



DEQ POLICY STATEMENT PS18-06

POLICY FOR PUBLIC RECORDS REQUESTS

PURPOSE

This statement describes the policy for handling public records requests (PRRs) received by the Idaho Department of Environmental Quality (DEQ) from the public under the Idaho Public Records Law, Idaho Code §§74-102 et seq. This policy and procedure shall supersede and replace the DEQ Policy for Handling Public Records Requests (PM12-03), dated November 8, 2012.

STATEMENT OF POLICY

Written Requests

1. Requests for records must be submitted in writing. The only exception is legislators who may request records verbally.
2. Requests submitted by email, fax, or DEQ's online request form are considered written requests.

Response Time

3. The date of receipt for PRRs shall be the date DEQ staff receives the written request. For electronically submitted requests, the date of receipt is the date DEQ staff opens the electronic file.
4. DEQ shall respond in writing to all PRRs within three business days after the date the request is received. The response shall grant, deny, or give notice of extension.
5. An extension shall be sent to the requester when more than three working days are required to fulfill the request. This notification informs the requester an additional seven business days may be needed to fill the request.

Entering the Request

6. When a PRR is submitted online, the PRR coordinator shall ensure all appropriate divisions and/or regional offices are assigned through the PRR application.
7. PRRs received by DEQ staff shall be promptly forwarded to the designated division or regional office PRR custodian. The custodian shall enter requests into the PRR application and ensure all appropriate divisions and/or regional offices are assigned.

Responding to the Request

8. The PRR custodians shall collaborate to send one response when possible if a request involves more than one division or regional office. If circumstances do not allow collaboration, the response letter shall note that additional public records may be sent separately by another DEQ division or regional office.
9. PRR custodians shall save all requests, correspondence, and response letters in DEQ's PRR application.
10. The PRR coordinator ensures that a response is sent for each request.

Scope of the Request

11. DEQ staff shall not ask a requester why the public records are being sought. However, it is appropriate for staff to inquire whether the requested record or information will be used for a mailing or telephone list, as described in Idaho Public Records Law.
12. DEQ staff may contact the requester to determine the scope of the records requested if the request is broad, unclear, or may incur substantial fees. Such correspondence shall be saved in the PRR application, making it accessible to other DEQ divisions and/or regional offices handling the same request. Similarly, comments describing the situation must be added in the PRR application.
13. If the requester significantly changes the scope or substance of a PRR before the request is filled, the requester shall be encouraged to withdraw the original request and submit a new one. If the changes are not substantial, edits to the original request will be documented in the PRR application, and DEQ's response will align with the updated request.
14. DEQ will not prepare new records in response to a PRR. A person may request to view or copy *existing* written documents and electronic records that contain information relating to the request.
15. Requests for data will be delivered in the format used by DEQ in normal business practice. Data available on DEQ's website will be provided as presented on the site, and requesters will be directed to the web page with the pertinent information.
DEQ staff may query data in the format normally used if the data requested are not available on the website. If the data requested include contact information, staff must contact the PRR coordinator and hold the information until the requester certifies the information will not be used for a mailing list.

Contact Lists

16. Requesters must certify that the information requested will not be used as a telephone or mailing list, or for any other illegal purpose. Submitting via the online PRR form or the DEQ PRR form certifies they will not use the disclosed information for an illegal purpose.
17. DEQ staff shall place the following notice on any list that could potentially be used as a telephone or mailing list without consent of the persons on the list: “WARNING: USE OF THIS LIST AS A MAILING LIST OR A TELEPHONE LIST IS PROHIBITED BY IDAHO CODE §17-120 AND PUNISHABLE BY A CIVIL PENALTY UP TO \$1,000.”
18. The PRR coordinator shall be notified when DEQ staff suspects a requester is using, or will use, disclosed information as a telephone or mailing list in violation of the law. The PRR coordinator will solicit the requester to certify that they will not use the information for a mailing or telephone number list. The certification response will be sent to the Office of the Attorney General (OAG) for review. If the OAG determines the request should be denied, a denial letter shall be sent to the requester. The denial letter will instruct the requester on resubmitting their request and obtaining the requested documents if a letter is provided promising no commercial use.

Requests Submitted by an Attorney

19. The OAG must be notified before the request is filled when a PRR is submitted by an attorney or law office.

Documents for Attorney Review

20. Documents submitted for OAG review must be separated from the other records to be released and specific pages marked when part of a larger document.

Communications to or from the Attorney General’s Office

21. Documents that encompass any communications to or from the OAG must be submitted for OAG review before the request is filled.

Confidential Business Information

22. Documents that may be a trade secret must be submitted for OAG review before the request is filled. Trade secrets are those records or information given to, submitted to, or otherwise obtained by DEQ of which disclosure could cause economic or other competitive harm to the company that is the subject of the trade secret and that are claimed by the company to be subject to confidential treatment.
23. Trade secrets submitted to or obtained by DEQ and not otherwise required by federal or state law to be released shall not be disclosed to the public.

Active Enforcement Actions and Litigation

24. Documents that consist of investigatory records related to an ongoing or pending enforcement action or litigation must be submitted for OAG review before the request is filled. Investigatory records include those records that, if disclosed, could

compromise an ongoing investigation, enforcement action, or reveal a confidential source, including complainants who wish to be anonymous.

25. If staff knows that a particular matter within the scope of a request has been the source of litigation or enforcement action in the past, they must notify the OAG before a request is filled.

Denials and Partial Denials

26. The OAG determines all denials and partial denials.
27. Certain confidential records may be withheld from disclosure. The Idaho Public Records Law describes the exceptions to public records disclosure.
28. A denial or partial denial is issued when a requester is not allowed access to a document or any portion of a document that falls within the scope of the request.
29. All denials and partial denials shall be in writing and shall include reference to the following:
 - The OAG reviewed the request.
 - The statutory authority for the denial or partial denial.
 - The requester's right to file an appeal within 180 days from the date of the mailing of the denial or partial denial.
30. Exempted portions or pages of a record or document shall be removed or redacted when possible, so the remaining material can be provided to the requester when possible.

Personnel Information

31. The Human Resources custodian shall be assigned when a request includes personnel information.

Public Comment Packages

32. Members of the public are not required to submit a PRR before reviewing DEQ records in a public comment package made available for public review during a comment period required by statute or regulation. Unless prohibited by the controlling statute, a fee may be imposed for copies of records in a public comment package pursuant to the fee schedule.
33. Relevant or peripheral documents not included in a public comment package, and not exempt from disclosure, shall be made available to the public pursuant to a formal PRR.
34. The requester shall be referred to the OAG when more detail regarding a denial or partial denial is needed.
35. Any records withheld as a denial or partial denial shall remain available until the end of the 180-calendar day appeal period, or until a decision has been rendered on any petition filed.

Copying Records

36. Requested records shall be scanned and attached to an email, loaded on the DEQ FTP site and a link emailed, or copied and mailed to the requester. When the records

- requested are large in size or number, the requester shall be contacted and offered the option of visiting the DEQ office to examine the records in-house or pay for the copies.
37. Records shall be provided in the format used by DEQ unless it is determined by the PRR coordinator and reviewed by the OAG that a valid reason exists for providing a particular record to the public in the format requested. Under no circumstances shall one person be denied access to a record in a particular format when the record has been or will be made available to another member of the public in that format.
 38. A certified copy of any public record, if feasible to produce, shall be provided upon request.

Records Examinations

39. DEQ staff shall be present in the same room or at a nearby location while records are being examined in-house.
40. Examination of public records shall be conducted during regular business hours unless otherwise authorized. Any requester that schedules a review of DEQ records outside regular business hours shall provide advance payment for a DEQ staff member to be present.
41. DEQ staff shall prevent alteration of any public record while it is being examined.

Fee Schedule

42. Idaho Code §74-102 authorizes DEQ to establish fees to recover actual costs associated with locating and copying documents in responding to a PRR. DEQ's Public Records Request Fee Schedule is provided in Appendix A. DEQ will revisit the PRR fee schedule as necessary to ensure compliance with Idaho Code and update fee amounts. PRR fee schedule updates may occur without updating this policy.
43. DEQ will invoice at hourly fees using labor rates representing the lowest paid PRR custodian working at DEQ. Similarly, DEQ also invoices at hourly fees for labor rate representing the lowest paid deputy attorney general working on behalf of DEQ. This policy has been reviewed by the OAG and has been deemed consistent with the intent of Idaho Code §74-102(10)(c)(2015). This policy is also consistent with the agency's past practice of conservatively estimating DEQ costs to maximize customer service and access to open government.
44. The requester may be informed of the estimated charges before DEQ acts on the request when the costs associated with filling a PRR are deemed excessive and might cause the requester to withdraw or narrow the request.

Prepayment of Fees

45. Prepayment of costs associated with fulfilling a PRR may be required on a case-by-case basis if DEQ believes the charges might not be paid, the requester's name is on an unpaid debt list, the request is large, or other circumstances exist that indicate prepayment is appropriate. Any overpayment shall be promptly refunded.

Fee Waivers

46. DEQ shall not charge a fee for copies or labor when the requester demonstrates that examination and/or copying of public records meets *all* of the following conditions:
 - Public interest clause: It is likely to contribute significantly to the public's understanding of the operations or activities of the government.
 - It is not primarily in the individual interest of the requester including, but not limited to, the requester's interest in litigation in which the requester is or may become a party.
 - Insufficient financial resources clause: The requester has insufficient financial resources to pay such fees.
47. The following factors will be considered when evaluating a requester's qualification for the public interest clause:
 - Whether the requested record is already in the public domain.
 - Whether the subject of the requested record concerns government operations or activities.
 - Whether the requested record would contribute to the public's interest or understanding of those operations or activities.
 - Whether the requester will disseminate the information to the public.
 - Whether disclosure of the record would benefit the broader public interest or understanding, not merely the private interests of the requester.
48. The following factors will be considered when evaluating a requester's qualification for the insufficient financial resources clause:
 - The extent to which the requester will receive an economic benefit by using the requested information.
 - The financial assets and debts of the person or entity requesting the waiver.
 - The ability of the requester to obtain records with a fee requirement.
49. DEQ may seek additional information from a requester to demonstrate qualification for a fee waiver.
50. All requests for a waiver shall be evaluated on a case-by-case basis. Any response to a request for a fee waiver shall be reviewed by the OAG.
51. The following government entities shall not be assessed fees under this policy:
 - Federal agencies
 - State legislators
 - State agencies—including departments, divisions, bureaus, commissions, and boards
 - State-funded colleges and universities
 - Cities and counties
 - Health districts
 - School districts

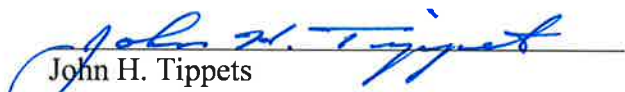
Billing and Fee Collection

52. The requester shall be sent an itemized invoice conforming to the requirements in Idaho Code §9-338(10)(g) and shall not be billed for any lump sum costs. The requester has 30 days to remit payment to DEQ.
53. If a requester has not remitted payment within 30 days and remains delinquent on such payment, DEQ will disclose and allow examination of the requested records but will not undertake any actions that would result in additional fees under the fee schedule until the overdue payment has been remitted.
54. If a requester has not remitted payment within 120 days and remains delinquent on such payment, DEQ will place the requester's name on an unpaid debt list that may result in the requirement of prepayment of costs associated with a PRR under the fee schedule until either 4 years have elapsed since the requester's name was placed on the list or until the overdue payment has been remitted.

Implementation

This policy shall be effective immediately.

Dated this 20th day of June, 2018


John H. Tippet
Director

Appendix A. Public Records Request Fee Schedule

Idaho Code §9-338 authorizes DEQ to establish fees to recover actual costs associated with locating and copying documents in responding to a public records request (PRR). Except for fees that are authorized or prescribed under other provisions of Idaho law, no fee shall be charged for the first 2 hours of labor in responding to a PRR or for copying the first 100 pages of public records requested. DEQ has established fees to recover the actual costs associated with locating and copying documents:

- The request is for more than 100 pages of paper records.
- The request includes records from which nonpublic information must be deleted.
- The actual labor associated with responding to the request exceeds 2 person hours.

Pursuant to Idaho Code §9-338, DEQ establishes the following Public Records Request Fee Schedule:

Idaho Code	Type of Work	Cost
§9-338(10)(b)(i)	Photocopying more than 100 sheet pages on standard 8.5 × 11-inch paper	\$.02 per page black and white \$.08 per page color
§9-338(10)(c)	Photocopying on sheets other than standard 8.5 × 11-inch paper	Actual cost—varies depending on size
§9-338(10)(d)(e)	Where labor exceeds 2 person hours	\$11.00 per hour
§9-338(10)(d)(e)	Where review by the Office of the Attorney General is required	\$26.00 per hour
§9-338(10)(c)	Retrieval of archived information	\$2.50 per file \$3.00 per box
§9-338(10)(c)	Expedited retrieval of archived information	Additional \$10.00 fee for delivery
§9-338(10)(c)	Where DEQ has an out-of-pocket cost	Actual cost
§9-338(10)(d)(i)	Where records are provided in the form of computer tape or disk, compact disc (CD), digital versatile disc (DVD), microfilm, or similar form	Actual cost
§9-338(10)(c)	Where copies of records are mailed or shipped	Actual cost
§9-338(10)(d)(ii)	Where DEQ has a standard charge for selling information in the form of a publication	Standard cost for selling published information

- Copies or printouts will be duplexed whenever possible and treated as a single copy for fee assessment.
- Idaho sales tax shall be assessed on copy fees and DEQ's out-of-pocket costs.
- If DEQ believes that a requester or group of requesters is attempting to break down a request into a series of requests to avoid fee assessment, DEQ will aggregate such requests to determine the total fee and charge accordingly.
- When a PRR's cumulative costs are \$10.00 or less, DEQ will forego any fee collection.