

# Idaho Public Records Act

**Benjamin Allen**

Shoshone County Prosecuting Attorney



# Idaho Public Records Act

**Most Up to Date Version:**

<https://legislature.idaho.gov/statutesrules/idstat/title74/t74ch1/>





# Idaho Public Records Act

## CHAPTER 1 PUBLIC RECORDS ACT

[Download Entire Chapter \(PDF\)](#)

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Office of the  
Attorney General

## Idaho Public Records Law Manual

Idaho Code §§ 74-101 through 74-127



**JANUARY 2023**

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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.

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# Heart of the Public Records Act

I.C. §74-102. PUBLIC RECORDS — RIGHT TO EXAMINE.  
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.



# 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"** means every recording including letters, words, pictures, sounds, video/film, or symbols.

# Which of the following is not a Public Record?

Meeting Minutes

Deleted Emails

Text  
Messages

Facebook  
Posts

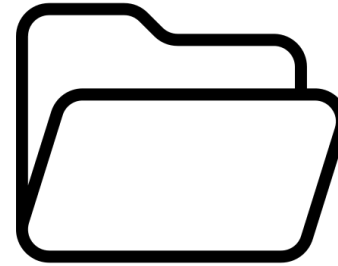
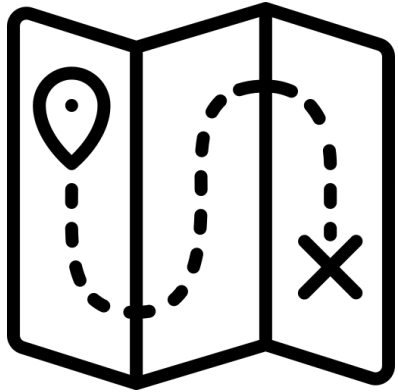
Conversations  
over Coffee

YouTube Video  
Comments

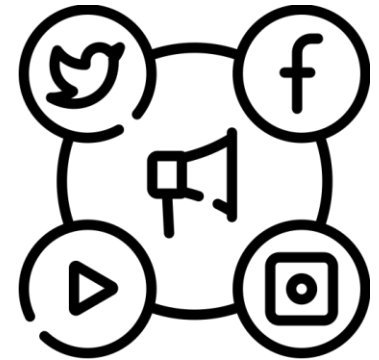
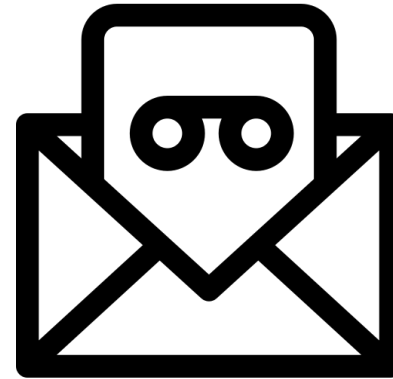
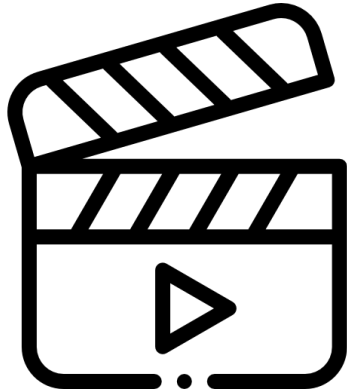
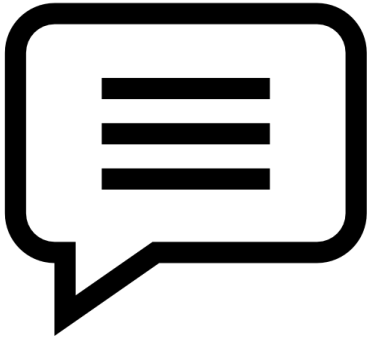
# Which of the following is not a Public Record?

Conversations  
over Coffee

# Traditional Records



# Digital Records





# Digital Records Advice

- ☐ Information on county technology is usually public
- ☐ If it creates liability for the county, its 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
- ☐ Proper disposal of digital records
- ☐ Providing up to date guidance to employees

# Challenges with Social Media



- ☐ County social media
- ☐ Campaign social media
- ☐ Personal social media
- ☐ “Accomplice” social media
- ☐ Applies to any blogs, forums, Facebook, TikTok , Instagram (and whatever comes next)

# The Supreme Court Addresses When Public Officials Can Block Social Media Followers

MARCH 18, 2024 / ROB NUSSBAUM

On March 15, 2024, the Supreme Court of the United States issued decisions in [Lindke v. Freed](#) and [Garnier v. O'Connor-Ratcliff](#), two cases which involved when public officials can block social media followers and delete their comments.

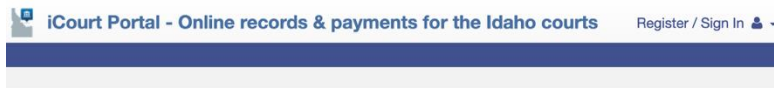


The [Lindke v. Freed](#) case involved a City Manager (Freed) who deleted certain Facebook comments and then blocked Lindke, a critic of the city, who made comments on Freed's Facebook page. Freed operated the Facebook page himself and used it to post "prolifically (and primarily)"

about his personal life despite sometimes making posts about his City Manager job. After Freed blocked him, Lindke sued, claiming Freed's Facebook page was a public forum and, as such, Freed violated Lindke's First Amendment rights by removing his comments and then blocking him.

# Digital Records Can Be Your Friend

Posting records on your website may 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.](#)

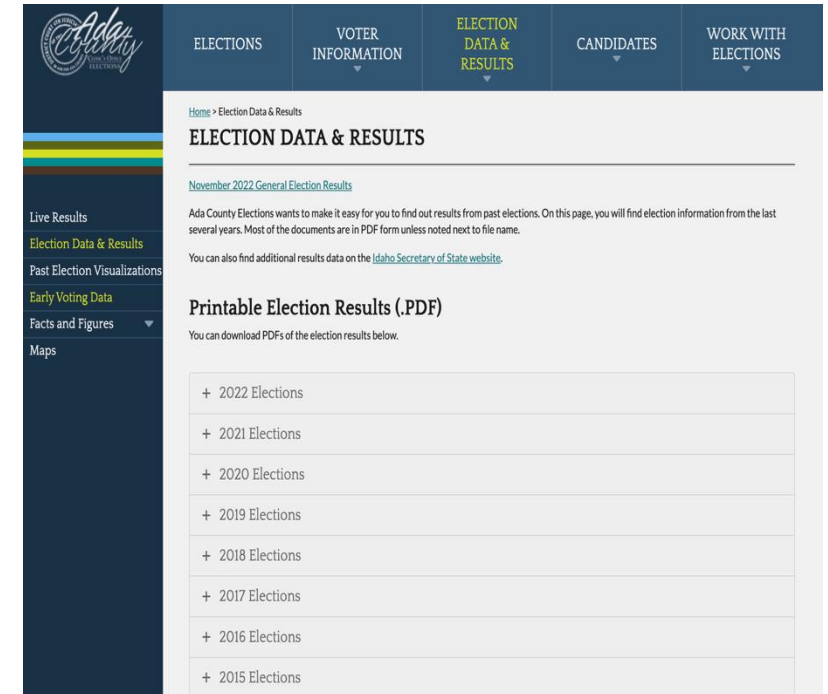
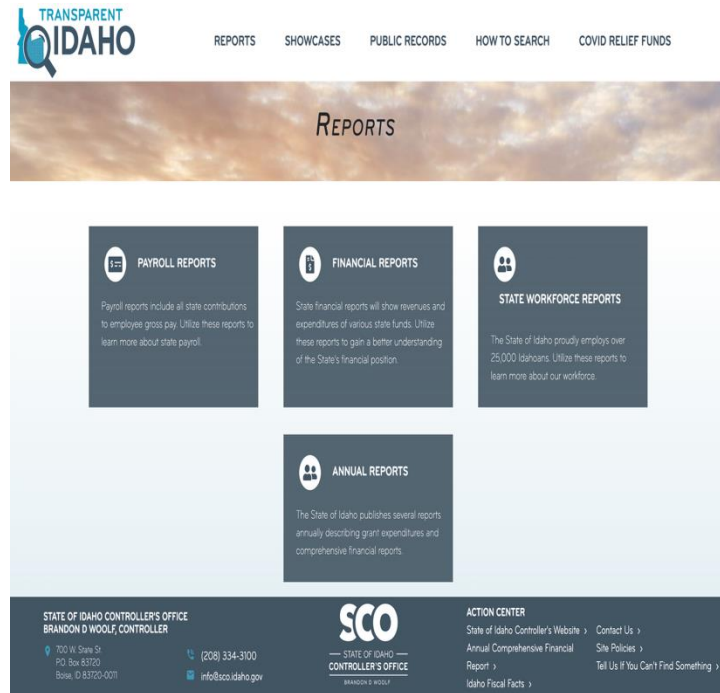
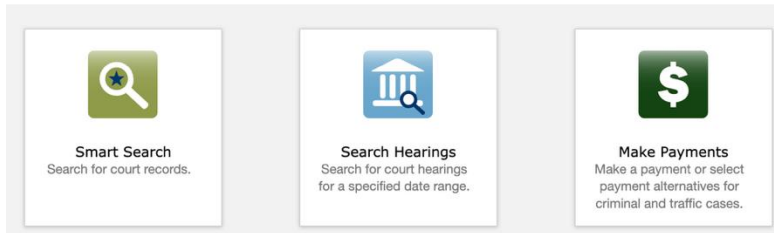
> [Learn more about Extended Access to Court Records.](#)

> [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.



# Records Exempt from Disclosure

Certain judicial proceedings

Law enforcement investigatory records

Records of juveniles

Records related to cybersecurity programs and devices

Personnel records & Medical records

Trade secrets

Appraisal records prior to acquisition by a county

Records related to claims or potential claims against the county

Attorney client records



# Records Exempt from Disclosure

Attorney client records

# Records Exempt from Disclosure

I.C. §74-115(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.

# Records Exempt from Disclosure

- Idaho Rules of Evidence:
  - **General rule of privilege:** A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client which were made between the client and the client's lawyer.
  - A "client" is a person, public officer, or corporation, association, or other organization or entity, either public or private, who is rendered professional legal services by a lawyer, or who consults a lawyer with a view to obtaining professional legal services from the lawyer.
  - A communication is "confidential" if not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.
- Idaho Rules of Professional Conduct:
  - A lawyer for a government agency may have authority on behalf of the government to decide upon settlement or whether to appeal from an adverse judgment. Also, lawyers under the supervision of these officers may be authorized to represent several government agencies in intragovernmental legal controversies in circumstances where a private lawyer could not represent multiple private clients.



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# Public's Right to Examine Records

## What the Statute Says

“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.”

[\(§74-102\)](#)

# Public's Right to Examine Records

## What the Statute Says

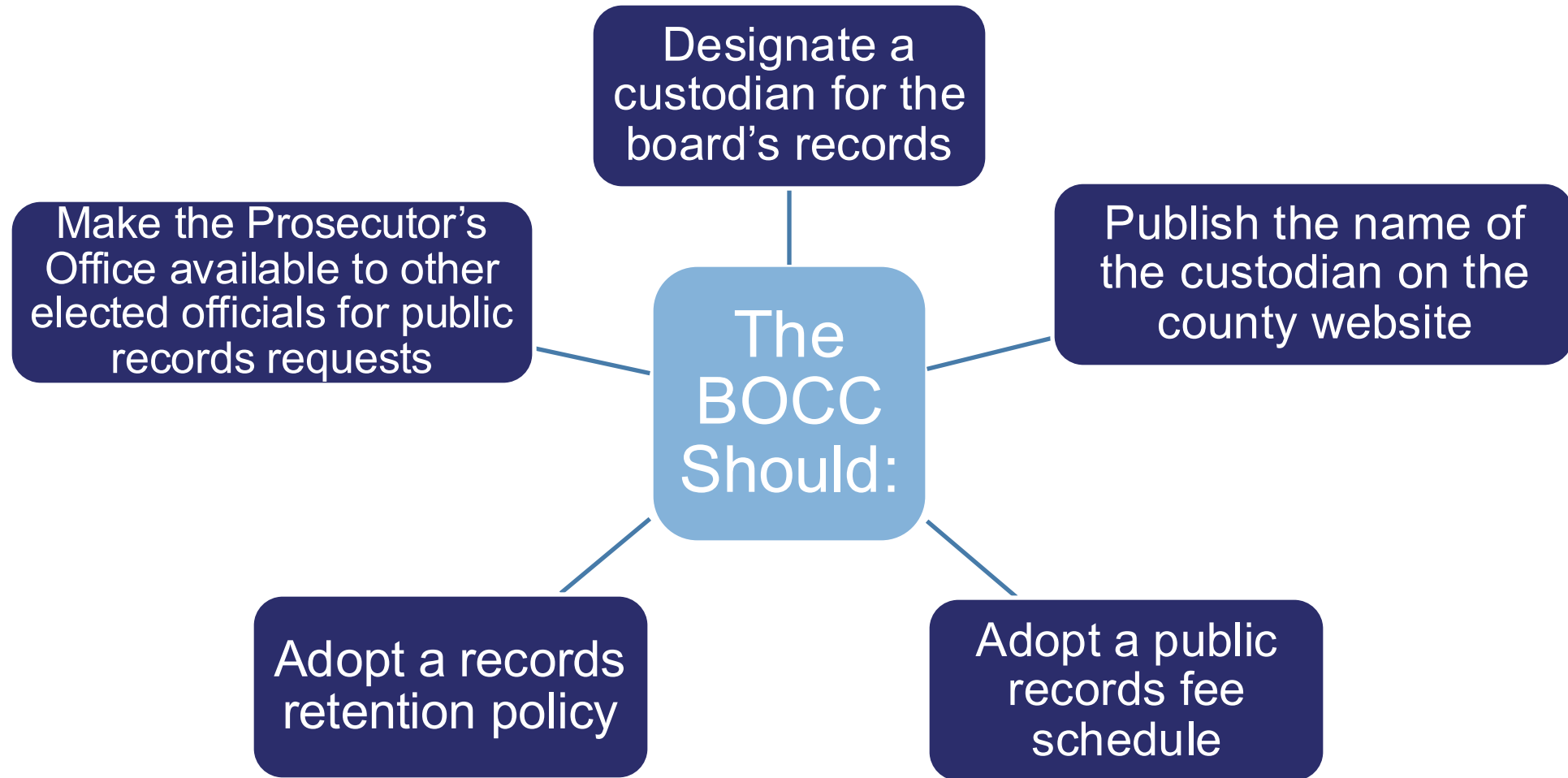
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([§74-102](#))

## What the Statute Means

The public has the right to read, view, watch, listen to, make notes about, photograph, or copy records which are public, during regular business hours of the public entity or at other reasonable times, unless an exemption exists that would protect the record.

# Reasonable Recommendations for Records Requests



# What should be in a fee schedule?

- 💰 Per page copy charge for both color and black/white copies
- 💰 Costs for non-standard paper (maps, microfiche, etc.)
- 💰 Costs for hardware or storage devices such as flash drives
- 💰 Requirement for pre-payment of anticipated costs
- 💰 Specialized labor in retrieving or redacting information
- 💰 Policy on labor costs (hourly wage of lowest paid employee)

Reminder: The fees charged CANNOT exceed the actual cost of processing and fulfilling the request.

**OFFICIAL FEE SCHEDULE – EXHIBIT A**  
**ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS, RESOLUTION #\_\_\_**

| <b>Copied Material and Miscellaneous</b> |  |   |  |
|--|--|---|--|
| <b>Materials</b>                         | <b>Chargeable Items</b>  | <b>Rate/Fees</b>  | <b>Notes</b>   |
| <b>Black/White Copies</b>                | Standard Copy Paper/Ink  | 10 Cents/Page   | Per page price does not include labor to produce copies                    |
| <b>Color Copies</b>                      | Standard Copy Paper/Ink  | 20 Cents/Page   | Per page price does not include labor to produce copies                    |
| <b>Non-standard paper</b>                | Includes maps, microfiche, or other non-standard 8 ½ x 11 paper  | Actual Cost   | Requestor may provide materials  |
| <b>Digital Material</b>                  | Includes DVD/CD, Flash drive, hard drive, or any other media storage device  | Cost of storage device  | Requestor may provide unopened media storage device for transferring media |
| <b>Labor</b>                             | Labor in locating and compiling materials  | Hourly wage of lowest paid employee qualified to perform the work | Requestors are entitled to the first two hours of labor free.              |
|  | Requestors will be charged Actual Cost to redact nonpublic information. Should it be necessary for an outside agency to perform the labor in locating or compiling materials, the requestor will be charged Actual Cost without the first two hours of free labor.   |   |  |
| <b>Note</b>                              | Assessed fees shall be paid prior to receiving the requested materials. An estimated bill shall be sent to the requestor prior to beginning the work of locating or compiling. This bill is only an estimate and may be subject to change. Any unused fees shall be refunded to the requestor. Additional costs accrued during production, after issuance of the bill, shall be paid prior to releasing the requested materials. Requests made as a Public Records Request shall receive the first 100 pages of Black/White Copies on standard paper and the first two hours of labor in compiling the documents free. |   |  |



# The Role of County Officials

- ☐ Ensure each office or department has designated a custodian of records and publish the name/email on your website.
- ☐ Develop a system for tracking requests and/or identifying if other departments are receiving the same or similar request.
- ☐ If the record is easily available, you *may* simply choose to provide the record without more formal processes.
- ☐ If the records are not readily available, or an extension may be needed, have the requester fill out a PRR form.
- ☐ Consult your Prosecuting Attorney before denying a request for records you believe are exempt from disclosure.

# Limitations on Requests (§74-102)

- ☐ Records 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 requests if:
  - ✓ The BOCC has adopted a records request fee schedule, **and**
  - ✓ Charges do not exceed the actual costs of labor for the wage of the lowest paid employee or attorney (if applicable) capable of processing the request.

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**Remember** – Residents continue to receive the following benefits:

- ☐ First 100 pages of black/white copies for free
- ☐ First 2 hours of actual labor needed to process the request

# Processing a Request

3 Days

- You have 3 days (working days) to process a public records request from a resident\*

10 Days

- You may take up to 10 days (working days) to process a request if you notify the requester that it will take longer than 3 days\*

Deny

- If the request is not processed within 10 days, it is deemed to be denied (unless the request requires the conversion of electronic media and the need for additional time is communicated to the requester)\*

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 requester must be provided notice of their right to appeal

Appeal

- Appeals are brought in the District Court of the county where the records are located

# Which of the following is a valid reason to deny a Public Records Request?

The requested information was prepared by a county attorney in anticipation of litigation

You requested a county attorney review the request but did not receive a response back

The requested information would subject a county employee to public criticism

# Which of the following is a valid reason to deny a Public Records Request?

The requested information was prepared by a county attorney in anticipation of litigation

# Denials:

## A good faith denial:

- ✓ When 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

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## 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



# How Many Days to Appeal a Denial?

14  
Days

30  
Days

180  
Days

# How Many Days to Appeal a Denial?

“The sole remedy for a person aggrieved by the denial of a request for disclosure is to institute proceedings in the District Court ... to compel the public agency ... to make the information available.”

I.C. 74-115(1)

180  
Days

# Denial: The Public Interest Balancing Test

- I.C. §74-101(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.

# Denial: The Public Interest Balancing Test

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# Which are potential consequences for violating the Public Records Act?

Payment of Costs and  
Attorney's Fees to the  
denied Party

30 Days of Jail

Civil Penalty of \$1000

# Which are potential consequences for violating the Public Records Act?

Payment of Costs and  
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Civil Penalty of \$1000

# 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](#))

# 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](#))

## But...

“No [public official] 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 [official] acted in good faith in attempting to comply with the provisions of this chapter.” ([§74-118](#))



# Always consult with your Prosecuting Attorney!



# Final IAC 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 (or outside legal counsel)

# Public Records Act

**Questions?**

