

ADMINISTRATOR'S MEMORANDUM

To: IDWR Staff

Records No. 14

From: Mathew Weaver, Director



Re: Public Records Request Policy

Date: January 11, 2025

RE: Process and procedure for responding to Public Records Requests

PURPOSE

This administrative memorandum establishes policy for addressing a public record request (“PRR”) received by the Idaho Department of Water Resources (“IDWR” or “Department”) under Idaho public records laws. The [Idaho Public Records Act](#) (“Act”) governs the disclosure of information by all state and local government entities. The Act affirms Idaho’s commitment to open and transparent government by ensuring all records maintained by public agencies are open and available to the public for inspection and copying at all reasonable times unless the information is specifically exempt from disclosure by law.

AUTHORITY AND ADDITIONAL REFERENCES

Idaho Codes §§ 74-101 through 74-127; IDWR Administrative Memorandum Amended Records No. 7.

DEFINITIONS

Idaho Code § 74-101 defines key terms under the Act. The following are select terms from the statute:

- Copy means transcribing by handwriting, photocopying, duplicating machine, and reproducing by any other means so long as the public record is not altered or damaged.
- Inspect means the right to listen to, view, and make notes of public records as long as the public record is not altered or damaged.
- Public Records include but are not limited to, any writing containing information relating to the conduct or administration of the public’s business prepared, owned, used, or retained by any state or local agency, regardless of physical form or characteristics. Provided, however, that personal notes created by a public official solely for his own use shall not be a public record if such personal notes are not shared with any other person or entity.

- Requester means the person requesting examination and/or copying of public records pursuant to Idaho Code § 74-102.
- Writing includes, but is not limited to, handwriting, typewriting, printing, photostating, photographing, and every means of recording, including letters, words, pictures, sounds or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums, or other documents.

Supplementing the above definitions, IDWR defines the following terms for this PRR policy:

- PRR Coordinator or Custodian is the designated State Office employee (currently the Director's Assistant), who is responsible for tracking and overseeing PRRs received by the Department. This position is required by Idaho Code § 74-119.
- Receipt Date is the business date that an IDWR employee receives a PRR, or the next business day if received outside of normal business hours. IDWR's business hours are 8:00 a.m. to 5:00 p.m. Mountain Time.
- Regional Coordinators are the designated IDWR regional office employees who are responsible for coordinating the research and compilation of responsive records within their regions. The PRR Coordinator will work with Regional Coordinators when IDWR receives a request related to that region.
- Responsive Record is any public record (as defined above) that meets the parameters of the request. (E.g., if a requester asks for records from 2015, only records from that year are responsive).

INFORMATION REQUESTS

A public records request and an information request will be treated differently by the Department. An information request is a request for information that is easily accessible to the public. These requests may include, but are not limited to, information regarding IDWR operations, requests for copies of agency policies, forms, procedures, pamphlets, booklets, and other information designed for distribution. If an IDWR employee receives an information request, the employee may respond to the requester directly. Responses to information requests do not need to adhere to this PRR policy. If questions arise, contact the PRR Coordinator for assistance.

PUBLIC RECORD REQUEST POLICY – OVERVIEW

The following is an overview of the IDWR PRR policy:

1. PRRs must be in writing.
2. All responses to PRRs must be coordinated with the PRR Coordinator. The PRR Coordinator may work with a deputy attorney general (“DAG”), the Regional Coordinators, and other employees to compile and review records for response, as appropriate.
3. IDWR must either grant, partially deny, or deny PRRs in writing within three business days pursuant to Idaho Code § 74-103(2).
4. If more time is needed to locate or retrieve responsive records, IDWR must inform the requestor in writing. IDWR must then provide the records no later than ten business days following the request.
5. If IDWR fails to respond, the PRR will be deemed denied within ten business days following the request.
6. IDWR may not ask the purpose of the request but may clarify or assist in narrowing the request.
7. IDWR must release all records unless they are exempt from disclosure per the Public Records Act. A DAG must review any denials or partial denials of requests.
8. All responses should follow a standard IDWR PRR response template.
9. IDWR may charge fees for copying more than 100 pages of records and for labor needed to fulfill requests, upon Management approval.
10. IDWR should NOT create new documents to fulfill a request. For example, if the requester asks for a list of all water rights in a particular basin, and that list does not already exist – IDWR should not create the list, even if the information is available¹.

PROCESS

Receipt and Form of Public Record Requests

IDWR will only respond to public record requests submitted to IDWR in writing (i.e., by mail, fax, hand delivery, or email). All written public record requests must include the requester’s name, phone number, and mailing or email address.

Requesters submitting PRRs to IDWR by email must send their requests to publicrecordsrequest@idwr.idaho.gov.

¹ As an alternative, the customer should be referred to the Department's website if the information can be found there or the research can be completed through the Department's public search capabilities.

If an IDWR employee receives a request for public records through their work email account, the employee should forward the request to the PRR Coordinator via publicrecordsrequest@idwr.idaho.gov on the same day the request is received, or on the first day, the employee first becomes aware of the email. The PRR Coordinator should be notified before the employee receiving a PRR responds to the requestor. When forwarding the request, the employee should identify responsive records, other employees who may have responsive records, and any other information that will assist with compiling records and responses.

When IDWR employees receive a verbal request for records (either by phone or in person), the employee should instruct the requester to submit the request in writing via email, mail, fax, or hand delivery.

Logging and Tracking the Request

The PRR Coordinator will log all PRRs in a tracking spreadsheet and assign a tracking number. Staff should reference the tracking number in all correspondence regarding the request.

Scope of the Request

Upon receipt of a PRR, IDWR is prohibited by law from making any inquiry of the person requesting records, except: (1) to verify the identity of the requester; (2) to ensure the requested record(s) will not be used for purposes of a mailing or telephone list; or (3) to protect the disclosure of personal information to the public. However, in instances when the PRR is unclear or overly broad, the PRR Coordinator may work with the requester to clarify the request or narrow the scope of the request. The PRR Coordinator will inform the requester if the volume of the response will necessitate the charging of fees.

When IDWR contacts the requester about the scope of or to clarify the request, the PRR Coordinator will document the conversation and any changes to the original request. If the requester significantly alters the request, the PRR Coordinator should ask the requester to submit a new request.

Researching Responsive Documents

Upon receipt of a PRR, the PRR Coordinator will forward the request to all IDWR employees they believe have responsive records. The PRR Coordinator will specify the deadline by which staff should return records to the PRR Coordinator. Employees receiving a request from the PRR Coordinator should forward the request to other staff members who may have responsive records. The PRR Coordinator should be copied on any forwarded requests or informed of who the other employees are. Employees responding to a PRR should thoroughly search for any records responsive to the request. The following records should be considered when responding to a PRR: emails, memos, reports, notes, letters, spreadsheets, recordings, videos, photographs, maps, telephone logs, calendars, voice mail, text messages, Teams messages, and other existing IDWR documents and records. (See “Definitions.”)

Before forwarding records to the PRR Coordinator for response, employees should review related records to determine if they fit the parameters of the PRR and flag any items that may require DAG review.

Additional Records Review

Under certain circumstances, Legal staff should review responsive records falling within the scope of a PRR. Examples include:

1. PRR requests filed by an attorney's office.
2. Documents prepared by or for an attorney, or documents representing client-attorney communication (e.g., communications between IDWR staff and DAGs).
3. Documents related to an active contested case or active litigation.
4. Documents marked confidential or trade secret.
5. Programmatic specific documents that may include proprietary or security information (e.g., geothermal, dam safety, GIS, etc.).
6. Documents that could pose a risk to human health and safety if made public (e.g., dam construction plans).
7. Documents pertaining to pending IDWR or Idaho Water Resource Board financial transactions, including requests for qualifications (RFQ), requests for proposals (RFP), contracts, purchase orders, payments, bonds, loans, or grants.

Additionally, the IDWR Human Resources Officer may review any requests for personnel information.

Responding to a Request

Required Response Time

Upon receipt of a PRR, IDWR must reply in writing to the requester within three working days. The reply shall do one of the following:

1. Grant the request in whole or in part, and deliver responsive documents or allow access to responsive documents;
2. Deny the request;
3. Inform the requester that there are no responsive documents; or
4. Notify the requester that additional time is needed to locate, retrieve, or review documents.

If more than three days are needed for staff to respond to the PRR, the PRR Coordinator will inform the requester in writing that additional time is needed. Idaho Code § 74-103(2) allows IDWR to extend its response to PRR by ten (10) working days from receipt of the PRR. At the end of the ten-day extension, the PRR Coordinator must respond in writing to the requester with responsive records, denial or partial denial of the PRR. If responsive documents require electronic conversion or retrieval that takes longer than ten working days, the PRR Coordinator will notify the requester in writing and coordinate with the requester to identify the day when the responsive documents will be delivered or available to review.

Standard Templates and Language

When responding to a request, the PRR Coordinator or their designee should use standard templates and language specific to the type of response.

Granting a Request

If there are responsive documents and no statutory exemption for denial, IDWR shall deliver or provide access to the records within the statutory time frame. IDWR may allow for the examination of records during regular office hours or may deliver documents in hard copy or electronically.

Additional Considerations:

1. IDWR is not required to create a record where none exists at the time of the request.
2. IDWR is not required to provide copies of records in a format different than the original.
3. Upon request, a certified copy must be produced if feasible or if required by law.

Examination of Public Records

Any person may examine public records at the office in which the records reside during regular office or working hours. Upon a request to examine public records, the PRR Coordinator, Regional Coordinator, or designated IDWR employee will arrange a time with the requester to examine the records. The examination may be reasonably restricted to allow the custodian to retain control of the records and to prevent removal, alteration, or destruction of the records. The PRR Coordinator shall exert their best effort to ensure the requester does not alter any public record during examination.

Exemptions

Some public records, or information contained in a public record may be exempt from disclosure according to specific provisions in the Act, other provisions of Idaho Code, federal law, and state and federal regulations to the extent specifically provided for by such law or regulation. IDWR is not required to provide exempt records. When only some information in a record is exempt, IDWR is responsible for redacting the exempt information and supplying the modified record to the requester. When IDWR

removes ANY information from a record, the result is a partial denial, and IDWR must notify the requester of the basis for the partial denial in writing. (See “Denial,” below.) If there are any questions concerning whether the information in a public record is exempt, contact the DAG assigned to IDWR PRR.

Lists

No list of people prepared by IDWR may be used as a mailing or telephone list (except by IDWR for official business) without the permission of those on the list. When IDWR receives a request, the PRR Coordinator must inform the requester that the requested record or information cannot be used for purposes of a mailing or telephone list as prohibited by Idaho Code § 74-120.

The following language shall be included in all PRR responses from IDWR: *Pursuant to Idaho Code § 74-120, use of any list as a mailing list or telephone list is prohibited and punishable by a civil penalty up to \$1,000.*

Denial of Public Records Requests

IDWR may withhold some records from disclosure pursuant to certain exemptions. (See Exemptions above.) When the Department withholds any information, the request is considered denied or partially denied. A DAG must review any denial or partial denial. A requester has 180 days from the date of the mailing or emailing of the denial or partial denial to file an appeal.

If a request is denied in whole or in part, the requester must be notified in writing. The notice of denial shall include the following:

1. A statement that a DAG has reviewed the request pursuant to Idaho Code § 42-103(5);
2. The statutory basis for the denial; and
3. A statement of the right to appeal and the time limit for appeal.

Inspection and Correction of a Person’s Own Records

A person may inspect and copy a record pertaining to themselves, even if the record is otherwise exempt from public disclosure.

Retention of Request

IDWR shall maintain all PRRs and responses for one year after the 180-day appeal period. In the event of a PRR appeal of a denial, IDWR shall retain the PRR, the denial, any responsive documents provided, and all documents in question until one year after the appeal process is completed.

FEES²

Pursuant to Idaho Code § 74-102(10)(b) the Department may charge fees on labor when the actual labor associated with responding to PRR exceeds two hours, when nonpublic information must be redacted from the responsive record(s), or if the request exceeds one hundred pages of paper records.

Idaho Code § 74-102(10)(e) allows the Department to charge fees not greater than the per-hour pay rate of the lowest-paid administrative staff and attorney necessary and qualified to process a PRR.³ The Department will consider charging fees on labor when: (1) due to a large volume of responsive records, an extension of time is needed to respond to the PRR beyond the standard three-day timeframe, AND (2) the actual labor associated with responding to requests for public records exceeds two person-hours.

Under Idaho Code § 74-102(10)(c), IDWR is authorized to establish a copying fee schedule. The fee may not exceed the actual cost to IDWR of copying the record(s). Pursuant to the Act, IDWR will not charge for copying the first 100 pages of a record. Each page of print is a single copy; double-sided copies are assessed for the same fee as two single-sided copies. IDWR will not deliver multiple copies of the same document.

IDWR's fees for copying and labor are set forth in Administrator's Memorandum Amended Records No. 7.

PENALTY AND IMMUNITY

It is imperative that IDWR assert a good faith effort to comply with the law for every PRR. Because of the short response timelines established in statute, staff are required to immediately refer any questions about a request to the PRR Coordinator or a DAG assigned to represent IDWR. Failure to exert reasonable, good faith efforts may result in a court order awarding attorney's fees, costs, or monetary penalties against IDWR.

² Previously, the Department has not charged fees to recover the cost of labor expenses incurred while staff research and compile records responsive to PRR. However, since 2021, the Department has responded to several PRR requiring more than 5-10 hours across multiple staff resources to research and compile records. In 2022, the Department responded to one PRR that required 20+ staff hours, and another PRR that required 50+ staff hours and 56 hours of review by a DAG.

³ At the issuance of this memo, the applicable hourly rates are \$25.85 and \$43.30 for the administrative and legal positions respectively. These values may be subject to change based on future salary changes.