

State Agency Public Records Questionnaire

1. Please describe your current public records request process and policy for maintaining records that may be requested. *See attached Policy and Procedure*
  - a. What are the issues, if any, you see with your current office process and policy?
  - b. How could it be improved? *We should keep a log of public records requests.*
2. How many public records requests did your agency receive in the calendar year 2013?  
*Unknown.*
  - a. How many through May 2014? *1 of record*
3. Of those requests, how many were granted in full? *One*
  - a. How many were denied in part? *None*
  - b. In full? *None*
4. Do you have frequent requesters? *Unknown, requests are not saved or logged.*
5. For each request, please provide the following information:
  - a. Type of record requested *PREA (Prison Rape Elimination Act) Audit and corrective action plan for the IDJC St. Anthony facility.*
    - i. How many of each type of record was requested in total for the year?  
*Unknown*
  - b. Granted/Denied in Part/Denied in Full
    - i. How many of each? *One request, granted in full*
  - c. Reason for denial whether in whole or in part *NA*
  - d. Time elapsed for response *2 days*
  - e. If the time elapsed was more than the statutory 3-day standard, why? Please explain.

f. If the time elapsed was more than the statutory extended 10-day standard, why?

Please explain

g. What fees did you charge? *None.*

h. Please itemize the charges-labor, copying fees, etc...

i. Did you provide the first 100 pages and first two hours of labor free, as required by statute? Why or why not?

j. Type of requester: individual, law firm, NPO, etc.. *AP- news media*

k. Volume of request *123 Pages*

l. Were records provided to the requester with redactions? *NA*

i. If so, please describe the extent of redactions and the labor cost charged for the redaction.

m. In what medium were records provided? *Electronic*

n. Did the requester dispute the decision? *No*

i. If so, what was the outcome?

ii. Did the request go to court?

1. If so, what was the outcome

iii. What type of staffer responded to the records request?

1. Please list all

Anything unusual about this request? *No*

**Idaho Department of  
Juvenile Corrections  
Administrative  
Policy/Procedure**

<u>NUMBER</u>	<u>REVISED</u>	<u>REVIEWED</u>
901	01/28/13	01/28/13
<u>FORMERLY</u>	<u>EFFECTIVE</u>	<u>PAGES</u>
902.00	03/04/02	8

SUBJECT: PUBLIC RECORDS

APPROVAL:   
SHARON HARRIGFELD, DIRECTOR

ORIGIN: LEGAL SERVICES

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## Policy

The Idaho Public Records Act (the Act) codified at Idaho Code § 9-337 et seq, sets forth a person's legal right to examine and copy public records in Idaho. The intent of the Act is to make all records maintained by public agencies open to the public for inspection and copying at all reasonable times, unless the information is specifically exempted from disclosure by law.

It is therefore the policy of the Idaho Department of Juvenile Corrections (IDJC) to provide access to, and copies of, records immediately upon request whenever possible. For public records which are not regularly or routinely provided to the public, in the course, scope, and furtherance of the IDJC's responsibilities, persons will be asked to submit a written request, and under specific circumstances, may be asked to pay approved costs incurred to respond to the request.

## Procedure

### I. Public Records

- a. Include, but are not limited to, any existing writing containing information relating to the conduct or administration of the public's business, prepared, owned, used or retained by a public agency regardless of physical form or characteristics.
- b. It is presumed that all public records are open at all reasonable times for inspection, except as otherwise expressly provided by statute.
- c. The Act does not obligate IDJC to create a record in order to comply with a public records request. For example, IDJC is not obligated to create or perform a statistical analysis in order to provide information that is requested in a public records request if that statistical information is not already contained in a writing.

### II. Exemptions from Disclosure

- a. Records exempt from disclosure by the Act are specifically listed in Idaho Code §§ 9-340A through 9-340H. All employees should be aware that there are some records that cannot be released to the

public. **If there is any doubt about whether information should be disclosed, ask for a written request and upon receipt of the same immediately fax to Legal Services.**

b. IDJC records exempt from public disclosure include, but are not limited to:

i. Juvenile Records

1. Juvenile Case Management Records: are exempt from public disclosure pursuant to Idaho Code § 9-340B. Any request for juvenile case management records shall be processed in compliance with the Control, Maintenance and Movement of Case Management Files policy.
2. Juvenile Education Records: are exempt from public disclosure pursuant to Idaho Code § 9-340A(1) and the Family Education Right and Privacy Act (FERPA). Any request for juvenile education records shall be processed in compliance with the Control, Maintenance and Movement of Education Records policy.
3. Juvenile Medical Records: are exempt from public disclosure pursuant to Idaho Code § 9-340A(1) and the Health Insurance Portability and Accountability Act of 1996 (HIPPA). Any request for juvenile medical records shall be processed in compliance with the Disclosure of Juvenile Health Information policy.

ii. Custody Review Board Records

1. Custody Review Board records are exempt from public disclosure pursuant to Idaho Code § 9-340B.
2. Any request for records of the Custody Review Board shall immediately be forwarded to Legal Services.

iii. Personnel Records

1. Personnel records are exempt from public disclosure, except as provided in Idaho Code § 9-340C.
2. Any requests for personnel records shall immediately be forwarded to Human Resources.

c. Records may contain both exempt and nonexempt records. IDJC is responsible for separating the exempt records from the nonexempt records and supplying the nonexempt record. The Act prohibits denying access based upon the fact that the record contains both exempt and nonexempt records.

- d. Even if an exemption applies to a record, the law may allow disclosure of statistical information that does not identify any particular person.

### III. Designated Records Custodians

- a. Records Custodians will be trained in accordance with the current Act and disclosure of IDJC records under *Idaho Public Records Law Manual* published by the Office of the Attorney General. Any changes and/or updates in the statute, administrative rules and case law will require additional training.
- b. The following IDJC employees are designated as official custodians of IDJC records for the purposes of this policy:
  - i. Director,
  - ii. Division Administrators,
  - iii. Public Information Officer, and
  - iv. Central Records Custodian.
- c. Designated records custodians may delegate their duties and responsibilities in order to more efficiently process public records requests.

### IV. Public Records Requests

- a. Every person has a right to examine and copy any public record, including the right to make photographs or other copies.
- b. Requests for records that are regularly or routinely provided to the public in the course, scope, and furtherance of the IDJC's responsibilities are not required to be in writing. These records would include brochures or other literature provided to the public, or similar records,
  - i. The designated records custodian should specifically identify all public records, which are routinely and regularly provided to the public in the course and scope of the IDJC.
  - ii. A list identifying these records will be maintained by the Public Information Officer and posted to the intranet/public webpage.
- c. Requests for records that are not regularly or routinely provided to the public **must** be made in writing. The requestor will be asked to complete the Request for Public Records form (DJC-049). If the form is not used, any written request should include the following information:
  - i. name of person requesting the records,
  - ii. mailing address,
  - iii. email address, and

iv. telephone number.

V. Response to a Public Record Request

- a. A response to a public record request either granting or denying the request must be provided within **three (3) working days** of the date of receipt of the request. All public record requests must **immediately be** forwarded to Legal Services for review, unless it is a request for records identified by the designated Records Custodian as a record that is regularly or routinely provided to the public.
- b. If it is determined that additional time is needed to locate or retrieve the records or the records are voluminous, written notification must be given to the person requesting the records within three (3) working days that the records will be provided **no later than ten (10) working days** of the date of receipt of the request.
- c. A certified copy, if feasible to produce or when required by law, must be provided upon request.
- d. Only one copy will be provided of the requested documents. IDJC will not provide multiple copies.
- e. When a request is denied, in full or in part, the requesting party will be sent a notice of denial, or partial denial, detailing the statutory authority for the denial, provide a statement of appeal rights, and be signed by the Deputy Attorney General.
  - i. If a request is denied, the requested records must be retained until the end of the appeal period (180 days), until there has been a decision on an appeal, or as otherwise provided by law, whichever is longer.
  - ii. **Whenever a request is denied, there must be some indication made on the record that it shall not be purged without the approval of the designated custodian and the Deputy Attorney General. IT shall be notified of all denied requests.**
- f. If IDJC fails to respond to a public records request, the request is considered to be denied within ten (10) working days of the date of the request.

VI. Access to Records

- a. Examination of records must be conducted during regular office hours unless the Director or the designated records custodian authorizes otherwise. In this event, the persons designated to represent the custodian during such examination shall be entitled to reasonable compensation to be paid to them by IDJC out of funds provided in

advance by the persons examining such records at other than regular office hours.

- b. The requestor may make photographs, photographic, or other copies while the records are in the possession of the custodian using equipment provided by IDJC.
- c. IDJC shall not prevent the examination or copying of public records by contracting with a nongovernmental body to perform any of its duties or functions.

VII. Penalty and Immunity

- a. The Act provides a penalty of up to \$1000 if a court determines that the denial of a legitimate public records request was done deliberately and in bad faith.
- b. The Act also provides immunity from liability for the release of records as long as there is a good faith attempt to comply with the law's requirements. Therefore it is important to immediately refer any questions or any requests that seem doubtful to Legal Services.

VIII. The Following General Guidelines Apply

- a. The law prohibits asking why the information is needed.
- b. It is permissible to provide information to the requester to help narrow the scope of the request or to help the requester make the request more specific when the response is likely to be voluminous or require payment as provided in Section IX.
- c. It is permissible to verify the identity of the person requesting a record to ensure that the requested record or information will not be used for purposes of a mailing or telephone list.
- d. Staff must maintain vigilance to see that records are not altered or destroyed while being examined, but the law prohibits the agency's examination of any copy, photograph, or memoranda in the person's possession.
- e. Staff shall extend to the person all reasonable comfort and facility.

IX. Costs for Providing Public Records

a. Labor Costs

- i. The fee charged for locating or copying a public record cannot include any labor costs, unless one of the following is present:
  - 1. The request is for more than 100 pages of paper records,  
or

2. The request includes records from which nonpublic information must be deleted, or
  3. The actual labor associated with locating and copying documents, including those in electronic format, for a request exceeds two (2) person hours.
- ii. The amount of any labor costs shall be equivalent to the lowest hourly rate of the employee necessary and qualified to process the request.
  - iii. If the request requires redactions to the records by the Deputy Attorney General, the rate charged shall be no more than the per hour rate of the lowest paid Deputy Attorney General within IDJC.

b. Copying or Actual Costs

The Act permits IDJC to charge for the actual costs of photocopying records. The first 100 pages must be provided at no cost. IDJC's cost of standard photocopies is currently \$0.10 per page for all pages after 100.

- i. Costs for reproduction, other than copying, for such items as drawings, blueprints, computer disks, etc., will be charged to the requesting person at the direct or actual cost to IDJC.
- ii. The fee charged for providing information in the form of computer tapes, disks, microfilm, or similar record media may not exceed the amount of the direct costs for copying, plus allowable costs of administration and labor.
- iii. If there is a request to mail copies of documents to someone and the mailing cost is in excess of current first class letter postal rate, ask for a written request, advance payment, and a stamped, self-addressed envelope large enough for the number of copies.

c. Waiver of Costs

- i. There is no cost for providing those records identified by Division Administrators as records that are regularly provided to the public in the course and scope of IDJC's duties.
- ii. There is no charge for any record request for which the total actual cost of compliance is \$10 or less.
- iii. The requesting person will not be charged any cost or fee for copies or labor when the requesting person demonstrates that the request either:

1. Will not occur if fees are charged because the requester is unable to pay, or
2. Is likely to contribute significantly to the public's understanding of the operations or activities of government, or
3. Is not primarily in the individual interest of the requester, including the requester's interest in litigation in which the requester is or may become a party.

d. Advance payment of any and all charges is required.

X. Inspection and Correction of an Individual's Records: (Note requests for correction of an individual's records should be immediately referred to Legal Services.)

a. After providing identification, an individual may inspect, copy and request correction of public records pertaining to that person, even if the record is exempt from disclosure.

b. A person may then request in writing an amendment or correction of any records pertaining to that person.

i. A correction(s), or a written refusal to make the correction, must be made within ten (10) calendar days.

ii. A written refusal to correct the records must include the reasons for the refusal and indicate clearly the person's right to appeal the refusal and the time period for doing so.

iii. The court may award reasonable costs and attorney's fees to the prevailing party or parties, if it finds that the request for amendment or refusal to amend was frivolously pursued.

c. Idaho Code §9-342(3) prohibits access to certain records pertaining to oneself if the information:

i. relates to exempt investigatory records of an ongoing investigations;

ii. is compiled in reasonable anticipation of litigation which is not otherwise discoverable;

iii. relates to adoption records;

iv. is otherwise exempt from disclosure by statute or court rule; or

v. is a record of a prisoner maintained by the state or local agency having a custody or former custody of the prisoner or by the commission of pardons and parole.

## XI. Appeal Rights After Denial or Partial Denial

- a. The sole remedy for protesting the public agency's decision to deny or partially deny a person's request for records is to file a petition in the district court of the county where the records or some part of them is located, requesting the court to compel the agency to make the information available or to correct the record.
- b. The time limit for filing an appeal is 180 days from the date the notice of denial is mailed.

*Reference:*                    [Glossary of Terms and Acronyms](#): Copy, Custodian, Inspect,  
Public Records, Writing  
*Idaho Code §9-337 through 9-350*  
*Office of the Attorney General Idaho Public Records Law Manual*  
*Family Education Right and Privacy Act (FERPA)*  
*Health Insurance Portability and Accountability Act of 1996 (HIPPA).*

*Related Policies:*        *Confidentiality*  
*Control, Maintenance, and Movement of Case Management Files*  
*Control, Maintenance, and Movement of Education Records*  
*Disclosure of Juvenile Health Information*

*Related Forms:*         *Request for Public Records (DJC-049)*