

Idaho Public Records Ombudsman

December 15, 2014

Governor C.L. "Butch" Otter

Re: Report and Recommendation in Response to Executive Order 2014-04, Establishing a Public Records Ombudsman

Dear Governor Otter,

I am pleased to provide you with the following report and recommendations in response to Executive Order 2014-04. In that Executive Order, you tasked me with providing you a report with information including:

- Ensuring all executive branch agencies', departments', and offices' policies and practices concerning public records disclosure are consistent;
- The number of denials by agency ,reasons for denying the request, costs associated with every request received by an agency (including denials and approvals) and total costs of compliance with the public records act by agency;
- Concerns and complaints from individuals about agency policies, processes, and decisions denying access to public records.

2014 Public Records Ombudsman Report

Attached is the report I've compiled based on the survey I conducted of executive agency's public records processes. The survey responses indicated that your executive agencies are prompt in responding to public records requests and receive very few complaints. However, the survey results also noted several areas with room for improvement. Based on the survey results, I recommend that every agency make their public records request policy and fee schedule easily visible on their website. Each agency should set a reasonable record retention policy. Each agency should begin tracking their public records requests if they don't already. Each agency should regularly train their employees in public records law and the agency's public records request process. Finally, each agency should look for ways to modernize their public records request process.

2014 Public Records Ombudsman Legislation Recommendations

You also tasked me to work with agencies, stakeholders, and the public to provide recommendations to the Governor for improving public record disclosure policies and laws, including but not limited to legislation to incorporate a review process at the state and local level prior to or in lieu of litigation.

In August, I convened a group to start working on legislation. This diverse group included members of the Idaho Press Club, the Newspaper Association, the attorney general's office, the Idaho Association of Counties, and the Idaho Association of Cities. We also opened our meetings to the public. This group narrowed our goals for the 2015 legislature to the following recommendations for your review:

- Re-codify Idaho Public Records and Open Meeting laws into its own title and chapters
- Create an public records committee that can review public records request appeals
- Allow the public records ombudsman to serve as a mediator between requesters and state agencies and local governments

This group began drafting legislation for these recommendations and is prepared to submit them to the Idaho Legislature in the upcoming 2015 session.

Public Records Ombudsman Report 2014

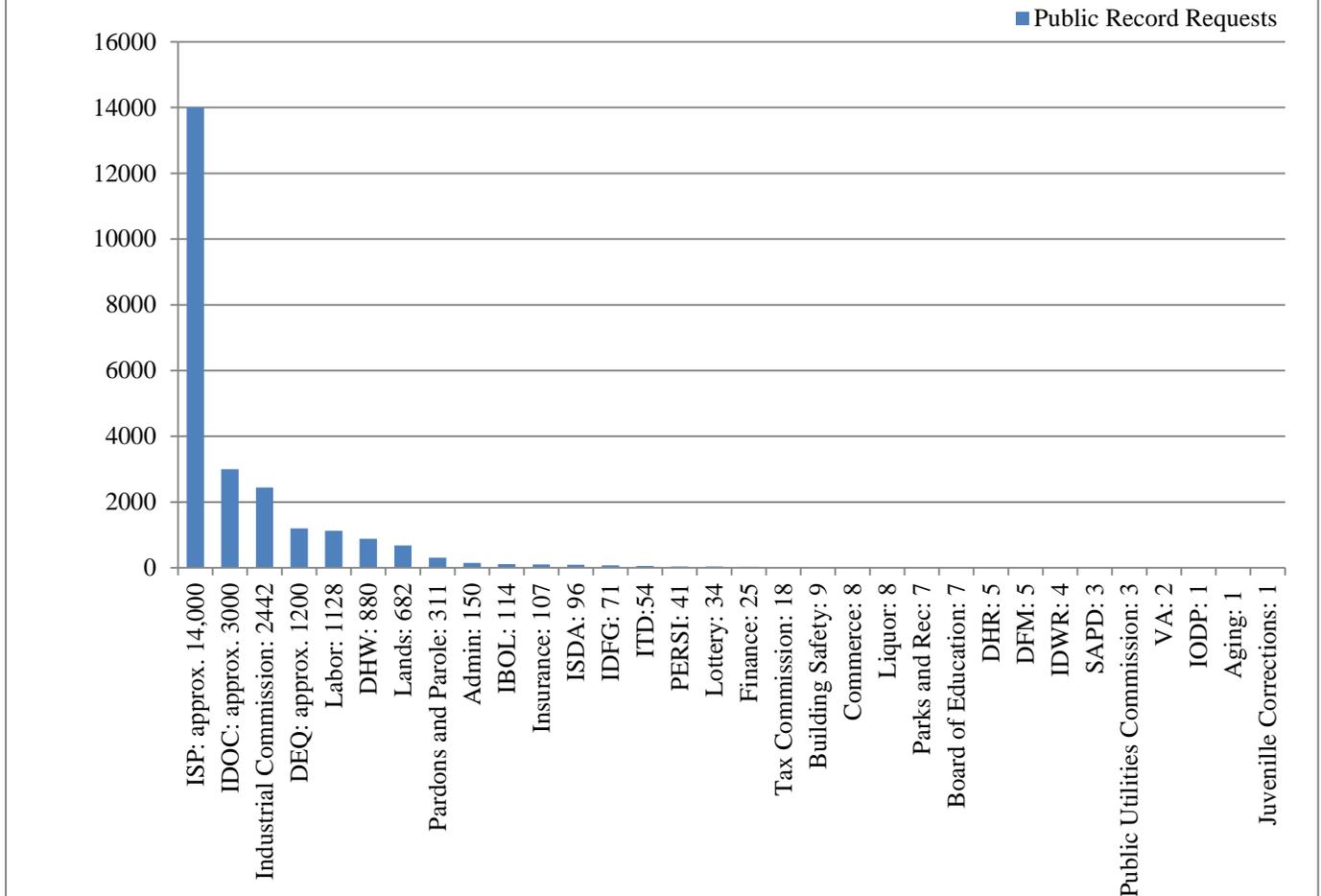
Survey Results:

In April, Governor Otter tasked me with surveying Idaho's Executive Branch agencies to determine compliance with Idaho public records law. I sent the survey to all agencies in May and gave them the deadline of September 30 to submit their responses. Overall, I was pleased with the results. Every agency was able to complete their requests either within the statutory 3 working day time period, or by taking the additional 7 working day extension. No agencies received formal complaints about their denials. No agencies improperly charged for responses that were less than 100 pages or required less than 2 hours of labor. However, the survey highlighted the need for more clarity across all state agencies regarding individual policies, fee schedules, record retention, and logging requests. The survey responses also showed a need to modernize agency request and response processes by making it easier to make and receive requests online.

Highest Number of Record Requests per Year: Idaho State Police, approx. 14,000

Lowest Number of Record Requests per Year: Office of Energy Resources 0, Office of Species Conservation 0, State Insurance Fund 0;

Public Records Requests Received by Agencies in 2013



RECOMMENDATIONS

Agency Public Records Policy

Idaho Public Records Law allows agencies to set their own policies for record requests with a few parameters. All agencies must provide the first 100 pages of records and first two hours of labor for free. Agencies must also respond to requests within 3 business days. If the response will take longer, agencies must inform the requester they will take a 7 working day extension. The survey responses showed that many agencies have created their own formal policy for the entire records request process, including who takes in the requests and assigns staff to respond. However, some agencies have no formal process, and as such, have difficulty tracking the requests they receive. For agencies that receive a low volume of requests, this may not appear problematic. However, a formal policy is very important for transparency and informing requester expectations. As a result of the survey responses, I therefore recommend that each agency create a formal policy with at least the following elements:

- **Inform the requester that all requests must be made in writing.** “In writing” includes email, fax, and an online request form, in addition to traditional formats.
- **Inform the requester of the agency’s response time.** If the response will take more than 3 business days, by the third business day, the agency must inform the requester in writing that it will need a 7 business day extension.
- **How the request is distributed within the agency for a response.** I.e. who receives the requests? Are they sent to the agency attorney for response? Who sends the response?
- **How agencies will deal with the scope of each request.** Agencies may not ask *why* the record is sought, however, the agency can contact the requester to determine if the person wants to narrow or clarify the scope of records sought. How will that be handled within your agency?
- **In what circumstances will an attorney review the response before it is sent to the requester?** When an attorney is making a request? When the records requested consist of investigatory records?
- **What is the procedure when personnel information is requested?** Agencies may not disclose personal information, including applications and all contact information without the employee’s express written consent.
- **Inform the public that when records are made available for the public to review during a comment period, a Public Records Request is not required to review the records. Fees may be imposed for copies of records, however.**
- **If a requester requests a telephone or mailing list, agencies must require requesters to certify that the records will not be used for an illegal purpose.** Agencies must place a warning notice on any list included in a response that informs the requester that illegal use of the list is punishable with a fine up to \$1,000.
- **Inform the public what the policy is for denials and partial denials, identifying that if their request is denied, the response will include the fact that an attorney reviewed the request, the specific statutory authority for the denial, and the requester’s right to appeal within 180 days from the date of mailing the notice of denial.** Also include in your policy any other relevant information about how denials are determined and that the records are maintained until the appeal period closes.
- **Inform requesters of your policy for copying records.** Will you email files if they are small enough to be sent? Will large files be placed on a disc? Will you respond with hard copies only? How will you respond if the requester asks for records in a different format than the format in which your agency keeps it? How will you respond if the requester asks for a certified copy of the record?

- **Inform requesters of your policy for examining records in house.** Will a staff member stay in the same room? Will you have a designated computer for all examinations? Will examinations only occur during normal business hours?
- **Inform requesters of your fee policy.** Remember, fees must reflect actual costs. This is not intended to be a revenue producer.
- **Inform requesters whether you will require pre-payment.** If you do not require pre-payment, how will you collect fees?
- **Inform requesters of your fee-waiver policy and how requesters can apply for such a waiver.**

Tracking Public Records Requests

Many agencies were able to respond with the specific number of requests they receive annually. However, some agencies could only provide estimates, while others had very little information. It is very important for agencies to track the request they receive. This allows agencies to more quickly respond to redundant requests and to ultimately determine what information is most often requested. This will allow agencies to potentially make certain types of information public permanently, precluding the need for the public to make requests. This can significantly cut down the amount of time agencies spend responding to requests. Further, requests themselves are public records, and thus, agencies must maintain them. All agencies must track all requests they receive. The method for tracking is left to the agency's discretion. However, for each request, tracking must include:

- The contact information of the requester
- The actual language of the request
- The date of the request
- The response time
- Whether the request was granted or denied either in whole or in part

Record Retention Policy

Survey results indicated varying levels of record retention. Agencies must develop an appropriate and feasible record retention policy and make that information easily accessible to the public. Each agency may set its own policy for each specific type of record.

Fee Schedule

All agencies must set a clear fee schedule for copies based on actual costs and this schedule must be easily accessible to the public. Agencies should not charge the same rate for electronic records sent electronically as printed copies of records. Agencies should avoid printing records that are not normally kept in printed form for the purpose of responding to a records request, unless the requester asks for them in that format.

Training

Agencies should provide annual training for staff that responds to public records request. This training should include reviewing public record statutes and troubleshooting the main issues the agency faces.

Modernization

Agencies should ensure their websites are user friendly for public record requesters and Agencies should identify frequently requested information and make it available on their website. For example, if committee minutes are frequently requested, agencies should post the minutes on their website after they are approved.