

Moved by Souza

Seconded by Rice

IN THE SENATE
SENATE AMENDMENT TO S.B. NO. 1274

AMENDMENT TO SECTION 1

On page 1 of the printed bill, delete lines 22 through 28, and insert:

"(3) "Custodian" means the person or persons having personal custody and control of the public records in question. ~~If no such designation is made by the public agency or independent public body corporate and politic, 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.~~".

AMENDMENT TO SECTION 3

On page 7, in line 45, following "designate" insert: "at least".

AMENDMENT TO THE BILL

On page 2, following line 33, insert:

"SECTION 2. That Section 74-102, Idaho Code, be, and the same is hereby amended to read as follows:

74-102. PUBLIC RECORDS -- RIGHT TO EXAMINE. (1) Every person has a right to examine and take a copy of any public record of this state and there is a presumption that all public records in Idaho are open at all reasonable times for inspection except as otherwise expressly provided by statute.

(2) The right to copy public records shall include the right to make photographs or photographic or other copies while the records are in the possession of the custodian of the records using equipment provided by the public agency or independent public body corporate and politic or using equipment designated by the custodian.

(3) Additionally, the custodian of any public record shall give the person, on demand, a certified copy of it if the record is of a nature permitting such copying or shall furnish reasonable opportunity to inspect or copy such record.

(4) A public agency or independent public body corporate and politic may require that a request for public records be submitted to it in a writing that provides the requester's name, mailing address, e-mail address and telephone number. A request for public records and delivery of the public records may be made by electronic mail.

(5) The custodian shall make no inquiry of any person who requests a public record, except:

(a) To verify the identity of the requester in accordance with section 74-113, Idaho Code; or

1 (b) To ensure that the requested record or information will not be
2 used for purposes of a mailing or telephone list prohibited by section
3 74-120, Idaho Code, or as otherwise provided by law; or

4 (c) As required for purposes of protecting personal information from
5 disclosure under chapter 2, title 49, Idaho Code, and federal law.

6 (6) The custodian shall not review, examine or scrutinize any copy,
7 photograph or memoranda in the possession of any such person and shall extend
8 to the person all reasonable comfort and facility for the full exercise of
9 the right granted under this act.

10 (7) Nothing herein contained shall prevent the custodian from main-
11 taining such vigilance as is required to prevent alteration of any public
12 record while it is being examined.

13 (8) Examination of public records under the authority of this section
14 must be conducted during regular office or working hours unless the custo-
15 dian shall authorize examination of records in other than regular office or
16 working hours. In this event, the persons designated to represent the cus-
17 todian during such examination shall be entitled to reasonable compensation
18 to be paid to them by the public agency or independent public body corporate
19 and politic having custody of such records, out of funds provided in advance
20 by the person examining such records, at other than regular office or working
21 hours.

22 (9) The public agency or independent public body corporate and politic
23 may provide the requester information to help the requester narrow the scope
24 of the request or to help the requester make the request more specific when
25 the response to the request is likely to be voluminous or require payment as
26 provided in subsection (10) of this section.

27 (10) (a) Except for fees that are authorized or prescribed under other
28 provisions of Idaho law, no fee shall be charged for the first two (2)
29 hours of labor in responding to a request for public records, or for
30 copying the first one hundred (100) pages of paper records that are re-
31 quested.

32 (b) A public agency or independent public body corporate and politic or
33 public official may establish fees to recover the actual labor and copy-
34 ing costs associated with locating and copying documents if:

35 (i) The request is for more than one hundred (100) pages of paper
36 records; or

37 (ii) The request includes records from which nonpublic informa-
38 tion must be deleted; or

39 (iii) The actual labor associated with responding to requests for
40 public records in compliance with the provisions of this chapter
41 exceeds two (2) person hours.

42 (c) A public agency or independent public body corporate and politic or
43 public official may establish a copying fee schedule. The fee may not
44 exceed the actual cost to the agency of copying the record if another fee
45 is not otherwise provided by law.

46 (d) For providing a duplicate of a computer tape, computer disc, mi-
47 crofilm or similar or analogous record system containing public record
48 information, a public agency or independent public body corporate and
49 politic or public official may charge a fee, uniform to all persons that
50 does not exceed the sum of the following:

- 1 (i) The agency's direct cost of copying the information in that
2 form;
- 3 (ii) The standard cost, if any, for selling the same information
4 in the form of a publication;
- 5 (iii) The agency's cost of conversion, or the cost of conversion
6 charged by a third party, if the existing electronic record is con-
7 verted to another electronic form.
- 8 (e) Fees shall not exceed reasonable labor costs necessarily incurred
9 in responding to a public records request. Fees, if charged, shall re-
10 flect the personnel and quantity of time that are reasonably necessary
11 to process a request. Fees for labor costs shall be charged at the per
12 hour pay rate of the lowest paid administrative staff employee or pub-
13 lic official of the public agency or independent public body corporate
14 and politic who is necessary and qualified to process the request. If
15 a request requires redactions to be made by an attorney who is employed
16 by the public agency or independent public body corporate and politic,
17 the rate charged shall be no more than the per hour rate of the lowest
18 paid attorney within the public agency or independent public body cor-
19 porate and politic who is necessary and qualified to process the public
20 records request. If a request is submitted to a public agency or inde-
21 pendent public body corporate and politic that does not have an attorney
22 on staff, and requires redactions by an attorney, the rate shall be no
23 more than the usual and customary rate of the attorney who is retained by
24 the public agency or independent public body corporate and politic for
25 that purpose.
- 26 (f) The public agency or independent public body corporate and politic
27 shall not charge any cost or fee for copies or labor when the requester
28 demonstrates that the requester's examination and/or copying of public
29 records:
- 30 (i) Is likely to contribute significantly to the public's under-
31 standing of the operations or activities of the government;
- 32 (ii) Is not primarily in the individual interest of the requester
33 including, but not limited to, the requester's interest in litigation
34 in which the requester is or may become a party; and
- 35 (iii) Will not occur if fees are charged because the requester has
36 insufficient financial resources to pay such fees.
- 37 (g) Statements of fees by a public agency or independent public body
38 corporate and politic shall be itemized to show the per page costs for
39 copies, and hourly rates of employees and attorneys involved in re-
40 sponding to the request, and the actual time spent on the public records
41 request. No lump sum costs shall be assigned to any public records re-
42 quest.
- 43 (11) A requester may not file multiple requests for public records
44 solely to avoid payment of fees. When a public agency or independent public
45 body corporate and politic reasonably believes that one (1) or more re-
46 questers is segregating a request into a series of requests to avoid payment
47 of fees authorized pursuant to this section, the public agency or inde-
48 pendent public body corporate and politic may aggregate such requests and
49 charge the appropriate fees. The public agency or independent public body
50 corporate and politic may consider the time period in which the requests have

1 been made in its determination to aggregate the related requests. A public
2 agency or independent public body corporate and politic shall not aggregate
3 multiple requests on unrelated subjects from one (1) requester.

4 (12) The custodian may require advance payment of fees authorized by
5 this section. Any money received by the public agency or independent pub-
6 lic body corporate and politic shall be credited to the account for which
7 the expense being reimbursed was or will be charged, and such funds may be
8 expended by the agency as part of its appropriation from that fund. Any por-
9 tion of an advance payment in excess of the actual costs of labor and copying
10 incurred by the agency in responding to the request shall be returned to the
11 requester.

12 (13) A public agency or independent public body corporate and politic
13 shall not prevent the examination or copying of a public record by contract-
14 ing with a nongovernmental body to perform any of its duties or functions.

15 (14) Nothing contained herein shall prevent a public agency or indepen-
16 dent public body corporate and politic from disclosing statistical informa-
17 tion that is descriptive of an identifiable person or persons, unless pro-
18 hibited by law.

19 (15) Nothing contained herein shall prevent a public agency or inde-
20 pendent public body corporate and politic from providing a copy of a public
21 record in electronic form if the record is available in electronic form and
22 if the person specifically requests an electronic copy.

23 (16) A public agency, elected official or independent public body cor-
24 porate and politic shall designate a custodian or custodians for all public
25 records, which includes any public official having custody of, control of,
26 or authorized access to public records and also includes all delegates of
27 such officials, employees or representatives.";
28 and renumber subsequent sections accordingly.

29 CORRECTION TO TITLE

30 On page 1, in line 3, following "'CUSTODIAN";" insert: "AMENDING SEC-
31 TION 74-102, IDAHO CODE, TO PROVIDE THAT A PUBLIC AGENCY, ELECTED OFFICIAL
32 OR INDEPENDENT PUBLIC BODY CORPORATE AND POLITIC SHALL DESIGNATE A CUSTODIAN
33 OR CUSTODIANS FOR ALL PUBLIC RECORDS;"; and in line 9, following "DESIGNATE"
34 insert: "AT LEAST".