



Idaho Public Records Act

What Local Officials Need to Know

Idaho Public Records Act: Title 74 Ch. 1



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



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Idaho Public Records Act: Intro

“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 actions of state and local government 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.”

“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.”

“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.”

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)

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.

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

**Public
Record**

Any writing containing information relating to the conduct or administration of the public's business.

Writing

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

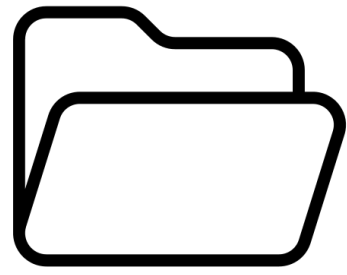
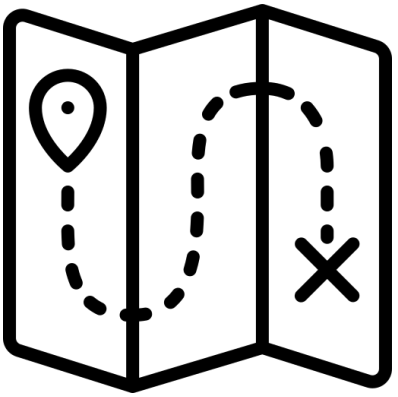
Conversations
over Coffee

YouTube
Video
Comments

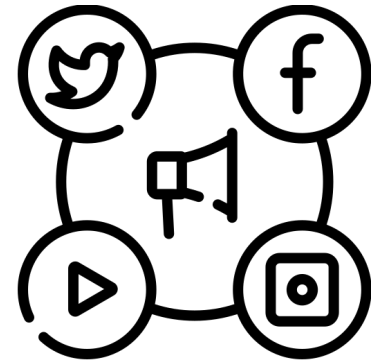
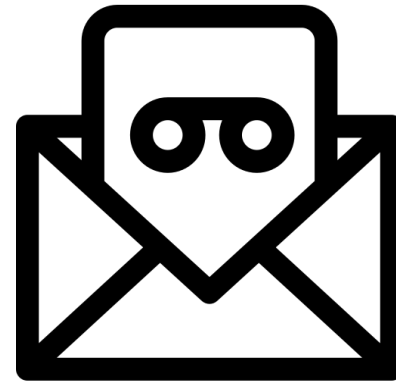
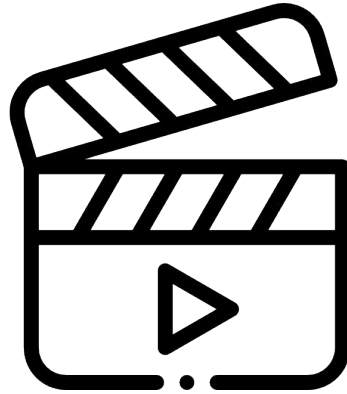
Which of the following is not a Public Record?

Conversations
over Coffee

Traditional Records



Digital Records

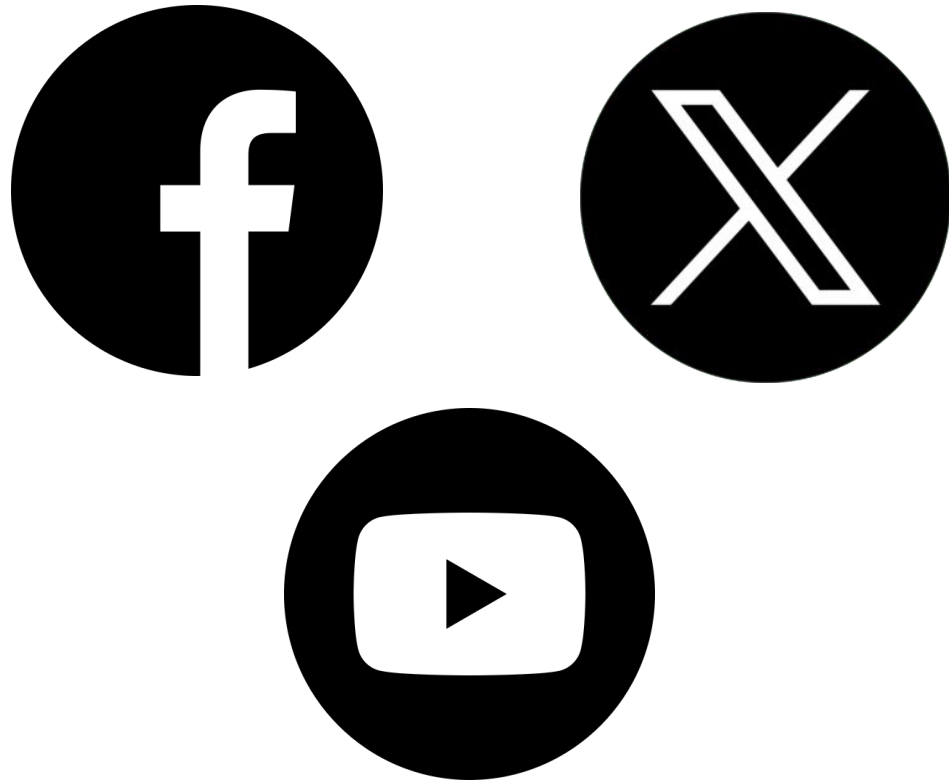


- Information on county government technology is usually public
- If it creates liability for the county government, it's probably a public record
- Keep private/personal records separate from public records
 - Use county email for county business
 - Use personal email for personal business
 - Use county 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
- 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

 **iCourt Portal - Online records & payments for the Idaho courts** Register / Sign In

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.](#)

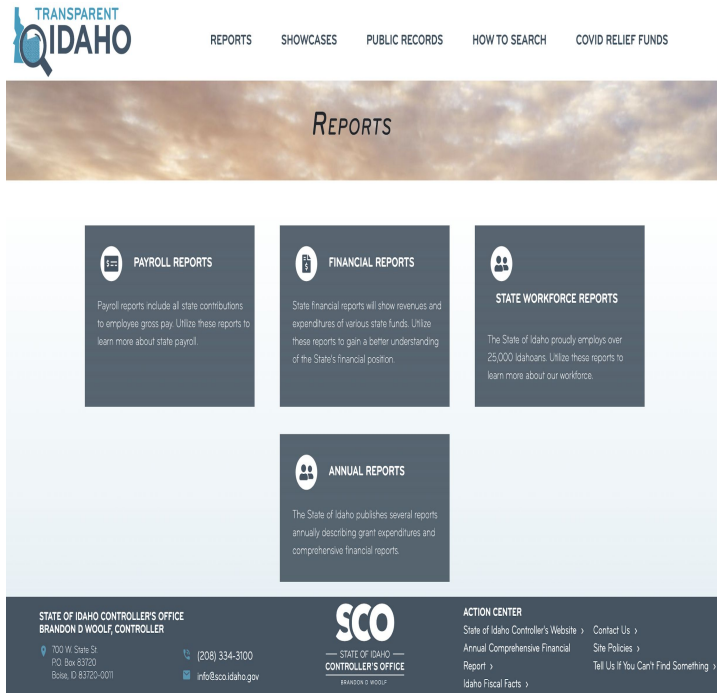
> [Learn more about Extended Access to Court Records.](#)

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

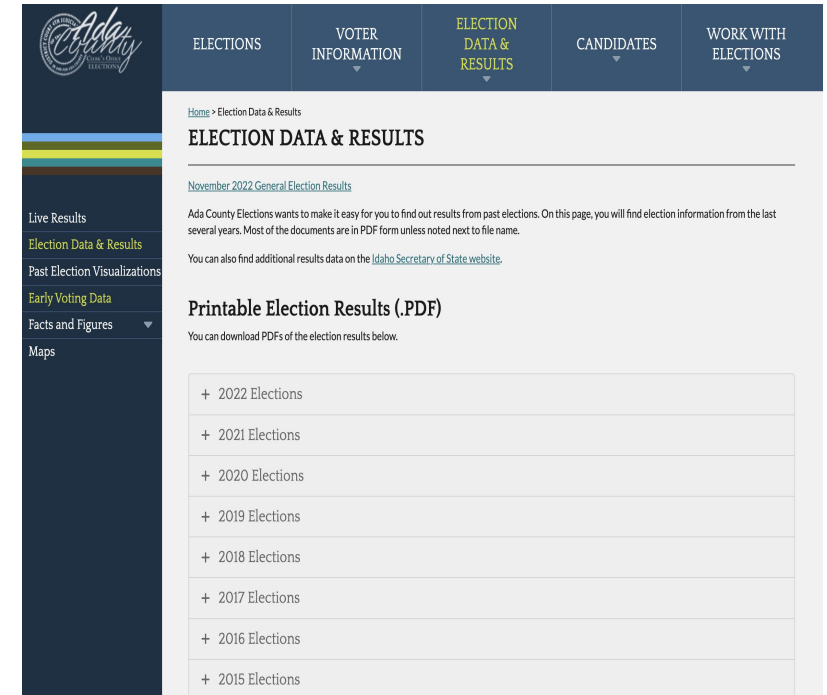
By using this site, I agree to the [Terms & Conditions](#).

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.

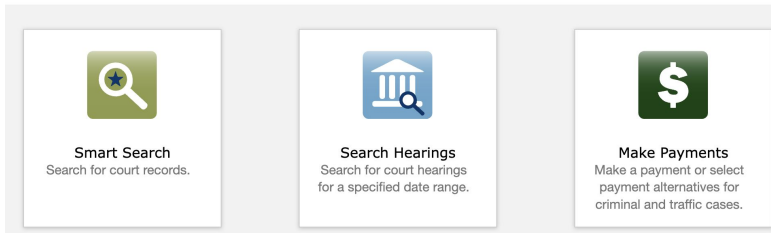
We recommend Microsoft Edge or Mozilla Firefox for an optimal experience when using iCourt Portal. Please also note, due to screen size users may experience difficulties making payments on mobile devices, we recommend using a desktop or laptop device to make payments.



The screenshot shows the 'TRANSPARENT IDAHO' website with a 'REPORTS' section. The page features a navigation menu with 'REPORTS', 'SHOWCASES', 'PUBLIC RECORDS', 'HOW TO SEARCH', and 'COVID RELIEF FUNDS'. The main content area is titled 'REPORTS' and contains five report categories: 'PAYROLL REPORTS', 'FINANCIAL REPORTS', 'STATE WORKFORCE REPORTS', and 'ANNUAL REPORTS'. Each category includes a brief description of the reports. The footer contains contact information for the 'STATE OF IDAHO CONTROLLER'S OFFICE' and the 'ACTION CENTER'.



The screenshot shows the 'Ada County ELECTIONS' website. The navigation menu includes 'ELECTIONS', 'VOTER INFORMATION', 'ELECTION DATA & RESULTS', 'CANDIDATES', and 'WORK WITH ELECTIONS'. The main content area is titled 'ELECTION DATA & RESULTS' and features a sidebar with 'Live Results', 'Election Data & Results', 'Past Election Visualizations', 'Early Voting Data', 'Facts and Figures', and 'Maps'. The main content area includes a link to 'November 2022 General Election Results' and a section for 'Printable Election Results (.PDF)' with a list of years from 2015 to 2022.



Three icons representing digital services: 'Smart Search' (magnifying glass), 'Search Hearings' (court building), and 'Make Payments' (dollar sign).

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

Attorney Client
Records

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.

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- 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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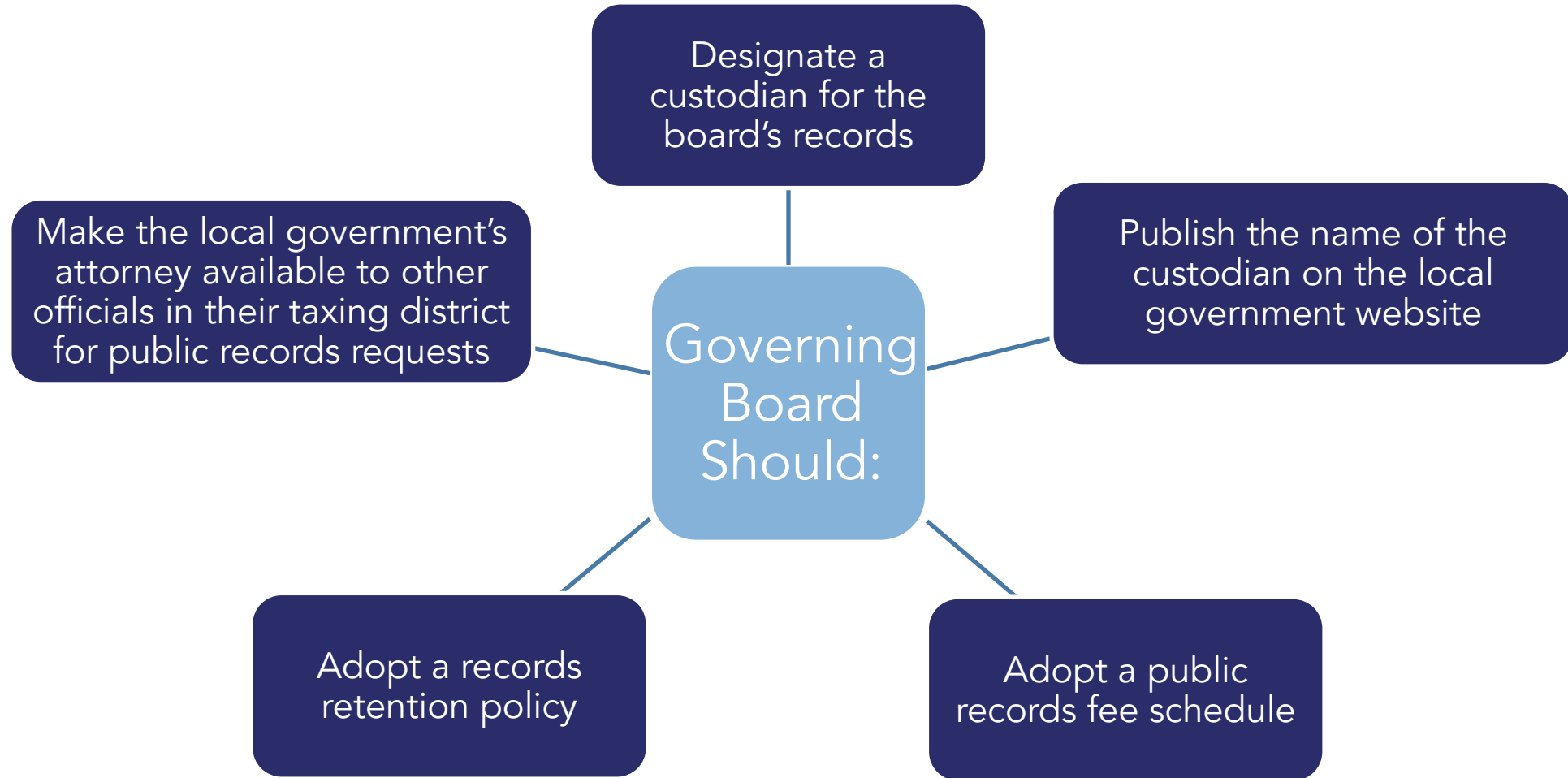
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Recommendations for Request Processes



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.

Fee Schedule Example

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

Copied Material and Miscellaneous			
Materials	Chargeable Items	Rate/Fees	Notes
Black/White Copies	Standard Copy Paper/Ink	10 Cents/Page	Per page price does not include labor to produce copies
Color Copies	Standard Copy Paper/Ink	20 Cents/Page	Per page price does not include labor to produce copies
Non-standard paper	Includes maps, microfiche, or other non-standard 8 ½ x 11 paper	Actual Cost	Requestor may provide materials
Digital Material	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
Labor	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.		
Note	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 Local 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 legal counsel 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.

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
- ❑ Charges based upon the wages of the lowest paid employee capable of producing the records

Processing Requests

3 Days



You have 3 working days to process a public records request from a resident*

10 Days



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

Denial



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 extra 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.

*Sentry Dynamics, Inc.
v. Ada County*

1). Clarification of
PRR fulfilment
requirements

2). Rights of the
entity to decide
format, require
compliance with the
law

3). Limits what is
considered Public
Record

Sentry Dynamics v. Ada County

Idaho Code § 74-102(1)–(3) (emphasis added). Additionally, subsection (8) specifies that the “[e]xamination of public records under the authority of this section must be conducted during regular office or working hours unless the custodian shall authorize examination of records in other than regular office or working hours.” I.C. § 74-102(8).

Reading the provisions of the PRA, we conclude that it grants considerable deference to the agency acting as custodian of the records in determining the method and format for producing copies of public records. The PRA provides no right to access a public record in an electronic format, let alone a specific electronic format. While Ada County is required to produce the responsive records in its possession—provided the requesting party has complied with the “assurance” requirement in Idaho Code section 74-102(5)(b)—it is under no obligation to provide them in an electronic format. Similarly, the PRA leaves the mode of delivery to the custodial agency. This may be as simple as the custodian providing hard copies to a requester that has made a personal visit to the County Courthouse, delivering the copies via U.S. Mail, emailing the records, or transferring the information through a data portal.

1) . Clarification of PRR Fulfilment Requirements

Records may be provided in *any* format, regardless of what format is requested, as long as they are provided

No legal requirement to provide the requested records in any specific electronic format

2) . Rights of the Entity

Public Entities have the ability to obtain requestors' written acknowledgment that:

1. The requestor is a resident. I.C. § 74-102
2. The records will not be used for mailing purposes by requestor or downstream users. I.C. § 74-120(5)(b)

3) . Limits what is considered Public Information

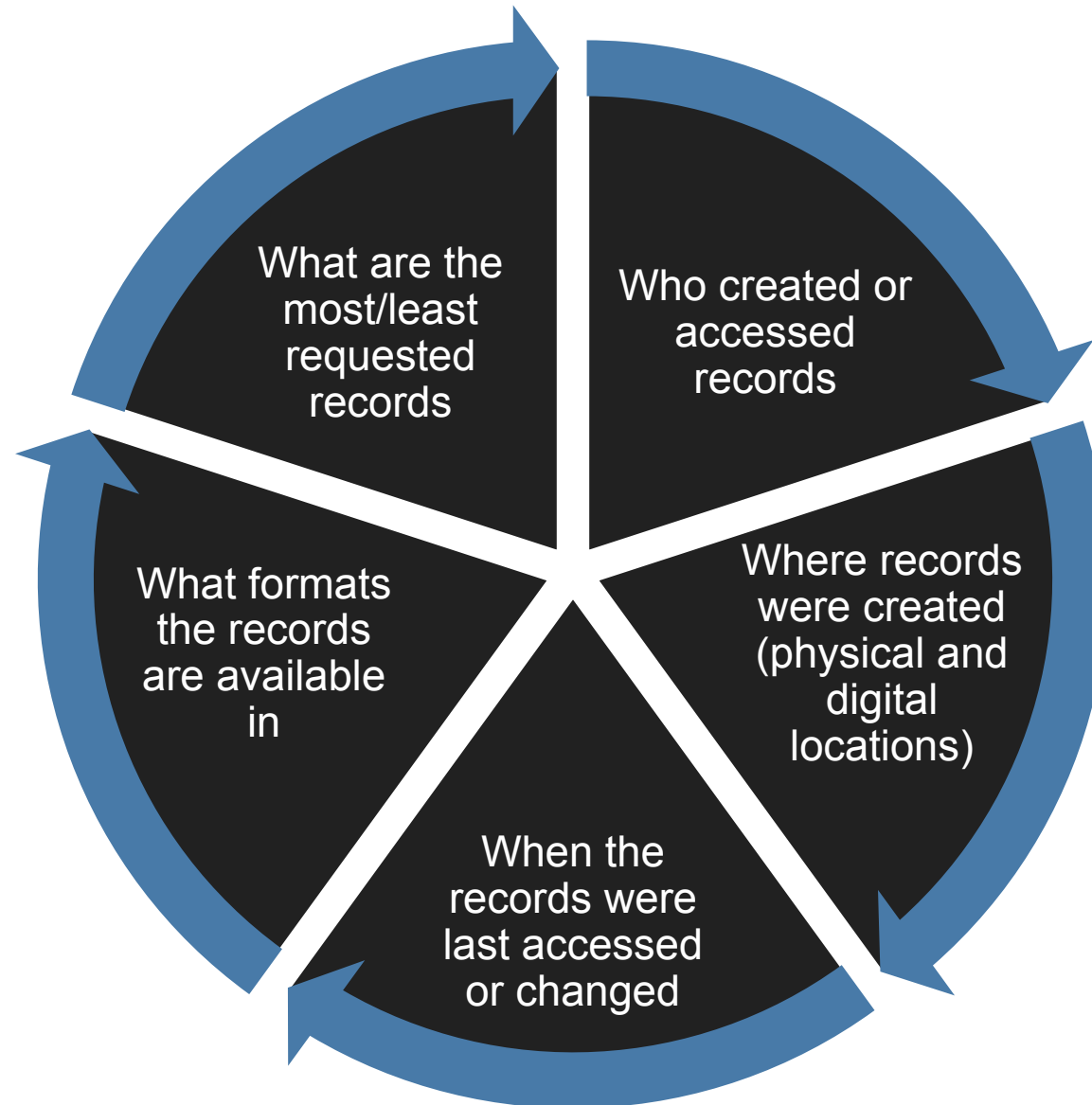
Metadata is not
necessarily a Public
Record*



What is Metadata?

Information ABOUT
documents, files, or
media which is often
not readily visible.

Metadata: The Unseen Information



Public Records Request, Denial?

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

Public Records Request, Denial?

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

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

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**

Records Exempt from Disclosure

Certain judicial proceedings

Law enforcement investigatory records

Records of juveniles

Trade Secrets and Records related to cybersecurity programs

Personnel records & Medical records

Records Constituting an Unwarranted Invasion of Personal Privacy

Appraisal records prior to acquisition by a county

Records related to claims or potential claims against the county

Attorney client records

- 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.

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Violations: Which are potential consequences?

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

30 Days of Jail

Civil Penalty of
\$1000

Violations: Which are potential consequences?

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

Civil Penalty of
\$1000

“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!



Community Chest

**GET OUT
OF JAIL
FREE**



THIS CARD MAY BE KEPT UNTIL NEEDED, OR SOLD

Have Policies

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

Provide

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

Involve

- Your Prosecuting Attorney (or outside legal counsel)

Questions?