

2-21-2020



P.O. Box 2221 ~ Boise, ID 83701 ~ (208) 389-2879

February 18, 2020

TO: Idaho Senate Judiciary & Rules Committee

FROM: Idaho Press Club

RE: SB 1338

Dear Senators:

The Idaho Press Club respectfully urges you to hold SB 1338 in committee. As we have informed the bill's sponsor, Sen. Johnson, this bill as written is a huge overreaction to our successful lawsuit against Ada County for its multiple violations of the Idaho Public Records Act, and it would create a vast number of unintended consequences.

The bill takes a provision from the personnel records section regarding public employees and applies it in a blanket fashion to all public records in Idaho, of all types. It says that thousands of pieces of information that are in the phone book would suddenly become exemptions under the Idaho Public Records Act, information in which people don't have an expectation of privacy, such as addresses and phone numbers – information that already is widely available. The fiscal note on the bill, estimating no fiscal impact, is wildly off; this bill would require public employees at all levels of state and local government to spend thousands of hours redacting the most basic information from public records before allowing any public access.

Among the absurd results creating such a blanket exemption would create are making Idaho voter records completely useless. If names can't be attached to home addresses, there would be no way to have voter lists by precinct. There would be no way to run a campaign for office in Idaho.

From the reporter's perspective, we rely on public records when candidates file to run for public office, for example, and it is the contact information that those candidates provide in their public filings that allows us to contact them, interview them, and write about their campaigns. There is no public interest in shutting down access to information about who's running for office.

Much of the information of the type targeted by the bill already is exempt from disclosure in specific types of records, under the existing exemptions in the Idaho Public Records Act. Those exemptions stretch for 30 pages in our state statutes. They are specific for a reason: The purpose of the Idaho Public Records Act is to maintain transparency in government. All public records not specifically exempted from disclosure are presumed to be open to the public, so exemptions from disclosure must be specific, not broad, blanket policies.

An example is 74-108(4), the exemption for library records. Under current law, there is an exemption for "the records of a library which, when examined alone, or when examined with other public records,

would reveal the identity of the library patron checking out, requesting, or using an item from a library.” The Legislature has determined that it is the public policy of our state that information on what an individual checks out from a public library be exempted from disclosure. This law has been on the books for many years.

With the existing exemptions on the books, it is extremely rare for anyone’s Social Security number or driver’s license number to be released in a public record, but we can see that that would be a concern. Unlike the other information that SB 1338 seeks to exempt, there is a clear expectation of privacy for individuals in their Social Security number or driver’s license number, including to avoid identity theft. Accordingly, as a “belt and suspenders” approach, if SB 1338 were amended so that on Page 2 of the bill, lines 22 through 24, it read only:

(g) Records with regard to social security number and driver’s license number
we would not object.

However, SB 1338 as written is an exception that would swallow the rule – an unwarranted corruption of our public records act that would burden every public employee with thousands of hours of senseless redaction of basic information from public records.

In our successful lawsuit, Idaho Press Club vs. Ada County, the 4th District Court held that Ada County on multiple occasions withheld public records from the public without any basis in the law. That ranged from improperly withholding thousands of pages of information regarding such public business as contracts and leases of county property, to even redacting from its public records responses the actual names and email addresses of the very people making the requests – blacking out their own names when responding to them, and charging the requesters for attorneys’ time to make the redactions.

The county claimed it could make these exemptions without any statutory basis existing in the law, on the basis of “privacy.” The court disagreed. The ruling did not break new ground. As has long been the law in our state, as stated in Title 74, “Transparent and Ethical Government,” 74-102(1), “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.”

Thank you for your consideration of these matters, and please, we urge you, hold SB 1338 in committee.

Sincerely,

Idaho Press Club

Jennifer Swindell, acting 1st Amendment Committee chair

Ken Burgess, lobbyist

The Idaho Press Club is a non-profit trade association of working journalists from all media in Idaho.