

IN THE SENATE

SENATE BILL NO. 1274

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO PUBLIC RECORDS; AMENDING SECTION 74-101, IDAHO CODE, TO REVISE
2 THE DEFINITION OF "CUSTODIAN"; AMENDING SECTION 74-106, IDAHO CODE,
3 TO PROVIDE THAT BONUSES, SEVERANCE PACKAGES, OTHER COMPENSATION OR
4 VOUCHERED AND UNVOUCHERED EXPENSES FOR WHICH REIMBURSEMENT WAS PAID
5 TO A PUBLIC OFFICIAL ARE NOT EXEMPT FROM DISCLOSURE AND TO PROVIDE THAT
6 SOCIAL SECURITY NUMBERS AND DRIVER'S LICENSE NUMBERS SHALL BE EXEMPT
7 FROM DISCLOSURE; AND AMENDING SECTION 74-119, IDAHO CODE, TO PROVIDE
8 THAT PUBLIC AGENCIES SHALL DESIGNATE ONE PERSON AS CUSTODIAN TO RECEIVE
9 PUBLIC RECORDS REQUESTS AND SHALL PROVIDE AN ALTERNATE CUSTODIAN OR
10 ALTERNATE CUSTODIANS FOR CONTINGENCIES.
11

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

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

15 74-101. DEFINITIONS. As used in this chapter:

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

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

22 (3) "Custodian" means the person or persons having personal custody and
23 control of the public records in question. ~~If no such designation is made by~~
24 ~~the~~ A public agency or independent public body corporate and politic, ~~then~~
25 ~~shall appoint a custodian or custodians for all public records and includes~~
26 ~~means~~ any public official having custody of, control of, or authorized ac-
27 cess to public records and includes all delegates of such officials, employ-
28 ees or representatives.

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

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

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

41 (7) "Law enforcement agency" means any state or local agency given law
42 enforcement powers or which has authority to investigate, enforce, prose-

1 cute or punish violations of state or federal criminal statutes, ordinances
2 or regulations.

3 (8) "Local agency" means a county, city, school district, municipal
4 corporation, district, public health district, political subdivision, or
5 any agency thereof, or any committee of a local agency, or any combination
6 thereof.

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

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

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

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

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

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

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

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

34 SECTION 2. That Section 74-106, Idaho Code, be, and the same is hereby
35 amended to read as follows:

36 74-106. RECORDS EXEMPT FROM DISCLOSURE -- PERSONNEL RECORDS, PER-
37 SONAL INFORMATION, HEALTH RECORDS, PROFESSIONAL DISCIPLINE. The following
38 records are exempt from disclosure:

39 (1) Except as provided in this subsection, all personnel records of
40 a current or former public official other than the public official's pub-
41 lic service or employment history, classification, pay grade and step,
42 longevity, gross salary and salary history, including bonuses, severance
43 packages, other compensation or vouchered and unvouchered expenses for
44 which reimbursement was paid, status, workplace and employing agency. All
45 other personnel information relating to a public employee or applicant
46 including, but not limited to, information regarding sex, race, marital
47 status, birth date, home address and telephone number, social security num-
48 ber, driver's license number, applications, testing and scoring materials,
49 grievances, correspondence and performance evaluations, shall not be dis-

1 closed to the public without the employee's or applicant's written consent.
2 Names of applicants to classified or merit system positions shall not be dis-
3 closed to the public without the applicant's written consent. Disclosure of
4 names as part of a background check is permitted. Names of the five (5) final
5 applicants to all other positions shall be available to the public. If such
6 group is less than five (5) finalists, then the entire list of applicants
7 shall be available to the public. A public official or authorized represen-
8 tative may inspect and copy his personnel records, except for material used
9 to screen and test for employment.

10 (2) Retired employees' and retired public officials' home addresses,
11 home telephone numbers and other financial and nonfinancial membership
12 records; active and inactive member financial and membership records and
13 mortgage portfolio loan documents maintained by the public employee retire-
14 ment system. Financial statements prepared by retirement system staff,
15 funding agents and custodians concerning the investment of assets of the
16 public employee retirement system of Idaho are not considered confidential
17 under this chapter.

18 (3) Information and records submitted to the Idaho state lottery for
19 the performance of background investigations of employees, lottery retail-
20 ers and major procurement contractors; audit records of lottery retailers,
21 vendors and major procurement contractors submitted to or performed by the
22 Idaho state lottery; validation and security tests of the state lottery for
23 lottery games; business records and information submitted pursuant to sec-
24 tions 67-7412(8) and (9) and 67-7421(8) and (9), Idaho Code, and such docu-
25 ments and information obtained and held for the purposes of lottery security
26 and investigative action as determined by lottery rules unless the public
27 interest in disclosure substantially outweighs the private need for protec-
28 tion from public disclosure.

29 (4) Records of a personal nature as follows:

30 (a) Records of personal debt filed with a public agency or independent
31 public body corporate and politic pursuant to law;

32 (b) Personal bank records compiled by a public depositor for the pur-
33 pose of public funds transactions conducted pursuant to law;

34 (c) Records of ownership of financial obligations and instruments of a
35 public agency or independent public body corporate and politic, such as
36 bonds, compiled by the public agency or independent public body corpo-
37 rate and politic pursuant to law;

38 (d) Records, with regard to the ownership of, or security interests in,
39 registered public obligations;

40 (e) Vital statistics records; and

41 (f) Military records as described in and pursuant to section 65-301,
42 Idaho Code.

43 (5) Information in an income or other tax return measured by items of
44 income or sales, which is gathered by a public agency for the purpose of ad-
45 ministering the tax, except such information to the extent disclosed in a
46 written decision of the tax commission pursuant to a taxpayer protest of a
47 deficiency determination by the tax commission, under the provisions of sec-
48 tion 63-3045B, Idaho Code.

49 (6) Records of a personal nature related directly or indirectly to the
50 application for and provision of statutory services rendered to persons

1 applying for public care for people who are elderly, indigent or have mental
2 or physical disabilities, or participation in an environmental or a public
3 health study, provided the provisions of this subsection making records
4 exempt from disclosure shall not apply to the extent that such records or
5 information contained in those records are necessary for a background check
6 on an individual that is required by federal law regulating the sale of
7 firearms, guns or ammunition.

8 (7) Employment security information, except that a person may agree,
9 through written, informed consent, to waive the exemption so that a third
10 party may obtain information pertaining to the person, unless access to the
11 information by the person is restricted by subsection (3) (a), (3) (b) or
12 (3) (d) of section 74-113, Idaho Code. Notwithstanding the provisions of
13 section 74-113, Idaho Code, a person may not review identifying information
14 concerning an informant who reported to the department of labor a suspected
15 violation by the person of the employment security law, chapter 13, title 72,
16 Idaho Code, under an assurance of confidentiality. As used in this section
17 and in chapter 13, title 72, Idaho Code, "employment security information"
18 means any information descriptive of an identifiable person or persons that
19 is received by, recorded by, prepared by, furnished to or collected by the
20 department of labor or the industrial commission in the administration of
21 the employment security law.

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

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

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

37 (11) Complaints received by the board of medicine and investigations
38 and informal proceedings, including informal proceedings of any committee
39 of the board of medicine, pursuant to chapter 18, title 54, Idaho Code, and
40 rules adopted thereunder.

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

43 (13) Records of hospital care, medical records, including prescrip-
44 tions, drug orders, records or any other prescription information that
45 specifically identifies an individual patient, prescription records main-
46 tained by the board of pharmacy under sections 37-2726 and 37-2730A, Idaho
47 Code, records of psychiatric care or treatment and professional counseling
48 records relating to an individual's condition, diagnosis, care or treat-
49 ment, provided the provisions of this subsection making records exempt from
50 disclosure shall not apply to the extent that such records or information

1 contained in those records are necessary for a background check on an indi-
2 vidual that is required by federal law regulating the sale of firearms, guns
3 or ammunition.

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

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

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

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

14 (18) Records of the department of health and welfare relating to a sur-
15 vey, resurvey or complaint investigation of a licensed nursing facility
16 shall be exempt from disclosure. Such records shall, however, be subject to
17 disclosure as public records as soon as the facility in question has received
18 the report, and no later than the fourteenth day following the date that
19 department of health and welfare representatives officially exit the facil-
20 ity pursuant to federal regulations. Provided however, that for purposes
21 of confidentiality, no record shall be released under this section which
22 specifically identifies any nursing facility resident.

23 (19) Records and information contained in the registry of immunizations
24 against childhood diseases maintained in the department of health and wel-
25 fare, including information disseminated to others from the registry by the
26 department of health and welfare.

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

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

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

34 (c) Mortgage portfolio loan documents;

35 (d) Records of a current or former employee other than the employee's
36 duration of employment with the association, position held and loca-
37 tion of employment. This exemption from disclosure does not include the
38 contracts of employment or any remuneration, including reimbursement
39 of expenses, of the executive director, executive officers or commis-
40 sioners of the association. All other personnel information relating
41 to an association employee or applicant including, but not limited to,
42 information regarding sex, race, marital status, birth date, home ad-
43 dress and telephone number, applications, testing and scoring materi-
44 als, grievances, correspondence, retirement plan information and per-
45 formance evaluations, shall not be disclosed to the public without the
46 employee's or applicant's written consent. An employee or authorized
47 representative may inspect and copy that employee's personnel records,
48 except for material used to screen and test for employment or material
49 not subject to disclosure elsewhere in the Idaho public records act.

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

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

10 (23) Records and information contained in the trauma registry created
11 by chapter 20, title 57, Idaho Code, together with any reports, analyses and
12 compilations created from such information and records.

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

16 (25) The physical voter registration application on file in the county
17 clerk's office; however, a redacted copy of said application shall be made
18 available consistent with the requirements of this section. Information
19 from the voter registration application maintained in the statewide voter
20 registration database, including age, will be made available except for
21 the voter's driver's license number, date of birth and, upon a showing that
22 the voter comes within the provisions of subsection (30) of this section or
23 upon showing of good cause by the voter to the county clerk in consultation
24 with the county prosecuting attorney, the physical residence address of the
25 voter. For the purposes of this subsection good cause shall include the pro-
26 tection of life and property and protection of victims of domestic violence
27 and similar crimes.

28 (26) File numbers, passwords and information in the files of the health
29 care directive registry maintained by the secretary of state under section
30 39-4515, Idaho Code, are confidential and shall not be disclosed to any per-
31 son other than to the person who executed the health care directive or the re-
32 vocation thereof and that person's legal representatives, to the person who
33 registered the health care directive or revocation thereof, and to physi-
34 cians, hospitals, medical personnel, nursing homes, and other persons who
35 have been granted file number and password access to the documents within
36 that specific file.

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

41 (a) If requested by a law enforcement agency, to the law enforcement
42 agency; or

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

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

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

5 (30) The Idaho residential street address and telephone number of an
6 eligible law enforcement officer and such officer's residing household mem-
7 ber(s) as provided for in chapter 58, title 19, Idaho Code, except under the
8 following circumstances:

9 (a) If directed by a court order, to a person identified in the court
10 order;

11 (b) If requested by a law enforcement agency, to the law enforcement
12 agency;

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

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

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

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

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

34 (34) Any personal information collected by the secretary of state, pur-
35 suant to section 67-906(1) (b), Idaho Code, for the purpose of allowing indi-
36 viduals to access the statewide electronic filing system authorized in sec-
37 tion 67-906, Idaho Code.

38 SECTION 3. That Section 74-119, Idaho Code, be, and the same is hereby
39 amended to read as follows:

40 74-119. AGENCY GUIDELINES. By January 1, 2016~~9~~, every state agency
41 or independent public body corporate and politic shall adopt guidelines
42 that identify the general subject matter of all public records kept or main-
43 tained by the state agency or independent public body corporate and politic,
44 the custodian or custodians, and the physical location of such documents.
45 Public agencies shall designate one (1) person as custodian to receive pub-
46 lic records requests and shall provide an alternate custodian or alternate
47 custodians for contingencies.