

# Idaho Public Records Act

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# Quick Links

The Idaho Public Records Act

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

A screenshot of the Idaho Legislature website. The header is dark blue with the text "The official website of the Idaho Legislature" and "STATE OF IDAHO WHO'S MY CURRENT LEGISLATOR?". Below the header is a navigation menu with links for SENATE, HOUSE, COMMITTEES, LEGISLATORS, LAWS/RULES, LEGISLATIVE SESSIONS, and LIVE AUDIO/VIDEO STREAMING. The main content area is white with a blue header that says "Idaho Statutes" and a "Print Friendly" button. Below this is a notice: "Idaho Statutes are updated to the web July 1 following the legislative session." The main content is titled "TITLE 74 TRANSPARENT AND ETHICAL GOVERNMENT" and "CHAPTER 1 PUBLIC RECORDS ACT". There is a link to "Download Entire Chapter (PDF)". 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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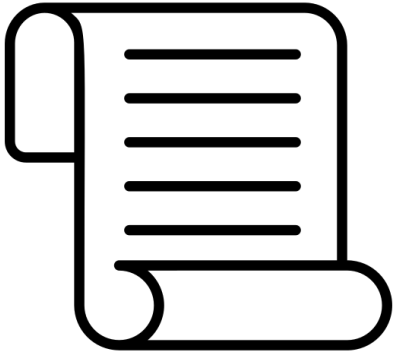
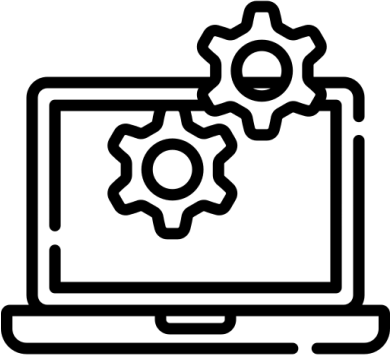
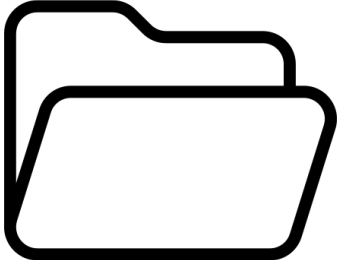
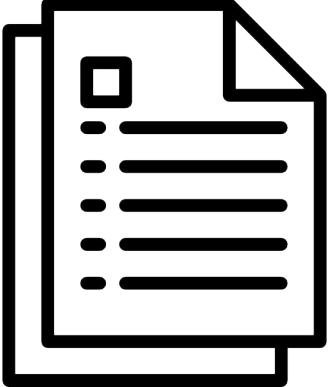
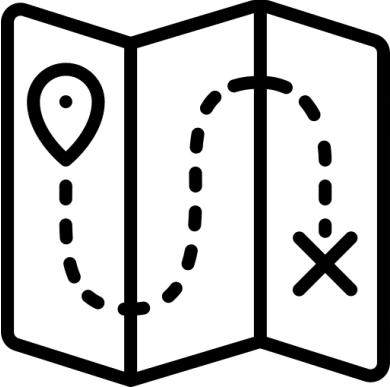
# What is a Public Record (§74-101)?

- "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 ...

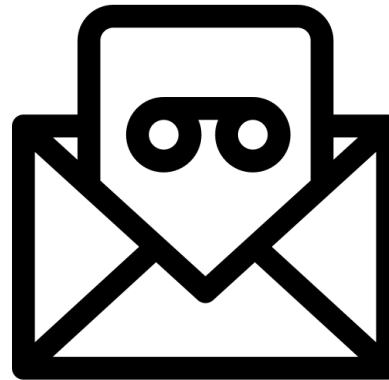
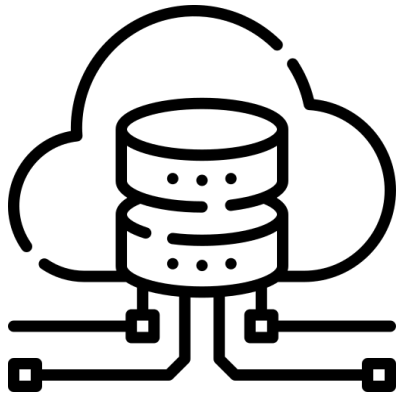
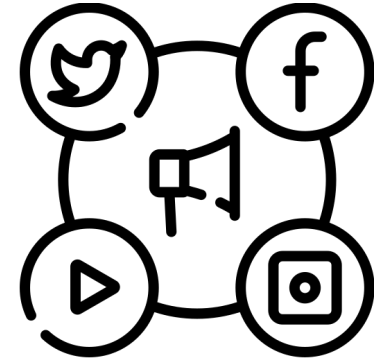
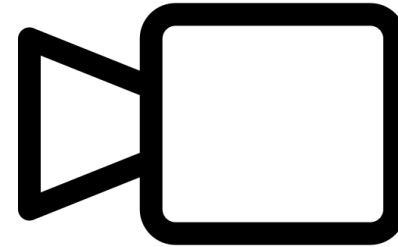
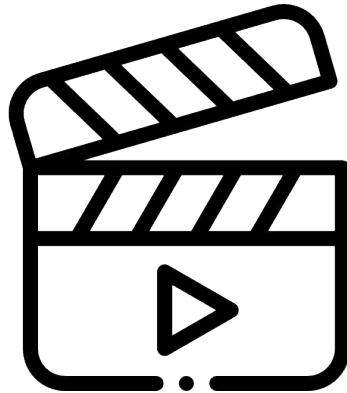
# Records Exempt from Disclosure

- 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
- 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



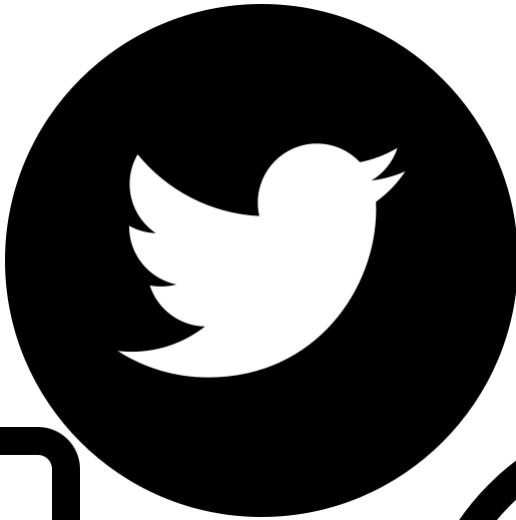
# Challenges Managing Digital Records

- 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

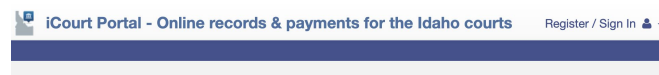
- Social media, public records, and the First Amendment
  - County social media
  - Campaign social media
  - Personal social media
  - Applies to Facebook, Twitter, Instagram, TikTok, webpages, blogs, forums (and whatever comes next)

# 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.](#)

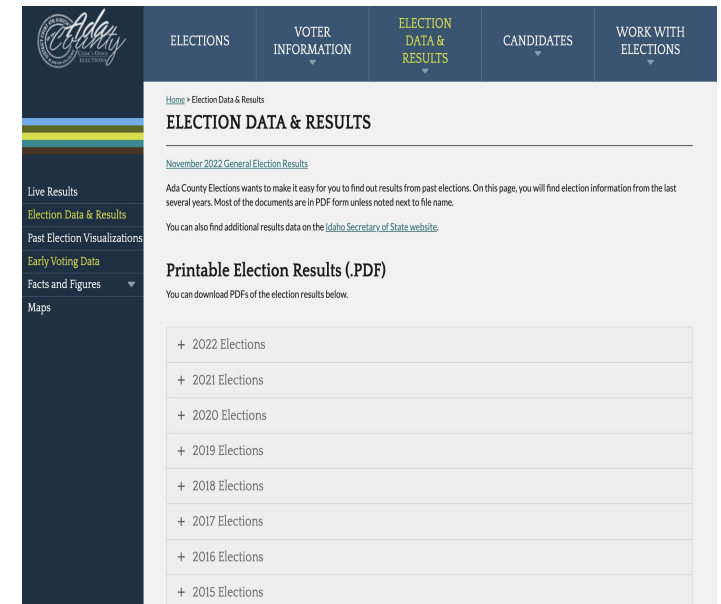
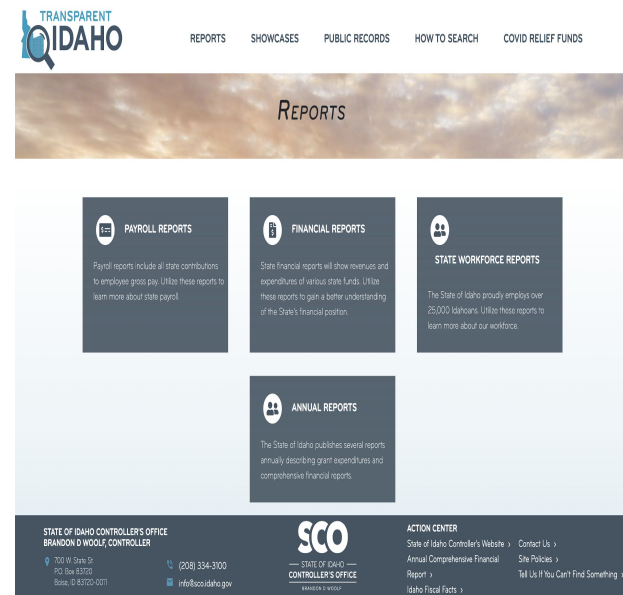
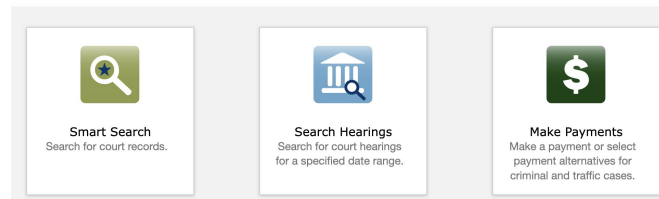
> [Learn more about Extended Access to Court Records.](#)

> [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)

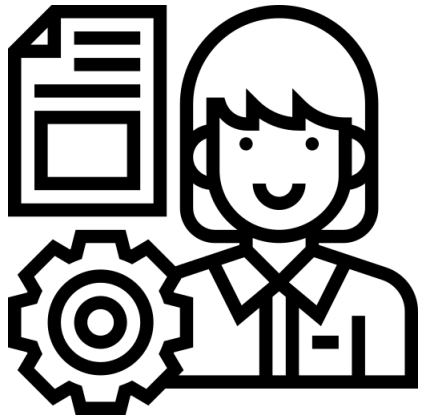
Note: The actual fee charged CANNOT exceed the actual cost of processing the request

# 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 Requests ([§74-103](#))

3 Days

- You have 3 days to process a public records request

10 Days

- You may take up to 10 days 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 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

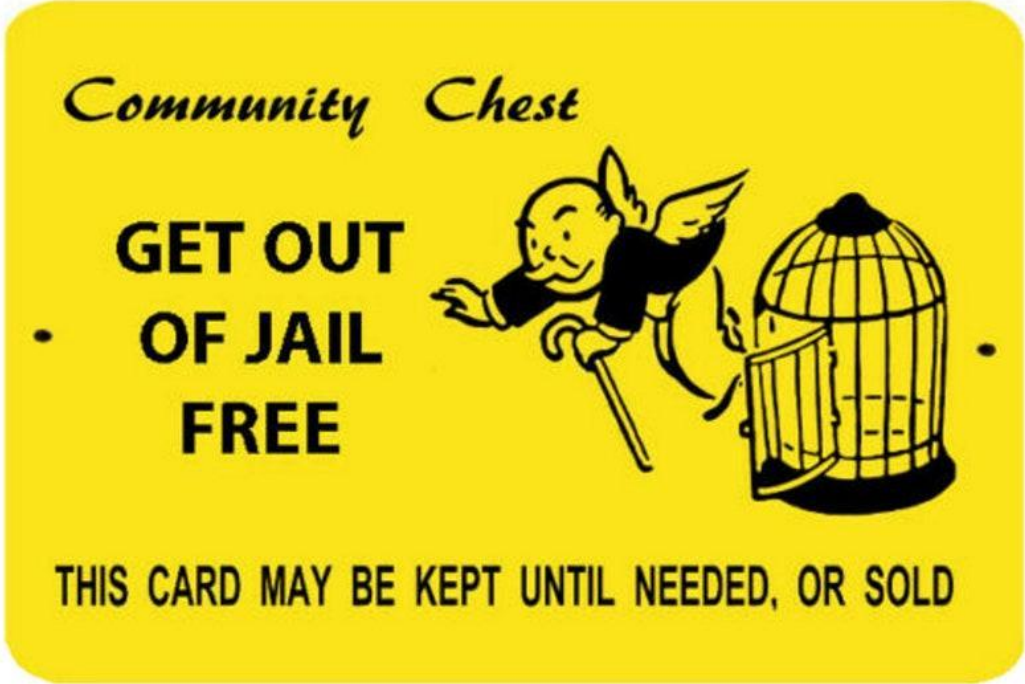
## A good faith denial:

- ✓ 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!





# 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)

# Time for a Test!



# 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

# 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

# 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