

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 239

BY REVENUE AND TAXATION COMMITTEE

AN ACT

1 RELATING TO PUBLIC WRITINGS; AMENDING SECTION 9-340D, IDAHO CODE, TO PROVIDE
2 THAT CERTAIN RECORDS ARE EXEMPT FROM DISCLOSURE, TO PROVIDE EXCEPTIONS
3 AND TO REMOVE A CODE REFERENCE; AND AMENDING SECTION 9-343, IDAHO CODE,
4 TO PROVIDE ADDITIONAL PROVISIONS RELATING TO PROCEEDINGS TO ENFORCE A
5 RIGHT TO EXAMINE OR TO RECEIVE A COPY OF CERTAIN RECORDS; AND DECLARING
6 AN EMERGENCY.
7

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

9 SECTION 1. That Section 9-340D, Idaho Code, be, and the same is hereby
10 amended to read as follows:

11 9-340D. RECORDS EXEMPT FROM DISCLOSURE -- TRADE SECRETS, PRODUCTION
12 RECORDS, APPRAISALS, BIDS, PROPRIETARY INFORMATION. The following records
13 are exempt from disclosure:

14 (1) Trade secrets including those contained in response to public
15 agency or independent public body corporate and politic requests for pro-
16 posal, requests for clarification, requests for information and similar
17 requests. "Trade secrets" as used in this section means information, in-
18 cluding a formula, pattern, compilation, program, computer program, device,
19 method, technique, process, or unpublished or in progress research that:

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

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

26 (2) Production records, housing production, rental and financing
27 records, sale or purchase records, catch records, mortgage portfolio loan
28 documents, or similar business records of a private concern or enterprise
29 required by law to be submitted to or inspected by a public agency or sub-
30 mitted to or otherwise obtained by an independent public body corporate and
31 politic. Nothing in this subsection shall limit the use which can be made
32 of such information for regulatory purposes or its admissibility in any en-
33 forcement proceeding.

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

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

41 (5) Examination, operating or condition reports and all documents re-
42 lating thereto, prepared by or supplied to any public agency or independent

1 public body corporate and politic responsible for the regulation or supervi-
2 sion of financial institutions including, but not limited to, banks, savings
3 and loan associations, regulated lenders, business and industrial develop-
4 ment corporations, credit unions, and insurance companies, or for the regu-
5 lation or supervision of the issuance of securities.

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

10 (7) Shipping and marketing records of commodity commissions used to
11 evaluate marketing and advertising strategies and the names and addresses of
12 growers and shippers maintained by commodity commissions.

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

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

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

38 (11) Records of any risk retention or self-insurance program prepared
39 in anticipation of litigation or for analysis of or settlement of potential
40 or actual money damage claims against a public entity and its employees or
41 against the industrial special indemnity fund except as otherwise discov-
42 erable under the Idaho or federal rules of civil procedure. These records
43 shall include, but are not limited to, claims evaluations, investigatory
44 records, computerized reports of losses, case reserves, internal documents
45 and correspondence relating thereto. At the time any claim is concluded,
46 only statistical data and actual amounts paid in settlement shall be deemed
47 a public record unless otherwise ordered to be sealed by a court of competent
48 jurisdiction. Provided however, nothing in this subsection is intended to
49 limit the attorney client privilege or attorney work product privilege oth-

1 erwise available to any public agency or independent public body corporate
2 and politic.

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

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

10 (14) Voluntarily prepared environmental audits, and voluntary disclo-
11 sures of information submitted on or before December 31, 1997, to an environ-
12 mental agency ~~as defined in section 9-803, Idaho Code~~, which are claimed to
13 be confidential business information.

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

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

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

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

28 (16) Active investigative records and trademark usage audits of the
29 Idaho potato commission specifically relating to the enforcement of chapter
30 12, title 22, Idaho Code, until the commencement of formal proceedings as
31 provided by rules of the commission; purchase and sales information sub-
32 mitted to the Idaho potato commission during a trademark usage audit, and
33 investigation or enforcement proceedings. Inactive investigatory records
34 shall be disclosed unless the disclosure would violate the standards set
35 forth in subsections (1) (a) through (f) of section 9-335, Idaho Code. Noth-
36 ing in this subsection shall limit the use which can be made, or availability
37 of such information if used, for regulatory purposes or its admissibility in
38 any enforcement proceeding.

39 (17) All records copied or obtained by the director of the department of
40 agriculture or his designee as a result of an inspection pursuant to section
41 25-3806, Idaho Code, except:

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

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

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

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

3 (20) Records, data, information and materials collected, developed,
4 generated, ascertained or discovered during the course of academic research
5 at public institutions of higher education if the disclosure of such could
6 reasonably affect the conduct or outcome of the research, or the ability of
7 the public institution of higher education to patent or copyright the re-
8 search or protect intellectual property.

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

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

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

26 (24) Records of a county assessor, the state tax commission, a county
27 board of equalization or the state board of tax appeals containing the fol-
28 lowing information showing the income and expenses of a taxpayer, which in-
29 formation was provided to the assessor by the taxpayer to permit the asses-
30 sor to determine the value of property of the taxpayer: (i) lists of personal
31 property required to be filed pursuant to section 63-302, Idaho Code, and op-
32 erating statements required to be filed pursuant to section 63-404, Idaho
33 Code, and (ii) confidential commercial or financial information including
34 trade secrets. Except with respect to lists of personal property required to
35 be filed pursuant to section 63-302, Idaho Code, and the operator statements
36 required to be filed pursuant to section 63-404, Idaho Code, it shall be the
37 responsibility of the taxpayer to give notice of its claim to exemption by
38 stamping or marking each page or the first page of each portion of documents
39 so claimed. No records that are exempt pursuant to this subsection shall be
40 disclosed without the consent of the taxpayer except as follows:

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

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

49 (c) To the board of tax appeals or the district court as evidence or
50 otherwise in connection with an appeal of the taxpayer's property tax

1 assessment, but only if the board or the court, as applicable, has en-
 2 tered a protective order specifying that the taxpayer information may
 3 not be disclosed by any person conducting or participating in the action
 4 or proceeding, except as authorized by the board or the court in accor-
 5 dance with applicable law.

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

8 (i) Name and mailing address of the property owner;

9 (ii) A parcel number;

10 (iii) A legal description of real property;

11 (iv) The square footage and acreage of real property;

12 (v) The assessed value of taxable property;

13 (vi) The tax district and the tax rate; and

14 (vii) The total property tax assessed.

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

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

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

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

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

37 (27) For policies that are owned by private persons, and not by a public
 38 agency of the state of Idaho, records of policies, endorsements, affidavits
 39 and any records that discuss policies, endorsements and affidavits that may
 40 be required to be filed with or by a surplus line association pursuant to
 41 chapter 12, title 41, Idaho Code.

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

48 SECTION 2. That Section 9-343, Idaho Code, be, and the same is hereby
 49 amended to read as follows:

1 9-343. PROCEEDINGS TO ENFORCE RIGHT TO EXAMINE OR TO RECEIVE A COPY OF
2 RECORDS -- RETENTION OF DISPUTED RECORDS. (1) The sole remedy for a person
3 aggrieved by the denial of a request for disclosure is to institute pro-
4 ceedings in the district court of the county where the records or some part
5 thereof are located, to compel the public agency or independent public body
6 corporate and politic to make the information available for public inspec-
7 tion in accordance with the provisions of sections 9-337 through 9-348,
8 Idaho Code. The petition contesting the public agency's or independent pub-
9 lic body corporate and politic's decision shall be filed within one hundred
10 eighty (180) calendar days from the date of mailing of the notice of denial
11 or partial denial by the public agency or independent public body corporate
12 and politic. In cases in which the records requested are claimed as exempt
13 pursuant to section 9-340D(1) or (24), Idaho Code, the petitioner shall
14 be required to name as a party and serve the person or entity that filed or
15 provided such documents to the agency, and such person or entity shall have
16 standing to oppose the request for disclosure and to support the decision of
17 the agency to deny the request. The time for responsive pleadings and for
18 hearings in such proceedings shall be set by the court at the earliest possi-
19 ble time, or in no event beyond twenty-eight (28) calendar days from the date
20 of filing.

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

25 (3) Nothing contained in sections 9-337 through 9-348, Idaho Code,
26 shall limit the availability of documents and records for discovery in
27 the normal course of judicial or administrative adjudicatory proceedings,
28 subject to the law and rules of evidence and of discovery governing such
29 proceedings. Additionally, in any criminal appeal or post-conviction civil
30 action, sections 9-335 through 9-348, Idaho Code, shall not make available
31 the contents of prosecution case files where such material has previously
32 been provided to the defendant nor shall sections 9-335 through 9-348, Idaho
33 Code, be available to supplement, augment, substitute or supplant discovery
34 procedures in any other federal, civil or administrative proceeding.

35 SECTION 3. An emergency existing therefor, which emergency is hereby
36 declared to exist, this act shall be in full force and effect on and after its
37 passage and approval.