

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 748

BY WAYS AND MEANS COMMITTEE

AN ACT

1 RELATING TO THE PUBLIC RECORDS ACT; AMENDING SECTION 74-115, IDAHO CODE, TO
2 PROVIDE FOR THE FILING OF A COMPLAINT BY A PERSON AGGRIEVED AND TO RE-
3 VISE PROVISIONS REGARDING DENIAL OF A REQUEST FOR DISCLOSURE; AMENDING
4 SECTION 74-114, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE; AND
5 DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.
6

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

8 SECTION 1. That Section 74-115, Idaho Code, be, and the same is hereby
9 amended to read as follows:

10 74-115. PROCEEDINGS TO ENFORCE RIGHT TO EXAMINE OR TO RECEIVE A COPY OF
11 RECORDS -- RETENTION OF DISPUTED RECORDS. (1) A person aggrieved by the de-
12 denial or partial denial of a request for disclosure, or the charge for dis-
13 closure, may file a complaint in the magistrate court of the county where
14 the records of some part thereof are located. The complaint contesting the
15 public agency's response to the records request shall be filed within ninety
16 (90) calendar days from the date of the response. The complaint shall in-
17 clude the full text of the original request, the full text of the response,
18 all communications between the requester and agency related to the request
19 and response, and the statutory reason the filing party is contesting the re-
20 sponse. The filing party shall pay a one-hundred-dollar (\$100) filing fee,
21 which shall be distributed to the county district court fund and may not be
22 waived. The district court clerk shall assign a case number. The filing
23 party shall serve the public agency. Within fourteen (14) days of receiv-
24 ing the complaint, the public agency in question shall file a response with
25 the court that includes the statutory reason for the response to the original
26 records request. Parties may attach affidavits to their respective plead-
27 ings. Neither party may use discovery for the initial complaint, nor shall
28 they summon witnesses. Attorneys are not required to file or respond to the
29 complaint. Oral arguments are not permitted. Upon receipt of the agency's
30 response, the judge shall review the filings and may request an in-camera re-
31 view of the documents in question. The judge shall issue a decision within
32 fourteen (14) days after receiving the agency's response. If the parties
33 reach an agreement before the judge issues an order, the court shall dismiss
34 the complaint. Upon issuance of the decision, either party may initiate an
35 appeal in the district court.

36 ~~(1) (2)~~ The sole remedy for Regardless of whether a complaint, as pro-
37 vided in subsection (1) of this section, has occurred, a person aggrieved
38 by the denial of a request for disclosure is to ~~is to~~ may institute proceedings in
39 the district court of the county where the records or some part thereof are
40 located, to compel the public agency to make the information available for
41 public inspection in accordance with the provisions of this chapter. The
42 petition contesting the public agency's decision shall be filed within one

1 hundred eighty (180) calendar days from the date of mailing of the notice
 2 of denial or partial denial by the public agency or the issuance of a judi-
 3 cial decision in an initial public records complaint that was filed pursuant
 4 to subsection (1) of this section. In cases in which the records requested
 5 are claimed as exempt pursuant to section 74-107(1) or (24), Idaho Code, the
 6 petitioner shall be required to name as a party and serve the person or en-
 7 tity that filed or provided such documents to the agency, and such person or
 8 entity shall have standing to oppose the request for disclosure and to sup-
 9 port the decision of the agency to deny the request. The time for responsive
 10 pleadings and for hearings in such proceedings shall be set by the court at
 11 the earliest possible time, or in no event beyond twenty-eight (28) calendar
 12 days from the date of filing.

13 ~~(2)~~ (3) The public agency shall keep all documents or records in ques-
 14 tion until the end of the appeal period, until a decision has been rendered on
 15 the petition, or as otherwise statutorily provided, whichever is longer.

16 ~~(3)~~ (4) Nothing contained in this chapter shall limit the availability
 17 of documents and records for discovery in the normal course of judicial or
 18 administrative adjudicatory proceedings, subject to the law and rules of
 19 evidence and of discovery governing such proceedings. Additionally, in any
 20 criminal appeal or post-conviction civil action, this chapter shall not make
 21 available the contents of prosecution case files where such material has
 22 previously been provided to the defendant nor shall this chapter be avail-
 23 able to supplement, augment, substitute or supplant discovery procedures in
 24 any other federal, civil or administrative proceeding.

25 SECTION 2. That Section 74-114, Idaho Code, be, and the same is hereby
 26 amended to read as follows:

27 74-114. ACCESS TO AIR QUALITY, WATER QUALITY AND HAZARDOUS WASTE
 28 RECORDS -- PROTECTION OF TRADE SECRETS. (1) To the extent required by the
 29 federal clean air act, the federal clean water act and the resource conser-
 30 vation and recovery act for state primacy over any delegated or authorized
 31 programs, even if the record is otherwise exempt from disclosure under this
 32 chapter, any person may inspect and copy:

- 33 (a) Air pollution emission data;
- 34 (b) The content of any title V operating permit;
- 35 (c) The name and address of any Idaho pollutant discharge elimination
- 36 system (IPDES) applicant or permittee;
- 37 (d) The content of any IPDES permit;
- 38 (e) IPDES permit applications, and information required to be submit-
- 39 ted by IPDES application forms, whether the information is submitted on
- 40 the application forms themselves or in any attachments used to supply
- 41 information required by the application forms;
- 42 (f) Effluent data or a standard or limitation, as defined in 40 CFR
- 43 2.302;
- 44 (g) The name and address of any applicant or permittee for a hazardous
- 45 waste treatment, storage, or disposal facility permit pursuant to chap-
- 46 ter 44, title 39, Idaho Code; and
- 47 (h) Any other record required to be provided to or obtained by the de-
- 48 partment of environmental quality pursuant to the federal clean air
- 49 act, the federal clean water act and the resource conservation and re-

1 covery act, and the implementing state statutes, federal regulations
2 and state rules, unless the record is a trade secret.

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

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

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

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

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

23 (c) As required by state or federal law, including section
24 74-115-~~(3)~~(4), Idaho Code, under a continuing claim of confidentiality
25 and subsection (1) of this section; or

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

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

32 (6) Notwithstanding the time frames set forth in section 74-103(2),
33 Idaho Code, when a request is made to the department of environmental quality
34 pursuant to the provisions of this chapter for the disclosure of information
35 for which a trade secret claim has been made, and the information has not
36 been demonstrated to be a trade secret to the satisfaction of the director
37 of the department of environmental quality, within three (3) working days of
38 receipt of the request for the disclosure of the information, the department
39 of environmental quality shall provide a written request for substantiation
40 to the person making the confidentiality claim. A response shall be submit-
41 ted to the department of environmental quality by the person claiming the
42 trade secret protection within ten (10) working days after receipt of the
43 request for substantiation, or the information subject to the claim shall be
44 disclosed without further notice. Upon receipt of a timely response to the
45 request for substantiation, the director of the department of environmental
46 quality shall determine whether the information is a trade secret subject to
47 protection.

48 (a) If it is determined that the information, or any portion of the in-
49 formation, is a trade secret, within three (3) working days after re-
50 ceipt of the response, the director of the department of environmental

1 quality shall notify the person requesting the information that the re-
2 quest is denied pursuant to subsections (4) and (5) of section 74-103,
3 Idaho Code.

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

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

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

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

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

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

33 SECTION 3. An emergency existing therefor, which emergency is hereby
34 declared to exist, this act shall be in full force and effect on and after
35 July 1, 2026.