ISDA POLICY

Public Records Act Policy

ADOPTED: December 19, 1990

LAST AMENDED: April 9, 2014 APPROVED: Celia R. Gould

I. Purpose

The Idaho Public Records Act ("Act"), Idaho Code Sections 9-337 through 9-350, was enacted by the Legislature in 1990. The Act governs the disclosure of information by all state and local government entities. The intent of the Act is that all records maintained by public agencies are open to the public for inspection and copying at all reasonable times, unless the information is specifically exempted from disclosure by law.

II. Definitions

Idaho Code Section 9-337 sets forth the definition of key terms, including the following:

a) **"Copy"** means transcribing by handwriting, photocopying, duplicating machine, and reproducing by any other means so long as the public record is not altered or damaged.

b) **"Custodian"** means the person having personal custody and control of the public records in question. If no such designation is made by the public agency, then custodian means any public official having custody of, control of, or authorized access to public records and includes all delegates of such officials, employees or representatives.

c) **"Inspect"** means the right to listen to, view and make notes of public records as long as the public record is not altered or damaged.

d) **"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 or local agency regardless of physical form or characteristics.

e) **"Requester"** means the person requesting examination and/or copying of public records pursuant to section 9-338, Idaho Code.

f) **"Writing"** includes, but is not limited to, handwriting, typewriting, printing, photostating, photographing and every means of recording, including letters,

words, pictures, sounds or symbols or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums or other documents.

III. Policy

A. FORM OF PUBLIC RECORDS REQUESTS

Public records requests must be submitted to ISDA in writing. ISDA will also accept public records requests by facsimile and e-mail. All public records requests must include requester's name, mailing address, and telephone number. In addition, the requester must provide an email address if the person desires to receive ISDA's response via e-mail and the records responsive to the request are in a format that can be sent electronically. The requester may submit public records requests to the following email address: PublicRecordRequest@agri.idaho.gov. The requester may use the ISDA's "Request to Examine and/or Copy Public Records" form available at http://www.agri.idaho.gov/Categories/LawsRules/procedureforrequesting.php. Requests for records routinely provided by the ISDA, such as forms or copies of laws and rules, do not require an official written, e-mail, or facsimile request.

B. LOGGING IN THE REQUEST

All public records requests will be promptly forwarded to the ISDA Public Records Request Tracker, who will log in each request, coordinate the request within the division(s) and among the custodian(s), and follow-up with such division(s) and custodian(s) to ensure requests are processed in accordance with the Act. The Public Records Request Tracker will also maintain records of assessed fees.

C. REQUIRED RESPONSE TIME

Pursuant to Idaho Code Section 9-339, the custodian receiving a written request for public records will have three (3) working days to respond in writing to the person making the request. If the custodian determines that three (3) working days are not adequate to locate or retrieve the public records, the custodian will so notify in writing the person making the request. The custodian will then provide the public records to the person no later than ten (10) working days following the receipt of the person's request.

If the custodian determines that the existing electronic record responsive to the request will first have to be converted to another electronic format by ISDA or by a third party, and that such conversion cannot be completed within ten (10) working days, ISDA will so notify the person making the request. ISDA will provide the converted electronic record at a time mutually agreed upon between ISDA and the person making the request, with due consideration given to any limitation that may exist due to the process of conversion or due to the use of a third party to make the conversion.

D. SCOPE OF THE PUBLIC RECORDS REQUEST

When a request is received that is broad or unclear, it is appropriate for the custodian or ISDA attorney to contact the requester to clarify the request. The custodian may explain what records are available and help identify the material that the requester is seeking. The custodian or ISDA attorney will document the conversation and any changes to the original request. If the request is significantly altered by the requester as a result of the discussion, the requester will be asked to submit a new request.

Under no circumstances will ISDA create documents that did not previously exist in order to respond to a public records request.

The custodian will make no inquiry of any person who makes a request for public records, except to verify the identity of a person requesting a record in accordance with Idaho Code Section 9-342, or to ensure that the requested record or information will not be used for purposes of a mailing or telephone list prohibited by Idaho Code Section 9-348, or as otherwise provided by law, or except as required for purposes of protecting personal information from disclosure under chapter 2, title 49, Idaho Code, and federal law.

ISDA may provide information to help the requester narrow the scope of the request or to help the requester make the request more specific when the response to the request is likely to be voluminous or require payment as provided in section 9-338(10), Idaho Code.

E. EXAMINATION OF PUBLIC RECORDS

Under Idaho Code Section 9-338(8), public records may be examined at the ISDA office during regular office or working hours unless the custodian authorizes examination of records in other than regular office or working hours. The examination may be reasonably restricted to allow the custodian to retain control of the records and to prevent removal, alteration, or destruction of the records. During an examination of records, ISDA staff will not review, examine, or scrutinize any copy, photograph, or memoranda in the requester's possession that is not an ISDA record.

Upon a request to examine public records, the custodian will coordinate with the requester a mutually agreeable time to examine the records. Prior to the examination of the records, the custodian will provide the requester an estimate of the labor costs, if any, associated with locating the records and redacting exempt information from the records. The requester must pay the estimated costs prior to examining the records. Any overpayment will be refunded to the requester. See the Fee Schedule in Section 11 of this Policy. If the funds are depleted, prior to the time the review is completed, ISDA will suspend processing, prepare an updated estimate, and require advance payment prior to processing the remainder of the request.

F. LISTS

Idaho Code Sections 9-338(5)(b) and 9-348 apply to requests for lists maintained by ISDA. However, the requirements in Idaho Code Section 9-348 do not apply to business lists developed by the ISDA Division of Marketing and Development used to promote food and agriculture products in Idaho. *See* Idaho Code § 9-348(6).

ISDA will not release the names, addresses, and telephone numbers of persons identified on a list unless such persons have given their permission for ISDA to release the information for use as a mailing or a telephone list.

Whenever a custodian receives a request for a list, the custodian will verify if the requirements in Idaho Code Section 9-348 apply to the request, and if the persons on a list have given their permission for ISDA to release the information for use as a mailing or a telephone list. Idaho Code Section 9-338(5)(b) authorizes the custodian to inquire of the person making the request to ensure that the requested record or information will not be used for purposes of a mailing or telephone list prohibited by Idaho Code Section 9-348.

Before distribution of any list that could potentially be used as a mailing or a telephone list without permission of the persons on the list, the custodian shall include the following information in the cover letter accompanying the list:

> In addition, please note we cannot release a mailing list for solicitation purposes. Specifically, Idaho Code Section 9-348 provides that:
>
> > [I]in order to protect the privacy of those who deal with public agencies or an independent public body corporate and politic:
> >
> > (a) No agency or independent public body corporate and politic may distribute or sell for use as a mailing list or a telephone number list any list of persons without first securing the permission of those on the list; and
> >
> > (b) No list of persons prepared by the agency or independent public body corporate and politic may be used as a mailing list or a telephone number list except by the agency or independent public body corporate and politic or another agency without first securing the permission of those on the list.
>
> I.C. § 9-348(1).
>
> In addition, any person who deliberately and in bad faith uses a list provided under Subsection (b), above (which includes businesses) as a mailing list, that person is subject to a civil penalty in an amount up to $1,000. I.C. § 9-348(11).

G. INSPECTION AND CORRECTION OF A PERSON'S OWN RECORDS

Under Idaho Code Section 9-342, a person may inspect and copy the public records pertaining to that person, even if the record is otherwise exempt from public disclosure. A person requesting to inspect and copy records pertaining to that person must provide proper identification to the custodian. A person's right to inspect and amend records pertaining to that person is limited by the circumstances set forth in Idaho Code Section 9-342(3).

A person may request in writing an amendment of any record pertaining to that person. ISDA will respond to requests by a person to amend a record of that person within ten (10) calendar days of receiving the request. In response to a request to amend a record, ISDA will either: (a) make any correction of any portion of the record which the person establishes is not accurate, relevant, or complete; or (b) inform the person in writing of the refusal to amend in accordance with the request and the reasons for the refusal, and indicate clearly the person's right to appeal the refusal and the time period for doing so. The notice of refusal must provide the statement of appeal rights and certificate of mailing set forth in Section 10 of this Policy.

H. EXEMPTIONS FROM DISCLOSURE

Information in public records may be exempt from disclosure under the specific provisions in Idaho Code Sections 9-340A through 9-340H, or in other provisions of Idaho Code. *See, e.g.*, Idaho Code Section 22-4909A. Public records may contain both exempt and non-exempt information. ISDA is responsible for redacting the exempt information in a record and supplying the non-exempt record to the person making a request. The Act prohibits denying access based upon the fact that the record contains both exempt and non-exempt information.

I. DENIAL OF PUBLIC RECORDS REQUESTS

If a request for a record is denied in whole or in part, the Act requires that ISDA send written notification to the requester identifying the statutory authority for the denial, the requester's right to appeal the denial or partial denial, and the time periods for filing an appeal. All notices of denial must be reviewed by an ISDA attorney.

The sole remedy to appeal ISDA'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. The time limit for filing an appeal is one hundred eighty (180) days from the date the notice of denial is mailed.

If a request is denied, the requested records must be retained until the end of the appeal period, until there has been a decision on an appeal, or, as otherwise provided by law, whichever is longer. The custodian will hold the documents until through the conclusion of the appeal process.

The template to be used for a denial letter is located at M:\PublicRecordRequestTemplates. The underlined and italicized content needs to be replaced with specific details for each public records request which is denied.

The following is an example of a denial letter.

DATE

NAME
COMPANY NAME
ADDRESS
CITY

Re: Public Records Request Received *DATE*

Dear *TITLE NAME:*

On *DATE*, the Idaho State Department of Agriculture, Division of *NAME,* received your *MAIL, FACSIMILE, or EMAIL* request for *"BRIEF QUOTE OF THE REQUEST."*

The information you requested is exempt from disclosure under the statutory authority of Idaho Code Section *(EACH PRR CODE FOR DENIAL)*.

An attorney has reviewed this denial. *Attorney initials*

Right to Appeal

The sole remedy for a person aggrieved by the denial of a request for disclosure is to institute proceedings in the district court of the county where the records or some part thereof are located, to compel the public agency to make the information available for public inspection in accordance with the provisions of sections 9-337 through 9-348, Idaho Code. The petition contesting the public agency's decision must be filed within one hundred eighty (180) calendar days from the date of mailing of the notice of denial or partial denial by the public agency. The time for responsive pleadings and for hearings in such proceedings shall be set by the court at the earliest possible time, or in no event beyond twenty-eight (28) calendar days from the date of filing.
Sincerely,

NAME, TITLE OF BUREAU CHIEF OR SUPERVISOR

cc: PERMANENT FILE LOCATION

Certificate of Mailing

I hereby certify that the original of this letter was deposited in the United States mail, postage prepaid, this *date* day of *month, year*.

_____
Witness Signature

J. FEE SCHEDULE

Under Idaho Code Section 9-338(10)(c), ISDA is authorized to establish a fee schedule. The fee may not exceed the actual cost to the ISDA of copying the record. The Act further provides that the ISDA may establish fees to recover the actual labor and copying costs associated with locating and copying documents if:

1) The request is for more than one hundred (100) pages of paper records; or
2) The request includes records from which non-public information must be deleted; or
3) The actual labor associated with responding to the request for public records exceeds two (2) person hours.

Pursuant to the Act, ISDA will not charge for the first 100 pages of paper records, even if the responsive documents exceed 100 pages. Similarly, ISDA will not charge for the first two (2) person hours of labor associated with responding to the request, even if the actual hours of labor exceed two (2) hours. For example, if there are 125 pages of responsive documents, and ISDA staff expended two and one-half (2 ½) hours in processing the request, ISDA will charge for 25 pages and one-half (1/2) hour of labor.

The ISDA fee schedule will not exceed reasonable labor costs necessarily incurred in responding to a public records request. Fees, if charged, shall reflect the personnel and quantity of time that are reasonably necessary to process the request. Fees for labor costs shall be charged at the per hour pay rate of the lowest paid employee who is necessary and qualified to process the request. If a request requires redactions to be made by an attorney, the rate charged shall be no more than the per hour rate of the lowest paid attorney on staff.

ISDA will assess fees for public records requests according to the following fee schedule:

Idaho Code Reference	Description of Work Performed	Costs
9-338(10)(a)	Photocopying less than 100 pages, 8 ½" x 11" paper size.	No charge
9-338(10)(c), (e)	Photocopying other than 8 ½" x 11" paper size (maps, blueprints, other materials).	Actual copying cost & labor rate to be determined at time request is submitted, if applicable
9-338(10)(c), (e)	Photocopying 100 or more pages in color, 8 ½'' x 11'' paper size.	$0.50 per page & labor rate to be determined at time request is submitted, if applicable
9-338(10)(d), (e)	Transfer of documentation in the form of computer tapes, discs, microfilm, or similar record media.	Actual copying cost & labor rate to be determined at time request is submitted,

		if applicable
9-338(10) (b), (c), (e)	Photocopying 100 or more pages, 8 ½" x 11" paper size.	$0.10 per page for pages in excess of 100 & labor rate to be determined at time request is submitted, if applicable
9-338(10)(b), (c), (e)	Redacting nonpublic information from records.	Labor rate to be determined at time request is submitted, if applicable
9-338(10)(b), (c), (e)	Labor exceeding two (2) person hours to locate and photocopy documents.	Labor rate to be determined at time request is submitted; charge only for time in excess of two hours

Each page on which print appears will be treated as a single copy, thus double-sided copies will be assessed on the same fee schedule as two single-sided copies. ISDA is not required to provide multiple copies of the same document.

Postage will be charged for requests of 100 or more documents, if the documents that are responsive to the request are to be mailed.

If ISDA has reason to believe that a person is attempting to divide one request into a series of separate requests to avoid fees, ISDA will aggregate such requests and charge a total fee. In determining whether a requester is dividing a request into several to avoid paying the fee, ISDA may consider the time period in which the requests have been made, as well as whether the subjects of the requests are related. Under Idaho Code Section 9-338(11), ISDA will not aggregate multiple requests on unrelated subjects from one requester.

When a custodian receives a public records request, the custodian will estimate the fee associated with the request and notify the requester in writing of the estimated fee. All fees associated with a public records request must be paid in advance. Any overpayment will be refunded to the requester. If a person making a request has an outstanding balance for prior public records requests with ISDA, the outstanding balance must be paid in full before any subsequent public records will be provided to the person. The custodian will maintain records of payments made for public record requests.

K. FEE WAIVERS

Under Idaho Code Section 9-338(10)(f), ISDA may not charge any cost or fee for copies or labor when the requester demonstrates that the requester's examination and/or copying of public records:

1) Is likely to contribute significantly to the public's understanding of the operations or activities of the government;
2) 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; **and**
3) Will not occur if fees are charged because the requester has insufficient financial resources to pay such fees.

The requester must meet ***all three*** of those criteria in order to have the fee waived. ISDA will evaluate a fee waiver request based upon the requirements in Idaho Code Section 9-338(10)(f) and the information provided by the requester. Requests for fee waivers will be reviewed on a case-by-case basis. It is the responsibility of the requester to provide detailed information to support a request for a fee waiver.

In order for ISDA to determine whether a requester has satisfied the statutory criteria for a fee waiver, ISDA will consider the following:

1) The subject matter of the requested records, within the context of the request, must be specifically related to an identifiable operation or activity of the ISDA. The correlation between the information requested and the operation or activity of the ISDA should not be tenuous. Overly broad requests or requests designed to gather general information will not satisfy the first element.
2) Disclosure of the information requested must be likely to contribute to an understanding of the ISDA's operations or activities.
3) The requester must specifically identify and describe a benefit that will be derived by the public rather than the individual interest of the requester. The requester must set forth his or her qualifications and expertise in the subject matter of the request.
4) The requester must demonstrate how disclosure of the information sought will contribute **significantly** to the public's understanding of the ISDA's operations or activities.

5) The requester must demonstrate that it is not primarily in its individual interest to receive the information free of charge. The ISDA may consider the requester's identity and the circumstances surrounding the request and draw reasonable inferences regarding the existence of a personal interest in the subject matter of the request. The ISDA will balance the requester's individual interest with that of the identified public interest in disclosure.

6) In order to determine whether a party has insufficient financial resources, the requester must provide ISDA with an affidavit or similar sworn statement, setting forth the financial resources of the requester. A fee waiver request will not be granted solely on the basis that the requester is a non-profit or not for profit entity. Additionally, indigence alone is not sufficient to satisfy the threshold criteria for a fee waiver.

L. PENALTY

Under Idaho Code Section 9-345, a court may assess a civil penalty of up to $1,000 if a public official has deliberately and in bad faith improperly refused a legitimate request for inspection or copying of public records.

M. IMMUNITY

Under Idaho Code Section 9-346, a public agency, public official, or custodian will not be liable for any loss or damage based upon the release of a public record governed by the Act if the public agency, public official, or custodian acted in good faith in attempting to comply with the provisions of the Act.