

IN THE SENATE

SENATE BILL NO. 1339

BY JUDICIARY AND RULES COMMITTEE

AN ACT

1 RELATING TO PUBLIC RECORDS; AMENDING SECTION 74-101, IDAHO CODE, TO REVISE
2 DEFINITIONS; AMENDING SECTION 74-102, IDAHO CODE, TO REMOVE UNNECES-
3 SARY VERBIAGE; AMENDING SECTION 74-103, IDAHO CODE, TO PROVIDE THAT
4 PUBLIC RECORDS REQUESTS BE MADE TO CUSTODIANS OF PUBLIC RECORDS AND TO
5 REMOVE UNNECESSARY VERBIAGE; AMENDING SECTION 74-106, IDAHO CODE, TO
6 REMOVE UNNECESSARY VERBIAGE; AMENDING SECTION 74-107, IDAHO CODE, TO
7 REMOVE UNNECESSARY VERBIAGE; AMENDING SECTION 74-112, IDAHO CODE, TO
8 REMOVE UNNECESSARY VERBIAGE; AMENDING SECTION 74-113, IDAHO CODE, TO
9 REMOVE UNNECESSARY VERBIAGE; AMENDING SECTION 74-114, IDAHO CODE, TO
10 REMOVE UNNECESSARY VERBIAGE; AMENDING SECTION 74-115, IDAHO CODE, TO
11 PROVIDE CORRECT CODE REFERENCES; AMENDING SECTION 74-118, IDAHO CODE,
12 TO REMOVE UNNECESSARY VERBIAGE; AMENDING SECTION 74-119, IDAHO CODE,
13 TO REMOVE UNNECESSARY VERBIAGE AND TO MAKE A TECHNICAL CORRECTION;
14 AMENDING SECTION 74-120, IDAHO CODE, TO PROVIDE THAT INFORMATION ABOUT
15 PUBLIC RECORDS CUSTODIANS BE NOTED ON AGENCY WEBSITES; AMENDING SEC-
16 TION 74-121, IDAHO CODE, TO REMOVE UNNECESSARY VERBIAGE AND TO MAKE
17 TECHNICAL CORRECTIONS; AMENDING SECTION 74-126, IDAHO CODE, TO REMOVE
18 UNNECESSARY VERBIAGE; AMENDING CHAPTER 1, TITLE 74, IDAHO CODE, BY THE
19 ADDITION OF A NEW SECTION 74-126, IDAHO CODE, TO PROVIDE THAT THE LEG-
20 ISLATIVE SERVICES OFFICE IS THE CUSTODIAN FOR LEGISLATIVE RECORDS AND
21 TO PROVIDE THAT A PUBLIC RECORDS REQUEST FOR THE LEGISLATURE SHALL BE
22 MADE TO THE LEGISLATIVE SERVICES OFFICE; AMENDING SECTION 74-126, IDAHO
23 CODE, TO REDESIGNATE THE SECTION; AND DECLARING AN EMERGENCY.

24 Be It Enacted by the Legislature of the State of Idaho:

25 SECTION 1. That Section 74-101, Idaho Code, be, and the same is hereby
26 amended to read as follows:

27 74-101. DEFINITIONS. As used in this chapter:

28 (1) "Applicant" means any person formally seeking a paid or volunteer
29 position with a public agency. "Applicant" does not include any person seek-
30 ing appointment to a position normally filled by election.

31 (2) "Copy" means transcribing by handwriting, photocopying, duplicat-
32 ing machine and reproducing by any other means ~~so~~ as long as the public record
33 is not altered or damaged.

34 (3) "Custodian" means the person or persons ~~having personal custody and~~
35 ~~control of the public records in question~~ designated as the custodian by the
36 public agency pursuant to section 74-119, Idaho Code.

37 (4) "Independent public body corporate and politic" means the Idaho
38 housing and finance association as created in chapter 62, title 67, Idaho
39 Code.

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

1 (6) "Investigatory record" means information with respect to an iden-
 2 tifiable person, group of persons or entities compiled by a public agency ~~or~~
 3 ~~independent public body corporate and politic~~ pursuant to its statutory au-
 4 thority in the course of investigating a specific act, omission, failure to
 5 act, or other conduct over which the public agency ~~or independent public body~~
 6 ~~corporate and politic~~ has regulatory authority or law enforcement author-
 7 ity.

8 (7) "Law enforcement agency" means any state or local agency given law
 9 enforcement powers or which has authority to investigate, enforce, prose-
 10 cute or punish violations of state or federal criminal statutes, ordinances
 11 or regulations.

12 (8) "Local agency" means a county, city, school district, municipal
 13 corporation, independent public body corporate and politic, district, pub-
 14 lic health district, political subdivision, or any agency thereof, or any
 15 committee of a local agency, or any combination thereof.

16 (9) "Person" means any natural person, corporation, partnership, firm,
 17 association, joint venture, state or local agency or any other recognized
 18 legal entity.

19 (10) "Prisoner" means a person who has been convicted of a crime and is
 20 either incarcerated or on parole for that crime or who is being held in cus-
 21 tody for trial or sentencing.

22 (11) "Public agency" means any state or local agency as defined in this
 23 section.

24 (12) "Public official" means any state, county, local district, inde-
 25 pendent public body corporate and politic or governmental official or em-
 26 ployee, whether elected, appointed or hired.

27 (13) "Public record" includes, but is not limited to, any writing con-
 28 taining information relating to the conduct or administration of the pub-
 29 lic's business prepared, owned, used or retained by any state agency, in-
 30 dependent public body corporate and politic or local agency regardless of
 31 physical form or characteristics. Provided, however, that personal notes
 32 created by a public official solely for his own use shall not be a public
 33 record as long as such personal notes are not shared with any other person or
 34 entity.

35 (14) "Requester" means the person requesting examination and/or copy-
 36 ing of public records pursuant to section 74-102, Idaho Code.

37 (15) "State agency" means every state officer, department, division,
 38 bureau, commission and board or any committee of a state agency including
 39 those in the legislative or judicial branch, except the state militia and the
 40 Idaho state historical society library and archives.

41 (16) "Writing" includes, but is not limited to, handwriting, typewrit-
 42 ing, printing, photostating, photographing and every means of recording,
 43 including letters, words, pictures, sounds or symbols or combination
 44 thereof, and all papers, maps, magnetic or paper tapes, photographic films
 45 and prints, magnetic or punched cards, discs, drums or other documents.

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

48 74-102. PUBLIC RECORDS -- RIGHT TO EXAMINE. (1) Every person has a
 49 right to examine and take a copy of any public record of this state and there

1 is a presumption that all public records in Idaho are open at all reasonable
2 times for inspection except as otherwise expressly provided by statute.

3 (2) The right to copy public records shall include the right to make
4 photographs or photographic or other copies while the records are in the pos-
5 session of the custodian of the records using equipment provided by the pub-
6 lic agency ~~or independent public body corporate and politic~~ or using equip-
7 ment designated by the custodian.

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

12 (4) A public agency ~~or independent public body corporate and politic~~
13 may require that a request for public records be submitted to it in a writing
14 that specifically describes the subject matter and records sought, includ-
15 ing a specific date range for when the records sought were created. The
16 requesting party shall be as specific as possible when requesting records.
17 A request shall describe records sought in sufficient detail to enable the
18 public body to locate such records with reasonable effort. A request shall
19 also provide the requester's name, mailing address, e-mail address and
20 telephone number. A request for public records and delivery of the public
21 records may be made by electronic mail.

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

24 (a) To verify the identity of the requester in accordance with section
25 74-113, Idaho Code; or

26 (b) To ensure that the requested record or information will not be
27 used for purposes of a mailing or telephone list prohibited by section
28 74-120, Idaho Code, or as otherwise provided by law; or

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

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

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

38 (8) Examination of public records under the authority of this section
39 must be conducted during regular office or working hours unless the custo-
40 dian shall authorize examination of records in other than regular office or
41 working hours. In this event, the persons designated to represent the cus-
42 todian during such examination shall be entitled to reasonable compensation
43 to be paid to them by the public agency ~~or independent public body corporate~~
44 ~~and politic~~ having custody of such records, out of funds provided in advance
45 by the person examining such records, at other than regular office or working
46 hours.

47 (9) The public agency ~~or independent public body corporate and politic~~
48 may provide the requester information to help the requester narrow the scope
49 of the request or to help the requester make the request more specific when

1 the response to the request is likely to be voluminous or require payment as
2 provided in subsection (10) of this section.

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

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

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

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

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

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

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

27 (i) The agency's direct cost of copying the information in that
28 form;

29 (ii) The standard cost, if any, for selling the same information
30 in the form of a publication;

31 (iii) The agency's cost of conversion, or the cost of conversion
32 charged by a third party, if the existing electronic record is con-
33 verted to another electronic form.

34 (e) Fees shall not exceed reasonable labor costs necessarily incurred
35 in responding to a public records request. Fees, if charged, shall re-
36 flect the personnel and quantity of time that are reasonably necessary
37 to process a request. Fees for labor costs shall be charged at the per
38 hour pay rate of the lowest paid administrative staff employee or pub-
39 lic official of the public agency ~~or independent public body corporate~~
40 ~~and politic~~ who is necessary and qualified to process the request. If
41 a request requires redactions to be made by an attorney who is employed
42 by the public agency ~~or independent public body corporate and politic~~,
43 the rate charged shall be no more than the per hour rate of the lowest
44 paid attorney within the public agency ~~or independent public body cor-~~
45 ~~porate and politic~~ who is necessary and qualified to process the public
46 records request. If a request is submitted to a public agency ~~or inde-~~
47 ~~pendent public body corporate and politic~~ that does not have an attorney
48 on staff, and requires redactions by an attorney, the rate shall be no
49 more than the usual and customary rate of the attorney who is retained by

1 the public agency ~~or independent public body corporate and politic~~ for
2 that purpose.

3 (f) The public agency ~~or independent public body corporate and politic~~
4 shall not charge any cost or fee for copies or labor when the requester
5 demonstrates that the requester's examination and/or copying of public
6 records:

7 (i) Is likely to contribute significantly to the public's under-
8 standing of the operations or activities of the government;

9 (ii) Is not primarily in the individual interest of the requester
10 including, but not limited to, the requester's interest in litiga-
11 tion in which the requester is or may become a party; and

12 (iii) Will not occur if fees are charged because the requester has
13 insufficient financial resources to pay such fees.

14 (g) Statements of fees by a public agency ~~or independent public body~~
15 ~~corporate and politic~~ shall be itemized to show the per page costs for
16 copies, and hourly rates of employees and attorneys involved in re-
17 sponding to the request, and the actual time spent on the public records
18 request. No lump sum costs shall be assigned to any public records re-
19 quest.

20 (11) A requester may not file multiple requests for public records
21 solely to avoid payment of fees. When a public agency ~~or independent public~~
22 ~~body corporate and politic~~ reasonably believes that one (1) or more re-
23 questers is segregating a request into a series of requests to avoid payment
24 of fees authorized pursuant to this section, the public agency ~~or inde-~~
25 ~~pendent public body corporate and politic~~ may aggregate such requests and
26 charge the appropriate fees. The public agency ~~or independent public body~~
27 ~~corporate and politic~~ may consider the time period in which the requests have
28 been made in its determination to aggregate the related requests. A public
29 agency ~~or independent public body corporate and politic~~ shall not aggregate
30 multiple requests on unrelated subjects from one (1) requester.

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

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

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

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

1 (16) A public agency, ~~or elected official or independent public body~~
2 ~~corporate and politic~~ shall designate a custodian or custodians for all pub-
3 lic records, which includes any public official having custody of, control
4 of, or authorized access to public records and also includes all delegates of
5 such officials, employees or representatives.

6 SECTION 3. That Section 74-103, Idaho Code, be, and the same is hereby
7 amended to read as follows:

8 74-103. REQUEST AND RESPONSE TO REQUEST FOR EXAMINATION OF PUBLIC
9 RECORDS. (1) All requests to examine public records shall be made to the
10 designated custodian of such records as defined in section 74-101(3), Idaho
11 Code. If a custodian has not been designated, a public records request may
12 be made to any official or employee of a public agency. A public agency, a
13 public official, or an employee of a public agency shall have no obligation
14 and shall not be deemed to have assumed any obligation to respond to a public
15 records request that fails to comply with the requirements of this subsec-
16 tion. A public records request must clearly indicate that it is a public
17 records request.

18 (2) A public agency or ~~independent public body corporate and politic~~
19 ~~custodian~~ shall either grant or deny a person's request to examine or copy
20 public records within three (3) working days of the date of the receipt of the
21 request for examination or copying. If it is determined by employees of the
22 public agency ~~or independent public body corporate and politic~~ that a longer
23 period of time is needed to locate or retrieve the public records, the public
24 agency ~~or independent public body corporate and politic~~ shall so notify in
25 writing the person requesting to examine or copy the records and shall pro-
26 vide the public records to the person no later than ten (10) working days
27 following the person's request. Provided however, if it is determined the
28 existing electronic record requested will first have to be converted to an-
29 other electronic format by the agency or by a third party and that such con-
30 version cannot be completed within ten (10) working days, the agency shall so
31 notify in writing the person requesting to examine or copy the records. The
32 agency shall provide the converted public record at a time mutually agreed
33 upon between the agency and the requester, with due consideration given to
34 any limitations that may exist due to the process of conversion or due to the
35 use of a third party to make the conversion.

36 (23) If the public agency or ~~independent public body corporate and~~
37 ~~politic custodian~~ fails to respond, the request shall be deemed to be denied
38 within ten (10) working days following the request.

39 (34) If the public agency ~~or independent public body corporate and~~
40 ~~politic~~ denies the person's request for examination or copying the public
41 records or denies in part and grants in part the person's request for exam-
42 ination and copying of the public records, the person legally responsible
43 for administering the public agency ~~or independent public body corporate and~~
44 ~~politic~~ or that person's designee shall notify the person in writing of the
45 denial or partial denial of the request for the public record.

46 (45) The notice of denial or partial denial shall state that the attor-
47 ney for the public agency ~~or independent public body corporate and politic~~
48 has reviewed the request or shall state that the public agency ~~or independent~~
49 ~~public body corporate and politic~~ has had an opportunity to consult with an

1 attorney regarding the request for examination or copying of a record and has
2 chosen not to do so. The notice of denial or partial denial also shall in-
3 dicate the statutory authority for the denial and indicate clearly the per-
4 son's right to appeal the denial or partial denial and the time periods for
5 doing so.

6 SECTION 4. That Section 74-106, Idaho Code, be, and the same is hereby
7 amended to read as follows:

8 74-106. RECORDS EXEMPT FROM DISCLOSURE -- PERSONNEL RECORDS, PER-
9 SONAL INFORMATION, HEALTH RECORDS, PROFESSIONAL DISCIPLINE. The following
10 records are exempt from disclosure:

11 (1) Except as provided in this subsection, all personnel records of
12 a current or former public official other than the public official's pub-
13 lic service or employment history, classification, pay grade and step,
14 longevity, gross salary and salary history, including bonuses, severance
15 packages, other compensation or vouchered and unvouchered expenses for
16 which reimbursement was paid, status, workplace and employing agency. All
17 other personnel information relating to a public employee or applicant
18 including, but not limited to, information regarding sex, race, marital
19 status, birth date, home address and telephone number, social security num-
20 ber, driver's license number, applications, testing and scoring materials,
21 grievances, correspondence and performance evaluations, shall not be dis-
22 closed to the public without the employee's or applicant's written consent.
23 Names of applicants to classified or merit system positions shall not be dis-
24 closed to the public without the applicant's written consent. Disclosure of
25 names as part of a background check is permitted. Names of the five (5) final
26 applicants to all other positions shall be available to the public. If such
27 group is less than five (5) finalists, then the entire list of applicants
28 shall be available to the public. A public official or authorized represen-
29 tative may inspect and copy his personnel records, except for material used
30 to screen and test for employment.

31 (2) Retired employees' and retired public officials' home addresses,
32 home telephone numbers and other financial and nonfinancial membership
33 records; active and inactive member financial and membership records and
34 mortgage portfolio loan documents maintained by the public employee retire-
35 ment system. Financial statements prepared by retirement system staff,
36 funding agents and custodians concerning the investment of assets of the
37 public employee retirement system of Idaho are not considered confidential
38 under this chapter.

39 (3) Information and records submitted to the Idaho state lottery for
40 the performance of background investigations of employees, lottery retail-
41 ers and major procurement contractors; audit records of lottery retailers,
42 vendors and major procurement contractors submitted to or performed by the
43 Idaho state lottery; validation and security tests of the state lottery for
44 lottery games; business records and information submitted pursuant to sec-
45 tions 67-7412(8) and (9) and 67-7421(8) and (9), Idaho Code, and such docu-
46 ments and information obtained and held for the purposes of lottery security
47 and investigative action as determined by lottery rules unless the public
48 interest in disclosure substantially outweighs the private need for protec-
49 tion from public disclosure.

- 1 (4) Records of a personal nature as follows:
2 (a) Records of personal debt filed with a public agency ~~or independent~~
3 ~~public body corporate and politic~~ pursuant to law;
4 (b) Personal bank records compiled by a public depositor for the pur-
5 pose of public funds transactions conducted pursuant to law;
6 (c) Records of ownership of financial obligations and instruments of a
7 public agency ~~or independent public body corporate and politic~~, such as
8 bonds, compiled by the public agency ~~or independent public body corpo-~~
9 ~~rate and politic~~ pursuant to law;
10 (d) Records, with regard to the ownership of, or security interests in,
11 registered public obligations;
12 (e) Vital statistics records;
13 (f) Military records as described in and pursuant to section 65-301,
14 Idaho Code;
15 (g) Social security numbers; and
16 (h) The following personal data identifiers for an individual may be
17 disclosed only in the following redacted format:
18 (i) The initials of any minor children of the individual;
19 (ii) A date of birth in substantially the following format:
20 "XX/XX/birth year";
21 (iii) The last four (4) digits of a financial account number in
22 substantially the following format: "XXXXX1234";
23 (iv) The last four (4) digits of a driver's license number or
24 state-issued personal identification card number in substan-
25 tially the following format: "XXXXX350F"; and
26 (v) The last four (4) digits of an employer identification number
27 or business's taxpayer identification number.
- 28 (5) Information in an income or other tax return measured by items of
29 income or sales, which is gathered by a public agency for the purpose of ad-
30 ministering the tax, except such information to the extent disclosed in a
31 written decision of the tax commission pursuant to a taxpayer protest of a
32 deficiency determination by the tax commission, under the provisions of sec-
33 tion 63-3045B, Idaho Code.
- 34 (6) Records of a personal nature related directly or indirectly to the
35 application for and provision of statutory services rendered to persons
36 applying for public care for people who are elderly, indigent or have mental
37 or physical disabilities, or participation in an environmental or a public
38 health study, provided the provisions of this subsection making records
39 exempt from disclosure shall not apply to the extent that such records or
40 information contained in those records are necessary for a background check
41 on an individual that is required by federal law regulating the sale of
42 firearms, guns or ammunition.
- 43 (7) Employment security information, except that a person may agree,
44 through written, informed consent, to waive the exemption so that a third
45 party may obtain information pertaining to the person, unless access to the
46 information by the person is restricted by subsection (3) (a), (3) (b) or
47 (3) (d) of section 74-113, Idaho Code. Notwithstanding the provisions of
48 section 74-113, Idaho Code, a person may not review identifying information
49 concerning an informant who reported to the department of labor a suspected
50 violation by the person of the employment security law, chapter 13, title 72,

1 Idaho Code, under an assurance of confidentiality. As used in this section
2 and in chapter 13, title 72, Idaho Code, "employment security information"
3 means any information descriptive of an identifiable person or persons that
4 is received by, recorded by, prepared by, furnished to or collected by the
5 department of labor or the industrial commission in the administration of
6 the employment security law.

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

13 (9) Unless otherwise provided by agency rule, information obtained as
14 part of an inquiry into a person's fitness to be granted or retain a license,
15 certificate, permit, privilege, commission or position, private associa-
16 tion peer review committee records authorized in title 54, Idaho Code. Any
17 agency that has records exempt from disclosure under the provisions of this
18 subsection shall annually make available a statistical summary of the number
19 and types of matters considered and their disposition.

20 (10) The records, findings, determinations and decisions of any prelit-
21 igation screening panel formed under chapters 10 and 23, title 6, Idaho Code.

22 (11) Complaints received by the board of medicine and investigations
23 and informal proceedings, including informal proceedings of any committee
24 of the board of medicine, pursuant to chapter 18, title 54, Idaho Code, and
25 rules adopted thereunder.

26 (12) Records of the department of health and welfare or a public health
27 district that identify a person infected with a reportable disease.

28 (13) Records of hospital care, medical records, including prescrip-
29 tions, drug orders, records or any other prescription information that
30 specifically identifies an individual patient, prescription records main-
31 tained by the board of pharmacy under sections 37-2726 and 37-2730A, Idaho
32 Code, records of psychiatric care or treatment and professional counseling
33 records relating to an individual's condition, diagnosis, care or treat-
34 ment, provided the provisions of this subsection making records exempt from
35 disclosure shall not apply to the extent that such records or information
36 contained in those records are necessary for a background check on an indi-
37 vidual that is required by federal law regulating the sale of firearms, guns
38 or ammunition.

39 (14) Information collected pursuant to the directory of new hires act,
40 chapter 16, title 72, Idaho Code.

41 (15) Personal information contained in motor vehicle and driver records
42 that is exempt from disclosure under the provisions of chapter 2, title 49,
43 Idaho Code.

44 (16) Records of the financial status of prisoners pursuant to subsec-
45 tion (2) of section 20-607, Idaho Code.

46 (17) Records of the Idaho state police or department of correction re-
47 ceived or maintained pursuant to section 19-5514, Idaho Code, relating to
48 DNA databases and databanks.

49 (18) Records of the department of health and welfare relating to a sur-
50 vey, resurvey or complaint investigation of a licensed nursing facility

1 shall be exempt from disclosure. Such records shall, however, be subject to
2 disclosure as public records as soon as the facility in question has received
3 the report, and no later than the fourteenth day following the date that de-
4 partment of health and welfare representatives officially exit the facility
5 pursuant to federal regulations. Provided however, that for purposes of
6 confidentiality, no record shall be released under this section that specif-
7 ically identifies any nursing facility resident.

8 (19) Records and information contained in the registry of immunizations
9 against childhood diseases maintained in the department of health and wel-
10 fare, including information disseminated to others from the registry by the
11 department of health and welfare.

12 (20) Records of the Idaho housing and finance association (IHFA) relat-
13 ing to the following:

14 (a) Records containing personal financial, family, health or similar
15 personal information submitted to or otherwise obtained by the IHFA;

16 (b) Records submitted to or otherwise obtained by the IHFA with regard
17 to obtaining and servicing mortgage loans and all records relating to
18 the review, approval or rejection by the IHFA of said loans;

19 (c) Mortgage portfolio loan documents;

20 (d) Records of a current or former employee other than the employee's
21 duration of employment with the association, position held and loca-
22 tion of employment. This exemption from disclosure does not include the
23 contracts of employment or any remuneration, including reimbursement
24 of expenses, of the executive director, executive officers or commis-
25 sioners of the association. All other personnel information relating
26 to an association employee or applicant including, but not limited to,
27 information regarding sex, race, marital status, birth date, home ad-
28 dress and telephone number, applications, testing and scoring materi-
29 als, grievances, correspondence, retirement plan information and per-
30 formance evaluations, shall not be disclosed to the public without the
31 employee's or applicant's written consent. An employee or authorized
32 representative may inspect and copy that employee's personnel records,
33 except for material used to screen and test for employment or material
34 not subject to disclosure elsewhere in the Idaho public records act.

35 (21) Records of the department of health and welfare related to child
36 support services in cases in which there is reasonable evidence of domestic
37 violence, as defined in chapter 63, title 39, Idaho Code, that can be used
38 to locate any individuals in the child support case except in response to a
39 court order.

40 (22) Records of the Idaho state bar lawyer assistance program pursuant
41 to chapter 49, title 54, Idaho Code, unless a participant in the program au-
42 thORIZES the release pursuant to subsection (4) of section 54-4901, Idaho
43 Code.

44 (23) Records and information contained in the time sensitive emergency
45 registry created by chapter 20, title 57, Idaho Code, together with any re-
46 ports, analyses and compilations created from such information and records.

47 (24) Records contained in the court files, or other records prepared as
48 part of proceedings for judicial authorization of sterilization procedures
49 pursuant to chapter 39, title 39, Idaho Code.

1 (25) The physical voter registration application on file in the county
2 clerk's office; however, a redacted copy of said application shall be made
3 available consistent with the requirements of this section. Information
4 from the voter registration application maintained in the statewide voter
5 registration database, including age, will be made available except for
6 the voter's driver's license number, date of birth and, upon a showing that
7 the voter comes within the provisions of subsection (30) of this section or
8 upon showing of good cause by the voter to the county clerk in consultation
9 with the county prosecuting attorney, the physical residence address of the
10 voter. For the purposes of this subsection, good cause shall include the
11 protection of life and property and protection of victims of domestic vio-
12 lence and similar crimes.

13 (26) File numbers, passwords and information in the files of the health
14 care directive registry maintained by the department of health and welfare
15 under section 39-4515, Idaho Code, are confidential and shall not be dis-
16 closed to any person other than to the person who executed the health care
17 directive or the revocation thereof and that person's legal representa-
18 tives, to the person who registered the health care directive or revocation
19 thereof, and to physicians, hospitals, medical personnel, nursing homes,
20 and other persons who have been granted file number and password access to
21 the documents within that specific file.

22 (27) Records in an address confidentiality program participant's file
23 as provided for in chapter 57, title 19, Idaho Code, other than the address
24 designated by the secretary of state, except under the following circum-
25 stances:

26 (a) If requested by a law enforcement agency, to the law enforcement
27 agency; or

28 (b) If directed by a court order, to a person identified in the order.

29 (28) Except as otherwise provided by law relating to the release of in-
30 formation to a governmental entity or law enforcement agency, any personal
31 information including, but not limited to, names, personal and business ad-
32 dresses and phone numbers, sex, height, weight, date of birth, social secu-
33 rity and driver's license numbers, or any other identifying numbers and/or
34 information related to any Idaho fish and game licenses, permits and tags un-
35 less written consent is obtained from the affected person.

36 (29) Documents and records related to alternatives to discipline that
37 are maintained by the Idaho board of veterinary medicine under the provi-
38 sions of section 54-2118(1)(b), Idaho Code, provided the requirements set
39 forth therein are met.

40 (30) The Idaho residential street address and telephone number of an el-
41 igible law enforcement officer and such officer's residing household mem-
42 ber(s) as provided for in chapter 58, title 19, Idaho Code, except under the
43 following circumstances:

44 (a) If directed by a court order, to a person identified in the court
45 order;

46 (b) If requested by a law enforcement agency, to the law enforcement
47 agency;

48 (c) If requested by a financial institution or title company for busi-
49 ness purposes, to the requesting financial institution or title com-
50 pany; or

1 (d) If the law enforcement officer provides written permission for dis-
2 closure of such information.

3 (31) All information exchanged between the Idaho transportation de-
4 partment and insurance companies, any database created, all information
5 contained in the verification system and all reports, responses or other
6 information generated for the purposes of the verification system, pursuant
7 to section 49-1234, Idaho Code.

8 (32) Nothing in this section shall prohibit the release of information
9 to the state controller as the state social security administrator as pro-
10 vided in section 59-1101A, Idaho Code.

11 (33) Personal information including, but not limited to, property val-
12 ues, personal and business addresses, phone numbers, dates of birth, social
13 security and driver's license numbers or any other identifying numbers or
14 information maintained by the administrator of the unclaimed property law
15 set forth in chapter 5, title 14, Idaho Code. Nothing in this subsection
16 shall prohibit the release of names, last known city of residence, property
17 value ranges and general property information by the administrator for the
18 purpose of reuniting unclaimed property with its owner.

19 (34) Any personal information collected by the secretary of state, pur-
20 suant to section 67-906(1) (b), Idaho Code, for the purpose of allowing indi-
21 viduals to access the statewide electronic filing system authorized in sec-
22 tion 67-906, Idaho Code, and any notification e-mail addresses submitted as
23 part of a lobbyist's registration under section 67-6617, Idaho Code, of an
24 employer, client, or designated contact for the purpose of electronic noti-
25 fication of that employer, client, or designated contact of a report filed
26 under section 67-6619, Idaho Code.

27 SECTION 5. That Section 74-107, Idaho Code, be, and the same is hereby
28 amended to read as follows:

29 74-107. RECORDS EXEMPT FROM DISCLOSURE -- TRADE SECRETS, PRODUCTION
30 RECORDS, APPRAISALS, BIDS, PROPRIETARY INFORMATION, TAX COMMISSION, UN-
31 CLAIMED PROPERTY, PETROLEUM CLEAN WATER TRUST FUND. The following records
32 are exempt from disclosure:

33 (1) Trade secrets including those contained in response to public
34 agency ~~or independent public body corporate and politic~~ requests for pro-
35 posal, requests for clarification, requests for information and similar
36 requests. "Trade secrets" as used in this section means information, in-
37 cluding a formula, pattern, compilation, program, computer program, device,
38 method, technique, process, or unpublished or in-progress research that:

39 (a) Derives independent economic value, actual or potential, from not
40 being generally known to, and not being readily ascertainable by proper
41 means by other persons who can obtain economic value from its disclosure
42 or use; and

43 (b) Is the subject of efforts that are reasonable under the circum-
44 stances to maintain its secrecy.

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

1 politic. Nothing in this subsection shall limit the use which can be made
2 of such information for regulatory purposes or its admissibility in any en-
3 forcement proceeding.

4 (3) Records relating to the appraisal of real property, timber or min-
5 eral rights prior to its acquisition, sale or lease by a public agency ~~or in-~~
6 ~~dependent public body corporate and politic.~~

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

11 (5) Examination, operating or condition reports and all documents re-
12 lating thereto, prepared by or supplied to any public agency ~~or independent~~
13 ~~public body corporate and politic~~ responsible for the regulation or supervi-
14 sion of financial institutions including, but not limited to, banks, savings
15 and loan associations, regulated lenders, business and industrial develop-
16 ment corporations, credit unions, and insurance companies, or for the regu-
17 lation or supervision of the issuance of securities.

18 (6) Records gathered by a local agency or the Idaho department of com-
19 merce, as described in chapter 47, title 67, Idaho Code, for the specific
20 purpose of assisting a person to locate, maintain, invest in, or expand busi-
21 ness operations in the state of Idaho.

22 (7) Shipping and marketing records of commodity commissions used to
23 evaluate marketing and advertising strategies and the names and addresses of
24 growers and shippers maintained by commodity commissions.

25 (8) Financial statements and business information and reports submit-
26 ted by a legal entity to a port district organized under title 70, Idaho Code,
27 in connection with a business agreement, or with a development proposal or
28 with a financing application for any industrial, manufacturing, or other
29 business activity within a port district.

30 (9) Names and addresses of seed companies, seed crop growers, seed crop
31 consignees, locations of seed crop fields, variety name and acreage by vari-
32 ety. Upon the request of the owner of the proprietary variety, this infor-
33 mation shall be released to the owner. Provided however, that if a seed crop
34 has been identified as diseased or has been otherwise identified by the Idaho
35 department of agriculture, other state departments of agriculture, or the
36 United States department of agriculture to represent a threat to that par-
37 ticular seed or commercial crop industry or to individual growers, infor-
38 mation as to test results, location, acreage involved and disease symptoms
39 of that particular seed crop, for that growing season, shall be available
40 for public inspection and copying. This exemption shall not supersede the
41 provisions of section 22-436, Idaho Code, nor shall this exemption apply to
42 information regarding specific property locations subject to an open burn-
43 ing of crop residue pursuant to section 39-114, Idaho Code, names of persons
44 responsible for the open burn, acreage and crop type to be burned, and time
45 frames for burning.

46 (10) Information obtained from books, records and accounts required in
47 chapter 47, title 22, Idaho Code, to be maintained by the Idaho oilseed com-
48 mission and pertaining to the individual production records of oilseed grow-
49 ers.

1 (11) Records of any risk retention or self-insurance program prepared
2 in anticipation of litigation or for analysis of or settlement of potential
3 or actual money damage claims against a public entity and its employees or
4 against the industrial special indemnity fund except as otherwise discov-
5 erable under the Idaho or federal rules of civil procedure. These records
6 shall include, but are not limited to, claims evaluations, investigatory
7 records, computerized reports of losses, case reserves, internal documents
8 and correspondence relating thereto. At the time any claim is concluded,
9 only statistical data and actual amounts paid in settlement shall be deemed
10 a public record unless otherwise ordered to be sealed by a court of competent
11 jurisdiction. Provided however, nothing in this subsection is intended to
12 limit the attorney-client privilege or attorney work product privilege oth-
13 erwise available to any public agency ~~or independent public body corporate~~
14 ~~and politic.~~

15 (12) Records of laboratory test results provided by or retained by the
16 Idaho food quality assurance laboratory. Nothing in this subsection shall
17 limit the use which can be made, or availability of such information if used,
18 for regulatory purposes or its admissibility in any enforcement proceeding.

19 (13) Reports required to be filed under chapter 13, title 62, Idaho
20 Code, identifying electrical or natural or manufactured gas consumption
21 data for an individual customer or account.

22 (14) Voluntarily prepared environmental audits, and voluntary disclo-
23 sures of information submitted on or before December 31, 1997, to an environ-
24 mental agency, which are claimed to be confidential business information.

25 (15) Computer programs developed or purchased by or for any public
26 agency ~~or independent public body corporate and politic~~ for its own use. As
27 used in this subsection, "computer program" means a series of instructions
28 or statements which permit the functioning of a computer system in a manner
29 designed to provide storage, retrieval and manipulation of data from the
30 computer system, and any associated documentation and source material that
31 explain how to operate the computer program. Computer program does not in-
32 clude:

33 (a) The original data including, but not limited to, numbers, text,
34 voice, graphics and images;

35 (b) Analysis, compilation and other manipulated forms of the original
36 data produced by use of the program; or

37 (c) The mathematical or statistical formulas that would be used if the
38 manipulated forms of the original data were to be produced manually.

39 (16) Active investigative records and trademark usage audits of the
40 Idaho potato commission specifically relating to the enforcement of chapter
41 12, title 22, Idaho Code, until the commencement of formal proceedings as
42 provided by rules of the commission; purchase and sales information sub-
43 mitted to the Idaho potato commission during a trademark usage audit, and
44 investigation or enforcement proceedings. Inactive investigatory records
45 shall be disclosed unless the disclosure would violate the standards set
46 forth in subsection (1) (a) through (f) of section 74-124, Idaho Code. Noth-
47 ing in this subsection shall limit the use which can be made, or availability
48 of such information if used, for regulatory purposes or its admissibility in
49 any enforcement proceeding.

1 (17) All records copied or obtained by the director of the department of
2 agriculture or his designee as a result of an inspection pursuant to section
3 25-3806, Idaho Code, except:

4 (a) Records otherwise deemed to be public records not exempt from dis-
5 closure pursuant to this chapter; and

6 (b) Inspection reports, determinations of compliance or noncompliance
7 and all other records created by the director or his designee pursuant
8 to section 25-3806, Idaho Code.

9 (18) All data and information collected by the division of animal indus-
10 tries or the state brand board pursuant to the provisions of section 25-207B,
11 Idaho Code, or rules promulgated thereunder.

12 (19) Records disclosed to a county official by the state tax commission
13 pursuant to subsection (4) (c) of section 63-3029B, Idaho Code.

14 (20) Records, data, information and materials collected, developed,
15 generated, ascertained or discovered during the course of academic research
16 at public institutions of higher education if the disclosure of such could
17 reasonably affect the conduct or outcome of the research, or the ability of
18 the public institution of higher education to patent or copyright the re-
19 search or protect intellectual property.

20 (21) Records, data, information and materials collected or utilized
21 during the course of academic research at public institutions of higher ed-
22 ucation provided by any person or entity other than the public institution
23 of higher education or a public agency.

24 (22) The exemptions from disclosure provided in subsections (20) and
25 (21) of this section shall apply only until the academic research is pub-
26 licly released, copyrighted or patented, or until the academic research
27 is completed or terminated. At such time, the records, data, information,
28 and materials shall be subject to public disclosure unless: (a) another
29 exemption in this chapter applies; (b) such information was provided to the
30 institution subject to a written agreement of confidentiality; or (c) public
31 disclosure would pose a danger to persons or property.

32 (23) The exemptions from disclosure provided in subsections (20) and
33 (21) of this section do not include basic information about a particular
34 research project that is otherwise subject to public disclosure, such as the
35 nature of the academic research, the name of the researcher, and the amount
36 and source of the funding provided for the project.

37 (24) Records of a county assessor, the state tax commission, a county
38 board of equalization or the state board of tax appeals containing the fol-
39 lowing information: (i) lists of personal property required to be filed pur-
40 suant to section 63-302, Idaho Code, and operating statements required to
41 be filed pursuant to section 63-404, Idaho Code; and (ii) confidential com-
42 mercial or financial information including trade secrets. Except with re-
43 spect to lists of personal property required to be filed pursuant to section
44 63-302, Idaho Code, and the operator statements required to be filed pur-
45 suant to section 63-404, Idaho Code, it shall be the responsibility of the
46 taxpayer to give notice of its claim to exemption by stamping or marking each
47 page or the first page of each portion of documents so claimed. No records
48 that are exempt pursuant to this subsection shall be disclosed without the
49 consent of the taxpayer except as follows:

1 (a) To any officer, employee or authorized representative of the state
2 or the United States, under a continuing claim of confidentiality, as
3 necessary to carry out the provisions of state or federal law or when
4 relevant to any proceeding thereunder.

5 (b) In the publication of statistics or reports as long as the statis-
6 tics or reports do not reasonably lead to the identification of the spe-
7 cific taxpayer or information submitted by taxpayers exempt pursuant to
8 this subsection.

9 (c) To the board of tax appeals or the district court as evidence or
10 otherwise in connection with an appeal of the taxpayer's property tax
11 assessment, but only if the board or the court, as applicable, has en-
12 tered a protective order specifying that the taxpayer information may
13 not be disclosed by any person conducting or participating in the action
14 or proceeding, except as authorized by the board or the court in accor-
15 dance with applicable law.

16 (d) Nothing in this subsection shall prevent disclosure of the follow-
17 ing information:

- 18 (i) Name and mailing address of the property owner;
- 19 (ii) A parcel number;
- 20 (iii) A legal description of real property;
- 21 (iv) The square footage and acreage of real property;
- 22 (v) The assessed value of taxable property;
- 23 (vi) The tax district and the tax rate; and
- 24 (vii) The total property tax assessed.

25 (25) Results of laboratory tests which have no known adverse impacts to
26 human health conducted by the Idaho state department of agriculture animal
27 health laboratory, related to diagnosis of animal diseases of individual an-
28 imals or herds, on samples submitted by veterinarians or animal owners un-
29 less:

30 (a) The laboratory test results indicate the presence of a state or fed-
31 erally reportable or regulated disease in animals;

32 (b) The release of the test results is required by state or federal law;
33 or

34 (c) The test result is identified as representing a threat to animal or
35 human health or to the livestock industry by the Idaho state department
36 of agriculture or the United States department of agriculture. Nothing
37 in this subsection shall limit the use which can be made, or availabil-
38 ity of such information if used, for regulatory purposes or its admis-
39 sibility in any enforcement proceeding, or the duty of any person to re-
40 port contagious or infectious diseases as required by state or federal
41 law.

42 (26) Results of laboratory tests conducted by the Idaho state depart-
43 ment of agriculture seed laboratory on samples submitted by seed producers
44 or seed companies. Nothing in this subsection shall limit the use which can
45 be made, or availability of such information pursuant to the provisions of
46 subsections (9) and (10) of section 22-418, Idaho Code.

47 (27) For policies that are owned by private persons, and not by a public
48 agency of the state of Idaho, records of policies, endorsements, affidavits
49 and any records that discuss policies, endorsements and affidavits that may

1 be required to be filed with or by a surplus line association pursuant to
2 chapter 12, title 41, Idaho Code.

3 (28) Individual financial statements of a postsecondary educational
4 institution or a proprietary school submitted to the state board of educa-
5 tion, its director or a representative thereof, for the purpose of regis-
6 tering the postsecondary educational institution or proprietary school pur-
7 suant to section 33-2402 or 33-2403, Idaho Code, or provided pursuant to an
8 administrative rule of the board adopted pursuant to such sections.

9 (29) Information submitted by insurance companies pursuant to section
10 41-612(17), Idaho Code.

11 (30) Documents, materials or other information submitted to the direc-
12 tor of the department of insurance as provided in chapter 64, title 41, Idaho
13 Code.

14 (31) Reports, information and other materials exempted by chapter 63,
15 title 41, Idaho Code.

16 (32) Records that identify the method by which the Idaho state tax com-
17 mission selects tax returns for audit review.

18 (33) Records that identify the method by which the administrator of the
19 unclaimed property law set forth in chapter 5, title 14, Idaho Code, selects
20 reports for audit review or conducts audit review of such reports and the
21 identity of individuals or entities under audit.

22 (34) Underwriting and claims records of the Idaho petroleum clean wa-
23 ter trust fund obtained pursuant to section 41-4905, 41-4909, 41-4911A,
24 41-4912, or 41-4912A, Idaho Code. Provided, however, that this subsection
25 shall not prevent the Idaho petroleum clean water trust fund's submittal to
26 the Idaho department of environmental quality or other regulatory agencies
27 of information necessary to satisfy an insured's corrective action require-
28 ment under applicable federal or state standards in the event of a release
29 into the environment from a petroleum storage tank; and provided further
30 that nothing in this subsection shall prevent the Idaho petroleum clean wa-
31 ter trust fund from providing auditing, reporting, or actuarial information
32 as otherwise required of it pursuant to section 41-4919, 41-4925A, 41-4928,
33 41-4930, 41-4932, 41-4937, or 41-4938, Idaho Code.

34 SECTION 6. That Section 74-112, Idaho Code, be, and the same is hereby
35 amended to read as follows:

36 74-112. EXEMPT AND NONEXEMPT PUBLIC RECORDS TO BE SEPARATED. If any
37 public record contains material which is not exempt from disclosure as well
38 as material which is exempt from disclosure, the public agency ~~or indepen-~~
39 ~~dent public body corporate and politic~~ shall, upon receipt of a request for
40 disclosure, separate the exempt and nonexempt material and make the nonex-
41 empt material available for examination, provided that a denial of a request
42 to copy nonexempt material in a public record shall not be based upon the fact
43 that such nonexempt material is contained in the same public record as the
44 exempt material.

45 SECTION 7. That Section 74-113, Idaho Code, be, and the same is hereby
46 amended to read as follows:

1 74-113. ACCESS TO RECORDS ABOUT A PERSON BY A PERSON. (1) A person may
2 inspect and copy the records of a public agency ~~or independent public body~~
3 ~~corporate and politic~~ pertaining to that person, even if the record is other-
4 wise exempt from public disclosure.

5 (2) A person may request in writing an amendment of any record pertain-
6 ing to that person. Within ten (10) days of the receipt of the request, the
7 public agency ~~or independent public body corporate and politic~~ shall either:

8 (a) Make any correction of any portion of the record which the person
9 establishes is not accurate, relevant, or complete; or

10 (b) Inform the person in writing of the refusal to amend in accordance
11 with the request and the reasons for the refusal, and indicate clearly
12 the person's right to appeal the refusal and the time period for doing
13 so. The procedures for appealing a refusal to amend shall be the same
14 as those set forth in sections 74-115 and 74-116, Idaho Code, and the
15 court may award reasonable costs and attorney's fees to the prevailing
16 party or parties, if it finds that the request for amendment or refusal
17 to amend was frivolously pursued.

18 (3) The right to inspect and amend records pertaining to oneself does
19 not include the right to review:

20 (a) Otherwise exempt investigatory records of a public agency ~~or inde-~~
21 ~~pendent public body corporate and politic~~ if the investigation is ongo-
22 ing;

23 (b) Information that is compiled in reasonable anticipation of a civil
24 action or proceeding which is not otherwise discoverable;

25 (c) The information relates to adoption records;

26 (d) Information which is otherwise exempt from disclosure by statute or
27 court rule;

28 (e) Records of a prisoner maintained by the state or local agency having
29 custody of the prisoner or formerly having custody of the prisoner or by
30 the commission of pardons and parole.

31 SECTION 8. That Section 74-114, Idaho Code, be, and the same is hereby
32 amended to read as follows:

33 74-114. ACCESS TO AIR QUALITY, WATER QUALITY AND HAZARDOUS WASTE
34 RECORDS -- PROTECTION OF TRADE SECRETS. (1) To the extent required by the
35 federal clean air act, the federal clean water act and the resource conser-
36 vation and recovery act for state primacy over any delegated or authorized
37 programs, even if the record is otherwise exempt from disclosure under this
38 chapter, any person may inspect and copy:

39 (a) Air pollution emission data;

40 (b) The content of any title V operating permit;

41 (c) The name and address of any Idaho pollutant discharge elimination
42 system (IPDES) applicant or permittee;

43 (d) The content of any IPDES permit;

44 (e) IPDES permit applications, and information required to be submit-
45 ted by IPDES application forms, whether the information is submitted on
46 the application forms themselves or in any attachments used to supply
47 information required by the application forms;

48 (f) Effluent data or a standard or limitation, as defined in 40 CFR
49 2.302;

1 (g) The name and address of any applicant or permittee for a hazardous
2 waste treatment, storage, or disposal facility permit pursuant to chap-
3 ter 44, title 39, Idaho Code; and

4 (h) Any other record required to be provided to or obtained by the de-
5 partment of environmental quality pursuant to the federal clean air
6 act, the federal clean water act and the resource conservation and re-
7 covery act, and the implementing state statutes, federal regulations
8 and state rules, unless the record is a trade secret.

9 (2) For purposes of this section, a record, or a portion of the record,
10 is a "trade secret" if the information contained in the record is a trade se-
11 cret within the meaning of the Idaho trade secrets act, sections 48-801, et
12 seq., Idaho Code, including commercial or financial information which, if
13 disclosed, could cause substantial competitive harm to the person from whom
14 the record was obtained.

15 (3) Any record, or portion of a record, provided to or obtained by the
16 department of environmental quality and identified by the person providing
17 the record as a trade secret shall not be disclosed to the public and shall be
18 kept confidential according to the procedures established in this section.

19 (4) Nothing in this section shall be construed as limiting the disclo-
20 sure of a trade secret by the department of environmental quality:

21 (a) To any officer, employee, or authorized representative of the state
22 or the United States, under a continuing claim of confidentiality, as
23 necessary to carry out the provisions of state or federal law, or when
24 relevant to any proceeding thereunder;

25 (b) As determined necessary by the director of the department of en-
26 vironmental quality (under a continuing confidentiality claim) to pro-
27 tect the public health and safety from imminent and substantial endan-
28 germent;

29 (c) As required by state or federal law, including section 74-115(3),
30 Idaho Code, under a continuing claim of confidentiality and subsection
31 (1) of this section; or

32 (d) With the consent of the person from whom the record is obtained.

33 (5) It shall be the responsibility of any person providing a record to
34 the department of environmental quality to give notice of the existence of a
35 trade secret on each page or other portion of information at the time of sub-
36 mittal, and such person shall have the burden of demonstrating that the in-
37 formation is a trade secret.

38 (6) Notwithstanding the time frames set forth in section 74-103(±2),
39 Idaho Code, when a request is made to the department of environmental qual-
40 ity pursuant to the provisions of this chapter for the disclosure of informa-
41 tion for which a trade secret claim has been made, and the information has not
42 been demonstrated to be a trade secret to the satisfaction of the director
43 of the department of environmental quality, within three (3) working days
44 of receipt of the request for the disclosure of the information, the depart-
45 ment of environmental quality shall provide a written request for substan-
46 tiation to the person making the confidentiality claim. A response shall be
47 submitted to the department of environmental quality by the person claiming
48 the trade secret protection within ten (10) working days after receipt of the
49 request for substantiation, or the information subject to the claim shall be
50 disclosed without further notice. Upon receipt of a timely response to the

1 request for substantiation, the director of the department of environmental
2 quality shall determine whether the information is a trade secret subject to
3 protection.

4 (a) If it is determined that the information, or any portion of the in-
5 formation, is a trade secret, within three (3) working days after re-
6 ceipt of the response, the director of the department of environmental
7 quality shall notify the person requesting the information that the re-
8 quest is denied pursuant to subsections (34) and (45) of section 74-103,
9 Idaho Code.

10 (b) If it is determined that the information, or any portion of the
11 information, is not a trade secret and is, therefore, subject to dis-
12 closure, within three (3) working days after receipt of the response,
13 the director of the department of environmental quality shall inform
14 the person making the confidentiality claim of the determination. The
15 decision shall be a final agency action directly appealable, de novo, to
16 the district court of the county where the records or some part thereof
17 are located. An appeal contesting the decision of the director of the
18 department of environmental quality to release information claimed to
19 be a trade secret shall be filed within ten (10) working days from the
20 date of receipt of the written notice of decision. The information
21 claimed to be a trade secret shall not be disclosed until the period
22 for appeal has expired with no appeal being taken, or a court order has
23 been issued finding that the information is not a trade secret and all
24 appeals of that order have been exhausted.

25 (7) In any appeal taken pursuant to this section, the court may award
26 reasonable costs and attorney's fees to the prevailing party if it finds the
27 claim of confidentiality or the decision of the director of the department of
28 environmental quality to provide records was frivolously pursued.

29 (8) The department of environmental quality shall adopt rules which in-
30 clude:

31 (a) Appropriate measures to safeguard and protect against improper
32 disclosure of trade secrets, including procedures to train all employ-
33 ees on the proper handling of trade secrets; and

34 (b) Any other provisions necessary to carry out this section.

35 (9) As it relates to the department of environmental quality, or to
36 agents, contractors, or other representatives of the department, the immu-
37 nity created in section 74-118, Idaho Code, shall apply only when disclosure
38 of a trade secret is made consistent with this section.

39 SECTION 9. That Section 74-115, Idaho Code, be, and the same is hereby
40 amended to read as follows:

41 74-115. PROCEEDINGS TO ENFORCE RIGHT TO EXAMINE OR TO RECEIVE A COPY
42 OF RECORDS -- RETENTION OF DISPUTED RECORDS. (1) The sole remedy for a per-
43 son aggrieved by the denial of a request for disclosure is to institute
44 proceedings in the district court of the county where the records or some
45 part thereof are located, to compel the public agency ~~or independent public~~
46 ~~body corporate and politic~~ to make the information available for public
47 inspection in accordance with the provisions of this chapter. The petition
48 contesting the public agency's ~~or independent public body corporate and~~
49 ~~politic's~~ decision shall be filed within one hundred eighty (180) calendar

1 days from the date of mailing of the notice of denial or partial denial by the
2 public agency ~~or independent public body corporate and politic~~. In cases
3 in which the records requested are claimed as exempt pursuant to section
4 74-107(1) or (24), Idaho Code, the petitioner shall be required to name as a
5 party and serve the person or entity that filed or provided such documents
6 to the agency, and such person or entity shall have standing to oppose the
7 request for disclosure and to support the decision of the agency to deny the
8 request. The time for responsive pleadings and for hearings in such proceed-
9 ings shall be set by the court at the earliest possible time, or in no event
10 beyond twenty-eight (28) calendar days from the date of filing.

11 (2) The public agency ~~or independent public body corporate and politic~~
12 shall keep all documents or records in question until the end of the appeal
13 period, until a decision has been rendered on the petition, or as otherwise
14 statutorily provided, whichever is longer.

15 (3) Nothing contained in this chapter shall limit the availability
16 of documents and records for discovery in the normal course of judicial or
17 administrative adjudicatory proceedings, subject to the law and rules of
18 evidence and of discovery governing such proceedings. Additionally, in any
19 criminal appeal or post-conviction civil action, this chapter shall not make
20 available the contents of prosecution case files where such material has
21 previously been provided to the defendant nor shall this chapter be avail-
22 able to supplement, augment, substitute or supplant discovery procedures in
23 any other federal, civil or administrative proceeding.

24 SECTION 10. That Section 74-118, Idaho Code, be, and the same is hereby
25 amended to read as follows:

26 74-118. IMMUNITY. No public agency ~~or independent public body corpo-~~
27 ~~rate and politic~~, public official, or custodian shall be liable, nor shall a
28 cause of action exist, for any loss or damage based upon the release of a pub-
29 lic record governed by the provisions of this chapter if the public agency
30 ~~or independent public body corporate and politic~~, public official, or custo-
31 dian acted in good faith in attempting to comply with the provisions of this
32 chapter.

33 SECTION 11. That Section 74-119, Idaho Code, be, and the same is hereby
34 amended to read as follows:

35 74-119. AGENCY GUIDELINES. By January 1, 2019, every state agency ~~or~~
36 ~~independent public body corporate and politic~~ shall adopt guidelines that
37 identify the general subject matter of all public records kept or main-
38 tained by the state agency ~~or independent public body corporate and politic~~,
39 the custodian or custodians, and the physical location of such documents.
40 Public agencies shall designate at least one (1) person as custodian to re-
41 ceive public records requests and shall provide an alternate custodian or
42 alternate custodians for contingencies. If a public agency has a website,
43 the agency shall note the name and contact information of its custodian of
44 records on its website and shall promptly update such information when it
45 changes.

1 SECTION 12. That Section 74-120, Idaho Code, be, and the same is hereby
2 amended to read as follows:

3 74-120. PROHIBITION ON DISTRIBUTION OR SALE OF MAILING OR TELEPHONE
4 NUMBER LISTS -- PENALTY. (1) Except as provided in subsections (2), (3), (4),
5 (5), (6), (7), (8) and (9) of this section, in order to protect the privacy of
6 those who deal with public agencies ~~or an independent public body corporate~~
7 ~~and politic:~~

8 (a) No agency ~~or independent public body corporate and politic~~ may dis-
9 tribute or sell for use as a mailing list or a telephone number list any
10 list of persons without first securing the permission of those on the
11 list; and

12 (b) No list of persons prepared by the agency ~~or independent public~~
13 ~~body corporate and politic~~ may be used as a mailing list or a telephone
14 number list except by the agency ~~or independent public body corporate~~
15 ~~and politic~~ or another agency without first securing the permission of
16 those on the list.

17 (2) Except as may be otherwise provided in this chapter, this section
18 does not prevent an individual from compiling a mailing list or a telephone
19 number list by examination or copying of public records, original documents
20 or applications which are otherwise open to public inspection.

21 (3) The provisions of this section do not apply to the lists of regis-
22 tered electors compiled pursuant to title 34, Idaho Code, or to lists of the
23 names of employees governed by chapter 53, title 67, Idaho Code.

24 (4) The provisions of this section shall not apply to agencies which is-
25 sue occupational or professional licenses.

26 (5) This section does not apply to the right of access either by Idaho
27 law enforcement agencies or, by purchase or otherwise, of public records
28 dealing with motor vehicle registration.

29 (6) This section does not apply to a corporate information list devel-
30 oped by the office of the secretary of state containing the name, address,
31 registered agent, officers and directors of corporations authorized to do
32 business in this state or to a business information list developed by the de-
33 partment of commerce containing the name, address, telephone number or other
34 relevant information of Idaho businesses or individuals requesting informa-
35 tion regarding the state of Idaho or to business lists developed by the de-
36 partment of agriculture, market development ~~division of marketing and de-~~
37 ~~velopment~~, used to promote food and agricultural products produced in Idaho.

38 (7) This section does not apply to lists to be used for ordinary util-
39 ity purposes which are requested by a person who supplies utility services in
40 this state. Ordinary utility purposes, as used in this chapter only, do not
41 include marketing or marketing research.

42 (8) This section does not apply to lists to be used to give notice re-
43 quired by any statute, ordinance, rule, law or by any governing agency.

44 (9) This section does not apply to student directory information pro-
45 vided by colleges, universities, secondary schools and school districts to
46 military recruiters for military recruiting purposes pursuant to the re-
47 quirements of federal laws.

1 (10) Nothing in this section shall prohibit the release of information
2 to the state controller as the state social security administrator as pro-
3 vided in section 59-1101A, Idaho Code.

4 (11) If a court finds that a person or public official has deliberately
5 and in bad faith violated the provisions of subsection (1)(a) or (1)(b)
6 of this section, the person or public official shall be liable for a civil
7 penalty assessed by the court in an amount not in excess of one thousand dol-
8 lars (\$1,000) which shall be paid into the general ~~account~~ fund.

9 SECTION 13. That Section 74-121, Idaho Code, be, and the same is hereby
10 amended to read as follows:

11 74-121. REPLEVIN -- PUBLIC RECORDS -- IMPROPER OR UNLAWFUL TRANSFER OR
12 REMOVAL. (1) Public records of the state and/or territory of Idaho are the
13 property of the citizens of the state in perpetuity and they may not be im-
14 properly or unlawfully transferred or removed from their proper custodian.
15 For purposes of this section, the terms "public record" and "record," or plu-
16 rals thereof, shall have the same meaning as "public record" as provided in
17 section 74-101, Idaho Code.

18 (2) For the purpose of this section, where public records of a county,
19 ~~or local district, or independent public body corporate and politic~~ thereof
20 are involved, all references to the state archivist also refer to any respon-
21 sible public official or records custodian and all references to the attor-
22 ney general also refer to county prosecutors.

23 (3) Whenever the state archivist or their designee has reasonable
24 grounds to believe that records belonging to the state, county, or local
25 ~~district, or independent public body corporate and politic~~ thereof, are in
26 the possession of a person or entity not authorized by law to possess those
27 records, and such possession was acquired on or after July 1, 2011, he or she
28 may issue a written notice demanding that person or entity to do either of the
29 following within ten (10) calendar days of receiving the notice:

30 (a) Return the records to the office of origin or the Idaho state
31 archives; or

32 (b) Respond in writing and declare why the records do not belong to the
33 state or a local agency.

34 (4) The notice and demand shall identify the records claimed to belong
35 to the state or local agency with reasonable specificity, and shall specify
36 that the state archivist may undertake legal action to recover the records if
37 the person or entity fails to respond in writing within the required time or
38 does not adequately demonstrate that the records do not belong to the state
39 or a local agency.

40 (5) If a person or entity that receives a written notice and demand from
41 the state archivist pursuant to this chapter fails to deliver the described
42 records, fails to respond to the notice and demand within the required time,
43 or does not adequately demonstrate that the records do not belong to the
44 state or a local agency, the state archivist may ask the attorney general to
45 petition a court of competent jurisdiction for an order requiring the return
46 of the records.

47 (6) The court may issue any order necessary to protect the records from
48 destruction, alteration, transfer, conveyance or alienation by the person
49 or entity in possession of the records, and may order that the records be sur-

1 rendered into the custody of the state archivist pending the court's deci-
2 sion on the petition.

3 (7) After a hearing, and upon a finding that the specified records are
4 in the possession of a person or entity not authorized by law to possess
5 the records, the court shall order the records to be delivered to the state
6 archivist or other official designated by the court.

7 (8) If the attorney general recovers a record under this section, the
8 court may award attorney's fees and court costs.

9 (9) Notwithstanding any other provision of this section, any public
10 record that is in the custody of an organization or institution shall not be
11 subject to the provisions of this section provided:

12 (a) That professional standards recognized by the society of American
13 archivists for the management and preservation of historical records
14 are maintained; and

15 (b) Such records are accessible to the public in a manner consistent
16 with this chapter.

17 (10) When a record is returned pursuant to subsection (3) (a) of this
18 section, upon the request of the person, organization or institution that
19 returned the record, the record custodian that receives the record shall
20 issue to that person, organization or institution a copy or digital image
21 of the record which shall be certified as a true copy of the record that was
22 returned to the state or local agency, and dated on the same day the record
23 was returned.

24 SECTION 14. That Chapter 1, Title 74, Idaho Code, be, and the same is
25 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
26 ignated as Section 74-126, Idaho Code, and to read as follows:

27 74-126. PUBLIC RECORDS REQUESTS -- LEGISLATURE -- LEGISLATIVE SER-
28 VICES OFFICE AS CUSTODIAN. (1) The legislative services office is designated
29 as custodian for legislative records.

30 (2) A public records request for the legislature, either house of the
31 legislature, or an individual legislator shall be made to the legislative
32 services office. The legislature, either house of the legislature, or an in-
33 dividual legislator shall not be obligated to respond to a public records re-
34 quest that is not made to the legislative services office.

35 SECTION 15. That Section 74-126, Idaho Code, be, and the same is hereby
36 amended to read as follows:

37 74-1267. SEVERABILITY. The provisions of this act are hereby declared
38 to be severable and if any provision of this act or the application of such
39 provision to any person or circumstance is declared invalid for any reason,
40 such declaration shall not affect the validity of remaining portions of this
41 act.

42 SECTION 16. An emergency existing therefor, which emergency is hereby
43 declared to exist, this act shall be in full force and effect on and after its
44 passage and approval.