



## RELEASE AND RESTRICTION OF DEPARTMENT RECORDS

### Purpose

This policy implements Board policy 4009 instructing the Department to establish guidelines for the release and restriction of records pursuant to the Idaho Public Records law and other applicable provisions of federal law and the Idaho Code.

### Legal Authority

- 5 United States Code 552 - Public information regarding agency rules, opinions, orders, records and proceedings
- 5 United States Code 552a - Records maintained on Individuals
- 15 United States Code 1681 et. seq. - Consumer protection and credit reporting by agencies
- 18 United States Code 2721 et. seq. - The Driver Privacy Protection Act
- 42 United States Code 405(c)(2)(C) - Provisions of the Social Security Act that prohibit the release of social security numbers and other personal information in motor vehicles and driver records
- Idaho Code 9-337 thru 9-349 - The Idaho Public Records Law – governs request for information by the public
- Idaho Code 49-202 - Personal Information in Driver License and Motor Vehicles files is confidential, subject to specific statutorily authorized release
- Idaho Code 49-203 - Prohibition on release and use of personal information contained in motor vehicle and driver records
- Idaho Code 49-203A - Rules, policies and waiver procedures regarding disclosure of personal information contained in motor vehicle and driver records

Idaho Code Sections 9-337 through 9-349 and 49-202 state that the public has the right during regular office hours to inspect and copy Department records, except those exempted by statute. Under the law, “Public record” includes, but is 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 agency, independent public body corporate and politic or local agency regardless of physical form or characteristics.

Idaho Code Sections 9-340A through 9-340H identify confidential records that are excluded from public viewing. Idaho Code Section 9-340D(3) provides that real property appraisals are not available to the public until the appraised property and all other project parcels are acquired. Idaho Code Section 9-340D(4) provides that estimates prepared by a state agency that detail the cost of a public project are exempt from disclosure until such time as the bids are opened or upon award of the contract for construction of the public project.

### **Records Custodians**

Pursuant to Idaho Code Section 9-337(3) the custodians of Department records are:

#### **Chief Administrative Officer (or Delegate)**

- Acts as head custodian of all Department records.
- In cases of concern regarding the release of a record, defers to the Department's Legal Counsel.

### All Department Employees

- Act as records custodians for the records under their responsibility.
- Respond to public record requests.
- Determine and collect applicable fees (per Idaho Code 9-338), the Attorney General Public Record Manual and ITD Public Record Request Fee Schedule.
- It is the responsibility of all employees, contractors, consultants and others who have access to ITD records (paper, electronic, film, video, voice, maps, drawings, etc.) to manage these records according to Department policy, state and federal law, and commonly accepted business practices relating to management, access, public disclosure, confidentiality and retention. Many of these records contain personal, privileged, proprietary or confidential information and should be handled accordingly.
- No person shall alter, benefit personally, intentionally access, disclose or grant any other person access to any information in ITD records unrelated or necessary to fulfill their job duties when not permitted by policy, contract or law.

### Availability and Cost of Records

As provided in Idaho Code Sections 9-338(8) and 49-202(1), examination of public records must be conducted during regular office hours unless the custodian of the records authorizes other arrangements. In this event, the person requesting the records will provide, in advance, funds for the reasonable compensation of the records custodian or designee. If the person requesting public records demonstrates either the inability to pay or that the public's interest or understanding would suffer by the assessment of fees, the cost or fees may be waived.

Idaho Code Section 9-338(10)(c) provides that a public agency may establish a copying fee schedule. The fee may not exceed the actual cost of copying the record if another fee is not otherwise provided by law. Administrative and labor costs may not be charged except under the following conditions:

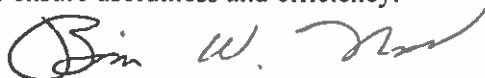
- The request is for more than 100 pages of paper records;
- The request includes records from which nonexempt information must be deleted; or
- The actual labor associated with locating and copying documents for a request exceeds two (2) hours.

The records custodian may require payment of estimated copying and labor and administrative fees in advance. To ascertain the specific fees for hard copies of documents see the ITD Public Record Request Fee Schedule.

Copies of accident records for a given time period are available by appointment with the appropriate Department section office. Hard copies of accident records may be made for the fees set in Idaho Code 49-202.

Electronically stored data CANNOT be released to the public through direct access via electronic means unless authorized by the Chief Administrative Officer or higher authority. Certain computer vendors may have direct access to their equipment for diagnostic purposes only.

All employees shall comply fully with the public access laws. The requester is not obliged to answer why he/she wants to examine or copy Department records, but employees can clarify the information request to ensure usefulness and efficiency.



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Date: 5/26/2015