



## Office of Governor C.L. “Butch” Otter

### Policy Memorandum for Public Record Requests

**Purpose:** The purpose of this policy memorandum is to formalize a policy for handling public records requests (PRRs) received by the Office of Governor C.L. “Butch” Otter under Idaho Public Records Law, Idaho Code § 9-337 et seq.

#### Statement of Policy

##### Requests to be in Writing

1. Except for members of the Idaho Legislature, all persons requesting access to records of the Office of the Governor shall be required to make a written request.
2. A PRR submitted by email, fax, or via this online request form is considered a written request.

##### Response Time

3. The PRR shall be deemed to be received on the date a Governor’s Office employee receives a written request. If the request is submitted electronically, the date of receipt shall be the date a Governor’s office employee opens the electronic file.
4. The Office of the Governor shall respond in writing, which includes email, to all PRR within three working dates after the date the request is received. The response shall grant the request, deny the request, or give notice that additional time is needed to fill the request.
5. If no more than three working days are required to retrieve or locate any requested records, an additional seven working days may be taken to fill the request so long as the requester is notified in writing that the additional time is needed.

##### Entering the Request

6. All PRR received by a Governor’s Office employee shall be forwarded to the PRR coordinator promptly upon receipt. The PRR coordinator shall assign relevant staff to respond to the request.
7. When a PRR is submitted online, the PRR coordinator shall ensure all appropriate staff members are assigned and that each request is responded to by the Governor’s Office.
8. The PRR coordinator shall coordinate responses from all involved parties.

##### Scope of Request

9. A requester shall not be asked why the public records are being sought except, as described in Idaho Public records Law, to inquire whether a requested record or information will be used for purposes of a mailing telephone list.
10. Where a request is broad or unclear or may incur substantial fees, the PRR Coordinator may contact the requester to determine if the person wants to narrow or clarify the scope of any records sought. If the requester changes the scope or substance of a PRR significantly before the request is filled by the Governor's office, the original request will be considered withdrawn.
11. A person may request to view or copy existing written documents and electronic files prepared, owned, used, or retained by the Governor's Office that contain information relating to the conduct or administration of the public's business. However, the Governor's office will not prepare new documents in response to a PRR.

### **Requests Submitted by an Attorney**

12. When the Governor's Office receives a PRR from an attorney or law office, review by the Governor's General or Associate Counsel shall be sought before the request is filled or denied.

### **Active Enforcement Actions and Litigation**

13. When the Governor's Office receives a PRR to inspect or take a copy of materials that consist of investigatory records related to an ongoing or pending enforcement or litigation, review by the General or Associate Counsel shall be sought before the request is filled or denied. Investigatory records include those records that, if disclosed, could compromise an ongoing investigation or enforcement action or reveal a confidential source (including complainants that wish to remain anonymous.)
14. If a Governor's Office employee knows that a particular matter within the scope of a PRR has been the source of litigation or enforcement in the past, they shall coordinate with the General or Associate Counsel to ensure that such matters are no longer active before the request is filled or denied.

### **Personnel Information**

15. When the Governor's Office receives a PRR for personnel information, it shall be routed through the PRR coordinator before the request is filled or denied. No personal information, including applications, contact information which includes address, phone number, or email will be released without that person's express written consent. Names of the top five applicants for employment to either the Governor's Office or a commission or board may be released without consent.

### **Public Comment Packages**

16. Where the Governor's Office's records are made available for the public to review during a comment period required by statute or regulation, members of the public are not required to submit a PRR prior to reviewing the records on the public comment package. Unless prohibited by the controlling statutes, a fee may be imposed for copies of records in a public comment package pursuant to the fee schedule.
17. Any relevant or peripheral documents not included in a public comment package and not exempt from disclosure shall be made available to the public pursuant to a formal PRR.

### **Contact Lists:**

18. Whenever a person submits a PRR via the online request form or uses the Governor's OfficeAg Public Records Request Form, he or she must certify that disclosed information will not be used as a telephone or mailing list or for any other illegal purpose.
19. In some instances, a Governor's Office employee may suspect a requester is using disclosed information as a telephone or mailing list in violation of the law despite receipt of confirmation to the contrary from the requester. Often this will be the case when a request is received from a company or individual known to collect public information for marketing purposes or with a history of making such requests to the Governor's Office. In these cases, the PRR custodian and/or PRR coordinator shall confer with the General or Associate Counsel on whether the request should be denied. If Counsel determines the request should be denied, a denial letter shall be sent to the requester. The denial letter will include instruction on how the requester may resubmit their request and obtain the requested documents if a letter is provided promising no commercial use.
20. Before distribution, Governor's Office staff shall place the following notice on any list that could potentially be used as a phone or mailing list without consent of the persons on the list:
21. "WARNING: USE OF THIS LIST AS A MAILING LIST OR A TELEPHONE LIST IS PROHIBITED BY IDAHO CODE § 9-348 AND PUNISHABLE BY A CIVIL PENALTY UP TO \$1,000."

### **Denials and Partial Denials**

22. Certain records may be withheld from disclosure due to their confidential nature. The exceptions to public records disclosure are described in the Idaho Public Records Law.
23. Any time a requester is not allowed access to a document or any portion of a document that falls within the scope of the request, it is a denial or partial denial. All denials and parties denials must be reviewed by the General or Associate Counsel.
24. All denials and partial denials of PRRs shall be in writing and shall include reference to the following:
  - a. The fact that the General or Associate Counsel reviewed the request
  - b. The specific statutory authority serving as basis for the denial or partial denial

- c. The requester's right to file an appeal within 180 days from the date of mailing the notice of denial or partial denial
25. Where possible, exempted portions of a record or document, or specific pages of a record document shall be removed or struck out so the rest of the material can be provided to the requester.
26. Where a PRR is denied and the requester subsequently asks for more detail regarding the nature of the documents withheld or the legal basis for the denial or partial denial, the requester shall be referred to the General or Associate Counsel for further information.
27. Any records withheld as a denial or partial denial shall remain available until the end of the requester's 180 calendar day appeal period or until a decision has been rendered on any petition filed.

### **Copying Records**

28. Where the number of documents is not voluminous, requested records may be copied or scanned and mailed or emailed at the request of the person submitting a PRR. Where a request is broad and the number of documents voluminous, the requester shall be sent a letter indicating that he or she may arrange to visit the Governor's Office and examine the records in house.
29. Where the requester seeks access to a record in a format not used by the Governor's office in the normal course of business, the record shall be provided in the format used by the Governor's office unless it is determined by the General or Associate Counsel that a valid reason exists for providing that particular record to the public in the format requested. Under no circumstances shall one person be denied access to a record in a particular format when the record has been or will be made available to another member of the public in that format.
30. A certified copy of any public record, if feasible to produce, shall be provided upon request.

### **Record Examinations**

31. While records are being examined in-house, a Governor's Office employee shall be present in the same room or at a nearby location.
32. Examination of public records shall be conducted during regular business hours unless otherwise authorized. Any requester that schedules review of records outside regular business hours shall provide advance payment for a Governor's Office employee to be present.
33. Governor's Office staff shall prevent alteration of any public record while it is being examined.

### **Fee Schedule**

34. Idaho Code 9-338 authorizes the Governor's Office to establish fees to recover actual costs associated with locating and copying documents in responding to a PRR. The Governor's Office Public Records Fee Schedule is located [here](#). From time to time, the Governor's Office will revisit the PRR fee schedule to ensure compliance with Idaho Code and update fee amounts as necessary. PRR fee schedule updates may occur without updating this entire policy.
35. In establishing its fee schedule, the Governor's Office elected to bill at labor rates representing the average hourly rate of all staff involved in producing the response, which includes attorneys reviewing the request. This policy is consistent with the intent of Idaho Code § 9-338(10)(e).

### **Prepayment of Fees**

36. Where the costs associated with filling a PRR might cause the requester to withdraw or narrow the request, the requester will be informed of the estimated charges before DEQ acts on the request.
37. Prepayment of costs associated with filling a PRR will be required.

### **Fee Waivers**

38. The following government entities shall not be assessed any fees under this policy: state legislators; federal agencies; other state agencies; cities and counties; school districts; health districts, and state funded colleges and universities.
39. The Governor's Office shall not charge any cost or fee for copies or labor when the requester demonstrates that examination and/or copying of public records meets *all* of the following conditions:
  - a. Is likely to contribute significantly to the public's understanding of operations or activities of the government.
  - b. Is not primarily in the individual interest of the requester, including, but not limited to, the requester's interest in litigation in which the requester is or may become a party.
  - c. Will not occur if fees are charged because the requester has insufficient financial resources to pay such fees.
40. The following factors will be considered when evaluating a requester's qualification for the public interest clause:
  - a. Whether the requested record is already in the public domain
  - b. Whether the subject of the requested records concerns government operations or activities
  - c. Whether the requested records would contribute to the public's interest or understanding of those operations or activities
  - d. Whether the requester will disseminate the information to the public

- e. Whether disclosure of the record would benefit the broader public interest or understanding, not merely the private interests of the requester
41. The following factors will be considered when evaluating a requester's qualification for the insufficient financial resources clause:
- a. The extent to which the requester will receive an economic benefit by using the requested information
  - b. The financial assets and debts of the person or agency requesting the waiver
  - c. Whether the fee requirement inhibits the requester's ability to obtain the records
42. The Governor's Office may seek additional information from a requester to demonstrate qualification for a fee waiver.
43. All requests for a waiver shall be evaluated on a case-by-case basis. Any response to a request for a fee waiver shall be reviewed by the General or Associate Counsel.

### **Billing and Fee Collection**

44. When a fee is charged for copying or printing public records and/or associated out of pocket costs, the requester shall be sent an itemized invoice conforming to the requirements in Idaho Code § 9-338(10)(g) and shall not be billed for any lump sum costs. The requester must remit payment before receiving the records.