

PURPOSE

1. The purpose of this public records request policy is to formalize a process for handling public records requests (PRR's) received by the Idaho Department of Finance (DOF). Requests for public records from the files of the State of Idaho, Department of Finance (DOF) or for inspection of such records are subject to the requirements of the Idaho Public Records Law, Idaho Code §§ 74-101 through 74-126, and other laws specifically addressing records maintained by the DOF. The intent of the law is that all records maintained by public agencies are open to the public for inspections and copying at all reasonable times unless the information is specifically exempted from disclosure by law.

STATEMENT OF POLICY

Requests Must Be in Writing:

2. Requests for copies of public records from the files of the DOF or for inspection of such records must be made in writing. A person making such a request (Requester) must provide his or her name, mailing address, e-mail address, and a current telephone number. [I.C. § 74-102(4)] Providing a current e-mail address will facilitate communications between the DOF and the Requester concerning the public records request.
3. A request for public records submitted to the DOF by electronic mail or facsimile shall be deemed to be a written request. A public records request submitted by e-mail should be directed to: finance@finance.idaho.gov. A faxed public records request should be directed to: (208) 332-8097. Requests made by mail should be directed to:

Idaho Department of Finance
Attn: Public Records Coordinator
P.O. Box 83720
Boise, Idaho 83720-0031

Public records requests submitted to the DOF in any other way may cause delay in response time by the DOF.

Entering the Request

4. All PRR's received by a DOF official or employee shall be forwarded to the designated PRR coordinator promptly upon receipt. Requests should be hand delivered to the PRR coordinator, not put in their in basket. The PRR coordinator will ensure that the appropriate bureau is assigned to the request and that each request is responded to by DOF.
5. If a PRR involves more than one bureau, the PRR coordinator shall coordinate responses from all involved parties. Response letters shall note that additional public records may be presented by another DOF bureau.

Response Time

6. A public records request shall be deemed to be received by the DOF on the date the DOF receives a written request whether in paper or electronic form. If the request is submitted electronically, it must be directed as set forth in paragraph 3 above, and the date of receipt shall be the date the electronic file is received by the DOF. If the request is submitted by fax, it must be directed as set forth in paragraph 3 above, and the date of receipt shall be the date the fax is received by the DOF.
7. After the DOF receives a request for public records as set forth in paragraph 5 above, it shall either grant or deny the request within three (3) working days of the date of the receipt of the request. If the DOF determines that a longer period of time is needed to locate or retrieve the public records requested, the DOF shall notify the Requester in writing that a longer period of time is needed, and that such records will be provided no later than ten (10) working days following receipt of the request. [I.C. § 74-103(1)]
8. If the DOF determines that existing electronic records requested by a Requester will first have to be converted to another electronic format by the DOF or by a third party and that such conversion cannot be completed within (10) ten working days, the DOF shall so notify the Requester in writing. In that event, the DOF shall provide the converted public records at a time mutually agreed upon between the DOF 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. [I.C. § 74-103(1)]

Scope of the Request

9. When a request is received that is broad or unclear, it is appropriate for the custodian or a DOF attorney to contact the requester to clarify the request. The custodian may explain what records are available and help identify the material that the requester is seeking. The custodian or DOF attorney will document the conversation and any changes to the original request. If the request is significantly altered by the requester as a result of the discussion, the requester will be asked to submit a new request.
10. DOF may provide 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(9), Idaho Code.
11. After receipt of a public records request, the DOF shall make no inquiry of the Requester, 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. [I.C. § 74-102(5)]
12. 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. [I.C. § 74-102(6)]
13. The DOF will not provide public information in a format not used by the DOF in the normal course of business, unless the DOF determines that special circumstances warrant doing so. Extra charges incurred by the DOF in preparing such public information in the new format may be charged to the Requester. Further, the DOF will not create a new document that does not already exist in its records in response to a public records request.

Requests Submitted by an Attorney

14. When DOF receives a PRR from an attorney or law office, review by the Office of the Attorney General (OAG) shall be sought before the request is filled or denied.

Communications to or from the Attorney General's Office

15. If a PRR potentially encompasses any communications to or from the OAG, review by the OAG shall be sought before the request is filled or denied.

Active Enforcement Actions and Litigation

16. When DOF receives a PRR to inspect or take a copy of materials that consist of investigatory records related to an ongoing or pending enforcement action or litigation, review by the OAG shall be sought before the request is filled or denied. Investigatory records include those records that, if disclosed, could compromise an ongoing investigation or enforcement action or reveal a confidential source (including complainants who wish to be anonymous).
17. If a DOF official or employee knows that a particular matter within the scope of a PRR has been the source of litigation or enforcement action in the past, they shall contact the OAG to ensure that such matters are no longer active before the request is filled or denied.

Personnel Information

18. When DOF receives a PRR for personnel information, it shall be routed through human resources before the request is filled or denied.

Exemptions from Disclosure

19. Information in public records may be exempt from disclosure under the specific provisions in Idaho Code Sections 74-104 through 74-111. Public records may contain both exempt and non-exempt information. DOF is responsible for redacting the exempt information in a record and supplying the non-exempt record to the person making a request. Idaho Public Records law

prohibits denying access based upon the fact that the record contains both exempt and non-exempt information.

20. 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.

Denial of Public Records Requests

21. Certain records may be withheld from disclosure due to their confidential nature. The exceptions to public records disclosure are described in the Idaho Public Records Law.
22. If the DOF denies the Requester's request for examination or copying of public records or denies the request in part, the DOF shall notify the Requester in writing of the denial or partial denial of the request for the public records. [I.C. § 74-103(3)]
23. The notice of denial or partial denial shall state that a Deputy Attorney General reviewed the request or that the DOF has had an opportunity to consult with an attorney regarding the request and has chosen not to do so. The notice of denial or partial denial shall also indicate the statutory authority for the denial and indicate clearly the Requester's right to contest the denial or partial denial. [I.C. § 74-103(4)]
24. If the DOF fails to respond to a public records request that has been properly made, the request shall be deemed to be denied within ten (10) working days following receipt of the request by the DOF. [Idaho Code § 74-103(2)]

25. If the DOF deems that disclosure of certain information included in a public record would constitute an unwarranted invasion of personal privacy, it will redact such information from the public record before it will provide a copy of such record in response to a public records request.

Requester's Rights if Request is Denied or Partially Denied

26. The sole remedy for a person aggrieved by the denial of a request for disclosure is to institute proceedings in the district court of Ada County to compel the DOF to make the information available for public inspection. The petition contesting the DOF's denial 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 DOF. The time for responsive pleadings and for hearings in such proceedings shall be set by the court at the earliest possible time, but in no event beyond twenty-eight (28) calendar days from the date of the filing. [I.C. § 74-115(1)]
27. The Department 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. [I.C. § 74-115(2)]

Copying of Records

28. Where the number of copies of public records that will be provided by the DOF in response to a public records request is less than one hundred (100) pages, the DOF will copy the public records and mail them to the Requester. If the number of public records to be provided exceeds one hundred (100) pages, the DOF may contact the Requester and arrange an appointment for the Requester to visit the DOF's offices in Boise, Idaho to examine the public records and determine which public records he or she wishes to be copied. Such appointments will generally occur during the regular office hours of the DOF, which are Monday through Friday from 8:00 a.m. to 5:00 p.m., except for state holidays.
29. Should the appointment be scheduled for a time after regular DOF office hours due to special circumstances, a person shall be designated by the DOF to represent the DOF during such examination, and shall be paid reasonable compensation for such service by the DOF out of funds provided in advance by the Requester. [I.C. § 74-102(8)]

Copying Fee Schedule

30. 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 for public records, or for copying the first one hundred (100) pages of paper records that are requested. [I.C. § 74-102 (10)(a)]
31. Under Idaho Code Section 74-102(10)(c) the DOF has established a copying fee schedule concerning public records requests. The fee may not exceed the actual cost to the DOF of copying such records. The actual cost shall generally not include any administrative or labor costs resulting from locating and providing a copy of the public record; however, the DOF may

establish a fee to recover the actual labor cost associated with locating and copying public records, if:

- (a) The request is for more than one hundred (100) pages of paper records; or
- (b) The request includes records from which nonpublic information must be deleted; or
- (c) The actual labor associated with responding to requests for public records in compliance with the provisions of this chapter exceeds two (2) person hours. [I.C. § 74-102(10)(b)]

32. The DOF may request advance payment of the cost of copying public records. [I.C. § 74-102(12)]

33. In providing a duplicate of a computer tape, computer disc, microfilm or similar or analogous record system containing public information, the DOF may charge a fee, uniform to all persons that does not exceed the sum of the following:

- (a) The DOF's direct cost of copying the public information in that form;
- (b) The standard cost, if any, of selling the same public information in the form of a publication;
- (c) 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. [I.C. § 74-102(10)(d)]

34. If the DOF determines that circumstances reasonably require, it may use a commercial copying service to photocopy public records in response to a public records request. In such cases, the requester shall be responsible for the amounts charged by the commercial copying service if the cost is \$5.00 or more. The DOF will make reasonable efforts to inform the Requester beforehand that it will use a commercial copying service and provide a reasonable estimate of the anticipated costs to the Requester. The Requester may be required to pay such charges prior to the DOF arranging for the commercial copying service to copy the public records responsive to the request.

35. If the DOF has reason to believe that a Requester or group of Requesters is attempting to break down a large request for copies of public records into a series of smaller requests for the purpose of avoiding the imposition of charges, the DOF will aggregate such requests for the purpose of determining appropriate charges and will impose charges accordingly.

36. When copies or printouts are duplexed, each side of a sheet of paper on which print appears shall be treated as a separate copy for the purposes of charges due.

37. Idaho sales tax shall be assessed to the Requester on all charges payable to the DOF for copying fees and other costs incurred by the DOF in responding to a public records request.

38. A Requester is not responsible for payment of charges incurred by such request, if the Requester demonstrates that the requester's examination and/or copying of public records:

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- 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.
39. Any request to waive otherwise chargeable costs and fees made by a Requester must be supported by the demonstration referenced in I.C. § 74-102(10)(f).
40. DOF may seek additional information from a requester to demonstrate qualification for a fee waiver.
41. All requests for a waiver shall be evaluated on a case-by-case basis. Any response to a request for a fee waiver shall be reviewed by the OAG.
42. The DOF fee schedule will not exceed reasonable labor costs necessarily incurred in responding to a public records request. Fees, if charged, shall reflect the personnel and quantity of time that are reasonably necessary to process the request. Fees for labor costs shall be charged at the per hour pay rate of the lowest paid employee that is necessary and qualified to process the request. If a request requires redactions to be made by an attorney, the rate charges shall be no more than the per hour rate of the lowest paid attorney on staff.

Shipping and Mailing Fees

43. Where copies of public records provided by the DOF in response to a public records request are mailed or shipped to the Requester and the cost is \$5.00 or more for such mailing or shipping, the Requester shall be responsible for reimbursement to the DOF of the actual mailing or shipping cost incurred by the DOF. The DOF may require that the Requester pay such charges in advance of the mailing or shipping of the public records responsive to the request.

Advance Notice to Requester of Charges due for Public Records

44. When it appears to the DOF that its response to a public records request will subject the Requester to charges of \$5.00 or more, the DOF may provide a reasonable estimate of the expected charges to the Requester prior to preparing the public records to be provided to the Requester. Once such reasonable estimate has been provided to the Requester, the DOF may require prepayment by the Requester prior to preparation of the public records.
45. The failure of the DOF to provide a reasonable estimate to the Requester and to require prepayment of the charges due, do not excuse the Requester from the responsibility to pay to the DOF the appropriate charges after the response to the request for public records has been provided.

Billing and Fee Collection

46. Statements of fees by the Department 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. § 74-102(10)(g)
47. When a fee is charged for copying or printing public records and/or an associate DOF out-of-pocket cost, the requestor shall be sent an itemized invoice conforming to the requirements of the above Idaho Code and shall not be billed for any lump sum costs. The requester has 30 days to remit payment to DOF.
48. If a requester has not remitted payment within 30 days and remains delinquent on such payment, DOF will disclose and allow examination of the requested records but will not undertake any actions that would result in additional fees under the fee schedule until the overdue payment has been remitted.

Penalty

49. Under Idaho Code Section 74-117, a court may assess a civil penalty of up to \$1,000 if a public official has deliberately and in bad faith improperly refused a legitimate request for inspection or copy of public records.

Immunity

50. 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 public agency, public official, or custodian acted in good faith in attempting to comply with the provisions of the Act.

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Appendix A. DOF Public Records Request Fee Schedule

Idaho Code §74-102 authorizes DOF to establish fees to recover actual costs associated with locating and copying documents in responding to a public records request (PRR). 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 PRR or for copying the first one hundred (100) pages of public records requested. DOF has established fees to recover the actual costs associated with locating and copying documents if:

- The request is for more than one hundred (100) pages of paper records.
- The request includes records from which nonpublic information must be deleted.
- The actual labor associated with responding to the request exceeds two (2) person hours.

Pursuant to Idaho Code §74-102, DOF established the following Public Records Request Fee Schedule:

Idaho Code Reference	Type of Work Involved	Charges
74-102(10)(a)	Photocopying less than 100 pages on standard 8 ½ x 11 paper where no redacting of confidential information is required	No charge
74-102 (10)(c),(e)	Photocopying on paper other than standard 8 ½ x 11 paper (e.g. blueprints, maps, etc.)	Actual copying cost & labor rate to be determined at time request is submitted if applicable,
74-102 (10)(b),(c),(e)	Photocopying more than 100 pages on standard 8 ½ x 11 paper	.10 per page (black & white) \$.50 per page (color) & labor rate to be determined at time request is submitted, if applicable
74-102 (10)(c)	Retrieval of archived information	Out of pocket cost & labor rate to be determined at time request is submitted, if applicable
74-102 (10)(b),(c),(e)	Request includes records from which non-public information must be redacted	\$.10 per page (black & white) & labor rate to be determined at time request is submitted, if applicable
74-102 (10)(b),(c),(e)	Where actual labor associated with locating and photocopying/printing hard copy and/or electronic documents equals or exceeds two (2) person hours	\$.10 per page (black & white) & labor rate to be determined at time request is submitted, if applicable
74-102 (10)(c)	Where DOF incurs out of pocket costs required for providing the requested records	Actual out of pocket cost
74-102 (10)(d)(ii)	Where DOF has a standard charge for selling information in the form of a publication	Standard cost for selling information in the form of the publication
74-102 (10)(d),(i)	Transfer of documentation in the form of computer tapes, discs, microfilm, or similar record media	Actual copying cost & labor rate to be determined at time request is submitted, if applicable.
74-102 (10)(c)	Where copies of records are mailed or shipped	Actual cost if greater than \$5

- Copies or printouts will be duplexed whenever possible and treated as a single copy for the purpose of fee assessment.
- Idaho sales tax shall be assessed on copy fees and DOF's out-of-pocket costs.

- If DOF has reason to believe that a requester or group of requesters is attempting to break down a request into a series of requests for the purpose of avoiding fee assessment, DOF will aggregate such requests to determine the total fee and charge accordingly.