

PURPOSE

1. The purpose of this public records request policy is to formalize a process for handling public records requests ("Requests") received by the Idaho Department of Finance ("Department"). Requests for public records from the files of the Department or for inspection of such records are subject to the requirements of the Idaho Public Records Law, Idaho Code §§ 74-101 through 74-127, and other laws specifically addressing records maintained by the Department. 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. A request for public records must be submitted in writing and must specifically describe the subject matter and records requested, including a specific date range for when the records were created. The Request must be sufficiently detailed to enable the Custodian to locate such records with reasonable effort.

A Request must provide the requester's name, mailing address, email address, telephone number, and if the Request is made by an Idaho resident, it must also include the below written declaration attesting under oath that the requester is a resident of this state:

I declare under penalty of perjury that I am a resident as defined in Idaho Code § 74-101(15). Further, I declare under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

Signature

Date

Requests made by mail should be directed to:

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

3. A Requester may submit a Request electronically by e-mail or facsimile. Such Requests submitted by e-mail should be directed to: finance@finance.idaho.gov. Any such Requests submitted by fax should be directed to: (208) 332-8099. All such requests submitted by e-mail or facsimile must include the same information as required in paragraph 2 above.
4. Requests submitted in any other way may interfere with or delay the Department's response

time.

Custodian and Location of Records

5. As defined in Idaho Code § 74-101(3), the Custodians for the Department of Finance are the Bureau Chiefs of the three Department bureaus and the Department's Deputy Director:
 - a) The Consumer Finance Bureau Chief has responsibility for maintaining records related to mortgage activities, consumer lending, and credit services.
 - b) The Financial Institutions Bureau Chief has responsibility for maintaining records related to state-chartered financial institutions.
 - c) The Securities Bureau Chief has responsibility for maintaining records related to securities and investments, escrow activities, money services businesses, and endowment care cemeteries.
 - d) The Deputy Director acts as the Department Public Records Coordinator and facilitates the Department's response to public records requests.

Alternate or additional Department personnel may be designated as a Custodian to fulfill the purposes of this policy.

6. The records of the Department are physically maintained at the Department's business location at 11341 West Chinden Blvd. Building 4, Floor 3, Boise, Idaho, 83714. Historical and archival records of the Department may be stored from time to time at secure remote locations.

Treatment of a Request

7. All Requests received by the Department shall be forwarded to the appropriate Custodian promptly upon receipt. In the event a Request is sent to a Custodian via email, the employee sending the Request must confirm the Custodian's receipt of the request. The Custodian receiving a Request must route it to any other Custodians as appropriate and shall ensure that the Request is responded to by the Department.

Response Time

8. The Department deems a Request as received on the date it receives the Request in writing, whether in paper or electronic form. If the Department receives a Request electronically, the Request should be directed to the address or fax number as set forth in paragraph 3 above, and the date of receipt shall be the date the electronic file or fax is received by the Department. If a request is submitted electronically to an absent Department employee's email address without also directing a copy of the Request to the address or fax number set forth in paragraph 3, then the time for responding to the request is not deemed to start while the employee is

absent.

9.

- a) **Requests Received from a Resident of this State:** After receiving a Request as set forth in paragraphs 2 and 3 above from a resident of this state, as defined by Idaho Code § 74-101(15), the Department shall grant or deny the request within three (3) working days of receiving the request.

If the Department determines that it needs a longer period of time to locate or retrieve the records requested, the Department shall notify the Requester in writing that a longer period of time is needed. Such records will be provided no later than ten (10) working days following receipt of the request.

- b) **Requests Received from a Non-Resident of this State:** After receiving a Request as set forth in paragraphs 2 and 3 above from a person who does not meet the definition of a resident of this state, as defined by Idaho Code § 74-101(15), the Department shall grant or deny the request within thirty (30) working days.

If the Department determines that it needs a longer period of time to locate or retrieve the records requested, the Department shall notify the Requester in writing that a longer period is needed. Such records will be provided no later than forty-five (45) days following a request from a non-resident, except that a response to a request to examine or copy public records from a person who is not a resident and not employed by a resident may be further extended for unusual or exigent circumstances. In the case where unusual or exigent circumstances exist, an explanation of such circumstances shall be provided to the requester.

- c) When responding to a Request, if the Department determines that electronic records must be converted to another electronic format, and this process cannot be completed within the time allotted, the Department shall notify the Requester in writing. In that event, the Department shall provide the converted public records at a time mutually agreed upon between the Department and the Requester, with 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. Idaho Code § 74-103(2).

Scope of the Request

10. When the Department receives a broad or unclear request, the Custodian or a Deputy Attorney General assigned to the Department ("Department Attorney") may contact the Requester to narrow or clarify the request. The Custodian or Department Attorney may explain what records are available and help identify the material that the Requester is seeking. The Custodian or Department 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 Department will ask the Requester to submit a new request.

11. When the response to the request is likely to be voluminous or require payment as provided in Idaho Code §74-102(10), the Department may provide information to help the Requester narrow the scope of the request or to help the Requester make the request more specific. Idaho Code § 74-102(9).
12. After receipt of a Request, the Department may inquire of the Requester:
 - a) To verify the identity of the Requester in accordance with Idaho Code § 74-113.
 - b) To ensure that the requested record or information will not be used for purposes of a mailing or telephone list prohibited by Idaho Code § 74-120, or as otherwise prohibited by law.
 - c) As required for purposes of protecting personal information from disclosure under Chapter 2, title 49, Idaho Code and federal law. Idaho Code § 74-102(5).
13. The Custodian shall not review, examine or scrutinize any copy, photograph or memoranda in the possession of a Requester and shall extend to the person all reasonable comfort and facility for the full exercise of the right granted under this act. Idaho Code § 74-102(6).
14. The Department will not provide public information in a format not used by the Department in the normal course of business. Extra charges incurred by the Department in preparing public information in a new format may be charged to the Requester. Further, the Department will not create a new document that does not already exist in its records in response to a public records request.

Type of Records

15. The Department has three Bureaus. The Consumer Finance Bureau, the Financial Institutions Bureau, and the Securities Bureau. The Department keeps and maintains records that relate to the administration by these Bureaus. In compliance with Idaho Code § 74-119, the following are guidelines on the subject matter of the Department's records, organized by Bureau.
16. The Consumer Finance Bureau maintains regulatory and licensing records related to mortgage lender, brokers, and loan originators, collection agencies, credit/debt counselors, credit repair organizations, debt buyers, consumer lenders, payday lenders, and title lenders. Records include license applications, examination reports, general correspondence, consumer complaints, investigative reports, and administrative and judicial enforcement actions.
17. The Financial Institutions Bureau maintains regulatory and chartering records related to state-chartered commercial banks, savings banks, credit unions, bank holding companies, trust companies and business and industrial development corporations. Records include

examination reports, call reports, general correspondence, consumer complaints, investigative reports, and administrative and judicial enforcement actions.

18. The Securities Bureau maintains regulatory records related to the securities industry, including the sale of investment securities (e.g. stocks and bonds) and the records of individuals and entities (e.g. stockbrokers, broker-dealers, investment advisers, and companies raising capital) that offer investments to the public or that advise the public regarding investments. The Bureau also maintains records related to escrow agencies, money services businesses, and endowment care cemeteries. The types of records maintained by the Bureau include audit and inspection reports, securities registration statements, examination reports, licensing applications, notice filings, general correspondence, consumer complaints, investigative reports, and administrative and judicial enforcement actions.

Common Exemptions

19. While many of the Department's records are available to the public, certain records may be withheld from disclosure due to specific exemptions to public disclosure as defined in the Public Records Act. The following examples include some, but not all, exemptions that may apply to Department records. Most records of a personal nature are exempt pursuant to Idaho Code § 74-106. Information obtained as part of an inquiry into a person's fitness to be granted or retain a license is exempt pursuant to Idaho Code § 74-106(9). Examination, operating, or condition reports, and all documents related thereto, are exempt pursuant to Idaho Code § 74-107(5). All confidential communications, which are communications between a bank, bank holding company, trust company, savings and loan association or credit union and the Department that is not designed or intended for disclosure to any other party, are exempt pursuant to Idaho Code §§ 74-104(1)(a) and 26-1111(3). Investigative reports are exempt pursuant to Idaho Code § 74-124 if the production of them would interfere with any enforcement proceeding, deprive a person of a right to impartial adjudications, constitute an unwarranted invasion of personal privacy, or disclose the identity of a confidential source.
20. The following exemptions apply to the Uniform Securities Act pursuant to Idaho Code § 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-*

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- 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.*

Requests from Attorneys

21. When the Department receives a Request from an attorney or law office, the Department should ask the Office of the Attorney General (OAG), through a Department Attorney, to review the Request before it is filled or denied.

Communications to or from the Attorney General's Office

22. When the Department receives a Request that potentially encompasses any communications to or from the OAG, the Department should ask the OAG, through a Department Attorney, to review the Request before it is filled or denied.

Active Enforcement Actions and Litigation

23. When the Department receives a Request seeking to inspect or take a copy of materials that consist of investigatory records related to an ongoing or pending enforcement action or litigation, the Department should ask the OAG, through a Department Attorney, to review the Request before it is filled or denied.
24. If a Department official or employee knows that a particular matter within the scope of a Request has been the source of litigation or enforcement action in the past, the Department should ask the OAG, through a Department Attorney, to review the Request before it is filled or denied.

Personnel Information

25. When Department receives a Request for personnel information, the Department should route the request through human resources before the request is filled or denied.

Denial of Public Records Requests

26. The Department may withhold certain records from disclosure due to their confidential nature. The exemptions to public records disclosure are described in the Idaho Public Records Law, and some of the more common exceptions are set forth in paragraphs 19 and 20 above.
27. If the Department denies a Request for examination or copying of public records, in full or in part, the Department shall notify the Requester in writing of the denial or partial denial of the request for the public records. Idaho Code § 74-103(4).
28. If the Department believes that a Request should be denied, the Department may ask the OAG, through a Department Attorney, to review the Request before responding to the Requester.
29. The Department's notice of denial or partial denial shall state that a Deputy Attorney General reviewed the request or that the Department 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 clearly indicate the Requester's right to contest the denial or partial denial. Idaho Code § 74-103(5).
30. If the Department 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 Department. Idaho Code § 74-103(3).
31. If the Department determines that certain information included in a public record is exempt, it will redact such information from the public record prior to providing a copy of such record in response to a Request.

Requester's Rights if Request is Denied or Partially Denied

32. The sole remedy for a Requester aggrieved by the denial of a Request is to institute proceedings in the Ada County district court to compel the Department to make the information available for public inspection. The petition contesting the Department'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 Department. 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. Idaho Code § 74-115(1).
33. 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. Idaho Code § 74-115(2).

Copying of Records

34. For any response of less than one hundred (100) pages of records, the Department will copy the public records and mail them or otherwise provide them to the Requester. For any response exceeding one hundred (100) pages of records, the Department may contact the Requester and arrange for the Requester to visit the Department's offices in Boise, Idaho, to examine the public records and determine which public records the Requester wishes to be copied. Such appointments will generally occur during the regular office hours of the Department, which are Monday through Friday from 8:00 a.m. to 5:00 p.m., except for state holidays.

Copying Fee Schedule

35. Unless otherwise required by Idaho law, no fee shall be charged to a resident of this state 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. Requests made by non-residents are subject to all labor and copying charges. Idaho Code § 74-102(10)(a).
36. As allowed by Idaho Code § 74-102(10)(c), the Department has established a copying fee schedule concerning public records requests. The fee may not exceed the actual cost to the Department 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 Department may establish a fee to recover the actual labor cost associated with locating and copying public records, if:
- (a) The request is made from a non-resident;
 - (b) The request from a resident is for more than one hundred (100) pages of paper records;
 - (c) The request includes records from which nonpublic information must be redacted;
 - (d) The actual labor associated with responding to a request made by a resident of this state for public records exceeds two (2) person hours. Idaho Code § 74-102(10)(b).
37. The Department may request advance payment of the cost of copying public records. Idaho Code § 74-102(12).
38. In providing a duplicate of a computer tape, computer disc, microfilm or similar or analogous record system containing public information, the Department may charge a fee, uniform to all persons that does not exceed the sum of the following:
- (a) The Department'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. Idaho Code § 74-102(10)(d).

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39. If the Department 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 Department 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 Department arranging for the commercial copying service to copy the public records responsive to the request.
40. If the Department 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 Department will aggregate such requests for the purpose of determining appropriate charges and will impose charges accordingly.
41. 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.
42. Idaho sales tax shall be assessed to the Requester on all charges payable to the Department for copying fees and other costs incurred by the Department in responding to a public records request.
43. 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:
- 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.
44. Any request to waive otherwise chargeable costs and fees made by a Requester must be supported by the demonstration referenced in Idaho Code § 74-102(10)(f).
45. The Department may seek additional information from a Requester to demonstrate qualification for a fee waiver.
46. 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, through a Department Attorney.
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47. The Department fee schedule will not exceed reasonable labor costs necessarily incurred in responding to a 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

48. Where copies of public records provided by the Department in response to a 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 Department of the actual mailing or shipping cost incurred by the Department. The Department may require that the Requester pay such charges in advance of mailing or shipping the records.

Advance Notice to Requester of Charges due for Public Records

49. When it appears to the Department that its response to a Request will subject the Requester to charges of \$5.00 or more, the Department 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 Department may require prepayment by the Requester prior to preparation of the public records.
50. The failure of the Department to provide a reasonable estimate to the Requester and to require prepayment of the charges due, does not excuse the Requester from the responsibility to pay to the Department the appropriate charges after the response to the Request has been provided.

Billing and Fee Collection

51. 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. Idaho Code § 74-102(10)(h).
52. When a fee is charged for copying or printing public records and/or an associated Department out-of-pocket cost, the Requester shall be sent an itemized invoice conforming to the requirements of the Idaho Code § 74-102(10)(h) and shall not be billed for any lump sum costs. The Requester has 30 days to remit payment to the Department.
53. If a Requester has not remitted payment within 30 days and remains delinquent on such payment, the Department 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

54. Under Idaho Code § 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.

Immunity

55. Under Idaho Code § 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. Department Public Records Request Fee Schedule

Idaho Code §74-102 authorizes the Department to establish fees to recover actual costs associated with locating and copying documents in responding to a public records request ("Request"). 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 or for copying the first one hundred (100) pages of public records requested. The Department 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, the Department established the following Public Records Request Fee Schedule:

Idaho Code Reference	Type of Work Involved	Charges
74-102(10)(a)	Two hours or less of labor necessary to respond to a Request.	<u>Resident</u> - No charge <u>Non-Resident</u> - Actual labor rate to be determined at time request is submitted if applicable
74-102(10)(a)	Photocopying less than 100 pages on standard 8 ½ x 11 paper where no redacting of confidential information is required	<u>Resident</u> - No charge <u>Non-Resident</u> - Actual copying cost & labor rate to be determined at time request is submitted if applicable
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) (counting only the pages in excess of 100) & 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 Department incurs out of pocket costs required for providing the requested records	Actual out of pocket cost
74-102(10)(d)(ii)	Where Department 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, disks, 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 Department's out-of-pocket costs.
- If Department 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, Department will aggregate such requests to determine the total fee and charge accordingly.