleted;
- c. The actual labor associated with responding to requests for public records in compliance with the Act exceeds two (2) person hours.
- d. The Department will assess fees for public records according to the following fee schedule:

Idaho Code Reference	Description of Work Performed	Costs
74-102(10)(a)	Photocopying or printing less than 100 pages, 8 ½" x 11" paper size	No charge
74-102(10)(c)	Photocopying or printing more than 100 pages, 8 ½ x 11" paper size (The first 100 pages are no charge.)	\$0.10 per page (Policy A-4.04)
74-102(10)(c)	Photocopying or printing color copies	\$0.20 per page
74-102(10)(c)	Copies of oversize documents (blueprints, maps, etc.)	Actual copying cost
74-102(10)(b)	Labor cost for responding to public records requests of less than two (2) person hours	No charge
74-102(10)(b) and (e)	Labor cost for responding to public records requests of more than two (2) person hours (The first two hours are no charge.)	Variable, see below
74-102(10)(d)	Copies of computer tapes or discs, microfilm, photographs or similar records; or conversion of an electronic record into another electronic format	Actual copying or conversion cost
74-102(10)(e)	Redacting nonpublic information from records	Variable, see below
	Postage or delivery charges	Actual cost, see below

**9. Labor Costs**

The labor cost for responding to requests in excess of two (2) person hours is outlined by statute and will be set on a case-by-case basis. The Act provides that the labor cost 'shall



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reflect the personnel and quantity of time that are reasonably necessary to process the request'; and that the '[f]ees for labor costs shall be charged at the per hour rate of the lowest paid administrative staff employee or public official of the public agency who is necessary and qualified to process the request.' The intent is to perform the work (responding to a public records request) in the most efficient and economical manner. Some requests may reasonably require the Director, Bureau Chief or Regional Supervisor to locate, retrieve, review or redact public records. However, all work on public records requests will be done at the lowest hourly rate for the employee who is necessary and qualified to process the request.

#### 10. Redaction

- a. The Act provides that 'if a request 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 ....' Again, the intent is to perform the work in the most efficient and economical manner. If redaction by an attorney is necessary, consult with a Deputy Attorney General assigned to the Department. In many cases, the redaction of nonpublic information can be done by Department staff (for example, the redaction of licensee's names, addresses, phone numbers, dates-of-birth).
- b. Each page on which print appears will be treated as a single copy, thus double-sided copies will be assessed on the same fee schedule as two single-sided copies. The Department is not required to provide multiple copies of the same document.
- c. The Department is not required to mail or deliver copies of records. Postage or delivery charges will be charged for requests upon mutual agreement if the Department agrees to mail or deliver copies of records.
- d. The Act provides that a requester may not file multiple requests for public records solely to avoid payment of fees. If the Department reasonably believes that one or more requesters are segregating a request into a series of requests to avoid payment of fees, the Department may aggregate such requests and charge the appropriate fees. The Department may consider the time period in which the requests have been made in its determination to aggregate related requests. The Department shall not aggregate multiple requests on unrelated subjects from one requester.

#### 11. Fee Estimate

When a custodian receives a public records request, the custodian will estimate the fee associated with the request and notify the requester in writing of the estimated fee. All fees associated with a public records request shall be paid in advance. Any overpayment will be refunded to the requester. If a person has an outstanding balance for prior public records requests with the Department, the outstanding balance must be paid in full before any subsequent public records will be provided to the person.

#### 12. Itemized Fee Statements

The Act requires that statements of fees shall be itemized to show the per page costs for copies, and hourly rates of employees and attorneys involved in responding to the request,



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and the actual time spent on the public records request. No lump sum costs shall be assigned to any public records request. (See Department Response to Public Records Request Form). The custodian will provide a copy of the itemized fee statement to the Director's office with notice that the request has been processed and answered.

#### 13. Fee Waivers

Under Idaho Code section 74-102(10(f)), the Department shall not charge for any cost or fees for copies or labor when the requester demonstrates that the requester's examination and/or copying of public records:

- a. Is likely to contribute significantly to the public's understanding of the operations or activities of the government;
- b. 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
- c. Will not occur if fees are charged because the requester has insufficient financial resources to pay such fees.
- d. The Department will evaluate a fee waiver request based on these requirements and the information provided by the requester. Requests for fee waivers will be reviewed on a case-by-case basis by the Director's office.
- e. The Department will consider the following factors in evaluating fee waiver requests:
  - 1) The extent to which the requester will receive an economic benefit by using the requested information;
  - 2) Whether the subject of the requested records concerns government operations or activities;
  - 3) Whether the requested records would contribute to the public's interest or understanding of those operations or activities;
  - 4) Whether the requester will disseminate the information to the public; and
  - 5) Whether the requested record is already in the public domain.

#### 14. Immunity

Under Idaho Code section 74-118, a public agency, public official, or custodian will not be liable for any loss or damage based upon the release of a public record governed by the Act if the agency, official or custodian acted in good faith in attempting to comply with the provisions of the Act.