

## Scope and Audience

This policy applies to all Public Records of the Department of Commerce as outlined in Idaho Code Title § 74 Chapter 1 -101 through § 74-126. The Freedom of Information Act (FOIA) applies to records held by federal agencies and is not generally applicable to Idaho state records.

## Policy Purpose

To establish policy for processing public record requests and the examination and/or copying of public records of the Department of Commerce.

## Policy Statement

The Department of Commerce complies with the public record laws of the State of Idaho. The intent of public records law is that all records maintained by Idaho government entities be available for public access and copying except as otherwise expressly provided by statute Idaho Code § [74-102](#). The Department must balance this policy of openness against the need for privacy of certain information and information provided by citizens and businesses that is necessary for the conduct of the government's business.

---

## 1. Definitions

**Department:** The Idaho Department of Commerce.

**Public Record:** Any writing or document containing information relating to the conduct or administration of the Department's business that is prepared, owned, used, or retained by the Department. Personal notes created by a public official solely for their own use are not considered a public record as long as such personal notes are not shared with any other person or entity. For purposes of this policy, a "public official" is any Commerce employee.

**Public Records Custodian:** The designated custodian of record requests for the Department of Commerce for the purpose of fulfilling the Idaho Public Records Act.

**Requester:** The person requesting examination and/or copying of public records pursuant to section [74-102](#), Idaho Code.

**Copy:** Transcribing by handwriting, photocopying, duplicating machine, and/or reproducing by any other means as long as the public record is not altered or damaged.

---

## 2. Public Records Custodian

- 2.1. The Public Records Custodian is the designated coordinator of record requests for the Department for the purpose of fulfilling the Idaho Public Records Act. The person serving in this position fulfills the duties required by [Chapter 1, Title 74](#), Idaho Code, as well as the custodian designation specifically required by § 74-102 (16). As such, the Custodian must be knowledgeable of Idaho Code Title 74 and maintain reasonable care and diligence of the responsibilities of the Department attributed to Idaho Public Records law.
- 2.2. The Department's Custodian shall be designated by the Department's acting Director. Once designated, the Custodian's name and contact information shall be placed clearly on the Department of Commerce's website (§ [74-119](#)).
- 2.3. The Custodian shall develop and maintain accurate tracking methods for record requests, communications, staff names and their time spent on requests, and record request response templates in line with [Idaho Code § 74-101-127](#).

- 2.4. In the event that the Custodian is absent from their office for more than three (3) consecutive regular working days, they may designate a knowledgeable temporary records Custodian.

### 3. Requests for Records and Department Response

- 3.1. Requests for records must be submitted in writing to the Department's listed Custodian.
  1. If Department staff other than the Custodian or temporary Custodian receive a record request, they shall direct them to the website that lists the Custodian's contact information and directions for submitting record requests.
- 3.2. Record requests must:
  1. Specifically describe the subject matter and record(s) being sought.
  2. Include a specific date range for when the records sought were created, and as many specific identifying details as possible.
  3. A requester's name, mailing address, e- mail address, and telephone number.
- 3.3. Receiving and fulfilling record requests shall be conducted during regular business days and hours. Business days are Monday – Friday 8:00 a.m. to 5:00 p.m. and exclude Idaho state recognized holidays. All requests received after normal business hours shall be deemed as received on the next business day.
  1. Requests will not be considered received until they have been submitted to the Custodian as outlined in section 3.1.
- 3.4. The Department will not provide copies of records in a format not already used by the Department in the normal course of business (i.e., alphabetized, chronological) or provide information in a format desired by the requesting party (Idaho Code § [74-103\(1\)](#)).
- 3.5. The response to each record request will be examined in light of the applicable state and federal laws, rules, and case law, as well as the Department's policies.
  1. *Removal of Non-public Information.* The Department will remove non-public information from records made available to requesting parties. Where non-public information is removed, the Department may have the removal reviewed by legal counsel and will notify the requesting parties of the removal and associated fees, if any. The notice will specify the legal basis for the removal and provide the requesting party with notice of the opportunity to petition the district court for an order compelling disclosure within one hundred eighty (180) days of the notice.
  2. *Requests by an Attorney.* When the Department receives a record request from an attorney or law office, the Department staff processing the request will consult with the Office of the Attorney General.
- 3.6. The Custodian shall track all communications with the Requester, time spent on a request, staff and staff time who assisted with the request, and request status.
- 3.7. Responses to record requests shall use Department developed and approved response templates when possible. Department responses shall use "Public Record Request" in place of "Public Information Request". The Idaho Public Records Act (Idaho Code § 74-101, et. seq.) does not require the state to provide information or create records.
- 3.8. For specific, clear record requests, the Custodian will note the date and time the request

was received. Within three (3) business days of receipt, the Custodian will either grant, partially deny, or deny the request or, if it is determined that a longer period of time is needed to locate, retrieve, and review the records, the Custodian will notify the requester and then respond to the request within ten (10) business days.

1. In the event that a record request is broad, vague, and/or places unreasonable burden in producing the records, the Custodian will note the date and time the request was received and ask for clarification. Within three (3) business days of receipt of clarification, the Custodian will either grant, partially deny, deny the request, or, if it is determined that a longer period of time is needed to locate, retrieve, and review the records, the Custodian will notify the requester and then respond to the request within ten (10) business days.
2. In the event that the Department reasonably believes that one or more requesters are segregating record requests into a series of requests to avoid payment of authorized fees or are submitting multiple requests determined to be of the same subject matter in a period of six (6) months' time, the Custodian will aggregate the requests and assess reasonable charges associated with the aggregation of the requests.

#### **4. Denial of Examination and Copy**

The Custodian may determine that a record requested in accordance with this policy is exempt from disclosure under applicable law (§ [74-107](#))( § [67-4708](#)). If a denial or partial denial of a request for examination is made, the denial must include the rationale for the decision, the appeal rights of the requester, and notification concerning attorney review of the request or lack thereof.

#### **5. Removal of Records During Examination**

Records are not to be removed during the examination from the place designated for in-person inspection unless the Custodian specifically agrees otherwise.

#### **6. Copying, Labor Fees, and Payment**

- 6.1. The Department may charge for the cost of copying public records, in various forms, in accordance with the copying fee schedule in Section 7.
- 6.2. The Department will not charge any labor or materials fees for the first two (2) hours of labor in responding to a request or any copying or scanning fee for the first one hundred (100) pages of paper records. For example, if there are 125 pages of responsive documents, and Commerce staff expended two and one-half (2½) hours in processing the request, the Department will charge for 25 pages and one-half (½) hour of labor.
- 6.3. If the actual cost of labor in responding to the request exceeds two (2) hours, the fee which the Department may charge is the hourly rate of the lowest-paid employee who is qualified to process the request.
- 6.4. Requests will be charged according to the schedule in Section 7. Payment must be made before, or at the time of receiving the copies. The Custodian may require advance payment of fees (§ [74-102\(12\)](#)), but any portion of the advance payment in excess of the actual costs will be returned to the requester with a detail invoice of actual costs.
- 6.5. No lump sum costs will be assigned to any request. Requests requiring fees will receive a final itemized invoice detailing the per page costs for copies, hourly rate of the employees and attorneys involved in responding to the request, and the actual time spent on the request (§ [74-102\(10\)\(g\)](#)).

6.6. The Department will issue an invoice to the Requester for requests requiring payments. Payments can be made electronically or by check. Payment details will be included on the invoice.

**7. Fee Schedule**

Idaho Code	Description of Work Performed	Costs
§ 74-102(10)(a)	Copying 100 or fewer responsive pages	No charge
§ 74-102(10)(c), (e)	Copying other than 8½" x 11" paper size (i.e., maps, blueprints)	Actual copying cost and labor rate to be determined at time request is submitted, if applicable
§ 74-102(10)(c), (e)	Hard copying more than 100 pages in color, 8½" x 11" paper size	\$.15 per page in excess of 100 and labor rate to be determined at time request is submitted, if applicable
§ 74-102(10)(d), (e)	Physical transfer of documentation in the form of computer tapes, discs, microfilm, or similar record media	Actual copying cost and labor rate to be determined at time request is submitted, if applicable
§ 74-102(10)(b), (c), (e)	Copying more than 100 responsive pages	\$.15 per page for pages in excess of 100 and labor rate to be determined at time request is submitted, if applicable
§ 74-102(10)(b), (c), (e)	Redacting nonpublic information from records	\$.15 per responsive page and labor rate to be determined at time request is submitted, if applicable
§ 74-102(10)(b), (c), (e)	Labor exceeding two (2) person hours to locate and copy documents	Labor rate to be determined at time request is submitted, charge only for time in excess of two (2) hours
§ 74-102(12)	Electronic payment	3%

**8. Fee Waivers**

8.1. Fee Waivers will be determined by the Department Pursuant to Idaho Code § [74-102\(10\)\(f\)](#),

- 8.2. No additional charge beyond the fee schedule will be made for physical examination of records by a Requester during normal Department office hours. However, if a Requester seeks to examine public records outside of normal office hours, and that person is available to accommodate the non-working hours request, then the actual compensation of the Custodian, or their designee, must be paid by the Requester before, or at the time of the examination, in addition to any incurred copying and/or labor costs.
- 8.3. The Department reserves the right to waive fees where the agency determines, in its discretion, that the costs of tracking and collecting the fee will exceed the fee. Fees will not be waived if it has been determined that the requestor is dividing up requests to avoid fees.

### **Revision History**

May 22, 2023

*Tom Kealey*