

IDAHO DEPARTMENT OF LABOR'S RESPONSE TO STATE AGENCY PUBLIC RECORDS QUESTIONNAIRE

1. Please describe your current public records request process and policy for maintaining records that may be requested.

Response: Most Department records that identify individuals or employers are confidential and may not be released to the public except under certain conditions. These confidentiality restrictions are based on federal and state law. In general, identifying information obtained in the Department's administration of the Unemployment Insurance (UI) program, Employment Services (ES) programs, Labor Market Information (LMI) programs, Workforce Investment Act (WIA) program, Agricultural Labor monitoring activities, Disability Determinations Services (DDS), and the New Hire Directory is confidential. Identifying information in the UI, ES, WIA and Agricultural Labor programs is considered exempt from disclosure because it is classified as protected employment security information in Idaho Code §§ 9-340C(7) and 72-1342, and in IDAPA 09.01.08. This information cannot be disclosed unless an interested party agrees to waive the exemption.

The confidentiality of UI information is specifically required by federal regulations in 20 C.F.R. § 603. Identifying information in DDS records is confidential under 20 C.F.R. § 401. Identifying information in the New Hire Directory is confidential under Idaho Code § 72-1605 and is also exempt from disclosure under the Public Records Act. Most personnel information pertaining to Department employees, former employees, and retirees is confidential. Computer programs developed or purchased by or for the Department for its own use are also exempt from disclosure.

The confidentiality requirements cover only identifying information, not statistical information that is not descriptive of an identifiable person or persons. Records pertaining to the general operation and administration of the Department as an agency are not confidential. Identifying information obtained in the Department's administration of the Wage & Hour statutes is also not confidential.

The disclosure of confidential employment security information is authorized when certain requirements are met. Those requirements vary depending on the party making the request:

Request by an individual or employer for their own records:

After providing identification or a notarized informed consent release, a person or employer may inspect and copy otherwise confidential records pertaining to that person or employer. For example, an interested party to a claim for benefits or proceedings involving employer liability may inspect and copy records pertaining to that claim or proceedings. An applicant for employment services may inspect and copy his or her application and referral records, including any job orders to which the applicant has been referred. An employer who has placed a job order may inspect and copy the employer's job order records, including a list of applicants referred to the employer on the employer's job order.

Request by an attorney:

Licensed attorneys representing clients may access any records that are disclosable to their clients, however, an attorney requesting such confidential information for Employment Security

Law purposes must indicate in a letter on letterhead that he or she represents the client. If the attorney is requesting the release of client information for a non-Employment Security Law purpose the attorney must also submit an "informed consent release" from his client authorizing the disclosure that meets the requirements of IDAPA 09.01.08.013.01. An attorney who does not represent the employer or individual whose records are sought must provide an "informed consent release" signed by the person whose records are sought that meets the requirements of IDAPA 09.01.08.013.01 and provide a "third party confidentiality agreement" signed by the attorney that meets the requirements of IDAPA 09.01.08.013.02.

Request by an agent representing individual or employer:

An agent representing the individual or employer whose records are sought for Employment Security Law purposes must provide either an "informed consent release" from the individual or employer authorizing the disclosure that meets the requirements of IDAPA 09.01.08.013.01, or submit clear and convincing evidence, such as a power of attorney, to the Department that indicates the agent represents the individual or employer. An agent representing the individual or employer whose records are sought for a non-Employment Security Law purpose must provide an "informed consent release" from the individual or employer authorizing the disclosure that meets the requirements of IDAPA 09.01.08.013.01.

Request by a third party:

A third party who requests information concerning an individual or employer must submit an "informed consent release" signed by the person whose records are sought that meets the requirements of IDAPA 09.01.08.013.01; and a "third party confidentiality agreement" signed by the third party seeking the records that meets the requirements of IDAPA 09.01.08.013.02.

Request by an elected official performing constituent services:

Legislators and members of Idaho's Congressional delegation may contact Department staff for economic or employment information that will assist them in carrying out their elected duties. Elected officials requesting information for a constituent are considered representatives of the constituent and are therefore privy to confidential information that would be disclosable to the constituent if the elected official presents reasonable evidence that the constituent has authorized the disclosure. Reasonable evidence may include a letter or written record of a telephone request.

Request by other public officials:

The Department may make confidential information available to public employees in the performance of their public duties or to their agents or contractors, subject to such restrictions and fees as the Director prescribes by rule. The U.S. Department of Labor allows this exception to the general rule of confidentiality of unemployment insurance information, but requires that arrangements be made for the reimbursement of costs involved if the disclosures to a public official would entail more than incidental and nominal costs. The Department has promulgated rules on the disclosure of information to public employees at IDAPA 09.01.08.012. The Department may disclose confidential information to other agencies if: the disclosure is required by federal law, the disclosure is required under a reciprocal agreement for the collection of contributions and payments in lieu of contributions, the disclosure is pursuant to a written agreement meeting the requirements of IDAPA 09.01.08.012.05, the disclosure is of benefit to the Department, or the disclosure is to a public official contacted for assistance when the safety of the Department staff or property may be at risk.

Subpoenas:

Confidential information may be supplied to a public official with subpoena authority after the Department determines the subpoena is reasonable in nature and scope. Law enforcement officials are among the public officials that may obtain confidential information with a subpoena. When a subpoena or other compulsory process for the production of confidential information is served on Department staff on behalf of a private party in litigation in which the Department is not a party, the Department must move to quash all subpoenas for the production of employment security information and attempt to recover costs from private parties not entitled to access the information sought, if other means of avoiding the unauthorized disclosure of the information have been unsuccessful or a court has not already ruled on the disclosure. To date the Department has been successful in quashing all such subpoenas received.

2. How many public records requests did your agency receive in the calendar year 2013?

Response: For calendar year 2013, the Department received and processed 1,128 public records requests. Through May of this year the Department received and processed 493 requests. It should be noted that these numbers do not include records provided to other agencies as the result of written disclosure agreements the Department has with those agencies.

3. Of those requests, how many were granted in full?

Response: Of the total amount of requests received since January of 2013, 1,297 requests were granted in full and 324 requests were denied in full. No requests were given a partial denial.

4. Do you have frequent requesters?

Response: Yes.

5. For each request, please provide the following information:

a & b. Type of records requested and how many of each type requested were Granted/Denied in Full? (Note: There were no partial denials.)

Response:

	2013	2014	Denied	Granted
Unemployment	983	418	197	1204
Employer Account	138	70	122	86
Wage & Hour Claims	0	1	0	1
Department Information	5	2	3	4
Disability Determination	0	1	1	0
Employment Services	2	1	1	2

c. Reason for denial whether in whole or in part?

Response: Requests were denied because they did not meet the legal requirements under state and federal law for the disclosure. The typical reasons were failure to obtain a release, the lack of a third party agreement, or the failure to provide the necessary information.

d. Time elapsed for response?

Response: Nearly all requests are responded to within the statutory 3-day standard. If more time is needed to locate and print the requested records, a 10-day letter is always sent to the party requesting the information. No request for records has required more than 10 days to respond.

e. If the time elapsed was more than the statutory 3-day standard, why? Please explain.

Response: (See answer above)

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

Response: (See answer above)

g. What fees did you charge? Please itemize the charges-labor, copying fees, etc....

Response: The Department charges 20 cents per page and \$18.60 per hour for staff time in locating, copying and mailing the requested information. However, there is no charge for the first \$100 of expenses per requester per year. Fees are only charged for requests after \$100 in annual expenses are exceeded.

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

Response: The Department is more generous than the statute requires--see answer above.

i. Type of requester? Individual, law firm, NPO, etc....

Response: Individuals requesting their own information, law firms, NPOs, landlords, housing authorities, hospitals, counties, state agencies, federal agencies, law enforcement agencies, other states, employers, mortgage companies, cities and service providers.

j. Volume of requests?

Response: The vast majority of disclosures are 1 to 3 pages in length. Other requests have ranged from 20 up to 360 pages.

k. Were records provided to the requester with redactions?

Response: Yes. Records often contain personally identifying information of others that is beyond the scope of the request. That information must be redacted. The time spent redacting information is counted against the \$100 annual limit.

l. In what medium were records provided?

Response: Records are provided by facsimile transmission or by mail.

m. Did the requester dispute the decision?

Response: No. Record requests are responded to by a legal assistant and a Deputy Attorney General who acts as the Department's disclosure attorney. On occasion the Department must go to district court to protect confidential employment security information, but that action is initiated by the disclosure attorney and not the entity making the request.

n. Anything unusual about this request?

Response: No.