

Idaho Public Records Act

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Quick Links

The Idaho Public Records Act

<https://legislature.idaho.gov/statutesrules/idstat/Title74/T74CH1/>



The screenshot shows the official website of the Idaho Legislature. The header includes the text "The official website of the Idaho Legislature" and "STATE OF IDAHO WHO'S MY CURRENT LEGISLATOR?". The navigation menu includes "SENATE", "HOUSE", "COMMITTEES", "LEGISLATORS", "LAWS/RULES", "LEGISLATIVE SESSIONS", and "LIVE AUDIO/VIDEO STREAMING". The breadcrumb trail reads "HOME | IDAHO LAWS & RULES | IDAHO STATUTES | TITLE 74 | 27". The main heading is "Idaho Statutes" with a "Print Friendly" button. A notice states "Idaho Statutes are updated to the web July 1 following the legislative session." The content area displays "TITLE 74 TRANSPARENT AND ETHICAL GOVERNMENT" and "CHAPTER 1 PUBLIC RECORDS ACT" with a "Download Entire Chapter (PDF)" link. A list of sections follows:

- 74-101 DEFINITIONS.
- 74-102 PUBLIC RECORDS — RIGHT TO EXAMINE.
- 74-103 REQUEST AND RESPONSE TO REQUEST FOR EXAMINATION OF PUBLIC RECORDS.
- 74-104 RECORDS EXEMPT FROM DISCLOSURE — EXEMPTIONS IN FEDERAL OR STATE LAW — COURT FILES OF JUDICIAL PROCEEDINGS.
- 74-105 RECORDS EXEMPT FROM DISCLOSURE — LAW ENFORCEMENT RECORDS, INVESTIGATORY RECORDS OF AGENCIES, EVACUATION AND EMERGENCY RESPONSE PLANS, WORKER'S COMPENSATION.
- 74-106 RECORDS EXEMPT FROM DISCLOSURE — PERSONNEL RECORDS, PERSONAL INFORMATION, HEALTH RECORDS, PROFESSIONAL DISCIPLINE.
- 74-107 RECORDS EXEMPT FROM DISCLOSURE — TRADE SECRETS, PRODUCTION RECORDS, APPRAISALS, BIDS, PROPRIETARY INFORMATION, TAX COMMISSION, UNCLAIMED PROPERTY, PETROLEUM CLEAN WATER TRUST FUND.
- 74-108 EXEMPTIONS FROM DISCLOSURE — ARCHAEOLOGICAL, ENDANGERED SPECIES, LIBRARIES, LICENSING EXAMS.
- 74-109 RECORDS EXEMPT FROM DISCLOSURE — DRAFT LEGISLATION, RESEARCH, PERSONAL COMMUNICATIONS, PERSONALLY IDENTIFYING INFORMATION, WORK PAPERS, AND DRAFT REDISTRICTING PLANS.

Your Desk Reference

Idaho Public Records Law
Manual

<https://www.ag.idaho.gov/content/uploads/2018/04/PublicRecordsLaw.pdf>



Office of the
Attorney General

Idaho Public Records Law Manual

Idaho Code §§ 74-101 through 74-127



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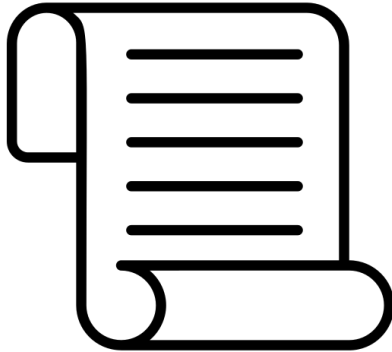
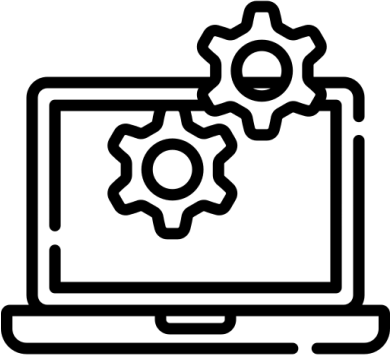
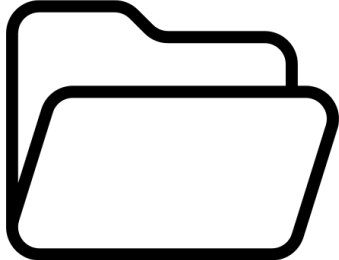
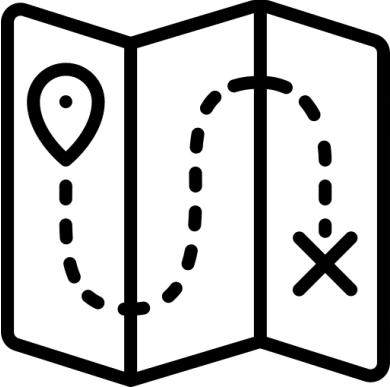
What is a Public Record (§74-101)?

- "Public record" includes, but is not limited to, any writing containing information relating to the conduct or administration of the public's business.
- "Writing includes ... every means of recording including letters, words, pictures, sounds, or symbols ...

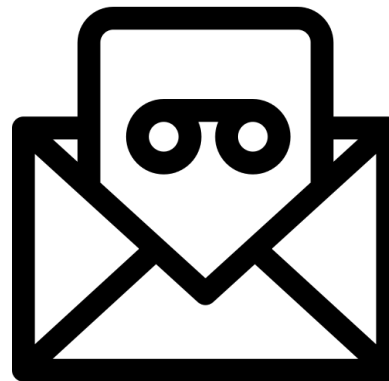
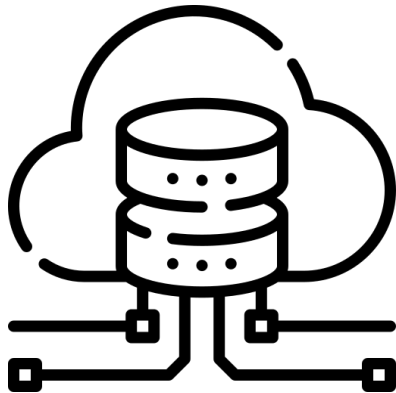
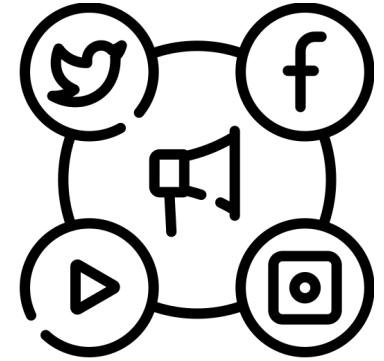
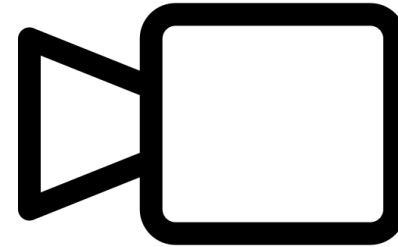
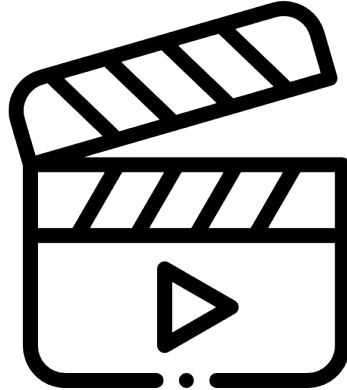
Records Exempt from Disclosure

- Certain judicial proceedings ([§74-104](#))
- Law enforcement investigatory records ([§75-105](#))
- Records of juveniles ([§75-105](#))
- Records related to cybersecurity programs and devices ([§75-105](#))
- Personnel records ([§74-106](#))
- Trade secrets ([§74-107](#))
- Appraisal records prior to acquisition by a county ([§74-107](#))
- Medical records ([§74-106](#))
- Records related to claims or potential claims against the county ([§74-107](#))
- Attorney client records ([§74-104](#))

Traditional Records



Digital Records



Types of Digital Records

- Vehicle GPS records
- Body camera and county security camera footage
- County related audio recording
- Texts, tweets, and voicemails
- Photos stored in the cloud
- Audio or video recordings of meetings
- Documents and files stored in the cloud

Digital Records Advice

- Information on county technology is usually public
- If it creates liability for the county, it's probably a public record
- Keep private/personal records separate from public records
 - Use county email for county business
 - Use personal email for personal business
 - Use county provided cell phone (if available) for county use
 - Use personal cell phone for personal use

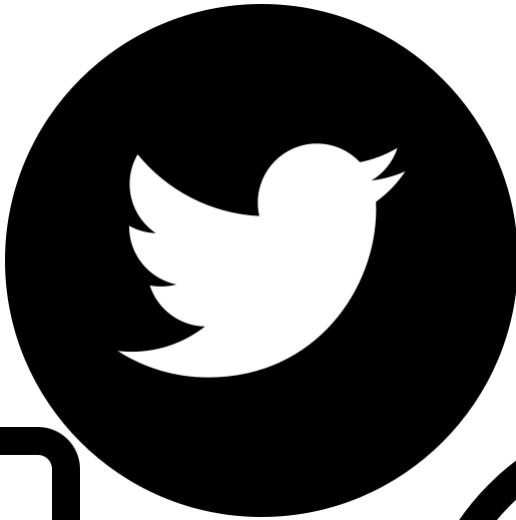
Challenges Managing Digital Records

- Capturing, storing, and archiving digital records
- Protecting confidential information
- Sorting information contained in digital records
- Redacting information exempt from disclosure
- Protecting confidential information
- Proper disposal of digital records
- Providing up to date guidance to employees

Challenges with Social Media

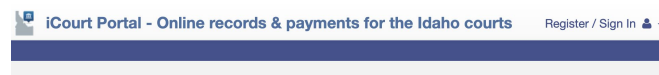
- Social media, public records, and the First Amendment
 - County social media
 - Campaign social media
 - Personal social media
 - Applies to Facebook, Twitter, Instagram, TikTok, webpages, blogs, forums (and whatever comes next)

The Lines are Blurrier than Ever



Digital Records Can Be Your Friend

Posting records on your website can reduce records requests



Notifications

Welcome! This website is available to provide the status of trial court cases in the State of Idaho. All Idaho counties are now available in this new court records system.

> [For all Court Records Requests, please contact the county court where the case resides. Click this link for the Directory.](#)

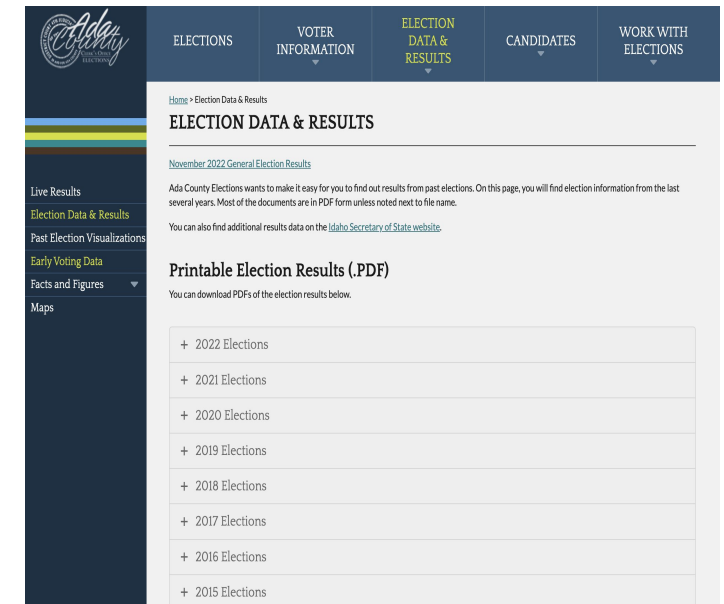
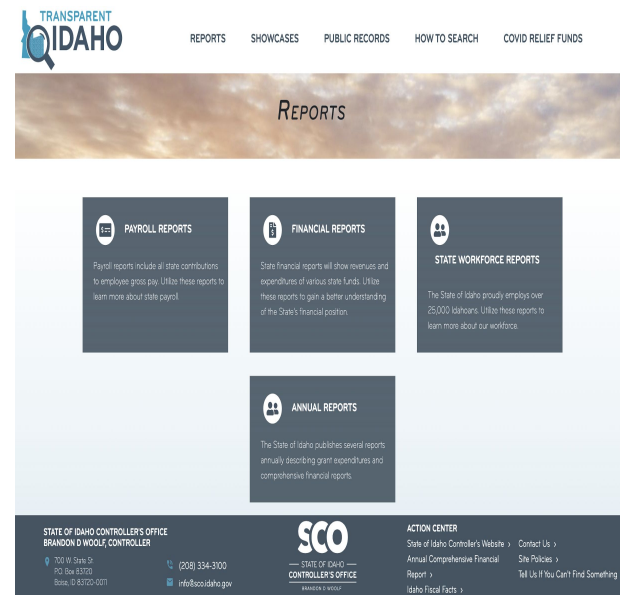
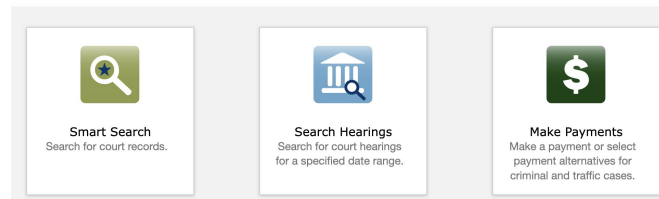
> [Learn more about Extended Access to Court Records.](#)

> [Click here for step-by-step instructions for making online Payments.](#)

By using this site, I agree to the [Terms & Conditions](#).

Sealed cases and certain information that is exempt from disclosure by court order or Idaho Court Administrative Rule 32 will NOT appear on the Portal. Please visit the county courthouse where the case was initiated for more information.

We recommend Microsoft Edge or Mozilla Firefox for an optimal experience when using iCourt Portal. Please also note, due to screen size users may experience difficulties making payments on mobile devices, we recommend using a desktop or laptop device to make payments.



Pop Quiz: Which of the following is not a Public Record?

Paper Documents

Emails

Text Messages

Facebook Post

Unrecorded Conversations

Tweet




Public's Right to Examine Records

"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."

(§74-102)



What should be in a fee schedule?

-  Per page copy charge for hard copies in excess of 100 pages
-  Per page copy charge for digital copies in excess of 100 pages
-  Policy on labor costs (hourly wage of lowest paid employee capable of processing the request)

Note: The actual fee charged CANNOT exceed the actual cost of processing the request

What Does It Really Mean?






The public has the right to read, view, watch, listen to, make notes, photograph, or copy records which are public and not otherwise exempt from disclosure

The Role of the BOCC

- The BOCC should designate a custodian of board records
- The name of the custodian should be published in an accessible place on the county website
- The BOCC should adopt a public records fee schedule
- The BOCC should adopt a records retention policy
- The BOCC should make the prosecuting attorney's office available to other elected officials for public records requests

What should be in a fee schedule?

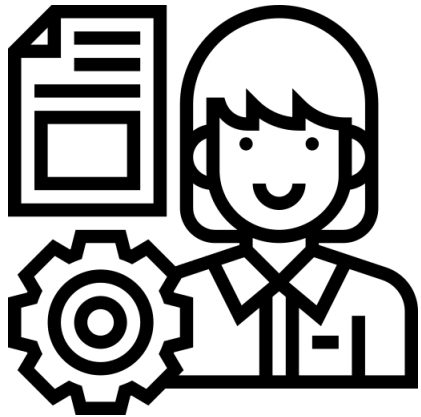
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-  Per page copy charge for digital copies in excess of 100 pages
-  Policy on labor costs (hourly wage of lowest paid employee capable of processing the request)

Note: The actual fee charged CANNOT exceed the actual cost of processing the request

The Role of County Officials

- Designate a custodian for public records for your office or department and publish the name on your website
- If the record is easily available, just provide the record
- If the records are not readily available, have the requester fill out a public records form
- **Always consult with your prosecuting attorney before denying a public records request!**

Designating a Custodian



"A public agency, elected official or independent body corporate and politic shall designate a custodian or custodians for all public records..."
(§74-102(16))

Limitations on Requests ([§74-102](#))

- Records which are exempt from disclosure cannot be released to the public
- You cannot ask the requester why they are requesting the record(s)
- You may only charge for records of the request if:
 - The BOCC has adopted a records request fee schedule
 - More than 100 page copies are requested
 - The record contains information which must be redacted
 - The actual labor of processing the request exceeds two hours
 - Charges for the request cannot exceed the labor costs of the wage of the lowest paid employee or attorney capable of processing the request

Processing a Request ([§74-103](#))

3 Days

- You have 3 working days to process a public records request

10 Days

- You may take up to 10 days if you notify the resident requester that it will take longer than 3 days to process the request, (up to 21 days for nonresident)

Deny

- If the request is not processed within 10 days, it is deemed to be denied (21 days for nonresident)

Notify

- You must notify the requester in writing of a denial or partial denial of a request, the denial must include your contact information and the notice to the requester of their right to appeal

Appeal

- Appeals are made in state court

Denials

A good faith denial:

- ✓ You consulted with your prosecuting attorney and he/she advised you to deny the request
- ✓ The information requested does not exist
- ✓ The record is exempt from disclosure

A bad faith denial:

- ⊘ You did not consult with your prosecuting attorney
- ⊘ Your prosecuting attorney advised you to release the record but you didn't want to
- ⊘ The record exists but you didn't want to release it
- ⊘ You don't like the person requesting the record

Always consult with your prosecuting attorney!



Violations

“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 fund.”

(§74-117)



1. What is the primary definition of a public record under the Idaho Public Records Act?

- A. Any writing that contains personal data of Idaho residents.
- B. Any record that a government office holds, regardless of its content.
- C. Any writing containing information related to the conduct or administration of public business.
- D. Any document that is deemed private or confidential.

2. Which of the following are not public records?

- A. Recordings of BOCC meetings
- B. Texts to employees regarding office hours
- C. Information in an employee personnel file
- D. Names, job titles, and duties of employees
- E. Wages of county employees

3. Which of the following constitutes a good faith denial of a records request?

- A. The denial was approved by the BOCC
- B. The individual submitting the request was rude to your staff
- C. You reviewed the Public Records Law Manual
- D. You don't think the record should be released to the public
- E. Your prosecuting attorney advised you to deny the records request

4. When processing a public records request, which scenario justifies charging a fee under Idaho law?

- A. The request involves fewer than 100 pages.
- B. The labor time exceeds two hours.
- C. The request is made by a nonresident.
- D. The document is readily available and does not need redaction.

5. What action must a custodian take if a public records request is denied?

- A. Verbally inform the requester.
- B. Ignore the request.
- C. Notify the requester in writing, providing contact information and appeal rights.
- D. Destroy the record immediately.

6. According to the Idaho Public Records Act, which of the following digital records is *most likely* considered a public record?

- A. Personal emails sent from a county official's private email address.
- B. Body camera footage from a county law enforcement officer.
- C. Text messages sent between family members of a county official.
- D. Personal social media posts.

7. What is the maximum amount a county can charge for labor costs when fulfilling a public records request?

- A. The wage of the highest-ranking employee in the office.
- B. An arbitrary amount as determined by the custodian.
- C. The hourly wage of the lowest-paid employee capable of fulfilling the request.
- D. A standard hourly wage set by the BOCC, regardless of the employee fulfilling the request.

8. What is the role of the BOCC in helping the public access records?

- A. Establishing and publishing a records fee schedule
- B. Denying requests that involve sensitive information
- C. Limiting the number of records requests
- D. Creating all county records personally

Final Checklist

Have Policies

- Use of technology
- Use of the internet, social media, etc.
- Off duty communications

Provide

- Training to county elected officials and employees
- Training to county advisory boards, committees, and commissions

Involve

- Your prosecuting attorney

Records Retention Basics



Why?

- Plan for the creation, use, retention, disposal, and preservation of records.
- A good records management system will make the county more efficient and productive. It will minimize costs, improve systems, and can protect counties from litigation.

Record Retention Schedule

Establish minimum retention periods and final disposition for various types of records:

- Sets minimum amount of time for records to be kept,
- Records may be inspected and/or copied unless specifically exempted by Idaho law,
- Each county is a little different and some types of records will likely need to be added or deleted from your schedule,
- The retention period only applies to the original copy of a record. Designate the official copy.

Classification of Records

- Permanent Record: 10 years
- Semi-Permanent Record: 5 years
- Temporary Record: 2 years
- Records can be retained in a digital medium
- Law Enforcement Media Recordings: 200 days
 - No evidentiary value (not affixed to building): 60 days
 - No evidentiary value (affixed to building): 14 days

31-871, Idaho Code



Records Management cont.

- Appraising records
 - Administrative
 - Legal
 - Fiscal
 - Historical
- Retention schedules
 - Created for the official or original records

Destruction of Records

- Resolution
 - Confidential records – shredded or burned
 - Non-confidential records – landfill
 - Archival – transferred to the State Archives
- Maintenance
 - Records involved in an ongoing audit, litigation, or investigation must not be destroyed until the matter is resolved.

Other Things to Consider

- Litigation hold procedure
- Disaster preparedness
- Identifying and protecting vital records
- Identifying risks