

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 281

BY WAYS AND MEANS COMMITTEE

AN ACT

RELATING TO PUBLIC RECORDS; AMENDING SECTION 9-337, IDAHO CODE, TO DEFINE A TERM; AMENDING SECTION 9-338, IDAHO CODE, TO PROVIDE THAT PUBLIC AGENCIES AND INDEPENDENT PUBLIC BODIES CORPORATE AND POLITIC MAY IMPOSE CERTAIN REQUIREMENTS RELATING TO REQUESTS FOR PUBLIC RECORDS, TO PROVIDE THAT REQUESTS FOR PUBLIC RECORDS AND DELIVERY OF PUBLIC RECORDS MAY BE MADE BY ELECTRONIC MAIL, TO REVISE PROVISIONS RELATING TO INQUIRIES BY CUSTODIANS IN CONNECTION WITH REQUESTS FOR PUBLIC RECORDS, TO REMOVE REFERENCE TO CERTAIN DISCRETIONARY REQUIREMENTS ASSOCIATED WITH REQUESTS FOR PUBLIC RECORDS, TO REVISE FEE PROVISIONS ASSOCIATED WITH REQUESTS FOR PUBLIC RECORDS, TO REMOVE PROVISIONS RELATING TO ADVANCE PAYMENT OF COSTS OF COPYING, THE CREDITING OF MONEYS RECEIVED TO CERTAIN ACCOUNTS AND THE EXPENDITURE OF SUCH FUNDS BY AN AGENCY, TO PROVIDE FOR THE PAY RATE OF FEES, TO PROVIDE THAT UNDER CERTAIN CIRCUMSTANCES THERE SHALL BE NO COST OR FEE CHARGED FOR EXAMINATION OR COPYING OF PUBLIC RECORDS, TO PROVIDE THAT STATEMENTS OF FEES SHALL BE ITEMIZED, TO PROHIBIT LUMP SUM COSTS, TO PROVIDE FOR THE AGGREGATION OF RELATED REQUESTS UNDER CERTAIN CIRCUMSTANCES, TO PROVIDE FOR ADVANCE PAYMENT OF FEES, TO PROVIDE FOR THE CREDITING OF MONEYS RECEIVED TO CERTAIN ACCOUNTS AND TO PROVIDE FOR THE EXPENDITURE OF SUCH FUNDS BY AN AGENCY, TO PROVIDE FOR THE RETURN OF EXCESS ADVANCE PAYMENTS UNDER CERTAIN CIRCUMSTANCES AND TO REMOVE A PROVISION AUTHORIZING THAT REQUESTS FOR PUBLIC RECORDS AND DELIVERY OF PUBLIC RECORDS MAY BE CONDUCTED BY ELECTRONIC MAIL; DECLARING AN EMERGENCY AND PROVIDING FOR APPLICABILITY.

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

SECTION 1. That Section 9-337, Idaho Code, be, and the same is hereby amended to read as follows:

9-337. DEFINITIONS. As used in sections 9-337 through 9-347, Idaho Code:

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

(2) "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.

(3) "Custodian" means the person having personal custody and control of the public records in question. If no such designation is made by the public agency or independent public body corporate and politic, then custodian means any public official having custody of, control of, or authorized access to public records and includes all delegates of such officials, employees or representatives.

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

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

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

13 (7) "Law enforcement agency" means any state or local agency given law  
 14 enforcement powers or which has authority to investigate, enforce, prose-  
 15 cute or punish violations of state or federal criminal statutes, ordinances  
 16 or regulations.

17 (8) "Local agency" means a county, city, school district, municipal  
 18 corporation, district, public health district, political subdivision, or  
 19 any agency thereof, or any committee of a local agency, or any combination  
 20 thereof.

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

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

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

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

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

37 (14) "Requester" means the person requesting examination and/or copy-  
 38 ing of public records pursuant to section 9-338, Idaho Code.

39 (15) "State agency" means every state officer, department, division,  
 40 bureau, commission and board or any committee of a state agency including  
 41 those in the legislative or judicial branch, except the state militia.

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

47 SECTION 2. That Section 9-338, Idaho Code, be, and the same is hereby  
 48 amended to read as follows:

1        9-338. PUBLIC RECORDS -- RIGHT TO EXAMINE. (1) Every person has a right  
 2 to examine and take a copy of any public record of this state and there is a  
 3 presumption that all public records in Idaho are open at all reasonable times  
 4 for inspection except as otherwise expressly provided by statute.

5        (2) The right to copy public records shall include the right to make  
 6 photographs or photographic or other copies while the records are in the pos-  
 7 session of the custodian of the records using equipment provided by the pub-  
 8 lic agency or independent public body corporate and politic or using equip-  
 9 ment designated by the custodian.

10        (3) Additionally, the custodian of any public record shall give the  
 11 person, on demand, a certified copy of it if the record is of a nature permit-  
 12 ting such copying or shall furnish reasonable opportunity to inspect or copy  
 13 such record.

14        (4) A public agency or independent public body corporate and politic  
 15 may require that a request for public records be submitted to it in a writ-  
 16 ing that provides the requester's name, mailing address, e-mail address and  
 17 telephone number. A request for public records and delivery of the public  
 18 records may be made by electronic mail.

19        (5) The custodian shall make no inquiry of any person who ~~applies for~~  
 20 ~~requests~~ a public record, except:

21        (a) To verify the identity of a person requesting a record the re-  
 22 quester in accordance with section 9-342, Idaho Code; or

23        (b) To ensure that the requested record or information will not be used  
 24 for purposes of a mailing or telephone list prohibited by section 9-348,  
 25 Idaho Code, or as otherwise provided by law, and except; or

26        (c) As required for purposes of protecting personal information from  
 27 disclosure under chapter 2, title 49, Idaho Code, and federal law; or

28        (d) To help the requester narrow the scope of the request or make the  
 29 request more specific when the response to the request is likely to be  
 30 voluminous or require payment as provided in subsection (9) of this sec-  
 31 tion.

32 ~~The person may be required to make a written request and provide their name, a~~  
 33 ~~mailing address and telephone number.~~

34        (56) The custodian shall not review, examine or scrutinize any copy,  
 35 photograph or memoranda in the possession of any such person and shall extend  
 36 to the person all reasonable comfort and facility for the full exercise of  
 37 the right granted under this act.

38        (67) Nothing herein contained shall prevent the custodian from main-  
 39 taining such vigilance as is required to prevent alteration of any public  
 40 record while it is being examined.

41        (78) Examination of public records under the authority of this section  
 42 must be conducted during regular office or working hours unless the custo-  
 43 dian shall authorize examination of records in other than regular office or  
 44 working hours. In this event, the persons designated to represent the cus-  
 45 todian during such examination shall be entitled to reasonable compensation  
 46 to be paid to them by the public agency or independent public body corporate  
 47 and politic having custody of such records, out of funds provided in advance  
 48 by the person examining such records, at other than regular office or working  
 49 hours.

~~(89) (a) A public agency or independent public body corporate and politic or public official may establish a copying fee schedule. The fee may not exceed the actual cost to the agency of copying the record if another fee is not otherwise provided by law. The actual cost shall not include any administrative or labor costs resulting from locating and providing a copy of the public record; provided however, that a Except for fees that are authorized or prescribed under other provisions of Idaho law, no fee shall be charged for the first two (2) hours of labor in responding to a request for public records, or for copying the first one hundred (100) pages of paper records that are requested.~~

~~(b) A public agency or independent public body corporate and politic or public official may establish a fees to recover the actual labor and copying costs associated with locating and copying documents if:~~

~~(i) The request is for more than one hundred (100) pages of paper records; or~~

~~(ii) The request includes records from which nonpublic information must be deleted; or~~

~~(iii) The actual labor associated with locating and copying documents for a request responding to requests for public records in compliance with the provisions of this chapter exceeds two (2) person hours.~~

~~(c) A public agency or independent public body corporate and politic or public official may establish a copying fee schedule. The fee may not exceed the actual cost to the agency of copying the record if another fee is not otherwise provided by law.~~

~~(d) For providing a duplicate of a computer tape, computer disc, microfilm or similar or analogous record system containing public record information, a public agency or independent public body corporate and politic or public official may charge a fee, uniform to all persons that does not exceed the sum of the following:~~

~~(i) The agency's direct cost of copying the information in that form;~~

~~(ii) The standard cost, if any, for selling the same information in the form of a publication;~~

~~(iii) The agency's cost of conversion, or the cost of conversion charged by a third party, if the existing electronic record is converted to another electronic form.~~

~~The custodian may require advance payment of the cost of copying. Any money received by the public agency or independent public body corporate and politic shall be credited to the account for which the expense being reimbursed was or will be charged, and such funds may be expended by the agency as part of its appropriation from that fund.~~

~~(e) Fees for labor costs shall be charged at the per hour pay rate of the lowest paid full-time administrative staff employee that is necessary and qualified to process the public records request. If the entity does not have any administrative staff, the pay rate shall be equal to the lowest paid full-time administrative staff employee of the Idaho attorney general's office that is necessary and qualified to process the public records request. If the request requires redactions to be made by an attorney, the rate charged shall be no more than the per hour rate of~~

1 the lowest paid full-time attorney within the Idaho attorney general's  
 2 office that is necessary and qualified to process the public records re-  
 3 quest.

4 (ef) The public agency or independent public body corporate and politic  
 5 may shall not charge any cost or fee for copies or labor when the re-  
 6 requester demonstrates either that the requester's examination and/or  
 7 copying of public records:

8 (i) ~~The inability to pay; or Is likely to contribute signifi-~~  
 9 ~~cantly to the public's understanding of the operations or activ-~~  
 10 ~~ities of the government;~~

11 (ii) ~~That the public's interest or the public's understanding of~~  
 12 ~~the operations or activities of government or its records would~~  
 13 ~~suffer by the assessment or collection of any fee Is not primar-~~  
 14 ~~ily in the individual interest of the requester including, but not~~  
 15 ~~limited to, the requester's interest in litigation in which the~~  
 16 ~~requester is or may become a party; and~~

17 (iii) Will not occur if fees are charged because the requester has  
 18 insufficient financial resources to pay such fees.

19 (g) Statements of fees by a public agency or independent public body  
 20 corporate and politic shall be itemized to show the per page costs for  
 21 copies, hourly rate and employees involved in responding to the re-  
 22 quest, and the actual time spent on the public records request. No lump  
 23 sum costs shall be assigned to any public records request.

24 (10) A requester may not file multiple requests for public records  
 25 solely to avoid payment of fees. When a public agency or independent public  
 26 body corporate and politic reasonably believes that one (1) or more re-  
 27 questers is segregating a request into a series of requests to avoid payment  
 28 of fees authorized pursuant to this section, the public agency or inde-  
 29 pendent public body corporate and politic may aggregate such requests and  
 30 charge the appropriate fees. The public agency or independent public body  
 31 corporate and politic may consider the time period in which the requests have  
 32 been made in its determination to aggregate the related requests. A public  
 33 agency or independent public body corporate and politic shall not aggregate  
 34 multiple requests on unrelated subjects from one (1) requester.

35 (11) The custodian may require advance payment of fees authorized by  
 36 this section in an amount not to exceed two hundred fifty dollars (\$250). Any  
 37 money received by the public agency or independent public body corporate and  
 38 politic shall be credited to the account for which the expense being reim-  
 39 bursed was or will be charged, and such funds may be expended by the agency as  
 40 part of its appropriation from that fund. Any portion of an advance payment  
 41 in excess of the actual costs of labor and copying incurred by the agency in  
 42 responding to the request shall be returned to the requester.

43 (912) A public agency or independent public body corporate and politic  
 44 shall not prevent the examination or copying of a public record by contract-  
 45 ing with a nongovernmental body to perform any of its duties or functions.

46 (103) Nothing contained herein shall prevent a public agency or inde-  
 47 pendent public body corporate and politic from disclosing statistical in-  
 48 formation that is descriptive of an identifiable person or persons, unless  
 49 prohibited by law.

1           (114) Nothing contained herein shall prevent a public agency or inde-  
2 pendent public body corporate and politic from providing a copy of a public  
3 record in electronic form if the record is available in electronic form and  
4 if the person specifically requests an electronic copy. ~~A request for a pub-~~  
5 ~~lic record and delivery of the public record may be conducted by electronic~~  
6 ~~mail.~~

7           SECTION 3. An emergency existing therefor, which emergency is hereby  
8 declared to exist, this act shall be in full force and effect on and after its  
9 passage and approval. The provisions of this act shall apply to all current,  
10 ongoing and future public records requests.