

Idaho Department of Correction 	<b>Standard Operating Procedure</b>	Title: <b>Public Record Requests</b>	Page: 1 of 8
		Control Number: <b>108.00.01.001</b>	Version: <b>1.0</b>

**Bree Derrick, chief of staff, approved this document on 11/27/2019.**

Open to the public:  Yes

**SCOPE**

This standard operating procedure applies to all Idaho Department of Correction employees involved in the process of providing information in response to public record requests.

<b>Revision Summary</b>
Revision date ( <u>11/27/2019</u> ) version <u>1.0</u> : This is a new standard operating procedure describing the guidelines and procedures for handling public record requests. Previously, this process was described in the Public Record Requests manual and the Public Records Manual FAQ.

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**BOARD OF CORRECTION IDAPA RULE NUMBER 108**

108. Idaho Public Records Act

**POLICY CONTROL NUMBER**

108, Public Access to Records

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## PURPOSE

The purpose of the SOP is to set a standard for processing public record requests agency-wide.

## RESPONSIBILITY

Certain Department employees are designated as official custodians of Department records. The employees designated as official custodians of the Department records may delegate duties and responsibilities of the custodians in order to more efficiently process public records requests. For purposes of this section, official custodians for records of the Department are:

- The director
- The public information officer
- The central records manager
- The administrators of the divisions
- The facility heads

### 1. Introduction

Idaho Code Section 74-102 (1) states, "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." In accordance with the Rules of the Board of Correction, 108. Idaho Public Records Act, public records must be made available unless specifically exempted from disclosure by state or federal statute or court rule.

### 2. What is a Public Record?

A public record "includes, but is not limited to, any writing containing information relating to the conduct or administration of the public's business prepared, owned, used or retained by any state agency, independent public body corporate and politic or local agency regardless of physical form or characteristics." Idaho Code Section 74-101(13). Writing "includes, but is not limited to, handwriting, typewriting, printing, photostating, photographing and every means of recording, including letters, words, pictures, sounds or symbols or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums and other documents." Idaho Code Section 74-101(16). Handwritten notes, raw notes, preliminary drafts, e-mail (electronic mail), computer files and the like are considered public records.

### 3. Types of Records

#### ***Offender Records***

These are records of offenders committed to the custody of the Board of Correction or who are on probation or parole. Offender records are specific to an offender to document an offender's behavior, activities, program participation in a regular, on-going systematic manner. Offender records include but are not limited to court documents, risk assessments, treatment program information, education records, grievance records,

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disciplinary offense reports, field notes or c-notes, parole information, probation reports, housing information, and institutional work history.

#### ***Facility Records***

These are records maintained at the facility that pertain to the day-to-day business operations of a Department facility or district office. Facility records include but are not limited to field memorandums and post orders, count sheets, visitation logs, audits, drill records, offender concern forms, security logs, investigations, food service, and correspondence.

#### ***Department Business Operations Records***

These are records that pertain to the day-to-day business operations of the Department. Department business operations records include but are not limited to Board meeting minutes, legislation, Department contracts, fiscal and budget information, purchasing records, correspondence, personnel records, policies and standard operating procedures, investigations, facility audits, program information, and program audits. Department business operation records are maintained at Central Office.

#### **4. Custodian of Public Records**

The custodian is “the person having personal custody and control of the public records in question.” Each facility head designates an official Records Custodian to respond to requests.

#### ***Responsibilities***

The duties and responsibilities of the Records Custodian are identified in the Idaho Public Records Act. The custodian’s responsibility to provide access to records at all reasonable times is absolute unless the record is exempt from disclosure by law.

This responsibility also includes:

- Providing access to public records.
- Protecting the integrity and confidentiality of records generated by the IDOC and other agencies.
- Extending reasonable comfort and facilitate the individual requests for public records.
- Applying exemptions to IDOC records that are listed and explained in this manual.
- Consulting with IDOC legal counsel on exempt records.
- Applying correct charges for record retrieval and copies.
- Processing all releases, partial denials, and denials within specified time frames, as required by the Public Records Act. Response must be made within three (3) working days of the request made by either e-mail, mail or fax. (Idaho Code Section 74-103)
- Providing a certified copy when requested (see *Certification Stamp Form*)

#### ***The Custodian May Not:***

Review, examine or scrutinize any copy, photograph or memoranda in the possession of the person making the public records request.

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***The Custodian May:***

- Verify the identity of the person only when the requestor is seeking access to records about themselves, per Idaho Code Section 74-113.
- Ensure that the requested record or information will not be used for the purposes of a mailing or telephone list.
- Require the person to submit the request in writing and provide their name, mailing address, telephone number and, if the requestor has one, e-mail address.
- Help the requestor narrow the scope of the request or help the requestor make the request more specific when the responsibility is likely to be voluminous or require payment.

**5. Requests for Records**

All requests for public records must be in writing, to include email. If the requestor attempts to make a walk-in oral request or a telephone request, advise them that a written request must be submitted prior to any release of any public record. The written request must include the name, mailing address telephone number of the requestor, and if they have one, an email address.

***Request to Correct or Amend a Record***

Any person may inspect and copy a record pertaining to that person, and request an amendment be made to the record. Idaho Code Section 74-113. The IDOC can only correct or amend records originated by the IDOC.

A prisoner or former prisoner is not entitled to inspect or request an amendment to a record about himself. Idaho Code Section 74-113(3)(e).

Within 10 days of receipt of a request to amend a record, the IDOC must make the correction, or explain in writing why the request to correct or amend the record was denied and include the person's right to appeal the denial. A request to correct or amend a record will not be denied without prior review and approval of the Deputy Attorney General assigned to the IDOC.

***Offender's Requests for Their Records***

Prisoners and parolees, current or former, are not entitled to records about themselves, including medical or treatment records. Idaho Code Section 74-113. This exemption may not apply if a prisoner is involved in litigation concerning the matter in the record. Contact the Deputy Attorney General assigned to the IDOC to confirm litigation.

Probationers are entitled to records about themselves.

Records of a deceased prisoner may be released to the personal representative of the deceased prisoner. The personal representative must provide legal documentation (such as a court order) showing that they have been appointed personal representative. The records may also be released when a court order authorizes their release.

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## 6. Time Limits, Retention, and Redaction

### ***Time Limitation to Respond to Requests***

The custodian can respond to the request by (1) fulfilling the request in full, (2) denying the request in full, or (3) denying the request in part. A denial is based upon the exemptions provided by statute or Board rule.

Upon receipt of a written request, a response must be made within three (3) working days. If a response cannot be completed within three working days, an extension notice must be completed and sent to the requestor within the original three working days. The extension allows an additional seven (7) working days, for a total of 10 working days, to fill the request.

### ***Retention of Public Records Requests***

All public record requests must be retained electronically in a central repository. A request that was disclosed in full will be purged after 30 days. A request that is partially denied or denied in full, must be kept for one calendar year. The integrity copy, the redaction copy (as explained below), and any documentation supporting the basis for the redaction or denial must be retained.

### ***Redaction of Public Records***

When a public record that is otherwise open also contains information that is exempt from public disclosure, the exempt information must be redacted. The term "redacted" refers to a process by which the exempt information is blacked-out without altering the original record.

To redact information, the original record must first be copied – make two copies of the original. One of the two copies will be the integrity copy and the second will be the redaction copy. Using one of the copies of the original, completely black out any exempt information. The redacted copy is disclosed to the requestor.

If manually applying the redaction, review the photocopy to guarantee that redacted information cannot be seen if held up to the light. If necessary, repeat the redaction process.

## 7. Fees

Consistent with Idaho Code section 74-102(10), the IDOC has adopted the following guidelines for recovering the cost of providing public records. Only fees amounting to \$5.00 or more will be charged. Prepayment is required prior to filling the request. There are no fees charged for requests from Federal, State, or local agencies, law enforcement, or judiciary. Additionally, in accordance with Idaho Code Section 74-102(10)(f), no fees will be charged if the requestor demonstrates:

- The request is likely to contribute significantly to the public's understanding of the operations or activities of the government.
- The request is not primarily in the individual interest of the requester.
- The request will not occur if fees are charged because the requester has insufficient financial resources to pay the fees.

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<b>Cost Type</b>	<b>Fee Standards</b>
<b>Copying</b>	<ul style="list-style-type: none"> <li>• First 100 pages free of charge.</li> <li>• Copies in excess of 100 pages are \$0.10 per page.</li> </ul>
<b>File Retrieval</b>	Charge \$9.25 for each file retrieved from state storage.
<b>Labor</b>	<ul style="list-style-type: none"> <li>• First two hours of labor are free of charge.</li> <li>• Charge the hourly rate of pay of the lowest paid employee necessary and qualified to fill the request.</li> <li>• Calculate hours in terms of actual time to the nearest quarter hour. Estimate labor cost if necessary.</li> <li>• In the event the custodian authorizes examination of records in other than regular office or working hours, the requestor will be responsible for pre-payment of staff compensation. The two hour labor exemption does not apply. Idaho Code Section 74-102(8).</li> </ul>
<b>Postage</b>	Only postage in excess of \$5 will be charged. The postage must be paid before the record is released.

## 8. Records Exempt from Disclosure

All request for IDOC records must be reviewed in their entirety to determine if an exemption applies pursuant to Idaho law for Board Rules.

All exemptions or denials MUST be reviewed by, or the record custodian consults with, the IDOC legal counsel. See Idaho Code Section 74-103(4).

The following IDOC records have been identified as being exempt from disclosure pursuant to Idaho law or Board rule. This list is not exhaustive.

<b>Record Type</b>	<b>Exemption Reference</b>
Social Security Numbers	I.C. 74-104(1)
Dates of Birth	I.C. 74-104(1)
Pre-Sentence Investigation Reports, and any addendums	I.C. 74-104 and 74-105(4)(a)(iv)
Medical, Mental Health, and Treatment Records, with some exceptions	I.C. 74-106(13), I.C. 74-105(4)(a)(i), IDAPA 108.04.a, Health Insurance Portability and Accountability of 1996 (HIPAA), 45 C.F.R. Parts 160 & 164.
Victim or Witness Information/Identity	IDAPA 108.04.b and 74-105(4)(a)
Confidential Informant Information/Identity	IDAPA 108.04.b and 74-105(4)(a)
Fingerprint Cards	I.C. 74-105(12)
NCIC and ILETs records	I.C. 74-105(12)
Police reports	I.C. 74-105(12)
FBI/CIB identification sheet	I.C. 74-104(1)
Driver's services sheets	I.C. 74-104(1)
Parole Hearing Officer Reports	I.C. 74-105(4)(c)

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Inmate Telephone Recordings and JPay Email	I.C. 74-105(4)(a) and IDAPA 108.04.b
Inmate Transport Information	I.C. 74-105(4)(a)(iii) and IDAPA 108.04.b
Inmate Visitor Information	I.C. 74-105(4)(a) and IDAPA 108.04.b
Investigatory records of the IDOC	I.C. 74-105(1), I.C. 74-105(4)(a), and IDAPA 108.04.b
Proposed or existing critical infrastructure records	I. C. 74-105(4)(b) and IDAPA 108.04.a
DNA database records	I.C. 74-106(17)
Records of a prisoner maintained by the IDOC or the Idaho Commission of Pardons and Parole when requested by that prisoner	I. C. 74-113(3)(e)
Records of a current or former offender requested by another person within IDOC custody	I.C. 74-105(14), 74-105(4)(a)(v), and IDAPA 108.04.a
Records of the Idaho Security Medical Program	I.C. 74-104(2), I.C. 74-105(4)(a), and IDAPA 108.05
Certain Assessments or portions of the Assessments (i.e. LSI, GAIN, TABE, etc.)	I.C. 74-104(1), 42 CFR Part 2
Certain Education or Academic Records	74-104(1), 74-108(5), IDAPA 108.04.a and FERPA, 34 C.F.R. part 99
Certain site-specific security operation records and/or emergency response records	I.C. 74-105(4)(a) and (b) and IDAPA 108.04.a
Certain records of the Commission of Pardons and Parole	I.C. 74-105(4)(c)
Certain employee personnel records	I.C. 74-106(1) and IDAPA 108.04.b
Certain records specific to the habilitation of any offender	I.C. 74-105(4)(a) and IDAPA 108.04.a

***Request for Records that do not fall under the Public Records Act:***

**Court Orders**

Records that are exempt under the Idaho Public Records Act must be released under court order.

***Verify authenticity of the court order with the Deputy Attorney General assigned to IDOC.***

**Subpoena (duces tecum)**

If a public record is subject to subpoena, the custodian of the record must immediately advise the Deputy Attorney General (DAG) assigned to the IDOC for further instruction, unless the custodian has received previous instruction or guidance from the DAG on how to respond to the subpoena.

The custodian may be required to attend court proceedings to identify and authenticate the record subject to subpoena. If the subpoena is from a person or an entity other than

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a governmental agency (i.e. county prosecutor, public defender, Attorney General), please contact the DAG assigned to the IDOC.

Offender counseling and treatment records will be handled as medical records.

## 9. Integrity of Public Records

- Under the Idaho Public Records Act, records custodians have an affirmative obligation to maintain such vigilance as is required to prevent the alteration of any public record.
- It is a felony to steal, mutilate or falsify a public record. See Idaho Code Sections 18-3201 and 18-3202.
- Idaho Code Section 18-3201 applies to public officials and carries up to 14 years incarceration.
- Idaho Code Section 18-3202 applies to private person and carries up to five years incarceration.

## REFERENCES

### [Idaho Public Records Act](#)

#### [IDAPA 06.01.01](#)

#### [\*Request and Consent For Release Of Confidential Offender Information Form\*](#)

Purpose: Formal written request by an offender for access to records about himself. This request is intentional and clearly outlines request and conditions thereof. Releases IDOC from liability of disclosure.

#### [\*Affidavit Of Custodian/Designated Custodian Of Public Records\*](#)

Purpose: To certify public records as true and correct copies upon request.

#### [\*Certification Stamp\*](#)

Purpose: To certify public records as true and correct copies upon request. Used when certification stamp is required to appear on the face of the document copy itself.

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