

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 253

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO PUBLIC RECORDS; AMENDING SECTION 74-101, IDAHO CODE, TO DEFINE  
2 A TERM; AMENDING SECTION 74-102, IDAHO CODE, TO REVISE PROVISIONS RE-  
3 GARDING PUBLIC RECORDS REQUESTS; AMENDING SECTION 74-103, IDAHO CODE,  
4 TO REVISE PROVISIONS REGARDING THE REQUEST AND RESPONSE TO REQUEST FOR  
5 EXAMINATION OF PUBLIC RECORDS; AMENDING SECTION 67-4126, IDAHO CODE, TO  
6 PROVIDE A CORRECT CODE REFERENCE AND TO MAKE TECHNICAL CORRECTIONS; AND  
7 DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.  
8

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

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

12 74-101. DEFINITIONS. As used in this chapter:

13 (1) "Applicant" means any person formally seeking a paid or volunteer  
14 position with a public agency. Applicant does not include any person seeking  
15 appointment to a position normally filled by election.

16 (2) "Copy" means transcribing by handwriting, photocopying, duplicat-  
17 ing machine or reproducing by any other means as long as the public record is  
18 not altered or damaged.

19 (3) "Custodian" means the person or persons having personal custody and  
20 control of the public records in question.

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

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

26 (6) "Investigatory record" means information with respect to an iden-  
27 tifiable person, group of persons or entities compiled by a public agency  
28 pursuant to its statutory authority in the course of investigating a spe-  
29 cific act, omission, failure to act, or other conduct over which the public  
30 agency has regulatory authority or law enforcement authority.

31 (7) "Law enforcement agency" means any state or local agency given law  
32 enforcement powers or that has authority to investigate, enforce, prosecute  
33 or punish violations of state or federal criminal statutes, ordinances or  
34 regulations.

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

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

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

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

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

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

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

19 (15) "Resident" means a person whose domicile has been within Idaho con-  
 20 tinuously for a period of at least thirty (30) days, excluding a full-time  
 21 student who is a resident of another state, and shall also include a domestic  
 22 entity as provided in section 30-21-102, Idaho Code. Establishment of resi-  
 23 dency shall include a spouse and dependent children who reside with that per-  
 24 son in the domicile. A domicile shall not be a person's workplace, vacation  
 25 residence, or part-time residence.

26 ~~(15)~~ (16) "State agency" means every state officer, department, divi-  
 27 sion, bureau, commission and board or any committee of a state agency, in-  
 28 cluding those in the legislative or judicial branch, except the state mili-  
 29 tia and the Idaho state historical society library and archives.

30 ~~(16)~~ (17) (a) "Unwarranted invasion of personal privacy" means:

31 (i) Disclosure of information used to identify, locate, or harass  
 32 a juvenile, a victim of an alleged crime of mass violence or domes-  
 33 tic violence, or a victim of physical or sexual abuse; or

34 (ii) Disclosure where release of information is likely to violate  
 35 legitimate and substantial privacy interests of the person iden-  
 36 tified when such interests are weighed against general public in-  
 37 formation.

38 (b) Release of the name, age, sex, and hometown of any deceased person  
 39 after notification of next-of-kin shall not constitute an unwarranted  
 40 invasion of personal privacy and shall be disclosed unless otherwise  
 41 exempt under this chapter.

42 ~~(17)~~ (18) "Writing" includes, but is not limited to, handwriting, type-  
 43 writing, printing, photostating, photographing and every means of record-  
 44 ing, including letters, words, pictures, sounds, or symbols, or combination  
 45 thereof, and all papers, maps, magnetic or paper tapes, photographic films  
 46 and prints, magnetic or punched cards, discs, drums or other documents.

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

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

5           (2) The right to copy public records shall include the right to make  
6 photographs or photographic or other copies while the records are in the pos-  
7 session of the custodian of the records using equipment provided by the pub-  
8 lic agency or using equipment designated by the custodian.

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

13           (4) A public agency may require that a request for public records be  
14 submitted to it in a writing that specifically describes the subject mat-  
15 ter and records sought, including a specific date range for when the records  
16 sought were created. The requesting party shall be as specific as possible  
17 when requesting records. A request shall describe records sought in suffi-  
18 cient detail to enable the public body to locate such records with reasonable  
19 effort. A request shall also provide the requester's name, mailing address,  
20 ~~e-mail~~ email address, and telephone number, and a written declaration by the  
21 requesting party attesting or affirming under oath whether such requester is  
22 a resident. A request for public records and delivery of the public records  
23 may be made by electronic mail.

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

26           (a) To verify the identity of the requester in accordance with section  
27 74-113, Idaho Code; or

28           (b) To ensure that the requested record or information will not be  
29 used for purposes of a mailing or telephone list prohibited by section  
30 74-120, Idaho Code, or as otherwise provided by law; or

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

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

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

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

48           (9) The public agency may provide the requester information to help the  
49 requester narrow the scope of the request or to help the requester make the

1 request more specific when the response to the request is likely to be volu-  
 2 minous or require payment as 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 submitted by a resident for  
 6 public records, or for copying the first one hundred (100) pages of pa-  
 7 per records that are requested by a resident.

8 (b) A public agency or public official may establish fees to recover  
 9 the actual labor and copying costs associated with locating and copying  
 10 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 public official may establish a separate copying  
 19 fee schedule ~~schedules~~ for requests submitted by residents and requests  
 20 submitted by persons who are not residents. The fee for residents may  
 21 not exceed the actual cost to the agency of copying the record if another  
 22 fee is not otherwise provided by law.

23 (d) (i) For providing a duplicate of a computer tape, computer  
 24 disc, microfilm or similar or analogous record system containing  
 25 public record information, a public agency or public official may  
 26 charge a fee, uniform to all ~~persons~~ residents, that does not ex-  
 27 ceed the sum of the following:

28 ~~(i)~~ 1. The agency's direct cost of copying the information  
 29 in that form;

30 ~~(ii)~~ 2. The standard cost, if any, for selling the same in-  
 31 formation in the form of a publication;

32 ~~(iii)~~ 3. The agency's cost of conversion, or the cost of con-  
 33 version charged by a third party, if the existing electronic  
 34 record is converted to another electronic form.

35 (ii) A public agency or public official may charge additional  
 36 fees, uniform to all persons who are not residents, for requests  
 37 involving duplication of a computer tape, computer disc, mi-  
 38 crofilm or similar or analogous record system containing public  
 39 record information.

40 (e) Fees for requests made by residents shall not exceed reasonable  
 41 labor costs necessarily incurred in responding to a public records  
 42 request. ~~Fees, and~~ if charged, shall reflect the personnel and quan-  
 43 tity of time that are reasonably necessary to process a request. Fees  
 44 for requests made by residents for labor costs shall be charged at the  
 45 per hour pay rate of the lowest paid administrative staff employee or  
 46 public official of the public agency who is necessary and qualified to  
 47 process the request. If a request from a resident requires redactions  
 48 to be made by an attorney who is employed by the public agency, the rate  
 49 charged shall be no more than the per hour rate of the lowest paid attor-  
 50 ney within the public agency who is necessary and qualified to process

1 the public records request. If a request from a resident is submitted  
2 to a public agency that does not have an attorney on staff, and requires  
3 redactions by an attorney, the rate shall be no more than the usual and  
4 customary rate of the attorney who is retained by the public agency for  
5 that purpose.

6 (f) The public agency shall not charge any cost or fee for copies or  
7 labor when the requester is a resident and demonstrates that the re-  
8 quester's examination and/or copying of public records:

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

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

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

16 (g) Notwithstanding any provision of law to the contrary, a public  
17 agency or public official may charge fees for labor and copying costs  
18 associated with locating and copying documents requested by a person  
19 who is not a resident or an employee of a resident. The fee rates and  
20 schedule for requests made by persons who are not residents or employees  
21 of residents shall be at the discretion of the public agency or public  
22 official as long as such fees do not exceed actual costs of the public  
23 agency or public official.

24 ~~(g)~~ (h) Statements of fees by a public agency shall be itemized to show  
25 the per page costs for copies, and hourly rates of employees and attor-  
26 neys involved in responding to the request, and the actual time spent on  
27 the public records request. No lump sum costs shall be assigned to any  
28 public records request. If a separate fee schedule is adopted for re-  
29 quests from persons who are not residents or employees of residents, the  
30 separate fees for such nonresidents shall be separately identified.

31 (11) A requester may not file multiple requests for public records  
32 solely to avoid payment of fees. When a public agency reasonably believes  
33 that one (1) or more requesters is segregating a request into a series of  
34 requests to avoid payment of fees authorized pursuant to this section, the  
35 public agency may aggregate such requests and charge the appropriate fees.  
36 The public agency may consider the time period in which the requests have  
37 been made in its determination to aggregate the related requests. A public  
38 agency shall not aggregate multiple requests on unrelated subjects from one  
39 (1) requester.

40 (12) The custodian may require advance payment of fees authorized by  
41 this section. Any money received by the public agency shall be credited to  
42 the account for which the expense being reimbursed was or will be charged,  
43 and such funds may be expended by the agency as part of its appropriation from  
44 that fund. Any portion of an advance payment in excess of the actual costs of  
45 labor and copying incurred by the agency in responding to the request shall  
46 be returned to the requester.

47 (13) A public agency shall not prevent the examination or copying of a  
48 public record by contracting with a nongovernmental body to perform any of  
49 its duties or functions.

1 (14) Nothing contained herein shall prevent a public agency from dis-  
 2 closing statistical information that is descriptive of an identifiable per-  
 3 son or persons, unless prohibited by law.

4 (15) Nothing contained herein shall prevent a public agency from pro-  
 5 viding a copy of a public record in electronic form if the record is available  
 6 in electronic form and if the person specifically requests an electronic  
 7 copy.

8 (16) A public agency or elected official shall designate a custodian or  
 9 custodians for all public records, which includes any public official having  
 10 custody of, control of, or authorized access to public records and also in-  
 11 cludes all delegates of such officials, employees or representatives.

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

14 74-103. REQUEST AND RESPONSE TO REQUEST FOR EXAMINATION OF PUBLIC  
 15 RECORDS. (1) All requests to examine public records shall be made to the  
 16 designated custodian of such records as defined in section 74-101(3), Idaho  
 17 Code. A public agency, a public official, or an employee of a public agency  
 18 shall have no obligation and shall not be deemed to have assumed any obli-  
 19 gation to respond to a public records request that fails to comply with the  
 20 requirements of this subsection. A public records request must clearly in-  
 21 dicate that it is a public records request.

22 (2) A public agency or custodian shall either grant or deny ~~a person's~~  
 23 a resident's request to examine or copy public records within three (3)  
 24 working days of the date of the receipt of the request for examination or  
 25 copying. A public agency or custodian shall either grant or deny a request  
 26 from a person who is not a resident and not employed by a resident to examine  
 27 or copy public records within thirty (30) days of the date of the receipt  
 28 of the request for examination or copying. If it is determined by employ-  
 29 ees of the public agency that a longer period of time is needed to locate or  
 30 retrieve the public records, the public agency shall so notify in writing  
 31 the person requesting to examine or copy the records and shall provide the  
 32 public records no later than ten (10) working days following the person's  
 33 request, if such person is ~~an Idaho~~ a resident, and no later than ~~twenty-one~~  
 34 ~~(21) working~~ forty-five (45) days following a request from a nonresident-,  
 35 except that a response to a request to examine or copy public records from  
 36 a person who is not a resident and not employed by a resident may be further  
 37 extended for unusual or exigent circumstances, in which case an explana-  
 38 tion of such circumstances shall be provided to the requester. Provided  
 39 ~~however, if~~ Additionally, if it is determined that the existing electronic  
 40 record requested will first have to be converted to another electronic  
 41 format by the agency or by a third party and that such conversion cannot be  
 42 completed within ~~ten (10) working days~~ the time allotted for the response,  
 43 the agency shall so notify in writing the person requesting to examine or  
 44 copy the records. The agency shall provide the converted public record at  
 45 a time mutually agreed upon between the agency and the requester, with due  
 46 consideration given to any limitations that may exist due to the process of  
 47 conversion or due to the use of a third party to make the conversion.

1 (3) If the public agency or custodian fails to respond within the time  
2 allotted for the response, the request shall be deemed to be denied ~~within~~  
3 ~~ten (10) working days following the request.~~

4 (4) If the public agency denies the person's request for examination  
5 or copying the public records or denies in part and grants in part the per-  
6 son's request for examination and copying of the public records, the person  
7 legally responsible for administering the public agency or that person's de-  
8 signee shall notify the person in writing of the denial or partial denial of  
9 the request for the public record.

10 (5) The notice of denial or partial denial shall state that the attorney  
11 for the public agency has reviewed the request or shall state that the public  
12 agency has had an opportunity to consult with an attorney regarding the re-  
13 quest for examination or copying of a record and has chosen not to do so. The  
14 notice of denial or partial denial also shall indicate the statutory author-  
15 ity for the denial and indicate clearly the person's right to appeal the de-  
16 nial or partial denial and the time periods for doing so.

17 SECTION 4. That Section 67-4126, Idaho Code, be, and the same is hereby  
18 amended to read as follows:

19 67-4126. POWERS AND DUTIES OF BOARD. The board of trustees of the soci-  
20 ety shall have powers and duties as follows:

21 1. To appoint a director of the society as provided herein and advise  
22 him in the performance of his duties and formulate general policies affect-  
23 ing the society.

24 2. To encourage and promote interest in the history of Idaho and encour-  
25 age membership in the society.

26 3. To collect for preservation and display artifacts and information  
27 illustrative of Idaho history, culture and society.

28 4. To print such publications and reports as may be deemed necessary.

29 5. To encourage creation of county historical societies and museums in  
30 the counties of Idaho.

31 6. To facilitate the use of Idaho records for official reference and  
32 historical research.

33 7. To be responsible for records management services for state gov-  
34 ernment. Records management services include the management, storage and  
35 retrieval of all state-created records under retention. State-created  
36 records shall mean any document, book, paper photograph, sound recording  
37 or other material, regardless of physical form or characteristic, made or  
38 received pursuant to law or in connection with the transaction of official  
39 state business. The board may charge reasonable amounts for records man-  
40 agement services. The records managed pursuant to this subsection will  
41 not be subject to the exemption in public records law provided in section  
42 ~~74-101(15)~~ 74-101(16), Idaho Code.

43 8. To accept from any state, county, or city, or any public official,  
44 any official books, records, documents, original papers, newspaper files,  
45 printed books, or portraits, not in current use. When such documents are  
46 so accepted, copies therefrom shall be made and certified under the seal of  
47 the society upon application of any person, which person shall pay for such  
48 copies reasonable fees established by the society.

1           9. To require that any state, county, or city, or any public official,  
2 deposit official books, records, documents, or original papers, not in cur-  
3 rent use, which are of definite historical importance, in the society for  
4 preservation and to provide methods whereby such materials, which have no  
5 significance, may be destroyed.

6           10. To establish such rules as may be necessary to discharge the duties  
7 of the society.

8           11. To employ such personnel as may be necessary for the administration  
9 of its duties in accordance with the rules of the administrator of the divi-  
10 sion of human resources promulgated pursuant to chapter 52, title 67, Idaho  
11 Code.

12           12. To have and use an official seal.

13           13. To delegate and provide subdelegation of any such authority.

14           14. To identify historic, architectural, archaeological, and cultural  
15 sites, buildings, or districts, and to coordinate activities of local his-  
16 toric preservation commissions.

17           15. To serve as the geographic names board of the state of Idaho.

18           SECTION 5. An emergency existing therefor, which emergency is hereby  
19 declared to exist, this act shall be in full force and effect on and after  
20 July 1, 2025.