

State Agency Public Records Questionnaire

1. Please describe your current public records request process and policy for maintaining records that may be requested. Attached is a copy of IDL's policy and procedure. This policy and procedure were updated effective January 2014 in an effort to centralize our record keeping on public records requests, and to ensure compliance with §§ 9-337 through 9-350 agency wide.
 - a. What are the issues, if any, you see with your current office process and policy?
Our current process and policy are comprehensive and complete. IDL strives to ensure compliance at all offices.
 - b. How could it be improved?
One of the goals of centralizing and tracking our PRRs is to determine what could/should be posted to the IDL website. This would eliminate the need for a public records request for some items. Review and discussion is anticipated during January of 2015, after 1 full year under our new policy and procedure. Additional resources to hire a full time PRR Coordinator to handle all PRR's statewide, and the technology to digitize records would certainly assist in our goal of 100% compliance statewide.
2. How many public records requests did your agency receive in the calendar year 2013?
The Boise office of IDL received and responded to 682 public record requests in calendar year 2013. This figure does not reflect agency wide numbers. Agency wide tracking was not implemented until January 2014,
 - a. How many through May 2014?
As of May 31, 2014, IDL received and responded to 379 public records requests. Of those requests, how many were granted in full?
667 (2013)
 - b. How many were denied in part?
2013
1 – Portion of request for mailing/contact list.
 - c. In full?
2013
2 – Trade secret or confidential (HR)
1 – No record existed
9 – Exempt – Transactions (Real Estate, not closed)
2 – Litigation (Discovery issue) referred to AG
3. Do you have frequent requesters?
Yes.
4. For each request, please provide the following information:
 - a. Type of record requested
 - i. How many of each type of record was requested in total for the year?
Cottage Site Appraisals – 155

Cottage Site records other than appraisals – 7
Easement documents – 5
Encroachment Permit documents – 51
Fire related documents (investigations/reports) – 7
Fiscal documents (contracts/bids) – 4
Forestry (timber harvests/compliance,etc.) – 5
Land Board (agenda items/verbatim) – 10
Leases – Commercial – 1
Leases – Residential – 9
Leases – Grazing – 4
Leases – Minerals – 14
Mines – 7
Navigable Waters – (permits, etc.) – 15
Oil and Gas – Leasing and Regulatory – 33
Other – May include bid abstracts, notifications, GIS data – 33
State Deeds – 5
Timber – 14

b. Granted/Denied in Part/Denied in Full

i. How many of each?

2014

Granted – 375

Denied in part – 1 – Portion of Request for mailing/contact list.

Denied in full – 3 – Requests for mailing/contact lists.

c. Reason for denial whether in whole or in part

See above

d. Time elapsed for response

99.5% are responded to within 3-day statutory time limit. Those that are not- see below.

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

10-days required to compile or retrieve requested records. Requestor always notified within 3 days if 10 days will be required.

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

When it is necessary to charge fees, the requestor is allowed 30 days to pay the fees, this is the only exception to replying within the guidelines.

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

2013 – Charged a total of \$414.58.

2014 – Through May 31 no fees charged.

Fees are only charged for requests in excess of 100 pages and/or two hours of labor to compile.

Fee for copies in excess of 100 pages is \$0.10 per page

Fee for labor in excess of 2 hours is at the rate of the lowest qualified staff member able to compile the requested records, generally \$12.86 per hour.

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

Yes.

- i. Type of requester: individual, law firm, NPO, etc...

Individuals, law firms, few NPO's, all make requests of IDL, but the majority of the requests are from individuals.

- j. Volume of request

We have received requests with responsive documents exceeding 500 pages.

- k. Were records provided to the requester with redactions?

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

Personal contact information always redacted.

Trade secret/Confidential information always redacted

We do not charge for redaction.

- l. In what medium were records provided?

Records are provided electronically (email or compact disc, depending on volume of records). Hard copies are sent at the request of the requestor.

- m. Did the requester dispute the decision? - Since 2012 (and possibly prior to) we have not been disputed on our limited denials.

- 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

IDL has a PRR Coordinator in the Boise office that responds to most requests. Area office staff may respond to requests coming in to their specific office, but since January 2014, all must be logged.

- n. Anything unusual about this request?

IDL Public Records Requests (PRR) Procedure

PRR Coordinator: Administrative Assistant as Assigned

Backup #1: Administrative Assistant/Office Specialist as Assigned

All IDL employees are responsible for processing PRRs in accordance with Idaho Public Records Law, Idaho Code §§ 9-337 through 9-350¹, and IDL Public Records Request Policy, Department Policy # 2.

DEFINITIONS: For the purposes of this procedure, the following terms and definitions are used:

1. **Custodian:** The individual(s) responsible for the research, retrieval and delivery of records to a requestor.
2. **Elected Official:** To include, but not limited to, members of the Land Board, State legislators, county commissioners, and Congressional offices.
3. **Office of Record:** Staff or Area office responsible for receiving and responding to Public Records Request.
4. **PRR Coordinator:** The staff member(s) responsible for logging, tracking, assigning PRR ID number, and document retention of all PRRs received by the Department.
5. **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. Writing means information maintained in many forms, including typewritten or hand written documents as well as pictures, maps, tapes, magnetic or punched cards, and computer media¹. Email, handwritten notes, working papers, and rough drafts are public records subject to disclosure upon request.
6. **Public Record Request (PRR):** A request from a member of the public for records which may include, but are not limited to, written documents and electronic files containing information relating to the conduct or administration of the public's business prepared, owned, used, or retained by IDL. Statutory requirements apply regarding the timeliness of response. ALL PUBLIC RECORD REQUESTS SHALL BE MADE IN WRITING.
7. **Receipt date:** The business day that the PRR is received by an IDL employee. If the PRR is delivered outside of business hours (after 5 p.m. local time Monday through Friday, on Saturday or Sunday, or on an observed holiday), receipt date is the first business day following delivery.
8. **Records Retention:** The required length of time (per SG1655)² Public Records Request records are retained by the Department.

¹ Idaho Public Records Law Manual, Idaho Code §§ 9-337 through 9-350

² Idaho Records Center Records Management Guide (May 2012)

9. Three days: By or before close of business on third business day following receipt date.
10. Ten days: By or before close of business on the tenth business day following receipt date.

PROCESS:

1. PRR is received and recorded on PRR Tracking Log, located at <https://teamwork.idl.idaho.gov/IDL/Programs/Administration/PublicRecordsRequest/Pages/default.aspx>. (See Attachment 1, Users Guide). The PRR number is allocated at this time.

PRR Coordinator updates PRR Tracking Log with the following information:

- a. Date received
- b. Office received
- c. Custodian name or Custodial group
- d. Date to Custodian
- e. Three-day and ten-day due dates (Auto populates, will need to override on holiday dates)
- f. Requestor name, address, phone number, and email if applicable
- g. Subject of request
- h. Fees charged (if applicable)
- i. The information requested, verbatim
- j. Date completed

If a PRR is received via email through *public_records_request@idl.idaho.gov*, the PRR Coordinator emails the request to the appropriate custodian and/or the custodial group. Email subject line will display "PRR No. xxxxxxxx, requestor's last, first name, three-day deadline date, and the email will be marked with the High Importance indicator. The Public Information Officer is copied on any request for records identified with a newsworthy IDL asset or program. The Deputy Attorney General for IDL who is tasked with PRRs is copied on any PRR from a legal firm and any PRR identified as newsworthy by the PRR Coordinator.

Public records requests received either verbally or in writing from an elected official must be sent to the Public Information Officer (PIO) in Boise for review before a response is sent. "Elected officials" include, but are not limited to, members of the Land Board, State legislators, county commissioners, and Congressional offices.

If PRR is received by a staff member or work group by mail or email, the staff member or work group shall identify the appropriate custodian and immediately commence with the response process. All requests received by staff in the Boise office shall be emailed to *public_records_request@idl.idaho.gov* for tracking purposes. All requests received by staff in an Area office shall be forwarded to the Coordinator for that office. If the PRR is received in the Boise office in a format other than email, the request will be scanned and emailed to public_records_request@idl.idaho.gov. If the PRR is received in any other office in a format other than email, the request will be scanned and emailed to the PRR Coordinator for that office. If a member of the public wishes to make a public records request at the office, front desk staff provides a Public Records Request Form, form number IDL PRR0001.01, (Attachment 2) for the requestor to fill out. The completed

form is scanned and emailed to the Public Records Request Coordinator for that office and the original is placed in the PRR Coordinator's mailbox.

All responses and correspondence relating to PRR will carry the assigned PRR Number as follows:

Re: PRR No. 2014XXXX (Yr4digit assigned number)

If response is via email this unique identifier will be carried in the subject line.

If response is sent via letter this unique identifier will be carried below the address and before the salutation. See Attachments 6 and 7 for examples

2. PRR Coordinator creates document library for the request. All documents are to be uploaded to the PRR SharePoint site on the intranet, <https://teamwork.idl.idaho.gov/IDL/Programs/Administration/PublicRecordsRequest/Pages/default.aspx>, for the appropriate year. All interim correspondence, including responsive document(s), is to be uploaded to the document library.

The naming convention for all documents uploaded is listed below. Correct naming of documents is critical to creation of an accurate record set for each PRR.

Naming Convention: All documents uploaded to the site shall have a specific naming convention. A standardized naming convention enables correct categorization and indexing of documents. The PRR number assigned by entry into the PRR Log will always lead, as follows:

Examples: **20140001_PRRRequest**

20140001_PRRResponse

20140001_PRR10day

Description: **PRR NUMBER_Short Description (Short description for PRRs will always carry the designator PRR**

Note: Underscores are used in lieu of spaces. No Spaces should be used in naming your documents.

3. The Custodian gathers the records, ensuring that information is complete and that any non-public information is removed, and provides the records to the PRR Coordinator. If attorney review or other involvement is necessary, it is the responsibility of the Custodian to coordinate.
 - a. If records retrieval cannot be completed within the three-day timeframe, the Custodian instructs the PRR Coordinator to send the requestor a ten-day letter (Attachment 3, IDL PRR0002.01).
 - b. If records retrieval/redaction labor and copying/scanning fees may total \$40.00 or more, the custodian estimates costs using the Cost Estimate Worksheet (Attachment 4, IDL PRR0003.01) and sends the estimate to the PRR Coordinator. The PRR Coordinator sends a prepayment request to the requestor

(Attachment 5, IDL PRR0004.01). The PRR Coordinator notifies the custodian when the prepayment is received and retrieval can commence.

- i. If prepayment of fees is requested, the custodian tracks the actual labor and copy costs associated with the request and provide the information to the PRR Coordinator upon completion of the PRR. If there was an overpayment of fees, the PRR Coordinator will ensure a refund of any overage is sent to the requestor.
 - ii. If a fee waiver is requested, the request must be received in writing and approved by a Bureau Chief or Administrator.
 - c. PRR Coordinator should review results letter for correct formatting, grammar, punctuation, and to ensure upload to the document library for the PRR.
 - d. All requests, results, and correspondence shall be retained in the document library at:
<https://teamwork.idl.idaho.gov/IDL/Programs/Administration/PublicRecordsRequest/Pages/default.aspx>
4. The PRR Coordinator emails or mails the requested records and PRR Result Letter to requestor (Attachment 6).
 - a. Any electronic result larger than can be reasonably emailed shall be saved to disc and given to the PRR Coordinator for mailing to the requestor.
 - b. Results sent electronically shall ONLY be provided in PDF format.
5. PRR Coordinator updates PRR Tracking Log with completion date, time spent on retrieval of records and fee amount collected, if applicable. The requested records and any correspondence between IDL and requestor are uploaded to the document library at <https://teamwork.idl.idaho.gov/IDL/Programs/Administration/PublicRecordsRequest/Pages/default.aspx>

DENIALS: In the event of a partial or total denial of a PRR, the PRR Coordinator will initiate legal review of the result letter. The denial shall state the following:

- The attorney for IDL has reviewed the request, or IDL has had the opportunity to consult with an attorney regarding the request and has chosen not to do so.
- Statutory authority for the denial.
- Notice of the requestor's right to appeal the denial or partial denial and the time periods for doing so (Attachment 8, sample common denial verbiage).

The denial or partial denial of a PRR may present an opportunity to provide information which may help the requestor to gain a more complete understanding of the Department, its programs, or its constitutional mandate. In those instances, the PIO may provide supplemental information to the requestor.

INFORMATION REQUESTS: An information request is a request for information received by the Department from the public under the guise of a public records request. There is no statutory requirement for response to an information request. When a request is received through public_records_request@idl.idaho.gov, and it is determined that an appropriate, complete response cannot be provided with records, the request may be identified as an information request or a partial information request. When an information request is received via email through public_records_request@idl.idaho.gov, the PRR Coordinator emails the request to the PIO for response.

DISPOSAL OF RECORDS: Pursuant to Idaho Records Management Guide (May 2012) all PRR records (Record Series SG1655) will be maintained by the Office of Record for a period of one year after the 180-day appeal period (18 months AFTER response is sent). If an appeal is filed, the records shall be maintained for a period of one year AFTER the appeal process is completed. Disposal of records shall be recorded on the PRR Tracking Log in the appropriate column as follows:

Date of destruction

Method of Destruction – Delete or Shred (see below)

Volume of record (either number of pages or number of electronic files)

Approval of destruction – ARS, or authority

Records shall be disposed of by one of two (2) methods:

- a. Deletion – All electronic files are to be deleted.
- b. Shredding – Hard copies or physical files shall be shredded.

Attachments:

- 1 PRR Users Guide
- 2 PRR Request Form – IDL PRR0001.01(Rev 01/14)
- 3 10 Day Letter – IDL PRR0002.01(Rev 01/14)
- 4 PRR Estimate Worksheet – IDL PRR0003.01(Rev 01/14)
- 5 Prepay Letter – IDL PRR0004.01(Rev 01/14)
- 6 PRR Result Letter – IDL PRR0005.01(Rev 01/14)
- 7 Email response - Sample
- 8 Letter response – Sample
9. Common Denial Verbiage



PUBLIC RECORDS REQUEST POLICY

1. **REFERENCES:** Idaho Public Records Act, I.C. 9-337 through 9-350
Department of Administration Records Management Guide,
Series # SG1655
2. **PURPOSE:** IDL processes public records requests (PRRs) in accordance with the Idaho Public Records Act. This policy clarifies those portions of the Act subject to Department discretion.
3. **DEFINITIONS:** For the purposes of this policy, the following terms and definitions are used.
 - A. **Custodian:** The individual(s) responsible for the research, retrieval and delivery of public records to a requestor.
 - B. **Elected Officials:** To include, but not limited to, members of the Land Board, State legislators, county commissioners, and Congressional offices.
 - C. **Information Request:** An information request is not the same as a public records request (PRR). An information request includes, but is not limited to, information pertaining to how IDL operates and requests for copies of agency policies, forms, procedures, pamphlets, booklets, and other printed information designed for distribution. While information requests are not subject to the same statutory timelines for response, the Department shall fulfill these requests in as reasonable a timeframe as practical.
 - D. **PRR Coordinator:** IDL employee(s) tasked with the responsibility of tracking Department PRRs. The duties associated with this may include, but are not limited to:
 - Recordation of all PRRs on central tracking sheet.
 - Assignment of PRR number (all correspondence will carry this number).
 - Identifying Custodian(s) agency wide for PRRs received through the public web site, email, or mail.
 - Maintaining all records of requests and responses.
 - Monitor PRRs, as needed, for compliance with State Statute and Department policy and procedure.
 - Assist, as needed, with formatting response, and/or compiling responsive documents in central electronic file.
 - E. **Public Records:** Public Records include, but are not limited to, any writing containing information relating to the conduct or administration of the public's business, prepared, owned, used or retained by a public agency. "Writing" means information maintained in many forms, including but not limited to, pictures, maps, tapes, magnetic or punched cards, and computer disks. Email, handwritten notes, working papers, and rough drafts are public records subject to disclosure upon request.
 - F. **Public Records Request (PRR):** A request from the member of the public for records which may include, but are not limited to, written documents and electronic files

containing information relating to the conduct or administration of the public's business prepared, owned, used or retained by IDL. Statutory requirements apply regarding the timeliness of response.

- G. Receipt Date: The business day that a PRR is received by an IDL employee. If the PRR is delivered outside of business hours (after 5 p.m. local time Monday through Friday, on Saturday or Sunday, or on an observed holiday), receipt date is the first business day following delivery.
 - H. Records Retention: The required length of time (per SG1655) Public Records Request records are retained by the Department.
 - I. Ten days: By or before close of business on the tenth business day following receipt date.
 - J. Three days: By or before close of business on the third business day following receipt date.
4. **METHOD OF PRR RECEIPT**: Members of the Legislature and those engaging in business with IDL who request information regarding their specific business shall be permitted to request public records verbally. All other PRRs must be received in writing via hand delivery, email, US mail, or fax. All requests must include the requestor's name, address, and phone number. IDL's public web site asks that PRRs be submitted via email to *public_records_request@idl.idaho.gov*. This email account is monitored by the Boise Staff Office.

Should an IDL employee receive a PRR through his or her email, it shall be treated as a PRR, and the response process shall immediately commence. The requestor WILL NOT be asked to re-submit the request through the *public_records_request@idl.idaho.gov* email address. The employee receiving the request will forward the request to the PRR Coordinator of that office on the same day received. Notification to the PRR Coordinator should occur PRIOR to any response in order to allow assignment of PRR number that must be notated on all correspondence or records sent.

Due to the statutory time limits for responding to PRRs, it is important that all Department employees with active e-mail accounts use the "out-of-office assistant" when they will not have access to their e-mail during the business day. This tool will inform potential e-mail PRR requestors that they have not made contact concerning their request. Out-of-office messages should include the public records request email address. Ex: "I am currently out of the office until DATE. If this is a public records request, please submit your request to *public_records_request@idl.idaho.gov*."

5. **CUSTODIAN RESPONSIBILITY**: Once the PRR Coordinator has identified a custodian, it is the responsibility of the custodian to coordinate all activities necessary to fulfill the request. These activities may include but are not limited to:
- working with other IDL offices to identify and retrieve any additional records necessary to fulfill the request
 - removal of exempt information
 - legal review
 - preparation of records for mailing or emailing to the requestor
6. **PRR PROCEDURE AND TRACKING**: Each IDL office shall follow Department policy and

procedure for appropriately processing PRRs.

PRRs received by each office shall be tracked by the PRR Coordinator in the office to ensure adherence to statutory timelines, and Department policy and procedure.

It is the responsibility of each office to retain PRRs and responses in accordance with IDL's retention schedule. In the event that multiple offices need to provide records to fill a PRR, it shall be the responsibility of the office that received the PRR to track the PRR. The PRR is to be logged and all documents are to be retained at <https://teamwork.idl.idaho.gov/IDL/Programs/Administration/PublicRecordsRequest/Pages/default.aspx>.

- 7. RESPONDING TO A REQUEST:** IDL shall provide access to and copies/scans of records immediately upon request whenever possible. Records shall be examined during normal working hours unless the person who administers the agency or a designated custodian authorizes otherwise. A certified copy, if feasible to produce or required by law, must be provided upon request. Records may be emailed to the requestor if an email address is provided. IDL is not required to create a record if none currently exists. Also, IDL is not required to provide copies of records in a format not used by the agency in the normal course of business.

While the law prohibits asking why the information is needed, it is permissible to verify that the requested record or information will not be used for the purposes of a mailing or telephone list (§ 9-348). It is also permissible to provide information to help the requestor narrow the scope of the request or to help the requestor make the request more specific when the response to the request is likely to be voluminous or require payment (§ 9-338(9)). All requests for clarification must be made in writing. If the requestor significantly changes the scope or substance of a PRR before the request is filled, it is permissible to ask the requestor to withdraw the original request and submit a new request.

The requestor may examine non-exempt files in order to select the specific records needed. Should a requestor visit an IDL office to inspect records, an IDL staff member must accompany the requestor to ensure that records are not altered or destroyed.

A request for records must be granted or denied within three days after receipt. If the custodian determines that a request cannot be granted within three days after receipt, IDL will acknowledge receipt of the PRR in writing and advise the requestor that ten working days may be necessary to retrieve the requested records. The request must be granted or denied in whole or in part within ten working days.

The custodian shall immediately contact his or her supervisor and the PRR Coordinator if it appears that it may take more than ten working days to meet the request.

The appropriate Area Manager, Bureau Chief or Executive staff member shall review any request that creates a cause for concern prior to its response.

If IDL fails to respond to a PRR within ten working days following the request, the request shall be deemed to be denied.

See Idaho Code, §§ 9-338 through 9-348, for more information regarding the processing of a public records request.

8. **REQUESTS FROM ELECTED OFFICIALS:** Public records requests received either verbally or in writing from an elected official must be sent to the Public Information Officer and the PRR Coordinator in Boise for review before a response is sent. "Elected officials" include, but are not limited to, members of the Land Board, State legislators, county commissioners, and Congressional offices.
9. **EXEMPTIONS:** ALL records at IDL are presumed to be public unless an exemption applies. See Idaho Code § 9-340, for a complete list of records exempt from disclosure by this act. See Attachment 1 for a partial list of exemptions commonly used by IDL.

Records may contain both exempt and nonexempt information. The custodian is responsible for separating the exempt from the nonexempt information, requesting review from Legal Counsel if required before supplying only the nonexempt record. It is prohibited to deny access to a record based on the fact that the record contains both exempt and nonexempt information.

When ANY exempt information is removed from a record, the result is a partial denial, and notice of the denial must be provided to the requestor in writing. See Section 11, Denial of Request.

10. **FEES FOR PROCESSING PUBLIC RECORDS:** Pursuant to Idaho Code, § 9-338, except for fees that are authorized or prescribed under other provisions of Idaho law, no fee shall be charged for the first two (2) hours of labor in responding to a request for public records, or for copying the first one hundred (100) pages of paper records that are requested.

Fees may be established to recover the actual labor and copying costs associated with locating and copying documents if:

- i. The request is for more than 100 pages of paper records, or
- ii. The request includes records from which nonpublic information must be deleted, or
- iii. The actual labor associated responding to requests for public records in compliance with the provisions of this chapter exceeds two (2) person hours.

If fees are charged, they shall reflect the personnel and quantity of time that are reasonably necessary to process a request. Fees for labor costs shall be charged at the per hour pay rate of the lowest paid administrative staff employee or public official of the public agency who is necessary and qualified to process the request. If a request requires redactions to be made by an attorney who is employed by the public agency, the rate charged shall be no more than the per hour rate of the then lowest paid attorney within the agency who is necessary and qualified to process the public records request.

The PRR Estimate Worksheet (IDLPRR0003.01) shall be completed for all PRRs when fees are anticipated. This statement of fees is itemized to show the per page costs for copies, hourly rates of employees and attorneys involved in responding to the request, and the actual time spent on the request. It may be determined that no fee is applicable after completion of the PRR Estimate if fees total \$40 or less (see analysis below). No lump sum costs shall be assigned to any public records request.

See Idaho Code, § 9-338, for full text.

Based on an analysis of PRR fees collected by IDL from 2002 – 2009, one third of the requests resulted in fees totaling \$40 or more, and those requests constituted 90% of the total PRR fees collected by IDL. In support of this analysis, fees shall not be assessed unless charges total \$40 or more. See Attachment 2, Fee Schedule, for a complete listing of fees associated with processing PRRs.

If there is reason to believe that a requestor or group of requestors is attempting to break a request down into a series of requests for the purpose of avoiding assessment of fees, IDL will aggregate such requests to determine the total fee and will charge accordingly.

IDL will provide only one copy of each record. When copies are duplexed, each side of the copy on which print appears is treated as a single copy for the purpose of fee assessment. A single scanned page is cost equivalent to a single copied page.

If the designated custodian authorizes examination of records outside of regular working hours, advance payment of reasonable compensation for this added expense may be required.

Prepayment of fees associated with locating and copying records is required. Should the request for payment be ignored, the PRR will be considered withdrawn 30 days from the date the request for pre-payment was mailed or emailed. The Prepayment notification letter (IDLPRR0004.01) shall contain the PRR number in the 'RE' section and on the bottom portion that the customer returns with payment, as noted.

Pursuant to Idaho Code § 9-338(10)(f), IDL may not charge a fee for copying or labor when the requestor demonstrates either the inability to pay, or that the public's interest or understanding of the operations or activities of government or its records would suffer by the assessment or collection of any fee. A request for fee waiver must be approved by a Division Administrator.

11. DENIAL OF REQUEST: If a request for a record is denied in whole or in part, the requestor must be notified in writing. The notice of denial shall include the following:

- A. a statement indicating that the attorney for the agency has reviewed the request, or that the agency had the opportunity to consult with an attorney and chose not to do so;
- B. the statutory basis for the denial;
- C. a simple statement of the right to appeal and the time limit for appeal.

For an example of appropriate verbiage, see Attachment 3, Sample PRR Denial Letter.

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

See Idaho Code, §§ 9-339 through 9-346, for additional information. If there is any doubt about whether information within a particular record should be disclosed, the request shall be reviewed by the agency's attorney.

12. RETENTION OF REQUEST: All PRRs and responses shall be maintained for one year after the 180-day appeal period. In the event of a PRR appeal of denial, the PRR, denial and any appeal records shall be retained until one year after the appeal process is

completed.

13. **PENALTY AND IMMUNITY:** See Idaho Code §§ 9-345 through 9-346 for information regarding penalty and immunity. It is imperative that IDL makes a good faith attempt to comply with the law for every public records request. To ensure that the effort is made, staff is required to immediately refer any questions or any requests that seem doubtful to the person who administers the agency or a designated custodian.
14. **REVISIONS AND REVOCATION:** DEPARTMENT POLICY #2 is hereby superseded by this REVISION #2, dated January 15, 2014.

THOMAS M. SCHULTZ, JR.
Director

Date

ATTACHMENTS:

1. Partial List of Common Exemptions
2. Fee Schedule
3. Sample PRR Denial Letter

Common Exemptions used by IDL

This list is NOT intended for use as a complete list of exemptions allowed by Idaho Public Records Law

9-340A: Exemptions in federal or state law—court files of judicial proceedings

(1) Any public record exempt from disclosure by federal or state law or federal regulations to the extent specifically provided for by such law or regulation.

NOTE: “State law” includes attorney/client privileged documents. If there is any question about whether a record is “privileged,” speak with legal counsel.

9-340C: Personnel records, personal information, health records, professional discipline

(1) Except as provided in this subsection, all personnel records of a current or a former public official other than the public official’s public service or employment history, classification, pay grade and step, longevity, gross salary and salary history, status, workplace and employing agency. All other personnel information relating to a public employee or applicant including, but not limited to, information regarding sex, race, marital status, birth date, home address and telephone number, applications, testing and scoring materials, grievances, correspondence and performance evaluations, shall not be disclosed to the public without the employee’s or applicant’s written consent....

(2) Retired employees’ and retired public officials’ home addresses, home telephone numbers, and other financial and nonfinancial membership records....

(8) Any personal records, other than names, business addresses and business phone numbers, such as parentage, race, religion, sex, height, weight, tax identification and social security numbers, financial worth or medical condition submitted to any public agency or independent public body corporate and politic pursuant to a statutory requirement for licensing, certification, permit or bonding.

9-340D: Trade Secrets, production records, appraisals, bids, proprietary information

(1) Trade secrets means information, including a formula, pattern, compilation, program, computer program, device, method, technique, process or unpublished or in progress research that:

- a. Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; and
- b. Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

(2) Production records, housing production, rental and financing records, sale or purchase records, catch records, mortgage portfolio loan documents, or similar business records of a private concern or enterprise required by law to be submitted to or inspected by a public agency or submitted to or otherwise obtained by an independent public body corporate and politic.

(3) Records relating to the appraisal of real property, timber or mineral rights prior to its acquisition, sale or lease by a public agency or independent public body corporate and politic.

(4) Any estimate prepared by a public agency or independent public body corporate and politic that details the cost of a public project until such time as disclosed or bids are opened, or upon award of the contract for construction of the public project.

(15) Computer programs developed or purchased by or for any public agency or independent

public body corporate and politic for its own use. As used in this subsection, "computer program" means a series of instructions or statements which permit the functioning of a computer system in a manner designed to provide storage, retrieval and manipulation of data from the computer system, and any associated documentation and source material that explain how to operate the computer program. Computer program does not include:

- (a) The original data including, but not limited to, numbers, text, voice, graphics and images
- (b) Analysis, compilation and other manipulated forms of the original data produced by the use of the program; or
- (c) The mathematical or statistical formulas that would be used if the manipulated forms of the original data were to be produced manually.

9-340E: Archaeological, endangered species, libraries, licensing exams.

(1) Records, maps or other records identifying the location of archaeological or geophysical sites or endangered species, if not already known to the public.

(2) Archaeological and geologic records concerning exploratory drilling, logging, mining and other excavation, when such records are required to be filed by statute for the time provided by statute.

Department of Lands PRR Fee Schedule

| | |
|--|-------------------------|
| <p>NO charge shall be assessed for the first 100 copies</p> <p>NO charge shall be assessed for the first 2 hours of research/labor time</p> <p>Fees shall not be charged unless the total exceeds \$40.00</p> | |
| Paper copies or scans | \$0.10 per page |
| Research/labor time | Staff per hour pay rate |
| CD | \$1.00 |
| Labor, electronic file search | Staff per hour pay rate |
| Publication | Actual cost |
| Postage | Actual cost |

Sample PRR Denial Letter

March 18, 2011

Joe Blow
123 Main St
Anyville, ID 83600

Re: Public Records Request

Dear Mr. Blow,

On March 17, 2011, Idaho Department of Lands (IDL) received your public records request for “any Oil and Gas Permit Application for drilling and leasing natural gas in Whirligig County, submitted by ABC Resources.”

Idaho Code § 9-340D(1) exempts from the public records law “trade secrets,” including those contained in response to public agency or independent public body corporate and politic requests for proposal, requests for clarification, requests for information and similar requests. “Trade secrets” as used in this section means information, including a formula, pattern, compilation, program, computer program, device, method, technique, process, or unpublished or in progress research that:

- (a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; and
- (b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

In addition, Idaho Code § 9-340E(2) exempts from the public records law “[a]rchaeological and geologic records concerning exploratory drilling, logging, mining and other excavation, when such records are required to be filed by statute....” The permit application was required to be filed by statute, and parts of the application information appear to meet the requirements of Idaho Code § 9-340E(2).

The drill permit submitted by ABC Resources with redacted “trade secrets,” as outlined under Idaho Code § 9-340D(1), and geologic exploratory drilling information, as outlined in Idaho Code § 9-340E(2), is enclosed.

A Deputy Attorney General for IDL has reviewed this denial.

Pursuant to Idaho Code 9-343, if you feel that you are aggrieved by any denial of this public records request, you may institute proceedings in District Court to compel the agencies to make the records available for public inspection. Any such action contesting this denial must be filed within 180 calendar days from the date of the mailing of this letter.

Regards,

Jane Doe
Public Records Requests
Idaho Department of Lands
(208) 334-0244

Enclosure