

Idaho Public Records Act & Records Retention Basics

Seth Grigg, Executive Director

Sara Westbrook, Director of Government Affairs



Quick Links

The Idaho Public Records Act

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



A screenshot of the Idaho Legislature's official website. The page is titled "Idaho Statutes" and features a navigation menu with links for "SENATE", "HOUSE", "COMMITTEES", "LEGISLATORS", "LAWS/RULES", "LEGISLATIVE SESSIONS", and "LIVE AUDIO/VIDEO STREAMING". The main content area displays "TITLE 74 TRANSPARENT AND ETHICAL GOVERNMENT" and "CHAPTER 1 PUBLIC RECORDS ACT". A list of sections follows, including "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.", and "74-109 RECORDS EXEMPT FROM DISCLOSURE — DRAFT LEGISLATION, RESEARCH, PERSONAL COMMUNICATIONS, PERSONALLY IDENTIFYING INFORMATION, WORK PAPERS, AND DRAFT REDISTRICTING PLANS." A "Download Entire Chapter (PDF)" link is visible on the right side of the page.

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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LAWRENCE WADEN
Attorney General
700 West Jefferson Street
Boise, ID 83720-0010
www.ag.idaho.gov



IDAHO
ASSOCIATION OF
COUNTIES

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](#))

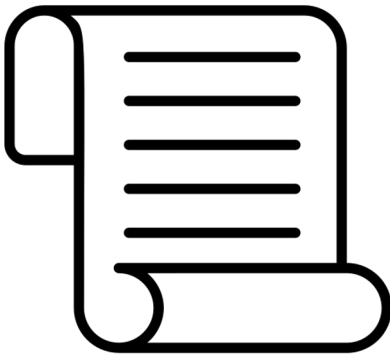
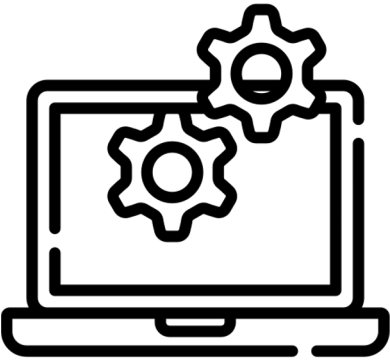
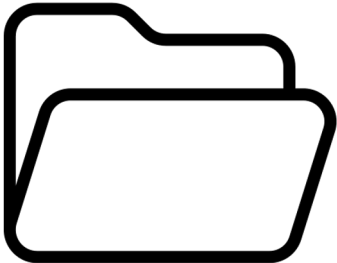
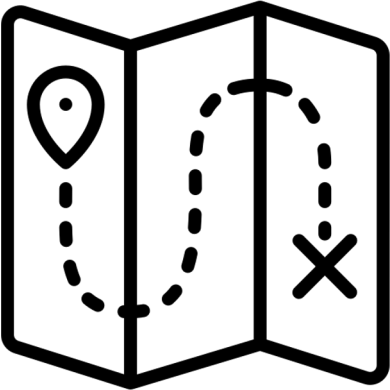
Appraisal records prior to acquisition by a county ([§74-107](#))

Medical records

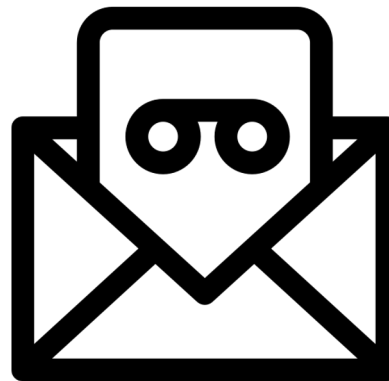
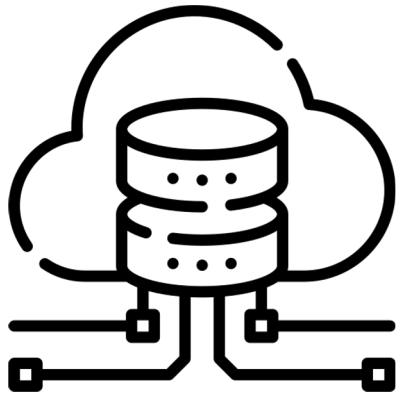
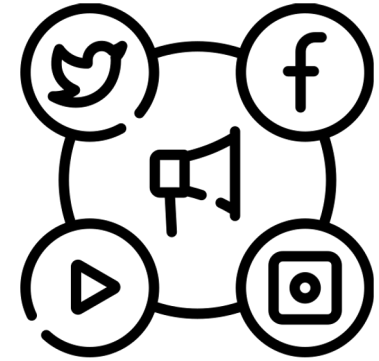
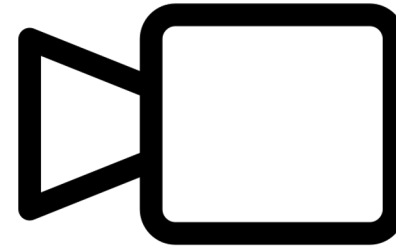
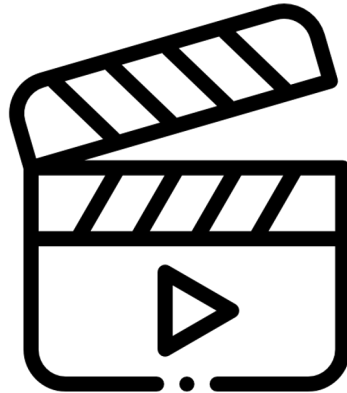
Records related to claims or potential claims against the county

Attorney client records

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, 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

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

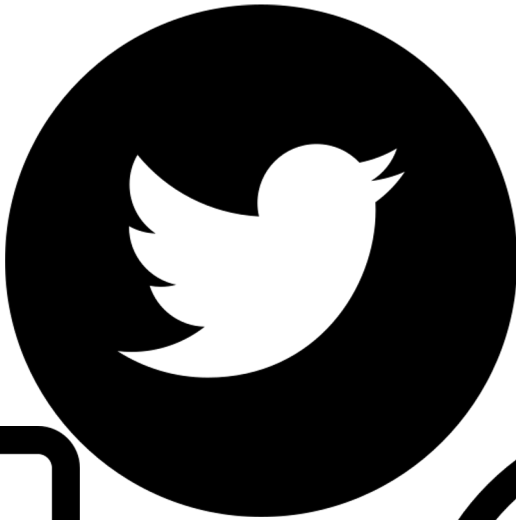
County social media

Campaign social media

Personal social media

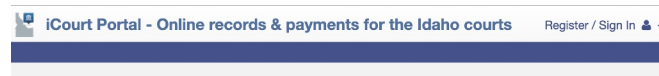
Applies to Facebook, Twitter, Instagram, TikTok, webpages, blogs, forums (and whatever comes next)

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.](#)

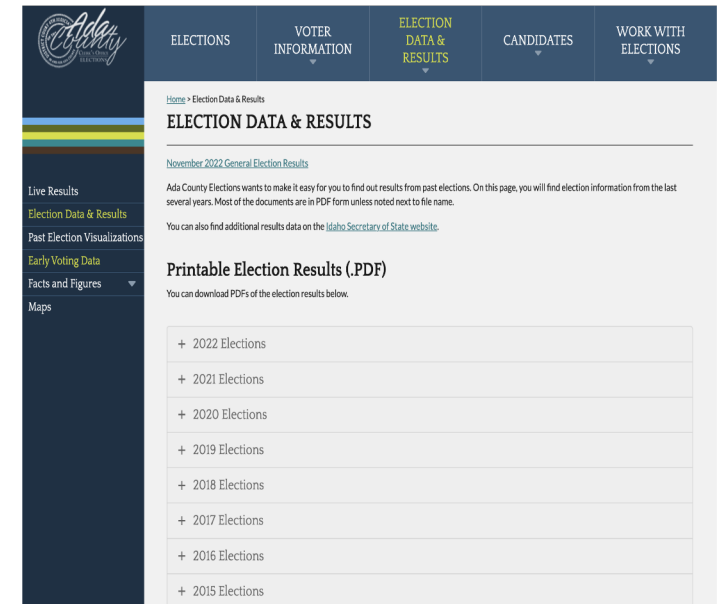
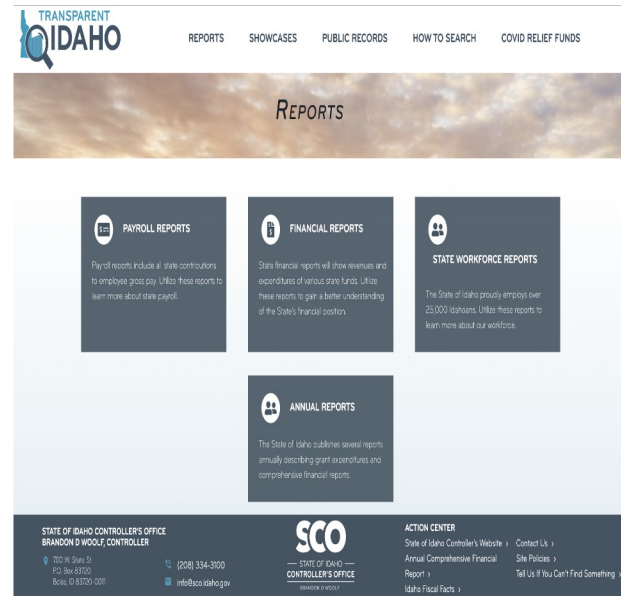
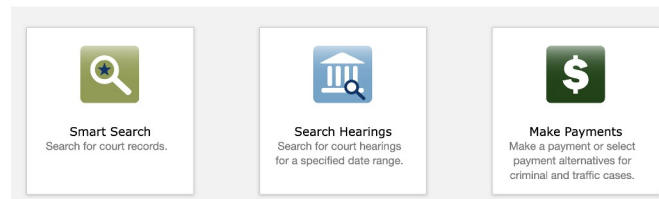
> [Learn more about Extended Access to Court Records.](#)

> [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 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 attorneys office available to other elected officials for public records requests

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

The Role of County Officials

Designate a custodian for public records for your office or department and publish the name on your website

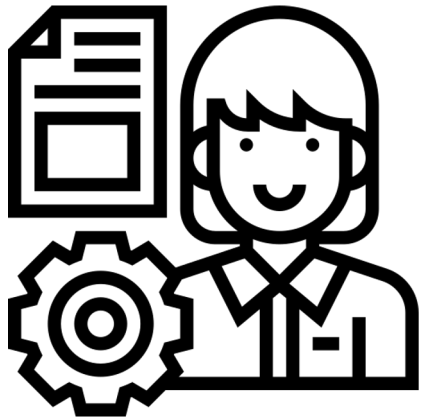
If the record is easily available, just provide the record

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 if 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 days to process a public records request

10 or 21 Days

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

Deny

- If the request is not processed within 10 (or 21 when applicable) days, it is deemed to be denied

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!



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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)

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 exempt 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

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

Questions?

Records Retention Manual

<https://idcounties.org/wp-content/uploads/2022/04/Records-Retention-Manual-2021.pdf>

