

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 328

BY WAYS AND MEANS COMMITTEE

AN ACT

1 RELATING TO PUBLIC RECORDS; AMENDING SECTION 9-337, IDAHO CODE, TO DEFINE
2 A TERM AND TO REVISE A DEFINITION; AMENDING SECTION 9-338, IDAHO CODE,
3 TO PROVIDE THAT PUBLIC AGENCIES AND INDEPENDENT PUBLIC BODIES CORPO-
4 RATE AND POLITIC MAY IMPOSE CERTAIN REQUIREMENTS RELATING TO REQUESTS
5 FOR PUBLIC RECORDS, TO PROVIDE THAT REQUESTS FOR PUBLIC RECORDS AND
6 DELIVERY OF PUBLIC RECORDS MAY BE MADE BY ELECTRONIC MAIL, TO REVISE
7 PROVISIONS RELATING TO INQUIRIES BY CUSTODIANS IN CONNECTION WITH
8 REQUESTS FOR PUBLIC RECORDS, TO PROVIDE THAT PUBLIC AGENCIES OR IN-
9 PENDENT PUBLIC BODIES CORPORATE AND POLITIC MAY PROVIDE REQUESTERS
10 WITH CERTAIN INFORMATION, TO REMOVE REFERENCE TO CERTAIN DISCRETIONARY
11 REQUIREMENTS ASSOCIATED WITH REQUESTS FOR PUBLIC RECORDS, TO REVISE
12 FEE PROVISIONS ASSOCIATED WITH REQUESTS FOR PUBLIC RECORDS, TO REMOVE
13 PROVISIONS RELATING TO ADVANCE PAYMENT OF COSTS OF COPYING, THE CREDIT-
14 ING OF MONEYS RECEIVED TO CERTAIN ACCOUNTS AND THE EXPENDITURE OF SUCH
15 FUNDS BY AN AGENCY, TO PROVIDE FOR THE PAY RATE OF FEES, TO PROVIDE THAT
16 UNDER CERTAIN CIRCUMSTANCES THERE SHALL BE NO COST OR FEE CHARGED FOR
17 EXAMINATION OR COPYING OF PUBLIC RECORDS, TO PROVIDE THAT STATEMENTS OF
18 FEES SHALL BE ITEMIZED, TO PROHIBIT LUMP SUM COSTS, TO PROVIDE FOR THE
19 AGGREGATION OF RELATED REQUESTS UNDER CERTAIN CIRCUMSTANCES, TO PRO-
20 VIDE FOR ADVANCE PAYMENT OF FEES, TO PROVIDE FOR THE CREDITING OF MONEYS
21 RECEIVED TO CERTAIN ACCOUNTS AND TO PROVIDE FOR THE EXPENDITURE OF SUCH
22 FUNDS BY AN AGENCY, TO PROVIDE FOR THE RETURN OF EXCESS ADVANCE PAYMENTS
23 UNDER CERTAIN CIRCUMSTANCES AND TO REMOVE A PROVISION AUTHORIZING THAT
24 REQUESTS FOR PUBLIC RECORDS AND DELIVERY OF PUBLIC RECORDS MAY BE CON-
25 DUCTED BY ELECTRONIC MAIL; DECLARING AN EMERGENCY AND PROVIDING FOR
26 APPLICABILITY.
27

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

29 SECTION 1. That Section 9-337, Idaho Code, be, and the same is hereby
30 amended to read as follows:

31 9-337. DEFINITIONS. As used in sections 9-337 through 9-347, Idaho
32 Code:

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

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

39 (3) "Custodian" means the person having personal custody and control of
40 the public records in question. If no such designation is made by the pub-
41 lic agency or independent public body corporate and politic, then custodian
42 means any public official having custody of, control of, or authorized ac-

1 cess to public records and includes all delegates of such officials, employ-
2 ees or representatives.

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

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

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

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

19 (8) "Local agency" means a county, city, school district, municipal
20 corporation, district, public health district, political subdivision, or
21 any agency thereof, or any committee of a local agency, or any combination
22 thereof.

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

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

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

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

34 (13) "Public record" includes, but is not limited to, any writing con-
35 taining information relating to the conduct or administration of the pub-
36 lic's business prepared, owned, used or retained by any state agency, in-
37 dependent public body corporate and politic or local agency regardless of
38 physical form or characteristics.

39 (14) "Requester" means the person requesting examination and/or copy-
40 ing of public records pursuant to section 9-338, Idaho Code.

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

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

1 SECTION 2. That Section 9-338, Idaho Code, be, and the same is hereby
2 amended to read as follows:

3 9-338. PUBLIC RECORDS -- RIGHT TO EXAMINE. (1) Every person has a right
4 to examine and take a copy of any public record of this state and there is a
5 presumption that all public records in Idaho are open at all reasonable times
6 for inspection except as otherwise expressly provided by statute.

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

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

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

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

23 (a) To verify the identity of a ~~person requesting a record~~ the re-
24 quester in accordance with section 9-342, Idaho Code; or

25 (b) To ensure that the requested record or information will not be used
26 for purposes of a mailing or telephone list prohibited by section 9-348,
27 Idaho Code, or as otherwise provided by law, ~~and except; or~~

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

30 ~~The person may be required to make a written request and provide their name, a~~
31 ~~mailing address and telephone number.~~

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

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

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

48 (9) The public agency or independent public body corporate and politic
49 may provide the requester information to help the requester narrow the scope

1 of the request or to help the requester make the request more specific when
 2 the response to the request is likely to be voluminous or require payment as
 3 provided in section 9-338(10), Idaho Code.

4 ~~(810)~~ (a) ~~A public agency or independent public body corporate and~~
 5 ~~politic or public official may establish a copying fee schedule. The~~
 6 ~~fee may not exceed the actual cost to the agency of copying the record if~~
 7 ~~another fee is not otherwise provided by law. The actual cost shall not~~
 8 ~~include any administrative or labor costs resulting from locating and~~
 9 ~~providing a copy of the public record; provided however, that a Except~~
 10 ~~for fees that are authorized or prescribed under other provisions of~~
 11 ~~Idaho law, no fee shall be charged for the first two (2) hours of labor in~~
 12 ~~responding to a request for public records, or for copying the first one~~
 13 ~~hundred (100) pages of paper records that are requested.~~

14 (b) A public agency or independent public body corporate and politic
 15 or public official may establish a fees to recover the actual labor and
 16 copying costs associated with locating and copying documents if:

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

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

21 (iii) The actual labor associated with locating and copying docu-
 22 ments for a request responding to requests for public records in
 23 compliance with the provisions of this chapter exceeds two (2)
 24 person hours.

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

29 ~~(bd)~~ For providing a duplicate of a computer tape, computer disc, mi-
 30 crofilm or similar or analogous record system containing public record
 31 information, a public agency or independent public body corporate and
 32 politic or public official may charge a fee, uniform to all persons that
 33 does not exceed the sum of the following:

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

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

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

41 ~~The custodian may require advance payment of the cost of copying. Any~~
 42 ~~money received by the public agency or independent public body corpo-~~
 43 ~~rate and politic shall be credited to the account for which the expense~~
 44 ~~being reimbursed was or will be charged, and such funds may be expended~~
 45 ~~by the agency as part of its appropriation from that fund.~~

46 (e) Fees shall not exceed reasonable labor costs necessarily incurred
 47 in responding to a public records request. Fees, if charged, shall re-
 48 fect the personnel and quantity of time that are reasonably necessary
 49 to process a request. Fees for labor costs shall be charged at the per
 50 hour pay rate of the lowest paid administrative staff employee or pub-

1 lic official of the public agency or independent public body corporate
2 and politic who is necessary and qualified to process the request. If
3 a request requires redactions to be made by an attorney who is employed
4 by the public agency or independent public body corporate and politic,
5 the rate charged shall be no more than the per hour rate of the lowest
6 paid attorney within the public agency or independent public body cor-
7 porate and politic who is necessary and qualified to process the public
8 records request. If a request is submitted to a public agency or inde-
9 pendent public body corporate and politic that does not have an attorney
10 on staff, and requires redactions by an attorney, the rate shall be no
11 more than the usual and customary rate of the attorney who is retained by
12 the public agency or independent public body corporate and politic for
13 that purpose.

14 (ef) The public agency or independent public body corporate and politic
15 may shall not charge any cost or fee for copies or labor when the re-
16 quester demonstrates either that the requester's examination and/or
17 copying of public records:

18 (i) The inability to pay; or Is likely to contribute signifi-
19 cantly to the public's understanding of the operations or activi-
20 ties of the government;

21 (ii) That the public's interest or the public's understanding of
22 the operations or activities of government or its records would
23 suffer by the assessment or collection of any fee Is not primar-
24 ily in the individual interest of the requester including, but not
25 limited to, the requester's interest in litigation in which the
26 requester is or may become a party; and

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

29 (g) Statements of fees by a public agency or independent public body
30 corporate and politic shall be itemized to show the per page costs for
31 copies, and hourly rates of employees and attorneys involved in re-
32 sponding to the request, and the actual time spent on the public records
33 request. No lump sum costs shall be assigned to any public records re-
34 quest.

35 (11) A requester may not file multiple requests for public records
36 solely to avoid payment of fees. When a public agency or independent public
37 body corporate and politic reasonably believes that one (1) or more re-
38 questers is segregating a request into a series of requests to avoid payment
39 of fees authorized pursuant to this section, the public agency or inde-
40 pendent public body corporate and politic may aggregate such requests and
41 charge the appropriate fees. The public agency or independent public body
42 corporate and politic may consider the time period in which the requests have
43 been made in its determination to aggregate the related requests. A public
44 agency or independent public body corporate and politic shall not aggregate
45 multiple requests on unrelated subjects from one (1) requester.

46 (12) The custodian may require advance payment of fees authorized by
47 this section. Any money received by the public agency or independent pub-
48 lic body corporate and politic shall be credited to the account for which
49 the expense being reimbursed was or will be charged, and such funds may be
50 expended by the agency as part of its appropriation from that fund. Any por-

1 tion of an advance payment in excess of the actual costs of labor and copying
2 incurred by the agency in responding to the request shall be returned to the
3 requester.

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

7 (104) Nothing contained herein shall prevent a public agency or inde-
8 pendent public body corporate and politic from disclosing statistical in-
9 formation that is descriptive of an identifiable person or persons, unless
10 prohibited by law.

11 (115) Nothing contained herein shall prevent a public agency or inde-
12 pendent public body corporate and politic from providing a copy of a public
13 record in electronic form if the record is available in electronic form and
14 if the person specifically requests an electronic copy. ~~A request for a pub-~~
15 ~~lic record and delivery of the public record may be conducted by electronic~~
16 ~~mail.~~

17 SECTION 3. An emergency existing therefor, which emergency is hereby
18 declared to exist, this act shall be in full force and effect on and after its
19 passage and approval. The provisions of this act shall apply to all current,
20 ongoing and future public records requests.