

Disclosure of Idaho Department of Correction Records Under The Idaho Public Records Act



Effective January 2016

Prepared For The Idaho Department of Correction



The purpose of this manual is to assist IDOC record custodians in developing a clear understanding of the Idaho Public Records Act as it applies to processing public records requests.

This manual was prepared specifically for the Idaho Department of Correction and shall be maintained by the Department Rules and Policy Coordinator.

TABLE OF CONTENTS

1. What is a Public Record?	3
2. Types of Records	4
3. Custodian of Public Records	5
4. Requests for Records	6
5. Time Limits, Retention, and Redaction	7
6. Fees and Charges	8
7. Records Exempt From Disclosure	9
8. Request for Records that do not fall under the Public Records Act:	13
9. Integrity of Public Records	14
References	15

Policy Statements

Idaho Code Section 74-102 (1) establishes the public's right to access public records. It states,

"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."

Rules of the Board of Correction, 108. Idaho Public Records Act, states,

"It is the intent of the Board that the records of the Department shall be open to the public for inspection and copying at all reasonable times, unless the records or information contained therein is specifically exempted from disclosure by state or federal statute or court rule. It is the further intent of the Board to implement the exemptions for Department records as set forth in the Idaho Public Records Act. The Board has determined that disputes over denials or partial denials of public record requests should be resolved informally whenever possible."

IDOC Policy 108, Public Access To Records, states,

"It is the policy of the Idaho Board of Correction that all records maintained by the Department of Correction shall be open to the public for inspection and copying at all reasonable times, unless the information is specifically exempted from disclosure by law."

1. What is a Public Record?

A 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 Section 74-101(13).

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 and other documents." Idaho Code Section 74-101(16). Handwritten notes, raw notes, preliminary drafts, e-mail (electronic mail), computer files and the like are considered public records.

Determining what information requested by the public is not open to disclosure is a responsibility of state officials. This manual is designed to help simplify the process.

2. Types of Records

The Idaho Department of Correction maintains the following records:

Offender Records

These are records of offenders committed to the custody of the Board of Correction or who are on probation or parole.

Offender records are records specific to an offender to document an offender's behavior, activities, program participation in a regular, on-going systematic manner. Offender records include but are not limited to court documents, risk assessments, treatment program information, education records, grievance records, disciplinary offense reports, field notes or c-notes, parole information, probation reports, housing information, and institutional work history.

Offender records are generally maintained in the offender's case management file ("c-file") or electronically in the Correctional Information System ("CIS"). The c-file is located at the facility where the inmate is housed, the district office where the offender is on probation or parole, or at central office or state archives for offenders who have completed their sentences.

Facility Records

These are records that pertain to the day-to-day business operations of a Department facility or district office.

Facility records include but are not limited to field memorandums and post orders, count sheets, visitation logs, audits, drill records, offender concern forms, security logs, investigations, food service, and correspondence.

Facility records are maintained at the facility.

Department Business Operations Records

These are records that pertain to the day-to-day business operations of the Department.

Department business operations records include but are not limited to Board meeting minutes, legislation, Department contracts, fiscal and budget information, purchasing records, correspondence, personnel records, policies and standard operating procedures, investigations, facility audits, program information, and program audits. Department business operation records are maintained at Central Office.

"Who can request a record?"

Anyone, including offenders, can submit a public records request. The custodians should not advise that an individual cannot request a record, however, they can advise that records will be provided in compliance with the Public Records Act and Board Rules.

“Do I have to provide a copy of a policy or SOP even if it is available on the Department’s website?”

Yes, unless the policy or SOP is exempt from disclosure.

If the policy or SOP is designated as open to the public, the record custodian can provide a copy of the policy or SOP as is. The record custodian may also inform the requestor the policy or SOP is available on the Department’s website, but must still provide a copy if that is what the requester asks for or prefers.

If the policy or SOP is designated as containing content exempt from disclosure, the record custodian who received the request can request a copy of the redacted policy or SOP from the policy coordinator at Central Office who maintains the redacted version.

All records of the Department must be reviewed to determine if the record is exempt from disclosure or contains exempt information.

3. Custodian of Public Records

The custodian is “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.” Idaho Code Section 74-101(3)

“I received a request for records that I am not the custodian of. What do I do?”

Forward the request to the appropriate custodian being mindful of the 3-day timeframe to respond to the request.

Designated Official Custodian

Pursuant to Idaho Code Section 74-101(3), the designated official custodians for records of the IDOC are:

- The Director
- The Public Information Officer
- The Central Records Sentencing Supervisor
- The Division Chiefs
- The Facility Heads

Employees designated as official custodians of IDOC records may delegate duties and responsibilities of the custodians in order to more efficiently process public requests. IDAPA 06.01.01, Rules of the Board of Correction, Section 108, Idaho Public Records Act, subsection 03, Custodian of Records.

“The request is for records that are maintained by multiple custodians, or I know other staff may have records that are responsive to the request that I do not have access to. Who is responsible for responding to the request?”

The initial custodian who received the request is responsible for responding to the request and must contact other custodians or staff who have or may have records that are responsive to the request.

Responsibilities

The duties and responsibilities of the custodian of the records are identified in the Idaho Public Records Act.

The custodian’s responsibility to provide access to records at all reasonable times is absolute unless the record is exempt from disclosure by law.

This responsibility also includes:

- Provide access to public records.
- Protect the integrity and confidentiality of records generated by the IDOC and other agencies.
- Extend reasonable comfort and facilitate the individual requests for public records.
- Maintain the log book and request sheets.
- Apply exemptions to IDOC records that are listed and explained in this manual.
- Consult with IDOC legal counsel on exempt records and if clarification is needed.
- Apply correct charges for record retrieval and copies.
- Process all releases, partial denials, and denials within specified time frames, as required by the Public Records Act. Response must be made within three (3) working days of the request made by either e-mail, mail or fax. Idaho Code Section 74-103
- Provide a certified copy when requested (see *Certification Stamp Form*, Appendix G)

"I have received a request for a certified copy of a Department record. How does a record get certified?"

A certified copy of a public record is a certification signed by the record custodian that the copy is a true and correct copy of the original record. The certification may be made in the form of an affidavit (Appendix F) or a stamp (Appendix G).

The Custodian May Not:

Review, examine or scrutinize any copy, photograph or memoranda in the possession of the person making the public records request.

The Custodian May:

- Verify the identity of the person only when the requestor is seeking access to records about themselves per Idaho Code Section 74-113
- Ensure that the requested record or information will not be used for the purposes of a mailing or telephone list
- Require the person to submit the request in writing and provide his name, mailing address, telephone number and e-mail address if the requestor has one
- Help the requestor narrow the scope of the request or help the requestor make the request more specific when the responsibility is likely to be voluminous or require payment

4. Requests for Records

All requests for public records must be in writing. If the requestor attempts to make a walk in oral request or a telephone request, advise them that a written request must be submitted prior to any release of any public record. The written request must include the name, mailing address and telephone number of the requestor.

Request to Correct or Amend a Record

Any person may inspect and copy a record pertaining to that person, and request an amendment be made to the record. Idaho Code Section 74-113.

A prisoner or former prisoner is not entitled to inspect or request an amendment to a record about himself. Idaho Code Section 74-113(3)(e).

"In what cases does IDOC need to advise of the right to appeal a public records response?"

Any request that is fully denied or denied in part must be advised of the right to appeal. This is done by checking the appropriate box located on the Notice of Action Taken Form.

Within 10 days of receipt of a request to amend a record, the IDOC must make the correction, or explain in writing why the request to correct or amend the record was denied and include the person's right to appeal the denial. A request to correct or amend a record shall not be denied without prior review and approval of the Deputy Attorney General assigned to the IDOC.

The IDOC can only correct or amend records originated by the IDOC.

"Do I need to contact a Deputy Attorney General if the only information being redacted from a record is a SSN or DOB?"

No.

Offender's Requests for Their Records

Prisoners and parolees, current or former, are not entitled to records about themselves, including medical or treatment records. Idaho Code Section 74-113. This exemption may not apply if a prisoner is involved in litigation concerning the matter in the record. Contact the Deputy Attorney General assigned to the IDOC to confirm litigation.

Probationers are entitled to records about themselves.

Records of a deceased prisoner may be released to the personal representative of the deceased prisoner. The personal representative must provide legal documentation (such as a court order) showing that they have been appointed personal representative. The records may also be released when a court order authorizes their release.

5. Time Limits, Retention, and Redaction

Time Limitation to Respond to Requests

The custodian can respond to the request by (1) fulfilling the request in full, (2) denying the request in full, or (3) denying the request in part. A denial is based upon the exemptions provided by statute or Board rule.

Upon receipt of a written request, a response must be made within three working days.

If a response cannot be completed within three working days, an extension notice (Appendix C) must be completed.

The extension notice must be sent to the requestor within the original three working days. The extension allows an additional seven working days, for a total of 10 working days, to fill the request.

Retention of Public Records Requests

All public record requests shall be retained by the custodian responding to the request.

The request information shall be logged on the Request Log, to be completed by the records custodian responding to the request. The Request Log will be retained for one year.

A request that was disclosed in full may be purged after 30 days.

A request that is partially disclosed or denied in full, shall be kept with the request and shall be retained by the person filling the request for one calendar year. The records custodian must also maintain the integrity copy and redaction copy as explained below, along with any documentation supporting the basis for the redaction or denial.

Redaction of Public Records

When a public record that is otherwise open also contains information that is exempt from public disclosure, the exempt information must be redacted. The term "redacted" refers to a process by which the exempt information is blacked-out without altering the original record.

To redact information, the original record must first be copied – make two copies of the original. One of the two copies will be the integrity copy and the second will be the redaction copy. Using one of the copies of the original, completely black out any exempt information with a black marker. The redacted copy must then be re-photocopied, and it is this last photocopy which is disclosed to the requestor.

Review the photocopy to guarantee that redacted information cannot be seen if held up to the light. If necessary, repeat the redaction process.

The records custodian must retain a copy of the integrity copy and a copy of the redacted record provided to the requestor pursuant to the retention schedule.

6. Fees and Charges

Actual Cost of Copies

The IDOC has adopted the following guidelines and schedule of costs for recovering the cost of providing public records consistent with Idaho Code section 74-102(10).

The IDOC may require advance payment for allowable cost of copies or labor. There are no fees charged for requests from Federal, State, or local agencies, law enforcement, or judiciary.

Prepayment of Costs

Offenders

Offenders must prepay all charges.

Public

Public must prepay all charges in excess of five dollars (\$5.00). Use invoice form (Appendix D).

The record custodian shall present or include the invoice for cost of charges of less than \$5 with requested copies when the copies are provided. Use invoice form (Appendix D)..

Schedule of Costs

Copy Costs

- First 100 pages free of charge
- Copies in excess of 100 pages are \$.10 per page

File Retrieval

Charge \$9.25 for each file retrieved from state storage.

Labor Costs

- First two hours of labor are free of charge
- Charge the hourly rate of pay of the lowest paid employee necessary and qualified to fill the request.
- Calculate hours in terms of actual time to the nearest quarter hour. Estimate labor cost if necessary.
- In the event the custodian authorizes examination of records in other than regular office or working hours, the requestor will be responsible for pre-payment of staff compensation. The two hour labor exemption does not apply. Idaho Code Section 74-102(8).

Postage Costs

Postage shall not be charged for requests that do not exceed five pages.

Prepayment or self-addressed stamped envelope is required for mailing of copies in excess of five pages. Estimate postage cost if necessary.

All charges in excess of \$5 must be paid before the record is released.

Cost of Copies or Labor Not Permitted

The IDOC may not charge for copies or labor if:

- The request is likely to contribute significantly to the public's understanding of the operations or activities of the government;
- The request is not primarily in the individual interest of the requester; and
- The request will not occur if fees are charged because the requester has insufficient financial resources to pay the fees.

Idaho Code Section 74-102(10)(f)

7. Records Exempt From Disclosure

The following IDOC records have been identified as being exempt from disclosure pursuant to Idaho law or Board rule. Any denial for the request of the records identified in the list below does not need to be reviewed by legal. This list is not exhaustive.

- Pre-Sentence Investigation Reports, and any addendums (I.C. 74-104)
- Medical and Mental Health Records
- Education Records
- Victim or Witness Information/Identity
- Fingerprint Cards
- LSI
- Drug/Alcohol treatment records
- Parole Hearing Officer Reports
- Inmate Telephone Recordings
- Inmate Transport Information

"Who decides if a record is exempt, in full or in part?"

The record custodian, or designee, should refer to a "content expert" when necessary. For example, if the question is whether the release of the record would jeopardize public safety, the content expert may be the Chief of Prisons or Chief Investigator of the SIU. The custodian fulfilling the request should document the basis for the exemption and who provided the basis, and retain this documentation with the request.

All requests for other IDOC records must be reviewed in their entirety to determine if an exemption pursuant to Idaho law or Board Rules applies.

If at any time there is a question of exemption or denial, the request **MUST** be reviewed by, or the record custodian consults with, the IDOC legal counsel. *See Idaho Code Section 74-103(4) and Notice Of Action On Public Records Request form (Appendix B)*. If the only information that is being redacted is the offender's Social Security Number, IDOC legal counsel has pre-reviewed all redactions of Social Security Numbers.

Records Exempt from Disclosure Under the Idaho Public Records Act

- ✓ Idaho Code Sections 74-104(1), 74-105(12). Records exempt from disclosure by federal or state law or federal regulation to the extent specifically provided for by such law or regulation.

Examples of records under this exemption include:

- Offender Social Security Number
- Fingerprint cards
- NCIC and ILETS records
- Police reports
- FBI/CIB identification sheet
- Driver's services sheet

- ✓ Idaho Code Section 74-104(2). Records contained in court files of judicial proceedings, the disclosure of which is prohibited by or under rules adopted by the Idaho Supreme Court.

Examples of records under this exemption include:

- Pre-sentence Investigation report (PSI) and its content
- Rider Review Report (written after July 1, 1996) (Also known as an Addendum to PSI)

- ✓ Idaho Code Section 74-105(1). The investigatory records of the IDOC.

- ✓ Idaho Code Section 74-105(4)(a). The following records of the IDOC:

- (i) Records of which the public interest in confidentiality, public safety, security and habilitation clearly outweighs the public interest in disclosure as identified pursuant to the authority of the Idaho Board of Correction under Section 20-212, Idaho Code: (Records exempt from disclosure under this section are specifically identified in the Board of Correction's Administrative Rule 108 currently in effect. See below.)
- (ii) Records that contain any identifying information, or any information that would lead to the identification of any victims or witnesses.
- (iii) Records that reflect future transportation or movement of a prisoner.
- (iv) Records gathered during the course of the pre-sentence investigation.
- (v) Records of a prisoner, as defined in Section 9-337(9) Idaho Code, or probationer shall not be disclosed to any other prisoner or probationer.

- ✓ Idaho Code Section 74-105(4)(b). Operation and security manuals, plans or codes of county jails and building owned or leased by Idaho State government, a county or a city. "Operation manuals" are those internal documents of any state government agency, county or city building or jail that define the procedures utilized to maintain security within the building or jail. "Plans or codes" relate only to those documents, the release of which could jeopardize the safety of worker, visitors or prisoners in those buildings, or adversely affect the public safety.

- ✓ Idaho Code Section 74-105(4)(c). Records of the Idaho Commission of Pardons and Parole. Votes of individual members of the Idaho Commission of Pardons and Parole in arriving at

"I know Pre-Sentence Investigations (PSI) are exempt from disclosure. Can parts of the PSI be released? What constitutes the PSI?"

The entire PSI is exempt from disclosure. Police reports and other documents, including assessments, that are attached to the PSI and the Addendum to the PSI (also known as Retained Jurisdiction or Rider reports) written after July 1, 1996 are also exempt from disclosure. PSI reports vary in scope and focus, but generally contain at least these items: (1) complete description of the situation surrounding the criminal activity, including the police report, a victim statement, and the offenders's version of events; (2) offenders educational background; (3) offenders employment background; (4) offenders social history; (5) residence history; (6) medical history; (7) information about environment to which the offender will return; (8) information on any financial resources available to assist the offender; (9) offender's values and outlook on life; (10) probation officers view of the motivation and ambitions; (11) full description of the offenders criminal record; and (12) recommendation as to disposition.

parole, pardon or commutation decisions shall not be made public. Idaho Code 20-213A(1)(b). Designated reports prepared by Commission staff or a designated IDOC employee, which is specifically to be used by the Idaho Commission of Pardons and Parole in making a parole determination shall be exempt from public disclosure. Idaho Code Section 20-223(c).

- ✓ Idaho Code Section 74-106(1). Employee personnel records. All personnel records of a current or former public official other than the public official's public service or employment history, classification, pay grade and step, longevity, gross salary and salary history, status, workplace and employing agency are exempt from disclosure. Notwithstanding this exemption, IDOC personnel are entitled to access their own personnel records. Idaho Code 74-113(1). The right to review records about oneself does not include the right to inspect investigation records if the investigation is ongoing. Idaho Code 74-113 (3)(a).
- ✓ Idaho Code Section 74-106(13). Offender medical and psychological records. Records of hospital care, medical records, including prescriptions, drug orders, records of psychiatric care or treatment and professional counseling records relating to an individual's condition, diagnosis, care, or treatment normally shall not be disclosed. (Records of this nature may be disclosed under certain conditions pursuant to Board of Correction Administrative Rule 108 or as stated in Section 8. See below.)
- ✓ Idaho Code Section 74-106(17). DNA database records maintained by the IDOC.
- ✓ Idaho Code Section 74-108(5). Test questions, scoring keys, and other data used to administer an academic or other examination or testing procedure before the examination is given if the examination is to be used again are exempt from disclosure. (Offender academic records are subject to disclosure under limited under certain conditions pursuant to Board of Correction Administrative Rule 108 or as stated in Section 8. See below.)
- ✓ Idaho Code Section 74-113(3)(e). Records of a prisoner maintained by the IDOC or the Idaho Commission of Pardons and Parole when requested by that prisoner. Prisoners do not have the right to inspect or copy records of themselves maintained by the state or local agency having custody of the prisoner or formerly having custody of the prisoner or by the Idaho Commission of Pardons and Parole.

Records Exempt from Disclosure in their Entirety Pursuant to Board of Correction Administrative Rule 108.04.a

- Records of the Department that define specific building design details, such as facility blueprints, that if disclosed would jeopardize public safety and the security of the facility
- Records of the Department that define specific operations used to respond to and control emergencies, such as emergency plans, that if disclosed would interfere with the secure and orderly conduct of Department operations
- Records of the Department that define site-specific security operations, such as facility security procedures and site-specific post orders, that if disclosed would jeopardize public safety and the security of the facility
- Records containing information specific to the habilitation of any offender, including information tracking the behavior, progress or digression of a particular offender under the legal care, custody, supervision or authority of the Board, including a person within or without the state pursuant to an agreement with another state or a contractor. Notwithstanding this exemption, records of this nature specific to inmates sentenced to death shall be available to counsel of record for inmates sentenced to death, subject to redaction

- Records of an offender when requested by another offender. For purposes of Subsection 108.04 the term offender shall not be construed to include a prisoner, probationer or parolee who has completed his sentence of incarceration or term of probation or parole
- Offender academic records. Notwithstanding this exemption, consistent with Family Educational Rights and Privacy Act, FERPA, 34 C.F.R. part 99, an offender's academic records shall be disclosed to school officials, including teachers, having legitimate educational interests. Further, an offender's academic records shall be disclosed to the offender's attorney of record in his criminal case, provided that the attorney first submit a release, on his letterhead, signed by the offender. A release under Subsection 108.04.a.vi. must be current, within six (6) months. The attorney may use the release in Appendix E or be substantially similar to Appendix E.
- Pre-sentence investigation reports, addenda, and the information contained in or attached to the reports, shall not be disclosed to any person except as provided by Idaho Rules of Criminal Procedure
- NCIC and ILETS records, FBI/CIB identification sheets, police reports, and drivers services sheets
- Medical, counseling and treatment records. Notwithstanding this exemption, an offender's medical, counseling and treatment records shall be disclosed to the offender's attorney of record in his criminal case, or the offender's private professional health care provider, provided that the attorney or the health care provider submit a release for these records, on his letterhead, signed by the offender. A release under Subsection 108.04.a.ix. must be current, within six (6) months. The attorney may use the release in Appendix E or be substantially similar to Appendix E.

Records Exempt from Disclosure in Part, Subject to Redaction, Pursuant to Board Of Correction Administrative Rule 108.04.b

- Records that contain any identifying information or any information that would lead to the identification of any victims or witnesses
- Records of the Department containing the names and addresses of confidential informants, or containing information identifying confidential informants
- Department intelligence reports of offender criminal activity, that if disclosed would jeopardize public safety, the safety of confidential informants, offenders and staff, and the security of the facility
- Records that identify or would lead to the identification of a date, time, or a place of future transportation or movement of a prisoner

Department Investigatory Records Board of Correction Administrative Rule 108.04.b

Department investigatory records, to the extent that disclosure of such records would interfere with enforcement proceedings, deprive a person of the right to a fair trial or impartial adjudication, disclose the identity of a confidential source or confidential information furnished only by the confidential source, disclose investigative techniques or procedures, or endanger the life or physical safety of any person. This exemption shall not preclude release of the following information

- The time, date, location, and nature and description of a reported crime, accident or incident
- The name, sex, age, and address of a person arrested, except as otherwise provided by law
- The time, date, and location of the incident and of the arrest

- The crime charged
- Documents given or required by law to be given to the person arrested.

Department Personnel Records Board of Correction Administrative Rule 108.04.b

Employee personnel records consistent with Idaho Code Section 74-106(1). Notwithstanding this exemption, IDOC personnel are entitled to access their own personnel records. Idaho Code 74-113. The right to review records about oneself does not include the right to inspect investigation records if the investigation is ongoing. Idaho Code 74-113(3)(a).

Records of Civil Commitments Board of Correction Administrative Rule 108.05

A Civil Commitment is a court order of commitment used to hold a person in state custody, involuntarily medicate a person or involuntarily treat (medical or psychiatric) a person. A civil commitment order is used in lieu of or in addition to criminal commitment. A civil commitment order may originate with the IDOC.

Civil commitment records differ in confidentiality from other offender records in that the civilly committed individual may not be convicted of a crime or may be held in a Department facility for reasons other than criminal conviction. Requests for information from the file of a civilly committed individual may be referred to Department legal counsel to determine applicability of federal and state statutes or court rules pertaining to individual privacy and the public's right to know.

8. Request for Records that do not fall under the Public Records Act:

Court Orders

Records that are exempt under the Idaho Public Records Act must be released under court order.

Verify authenticity of the court order with the Deputy Attorney General assigned to IDOC.

“Does a Court order for otherwise exempt records need to be reviewed by the Deputy Attorney General's office?”

Yes.

Subpoena (duces tecum)

If a public record is subject to subpoena, the custodian of the record shall immediately advise the Deputy Attorney General (DAG) assigned to the IDOC for further instruction, unless the custodian has received previous instruction or guidance from the DAG on how to respond to the subpoena.

The custodian may be required to attend court proceedings to identify and authenticate the record subject to subpoena. If the subpoena is from a person or an entity other than a governmental agency (i.e. county prosecutor, public defender, Attorney General), please contact the DAG assigned to the IDOC.

“Does a subpoena carry more weight in terms of what can be released than a public records request?”

Yes, some documents that cannot be released under public records law may be released with a subpoena. Contact the Deputy Attorney General's office for direction.

Offender Medical Records

Medical records include records of hospital care, prescription drug orders, records of psychiatric care or treatment, and professional counseling records. Medical records are exempt from disclosure under the Idaho Public Records Act, Board Rule and the federal Health Insurance Portability and Accountability of 1996 (HIPAA), 45 C.F.R. Parts 160 & 164. See Idaho Code Sections 74-104(1) and 74-106(13), and Board Rule 108. However, an offender's medical, counseling and treatment records shall be disclosed to the offender's attorney of record in his criminal case, or the offender's private professional health care provider, provided that the attorney or the health care provider submit a release for these records, on his letterhead, signed by the

offender and current within six (6) months. The release used must be either Appendix E or substantially similar.

“What constitutes a medical records release?”

The release must be signed by the offender and dated current within six months. The release used must be Appendix E or substantially similar.

Offender Counseling Records

Offender counseling and treatment records shall be handled as medical records.

Offender Psychological Records

Offender psychological records shall be handled as medical records.

Psychological evaluations prepared for use by the Idaho Commission of Pardons and Parole are exempt from disclosure in their entirety regardless of the requestor, only if incorporated into or attached to the Parole Hearing Report.

Offender Alcohol and Drug Abuse Records

Alcohol and Drug Abuse Records are exempt from disclosure under the Idaho Public Records Act, Board Rule, and the federal Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2, See Idaho Code Sections 74-104(1) and 74-106(13), and Board Rule 108. The release of offender alcohol and drug abuse records requires a release signed by the offender (Appendix E or substantially similar) or a court order.

Offender Education Records

Education records are exempt under the Idaho Public Records Act, Board Rule, and the federal Family Educational Rights and Privacy Act (FERPA), 34 C.F.R. Part 99. See Idaho Code Sections 74-104(1) and 74-108(5), and Board Rule 108. In most cases, the release of offender education records requires a release signed by the offender/student (Appendix E), a court order, or subpoena. Any requests for offender education records should be referred to Education Program staff.

9. Integrity of Public Records

- Under the Idaho Public Records Act, records custodians have an affirmative obligation to maintain such vigilance as is required to prevent the alteration of any public record.
- It is a felony to steal, mutilate or falsify a public record. See Idaho Code Sections 18-3201 and 18-3202.
- Idaho Code Section 18-3201 applies to public officials and carries up to 14 years incarceration.
- Idaho Code Section 18-3202 applies to private person and carries up to five years incarceration.

References

Appendix A: *Request Log*

Purpose: To record public records requests. Use of a log is required. Use one log for granted (fully disclosed) to be purged on a monthly basis. Use one log for denied (in whole or in part) to be maintained for one year.

Appendix B: *Notice Of Action On Public Records Request*

Purpose: Formal notification of action being taken in regard to a public records request. Designed as a cover page to the released documents. It is the formal written notification which gives a brief explanation as to the release or full or partial disclosure, cites explanations for full or partial denial, explains the right of appeal, and identifies the district court in which an appeal may be filed.

Appendix C: *Extension Of Time To Fill Request*

Purpose: Formal notification to extend time allowed for responding to public records request.

Appendix D: *Public Records Request Invoice*

Purpose: Form used to notify requestor of applicable charges in order to seek reimbursement.

Appendix E: *Request and Consent For Release Of Confidential Offender Information Form*

Purpose: Formal written request by an offender for access to records about himself. This request is intentional and clearly outlines request and conditions thereof. Releases IDOC from liability of disclosure.

Appendix F: *Affidavit Of Custodian/Designated Custodian Of Public Records*

Purpose: To certify public records as true and correct copies upon request.

Appendix G: *Certification Stamp*

Purpose: To certify public records as true and correct copies upon request. Used when certification stamp is required to appear on the face of the document copy itself.

Appendix H: *Frequently Asked Questions (FAQs)*

Purpose: Assist the users of this manual in answering and understanding some of the most common questions regarding it's content.

REQUEST LOG

DATE OF REQUEST	REQUESTOR (Name and contact information)	PUBLIC RECORDS REQUESTED	COST	DATE RECORDS WERE PROVIDED

NOTICE OF ACTION ON PUBLIC RECORDS REQUEST

IDAHO DEPARTMENT OF CORRECTION

1299 N. Orchard, Suite 110

Boise, Idaho 83706

Name of Requestor: _____ Date: _____

Address of Requestor: _____

Dear _____:

The Idaho Department of Correction received your public records request on _____
(Date)

I. Request Granted

- ☐ The requested record is enclosed.
- ☐ You may inspect and photocopy the requested records during regular office hours by contacting

Name Title Telephone Number

II. Request Granted in Part and Denied in Part or Denied in its Entirety

Your request has been processed. However, your request has been

☐ Granted in part and denied in part

☐ Denied in its entirety

Pursuant to:

___ Idaho Code 74-104(1)	___ Idaho Code 74-105(4)(a)	___ Idaho Code 74-106(13)
___ Idaho Code 74-104(2)	___ Idaho Code 74-105(4)(b)	___ Idaho Code 74-106(17)
___ Idaho Code 74-105(1)	___ Idaho Code 74-105(4)(c)	___ Idaho Code 74-106(1)
___ Idaho Code 74-108(5)	___ Idaho Code 74-113(3)(e)	___ IDAPA 06.01.01.108
___ Idaho Criminal Rule 32		___ No record found

The statutory exemptions provided herein shall not constitute a waiver of any and all other legal bases or privileges which may also be applicable.

- ☐ If your request was denied in part or entirely, the Department had the opportunity to consult with, or the request was reviewed by, the deputy attorneys general who represent the Idaho Department of Correction.
- ☐ If your request was denied in part or entirely, you have the right to appeal the denial of your request by filing a petition in conformance with the provisions of the Idaho Public Records Law, Title 74, Chapter 1, Idaho Code. Your petition must be filed in the _____ Judicial District Court of the State of Idaho within One Hundred Eighty (180) calendar days of the of the date of mailing of this notice.

III. Additional Comments:

Sincerely,

Custodian/Designated Custodian

Date: _____

cc: Central Records (offender records denied in its entirety or in part)

EXTENSION OF TIME TO FILL REQUEST

IDAHO DEPARTMENT OF CORRECTION

1299 N. Orchard, Suite 110

Boise, ID 83706

Date: _____

Name: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Telephone: (_____) _____ Fax: (_____) _____

I. Your request to examine or copy a public record was received on the _____ day of _____, 20____. The Idaho Department of Correction cannot process your request within three (3) working days. A longer period of time is necessary to locate, retrieve and review the records. Your patience in this matter is appreciated. If you do not receive a written response within ten (10) working days of the date the Idaho Department of Correction received the request, your request shall be deemed denied. Idaho Code Section 74-103(2).

II. Estimated cost \$_____

☐ Prepayment required

☐ Invoice (Appendix D) will be included

III. Additional Comments:

Sincerely,

Custodian/Designated Custodian

PUBLIC RECORDS REQUEST INVOICE
IDAHO DEPARTMENT OF CORRECTION

DATE:

TO:

Itemized Charges:

State Storage File Retrieval Charge (\$9.25 per retrieval) \$____.____
1-100 Pages copied at no charge.....*No charge*
____ Copies in excess of 100 pages at \$.10 per page \$____.____
Postage (if not prepaid)..... \$____.____
Cost of Labor in excess of two (2) hours
(____ hours at ____ per hour) \$____.____
 (____ hours at ____ per hour) \$____.____
 (____ hours at ____ per hour) \$____.____

TOTAL DUE \$____.____

Federal Tax Identification Number: 82600095297

PCA Code: _____

Please include a copy of this invoice with your check or money order. When the payment is received, the record request will be processed.

Payment Instructions:

- ***Make check payable to: Idaho Department of Correction***
- Mail to:

_____(208) _____
Custodian/Designated Custodian Signature Telephone Number



IDAHO DEPARTMENT OF CORRECTION

To promote a safer Idaho by reducing recidivism

C. L. "BUTCH" OTTER
Governor

KEVIN H. KEMPF
Director

REQUEST AND CONSENT FOR RELEASE OF CONFIDENTIAL OFFENDER INFORMATION

1. Name, address and information of offender authorizing release of records.

Offender Name: _____ Phone: _____ IDOC # (if applicable) _____
Date of Birth: _____ Social Security No: _____
Mailing Address: _____
Relationship to Offender: ☐ Self ☐ Other: _____

2. Statement of Request and Authorization

I do hereby request and authorize the Idaho Department of Correction (IDOC) to release the information indicated below to:

Name: _____ Phone: _____ Facsimile: _____

Mailing Address: _____

The extent of information that may be disclosed, includes the following records and documentation (initial all that apply):

_____ Evaluation/Assessments	_____ Psychosexual Evaluation	_____ Military
_____ Counseling records	_____ Treatment records	_____ Mental Health records
_____ Education	_____ Child support	_____ Employment
_____ Social histories	_____ Legal/Criminal/juvenile records	_____ Social Security Administration
_____ Problem Solving Court records	_____ Other _____	
_____ Medical records:	_____ Drug and alcohol treatment information, including:	
from _____ to _____	_____ Whether I am enrolled	_____ Diagnosis/prognosis
and/or regarding _____	_____ Cooperation level	_____ Presence in a facility
_____	_____ Treatment/discharge plan	_____ Attendance

The information release is for the purpose(s) of (initial all that apply):

_____ Insurance _____ Legal _____ Personal _____ Treatment/Continued Care
_____ Other _____

I understand that the above records are protected under federal regulations including the Health Insurance Portability and Accountability of 1996 (HIPAA), 45 C.F.R. Parts 160 & 164, and/or Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2, and cannot be disclosed without my written consent unless otherwise provided for in these regulations. Recipients of this information may re-disclose the information only in connection with their official duties. I understand that this authorization is subject to revocation by me if provided in writing, except to the extent that disclosure has already occurred in reliance upon this authorization, and subject to the conditions explained below. I understand this information may be re-released in accordance with Idaho Criminal Rule 32 for other legal purposes, and may no longer be protected by privacy regulations.

SPECIAL TERMS REGARDING REVOCABILITY OF CRIMINAL JUSTICE PROGRAM RELEASES:

Although HIPAA requires that consents be revocable and does not have an exception when a patient is mandated into treatment through the criminal justice system (CJS), 42 C.F.R. Part 2 sets forth some special rules when a patient's participation in a treatment program is an official condition of probation or parole, sentence, dismissal of charges, release from imprisonment, or other disposition of any criminal proceeding. While a consent form (or court order) is still required before any disclosure can be made about a CJS referral, the rules concerning duration and revocability of the consent are different. Under special rules of 42 C.F.R. Part 2, consent can be made irrevocable until a certain specified date or condition occurs, and the duration of the consent can be linked to the final disposition of the criminal proceeding. 42 C.F.R. §2.35. This allows programs to provide information even after the client leaves treatment. If the client does not comply with treatment, the program can report the problem to the judge or prosecuting attorney to testify in a probation revocation hearing because there has been no final disposition of the criminal matter. A CJS consent allows programs to use the expiration condition provided in 42 C.F.R. Part 2 "when there is a substantial change in the patient's criminal justice status." A substantial change in status occurs whenever the patient moves from one phase of the CJS to the next. For example, if a client were on parole or probation, there would be a change in the CJS status when the parole or probation ends, either by successful completion or revocation. Thus the program could provide periodic reports to the parole or probation officer monitoring the client, and could even testify at a parole or probation revocation hearing, since no change in criminal status would occur until after the hearing.

3. Expiration and Release of Liability

This release will remain valid for no more than six (6) months and may be revoked by me at any time in writing. I release and forever hold harmless the State of Idaho, IDOC, and their agents and employees from and against all claims, damages, or liability resulting from any action pursuant to this request.

Signature of Person Requesting Release of Records

Date

Name of Witness (or Parent/Guardian where required)

Signature of Witness/Parent/Guardian

Date

Idaho Department of Correction 10221 W. Emerald St. Boise, Idaho 83704 Phone: 208-327-7008 Fax: 208-327-7351

This affidavit should be formatted for and printed on IDOC letterhead.

**AFFIDAVIT OF CUSTODIAN/DESIGNATED CUSTODIAN
OF PUBLIC RECORDS
IDAHO DEPARTMENT OF CORRECTION**

STATE OF IDAHO)
) ss
County of _____)

I, _____, do hereby certify that I am a custodian/designated custodian of records for the Idaho Department of Correction under the Idaho Public Records Act, Idaho Code, Title 74, Chapter 1, and the Administrative Rules of the Idaho Board of Correction.

The copies of records attached hereto set forth the regularly conducted and regularly recorded activities, or matters observed pursuant to duty imposed by law and as to which there was a duty to report, of the Idaho Department of Correction. I hereby certify that these records are true and correct copies of official records or reports or entries therein of the Idaho Department of Correction.

Any redacted portion of the record is identified on a "Notice Of Action On Public Records Request" form, attached hereto.

DATED this _____ day of _____, _____.

Custodian/Designated Custodian

SUBSCRIBED AND SWORN to before me this _____ day of _____, _____.

Notary Public for Idaho

Residing at: _____

My Commission Expires: _____

CERTIFICATION STAMP

IDAHO DEPARTMENT OF CORRECTION

Under the Idaho Public Records Act a requestor has a right to a certified copy of a public record. Idaho Code Section 74-102(3). For purposes of IDOC documents, a certification request will generally come from an attorney or court personnel for evidentiary reasons. For many purposes, the affidavit of custodian of public records cover sheet (Appendix F) is sufficient. However, some courts may require that a document be certified on its face. Below are two versions of a certification stamp. The top one is long and narrow and the bottom one is wider and more square. It is important when certifying documents with a stamp on the face of the document that the language in the document not be obscured in any way. Choose the stamp you use accordingly.

I hereby certify that these records are true and correct copies
of official records or reports or entries therein of the Idaho
Department of Correction.

Dated: _____

Signature: _____

I HEREBY CERTIFY THAT
THESE RECORDS ARE TRUE
AND CORRECT COPIES OF
OFFICIAL RECORDS OR
REPORTS OR ENTRIES
THEREIN OF THE IDAHO
DEPARTMENT OF
CORRECTION.

Dated: _____

Signature: _____

Frequently Asked Questions

Who decides if a record is exempt, in full or in part?

The record custodian, or designee, should refer to a “content expert” when necessary. For example, if the question is whether the release of the record would jeopardize public safety, the content expert may be the Chief of Prisons or Chief Investigator of the SIU. The custodian fulfilling the request should document the basis for the exemption and who provided the basis, and retain this documentation with the request.

Do I need to contact a Deputy Attorney General if the only information being redacted from a record is a SSN or DOB?

No.

Do I have to provide a copy of a policy or SOP even if it is available on the Department’s website?

Yes, unless the policy or SOP is exempt from disclosure.

- If the policy or SOP is designated as open to the public, the record custodian can provide a copy of the policy or SOP as is. The record custodian may also inform the requestor the policy or SOP is available on the Department’s website, but must still provide a copy if that is what the requester asks for or prefers.
- If the policy or SOP is designated as containing content exempt from disclosure, the record custodian who received the request can request a copy of the redacted policy or SOP from the policy coordinator at Central Office who maintains the redacted version.

The request is for records that are maintained by multiple custodians, or I know other staff may have records that are responsive to the request that I do not have access to. Who is responsible for responding to the request?

The initial custodian who received the request is responsible for responding to the request and must contact other custodians or staff who have or may have records that are responsive to the request.

I received a request for records that I am not the custodian of. What do I do?

Forward the request to the appropriate custodian being mindful of the 3-day timeframe to respond to the request.

What constitutes a medical records release?

The release must be signed by the offender and dated current within 6 months. The release used must be Appendix E or substantially similar.

Does a subpoena carry more weight in terms of what can be released than a public records request?

Yes, some documents that cannot be released under public records law may be released with a subpoena. Contact the Deputy Attorney General's office for direction.

In what cases does IDOC need to advise of the right to appeal a public records response?

Any request that is fully denied or denied in part must be advised of the right to appeal. This is done by checking the appropriate box located on the Notice of Action Taken Form.

Who can request a record?

IDOC Public Records Manual
Appendix H, Last update January 2016

Anyone, including offenders, can submit a public records request. The custodians should not advise that an individual cannot request a record, however, they can advise that records will be provided in compliance with the Public Records Act and Board Rules.

Does a Court order for otherwise exempt records need to be reviewed by the Deputy Attorney General's office?

Yes.

I have received a request for a certified copy of a Department record. How does a record get certified?

A certified copy of a public record is a certification signed by the record custodian that the copy is a true and correct copy of the original record. The certification may be made in the form of an affidavit (see Appendix F) or a stamp (see Appendix G).

I know Pre-Sentence Investigations (PSI) are exempt from disclosure. Can parts of the PSI be released? What constitutes the PSI?

The entire PSI is exempt from disclosure. Police reports and other documents, including assessments, that are attached to the PSI and the Addendum to the PSI (also known as Retained Jurisdiction or Rider reports) written after July 1, 1996 are also exempt from disclosure. PSI reports vary in scope and focus, but generally contain at least these items: (1) complete description of the situation surrounding the criminal activity, including the police report, a victim statement, and the offender's version of events; (2) offenders educational background; (3) offenders employment background; (4) offenders social history; (5) residence history; (6) medical history; (7) information about environment to which the offender will return; (8) information on any financial resources available to assist the offender; (9) offender's values and outlook on life; (10) probation officers view of the motivation and ambitions; (11) full description of the offenders criminal record; and (12) recommendation as to disposition.