

Idaho Public Records Act



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Quick Links

The Idaho Public Records Act
<https://legislature.idaho.gov/statutesrules/idstat/Title74/T74CH1/>

The screenshot shows the Idaho Legislature website. The header includes "Idaho Legislature" and "STATE OF IDAHO". Navigation links include SENATE, HOUSE, COMMITTEES, LEGISLATORS, LAWS/RULES, LEGISLATIVE SESSIONS, and LIVE AUDIO/VIDEO STREAMING. The main content area is titled "Idaho Statutes" and includes a "Print Friendly" button. Below this, it states "Idaho Statutes are updated to the web July 1 following the legislative session." The main heading is "TITLE 74 TRANSPARENT AND ETHICAL GOVERNMENT" and "CHAPTER 1 PUBLIC RECORDS ACT". A "Download Entire Chapter (PDF)" link is visible. The list of sections includes: 74-101 DEFINITIONS, 74-102 PUBLIC RECORDS — RIGHT TO EXAMINE, 74-103 REQUEST AND RESPONSE TO REQUEST FOR EXAMINATION OF PUBLIC RECORDS, 74-104 RECORDS EXEMPT FROM DISCLOSURE — EXEMPTIONS IN FEDERAL OR STATE LAW — COURT FILES OF JUDICIAL PROCEEDINGS, 74-105 RECORDS EXEMPT FROM DISCLOSURE — LAW ENFORCEMENT RECORDS, INVESTIGATORY RECORDS OF AGENCIES, EVACUATION AND EMERGENCY RESPONSE PLANS, WORKER'S COMPENSATION, 74-106 RECORDS EXEMPT FROM DISCLOSURE — PERSONNEL RECORDS, PERSONAL INFORMATION, HEALTH RECORDS, PROFESSIONAL DISCIPLINE, 74-107 RECORDS EXEMPT FROM DISCLOSURE — TRADE SECRETS, PRODUCTION RECORDS, APPRAISALS, BIDS, PROPRIETARY INFORMATION, TAX COMMISSION, UNCLAIMED PROPERTY, PETROLEUM CLEAN WATER TRUST FUND, 74-108 EXEMPTIONS FROM DISCLOSURE — ARCHAEOLOGICAL, ENDANGERED SPECIES, LIBRARIES, LICENSING EXAMS, 74-109 RECORDS EXEMPT FROM DISCLOSURE — DRAFT LEGISLATION, RESEARCH, PERSONAL COMMUNICATIONS, PERSONALLY IDENTIFYING INFORMATION, WORK PAPERS, AND DRAFT REDISTRICTING PLANS.



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Your Desk Reference

Idaho Public Records Law
Manual

<https://www.ag.idaho.gov/content/uploads/2018/04/PublicRecordsLaw.pdf>

Office of the
Attorney General
Idaho
Public Records Law
Manual
Idaho Code §§ 74-101 through 74-127



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What is a Public Record ([§74-101](#))?

- "Public record" includes, but is not limited to, any writing containing information relating to the conduct or administration of the public's business.
- "Writing includes ... every means of recording including letters, words, pictures, sounds, or symbols ..."



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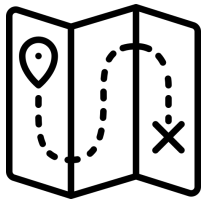
Records Exempt from Disclosure

- Certain judicial proceedings ([§74-104](#))
- Law enforcement investigatory records ([§75-105](#))
- Records of juveniles ([§75-105](#))
- Records related to cybersecurity programs and devices ([§75-105](#))
- Personnel records ([§74-106](#))
- Trade secrets ([§74-107](#))
- Appraisal records prior to acquisition by a county ([§74-107](#))
- Medical records
- Records related to claims or potential claims against the county
- Attorney client records



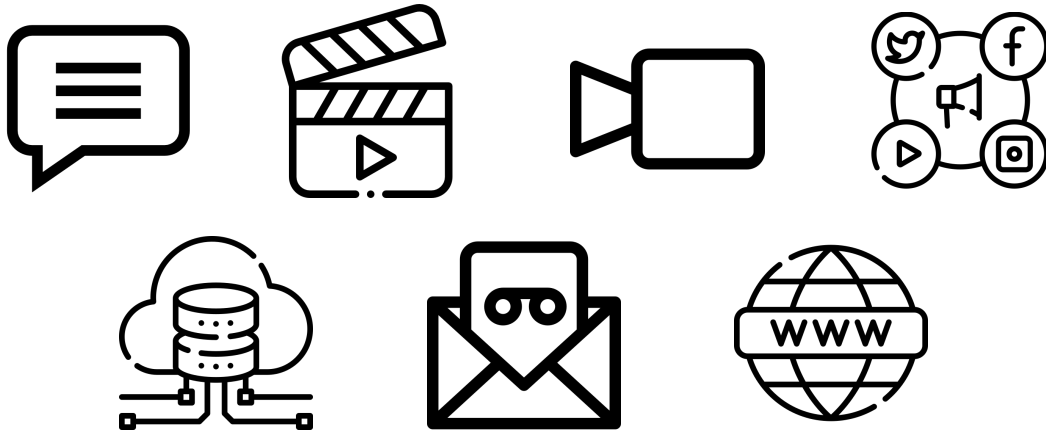
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Traditional Records



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Digital Records



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Types of Digital Records

- Vehicle GPS records
- Body camera and county security camera footage
- County related audio recording
- Texts, tweets, and voicemails
- Photos stored in the cloud
- Audio or video recordings of meetings
- Documents and files stored in the cloud



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Digital Records Advice

- Information on county technology is usually public
- If it creates liability for the county, its probably a public record
- Keep private/personal records separate from public records
 - Use county email for county business
 - Use personal email for personal business
 - Use county provided cell phone (if available) for county use
 - Use personal cell phone for personal use



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Challenges Managing Digital Records

- Capturing, storing, and archiving digital records
- Protecting confidential information
- Sorting information contained in digital records
- Redacting information exempt from disclosure
- Protecting confidential information
- Proper disposal of digital records
- Providing up to date guidance to employees



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Challenges with Social Media

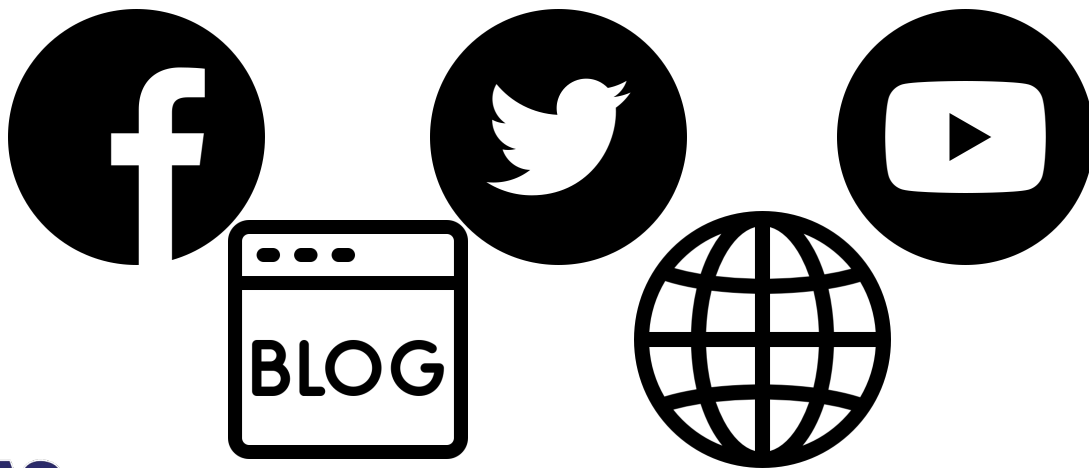
- Social media, public records, and the First Amendment
 - County social media
 - Campaign social media
 - Personal social media
 - Applies to Facebook, Twitter, Instagram, TikTok, webpages, blogs, forums (and whatever comes next)



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The Lines are Blurrier than Ever



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Digital Records Can Be Your Friend

Posting records on your website can reduce records requests

The image displays three screenshots of digital record portals. The first is the iCourt Portal, which offers online records and payments for Idaho courts, featuring a 'Smart Search' function. The second is the Idaho Reports portal, which provides various reports such as Marital, Financial, and Date Workforce. The third is the Election Data & Results portal, which offers voter information and election results for various years.

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Pop Quiz: Which of the following is not a Public Record?

The image shows six dark blue buttons with white text, arranged in two rows of three. The buttons represent different types of records: Paper Documents, Emails, Text Messages, Facebook Post, Unrecorded Conversations, and Tweet.

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Public's Right to Examine Records

"Every person has a right to examine and take a copy of any public record of this state and there is a presumption that all public records in Idaho are open at all reasonable times for inspection except as otherwise expressly provided by statute."

[\(§74-102\)](#)



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What Does It Really Mean?



The public has the right to read, view, watch, listen to, make notes, photograph, or copy records which are public and not otherwise exempt from disclosure



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The Role of the BOCC

- The BOCC should designate a custodian of board records
- The name of the custodian should be published in an accessible place on the county website
- The BOCC should adopt a public records fee schedule
- The BOCC should adopt a records retention policy
- The BOCC should make the prosecuting attorneys office available to other elected officials for public records requests



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What should be in a fee schedule?

- 💰 Per page copy charge for hard copies in excess of 100 pages
- 💰 Per page copy charge for digital copies in excess of 100 pages
- 💰 Policy on labor costs (hourly wage of lowest paid employee capable of processing the request)

Note: The actual fee charged **CANNOT** exceed the actual cost of processing the request



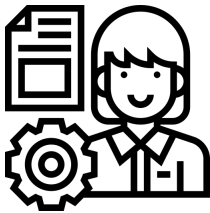
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The Role of County Officials

- Designate a custodian for public records for your office or department and publish the name on your website
- If the record is easily available, just provide the record
- If the records are not readily available, have the requester fill out a public records form
- **Always consult with your prosecuting attorney before denying a public records request!**



Designating a Custodian



“A public agency, elected official or independent body corporate and politic shall designate a custodian or custodians for all public records...”
[\(§74-102\(16\)\)](#)

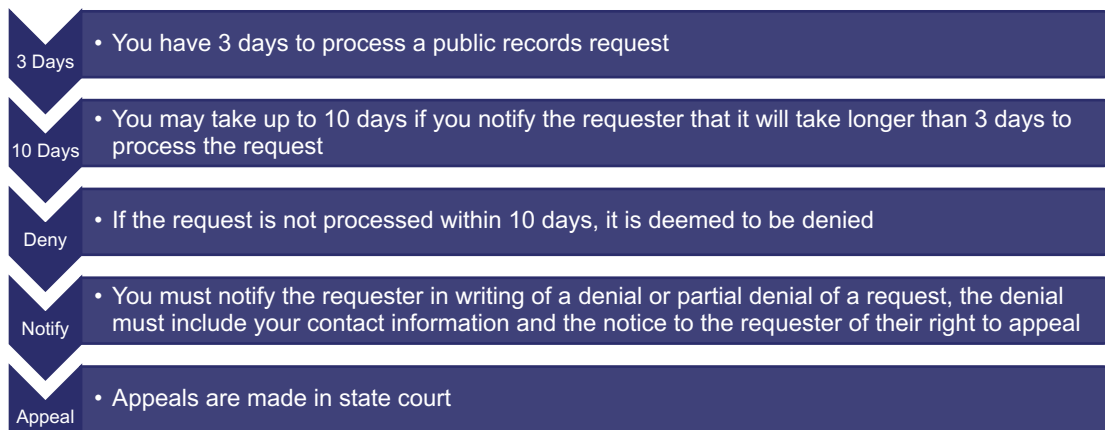


Limitations on Requests ([§74-102](#))

- Records which are exempt from disclosure cannot be released to the public
- You cannot ask the requester why they are requesting the record(s)
- You may only charge for records if the request if:
 - The BOCC has adopted a records request fee schedule
 - More than 100 page copies are requested
 - The record contains information which must be redacted
 - The actual labor of processing the request exceeds two hours
 - Charges for the request cannot exceed the labor costs of the wage of the lowest paid employee or attorney capable of processing the request



Processing a Requests ([§74-103](#))



Denials

A good faith denial:

You consulted with your prosecuting attorney and he/she advised you to deny the request

The information requested does not exist

The record is exempt from disclosure

A bad faith denial:

- ⊘ You did not consult with your prosecuting attorney
- ⊘ Your prosecuting attorney advised you to release the record but you didn't want to
- ⊘ The record exists but you didn't want to release it
- ⊘ You don't like the person requesting the record



Always consult with your prosecuting attorney!



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Violations

“If the court finds that a public official has deliberately and in bad faith improperly refused a legitimate request for inspection or copying, a civil penalty shall be assessed against the public official in an amount not to exceed one thousand dollars (\$1,000), which shall be paid into the general fund.”

[\(§74-117\)](#)



Final Checklist

Have Policies

- Use of technology
- Use of the internet, social media, etc.
- Off duty communications

Provide

- Training to county elected officials and employees
- Training to county advisory boards, committees, and commissions

Involve

- Your prosecuting attorney

