

OPEN GOVERNMENT GUIDE

Access to Public Records
and Meetings in

IDAHO

**REPORTERS
COMMITTEE**
FOR FREEDOM OF THE PRESS

Sixth Edition
2011

OPEN GOVERNMENT GUIDE

OPEN RECORDS AND MEETINGS LAWS IN

IDAHO

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**SIXTH EDITION
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Previously Titled
Tapping Officials' Secrets

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Introductory Note

The OPEN GOVERNMENT GUIDE is a comprehensive guide to open government law and practice in each of the 50 states and the District of Columbia. Fifty-one outlines detail the rights of reporters and other citizens to see information and attend meetings of state and local governments.

The OPEN GOVERNMENT GUIDE — previously published as *Tapping Officials' Secrets* — is the sole reference on open government laws in many states.

Written to follow a standard outline to allow easy comparisons between state laws, the compendium has enabled open government advocates in one state to use arguments successful in other states to enhance access rights at home. Press associations and lobbyists have been able to invoke other sunshine laws as they seek reforms in their own.

Volunteer attorneys, expert in open government laws in each state and in Washington, D.C., generously donated their time to prepare the initial outlines for the first incarnation of this project in 1989. In most states these same attorneys or their close associates updated and rewrote the outlines for the 1993, 1997, 2001 and 2006 editions as well this current 2011 edition.

Attorneys who are new to the compendium in this edition are also experts in open government and access issues, and we are grateful to them for their willingness to share in this ongoing project to create the first and only detailed treatise on state open government law. The rich knowledge and experience all the participating attorneys bring to this project make it a success.

While most of the initial users of this compendium were journalists, we know that lawyers and citizens have discovered it and find it to be indispensable as well.

At its core, participatory democracy decries locked files and closed doors. Good citizens study their governors, challenge the decisions they make and petition or vote for change when change is needed. But no citizen can carry out these responsibilities when government is secret.

Assurances of open government exist in the common law, in the first state laws after colonization, in territorial laws in the west and even in state constitutions. All states

have passed laws requiring openness, often in direct response to the scandals spawned by government secrecy. The U.S. Congress strengthened the federal Freedom of Information Act after Watergate, and many states followed suit.

States with traditionally strong access laws include Vermont, which provides virtually unfettered access on many levels; Florida, which was one of the first states to enact a sunshine law; and Ohio, whose courts have issued several access-friendly rulings. Other jurisdictions, such as Pennsylvania and the District of Columbia, have made significant changes to their respective open government laws since the fifth edition was published designed to foster greater public access to information. Historically, Pennsylvania had a reputation as being relatively non-transparent while the District of Columbia was known to have a very restrictive open meetings law.

Some public officials in state and local governments work hard to achieve and enforce open government laws. The movement toward state freedom of information compliance officers reflects a growing activism for access to information in the states.

But such official disposition toward openness is exceptional. Hardly a day goes by when we don't hear that a state or local government is trying to restrict access to records that have traditionally been public — usually because it is feared release of the records will violate someone's "privacy" or threaten our nation's security.

It is in this climate of tension between broad democratic mandates for openness and official preference for secrecy that reporters and good citizens need to garner their resources to ensure the passage and success of open government laws.

The Reporters Committee genuinely hopes that the OPEN GOVERNMENT GUIDE will help a vigorous press and citizenry to shape and achieve demands for openness, and that it will serve as a primer for those who battle in government offices and in the courts for access to records and meetings. When challenges to secrecy are successful, the news is better and so is the government.

User's Guide

Whether you are using a guide from one state to find a specific answer to an access issue, or the complete compendium encompassing all states to survey approaches to a particular aspect of open government law around the country, knowing a few basics on how the OPEN GOVERNMENT GUIDE is set up will help you to get the most out of it.

Following the outline. Every state section is based on the same standard outline. The outline is divided into two parts: access to records and access to meetings.

Start by reviewing the table of contents for each state. It includes the first two tiers of that state's outline. Once you are familiar with the structure of the outline, finding specific information is simple. Typically, the outline begins by describing the general structure of the state law, then provides detailed topical listings explaining access policies for specific kinds of records or meetings.

Every state outline follows the standard outline, but there will be some variations. Some contributors added items within the outline, or omitted subpoints found in the complete outline which were not relevant to that state's law. Each change was made to fit the needs of a particular state's laws and practices.

In general, outline points that appear in boldface type are part of the standard outline, while additional topics will appear in italicized type.

Whether you are using one state outline or any number of outlines, we think you will find the outline form helpful in finding specific information quickly without having to read an entire statute or search through many court cases. But when you do need to consult statutes, you will find the complete text of the relevant portions at the end of each outline.

Additional copies of individual state booklets, or of the compendium covering the 50 states and the District of Columbia, can be ordered from The Reporters Committee for Freedom of the Press, 1101 Wilson Blvd., Suite 1100, Arlington, Virginia 22209, or by calling (703) 807-2100. The compendium is available in electronic format on CD.

The state outlines also are available on our World-Wide Web site, www.rcfp.org/ogg. The Internet version of the outlines allows you to search the database and compare the law in different states.

Updates: The Reporters Committee published new editions of THE OPEN GOVERNMENT GUIDE in 1989, 1993, 1997, 2001, 2006, and now in 2011. We expect future updates to follow on approximately the same schedule. If we become aware of mistakes or material omissions in this work, we will post notices on this project's page on our World-Wide Web site, at www.rcfp.org/ogg. This does not mean that the outlines will constantly be updated on the site — it simply means known errors will be corrected there.

For our many readers who are not lawyers: This book is designed to help journalists, lawyers, and citizens understand and use state open records and meetings law. Although the guides were written by lawyers, they are designed to be useful to and readable by nonlawyers as well. However, some of the elements of legal writing may be unfamiliar to lay readers. A quick overview of some of these customs should suffice to help you over any hurdles.

Lawyers are trained to give a "legal citation" for most statements of law. The name of a court case or number of a statute may therefore be tacked on to the end of a sentence. This may look like a sentence fragment, or may leave you wondering if some information about that case was omitted. Nothing was left out; inclusion of a legal citation provides a reference to the case or statute supporting the statement and provides a shorthand method of identifying that authority, should you need to locate it.

Legal citation form also indicates where the law can be found in official reporters or other legal digests. Typically, a cite to a court case will be followed by the volume and page numbers of a legal reporter. Most state cases will be found in the state reporter, a larger regional reporter, or both. A case cite reading 123 A.2d 456 means the case could be found in the Atlantic (regional) reporter, second series, volume 123, starting at page 456.

Note that the complete citation for a case is often given only once. We have tried to eliminate as many cryptic second-reference cites as possible, but you may encounter cites like "Jackson at 321." This means that the author is referring you to page 321 of a case cited earlier that includes the name Jackson. Authors may also use the words *supra* or *infra* to refer to a discussion of a case appearing earlier or later in the outline, respectively.

Except for these legal citation forms, most "legalese" has been avoided. We hope this will make this guide more accessible to everyone.

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FOREWORD*Open records.*

In 1990, the Idaho Legislature passed a comprehensive new public records act. See Idaho Code § 9-337 through 9-348 (1990). This act created for the first time in Idaho a definitive procedure for making requests to inspect and copy public records and at the same time placed specific responsibilities on governmental agencies for responding to such requests. In addition, the act defined the universe of public records in a broad, encompassing manner, thus making clear that the records of government at every level in Idaho and in every type of cooperative and “intergovernmental” activity are subject to public view unless specifically exempted by statute.

As in other states, the Idaho Legislature determined that some types of public records should not be available for public inspection and copying because, in the legislature’s view, the type of information contained in the records was inherently personal and private in nature, or involved proprietary business information or was similarly best left confidential. However, rather than follow the federal Freedom of Information Act model in which a small number of exemptions are loosely defined, with the parameters of the exemptions left to agency regulations and judicial interpretation, the Idaho legislature chose to identify the actual types of records exempt from public disclosure with a greater degree of specificity. In addition, in nearly all instances, the legislature specifically refused to give government agencies the power to exempt public records from public view by rule making. In attempting to draw more black and white lines, instead of fewer gray lines, the legislature hoped to reduce the number of disputes over public records. This approach is particularly appropriate in Idaho, which has a small population and thus can only expect infrequent judicial interpretations of the open records statutes.

Revisions have occurred and numerous exemptions have been added or amended since 1990. Those revisions and exemptions are discussed *infra*. Additionally, the Idaho Supreme Court has addressed the Public Records Act at least four times.

First, in *Federated Publications Inc. v. Boise City*, 128 Idaho 459, 915 P.2d 21 (1996), the Idaho Supreme Court considered whether names and resumes of applicants for an appointment to a vacancy on the city council were subject to disclosure under the public records law. The court held that the term “applicant” in the provision of the public records law exempting from disclosure certain personnel information refers to an applicant for a position as a public employee, and does not apply to applicants to be a public official. Therefore, resumes and names of applicants for public office were held to be open to the public. The court also addressed whether records of an administrative review of a police shooting incident is exempt from public disclosure. The administrative review consisted of a review of policies and training, completeness of internal discipline procedures, and whether there had been a violation of the law. The court held that the records from such a review were open to the public and not exempt from disclosure as a personnel record. *Id.*

Second, in *Idaho Conservation League, Inc. v. Idaho State Department of Agriculture*, 143 Idaho 366, 146 P.3d 632 (2006), the Idaho Supreme Court rejected arguments that documents previously submitted to a state agency and then returned to their owner were not subject to disclosure under the public records act because the state agency no

longer had possession of such records. The court found that that fact that a state agency no longer had possession of a document was irrelevant to the question of whether such record was a public record and that such an argument was inconsistent with the purpose of the public records act. To that end, the court awarded ICL its attorneys fees on appeal because it found the state agency’s position on appeal to be “frivolously pursued” pursuant to Idaho Code § 9-344(2).

Third, in *Cowles Publishing Co. v. Kootenai Co. Bd. of Co. Commissioners*, 144 Idaho 259, 159 P.3d 896 (2007), the Idaho Supreme Court considered whether a series of e-mail messages of a personal nature exchanged between an elected public official and a public employee were public records subject to disclosure. The public employee claimed that the e-mail messages were not public records and, if they were, they were exempt from disclosure as a personnel record under Idaho Code § 9-340C(1). The court rejected each of these arguments. The court began its analysis by noting that “a record may be a public record if it is a writing that (1) contains information relating to the conduct or administration of the public’s business, and (2) was prepared, owned, used or retained by a governmental agency.” *Id.*, 144 Idaho at 263. The court found that the e-mail messages satisfied each of these prongs. Next, the court considered the personnel records exemption of 9-340C(1) and held that “although the [e-mail messages] may be a form of correspondence, they are not the type of correspondence the legislature meant to exempt in Idaho Code § 9-340C(1).” *Id.*, 144 Idaho at 264-265. As such, the e-mail messages were ordered to be released. The court also considered whether an associated settlement agreement should be released under the Public Records Act. Applying Idaho Code § 9-340D(11), the court held that only the statistical data and actual amounts paid are public records, and any other information contained in the settlement agreement is exempt from disclosure.

The fourth and final decision from the Idaho Supreme Court to address the Public Records Act is *Ward v. Portneuf Medical Center, Inc.*, 2011 WL 310383 (Feb. 2., 2011 Idaho). In *Ward*, an individual made a public records request to his local public hospital for copies of all contracts entered into between the hospital and any doctor. This request was denied. Thereafter, the public hospital was sold to a private entity and the new entity objected to producing the requested documents claiming it was not subject to the Public Records Act. On appeal, the Idaho Supreme Court held that “[t]he determination of whether a document qualifies as a public record is based on the content of the document and surrounding circumstances as they existed at the time the request was made.” *Id.*, 2011 WL at *3. Moreover, pursuant to Idaho Code § 9-343(2), a public agency is required to maintain all documents or records requested until an appeal ends and cannot alter the status of a public record by transferring the record outside the ambit of its control. Accordingly, the hospital was ordered to produce the requested documents.

Today’s Idaho Public Records Act represents a comprehensive statutory treatment of an important tool of public knowledge about the workings of government. The act opens many doors and file drawers which previously had been opened only at the whim and caprice of public officials. However, the omnipresent tension between public inquiry and the inner workings of government has brought efforts to weaken the public records statutes, many of which have unfortunately been successfully pursued.

Meetings.

Idaho’s original Open Meeting Law, Idaho Code § 67-2340 through 67-2347 (1974), was weakened by a series of appellate judicial decisions in the late 1970s and early 1980s. Whether it was as a result of those decisions or in continuation of prior practice, the Open Meeting Law was ignored routinely by governmental bodies, mostly local, across Idaho. As a result, media groups made repeated efforts to obtain legislative amendment of the Open Meeting Law.

In 1992, media groups were finally successful in pushing for reform of the Idaho Open Meeting Law. Amendments passed during the 1992 legislative session imposed strict new meeting notice requirements

upon public bodies, assigned specific responsibility to county prosecutors and the state attorney general's office for prosecuting violations of the law and provided civil penalties for knowing violations of the law by members of public bodies subject to the law.

The 1992 notice requirements give much more detailed information about agenda topics than was the case under prior law. Deliberations as well as decisions must take place in open meetings. Further amendments were passed in 1998 clarifying the requirements for open public meetings and executive sessions.

The Idaho Supreme Court has considered the application of the Open Meeting Law at least three times in the past few years. First, in *State v. Yzaguirre*, 144 Idaho 471, 163 P.3d 1183 (2007), the Idaho Supreme Court considered the contours of the "litigation exception" to the Open Meeting Law in I.C. § 67-2345(1)(f) [which has since been amended]. The court held that the presence of counsel was irrelevant to the application of the litigation exception; what was important was whether a public agency was meeting to discuss "probable litigation." The court also held that the law's requirement that "written minutes" of all meetings be kept under I.C. § 67-2344(1) did not include a requirement that an audio recording of the meeting take place. Finally, the court held that county commissioners could not be subject to the civil penalties of I.C. § 67-2347(2) for violations of the Open Meeting Law unless they knew they were not in compliance with the law.

Second, in *Safe Air for Everyone v. Idaho State Department of Agriculture, et al*, 145 Idaho 164, 177 P.3d 378 (2008), the Idaho Supreme Court was asked to consider whether the Open Meetings Act applied when Department of Agriculture employees attended an intergovernmental meeting to discuss issues related to crop residue burning. After noting that the crop residue disposal program was not a subagency of the Department of Agriculture, the court turned its attention to the definition of "governing body" under I.C. § 67-2341(5). The court held that a "governing body" must have "the authority to make decisions for or recommendations to a public agency regarding any matter." *Id.* Since the employees at issue did not have "the authority" to make decisions for or recommendation to the Department of Agriculture, they did not constitute members of a "governing body" subject to the requirements of the Open Meetings Act. "The legislature has required that various bodies and commission transact business at a meeting where a quorum is present. It has not imposed that requirement upon groups of public employees." *Safe Air for Everyone*, 145 Idaho at 168 (internal citations omitted).

Third, in *Noble v. Kootenai County*, 148 Idaho 937, 231 P.3d 1034 (2010), the Idaho Supreme Court held that a site visit by a county commission to a property that was the subject of the landowners' subdivision application violated I.C. § 67-2342's requirement that "all meetings of a governing body of a public agency shall be open to the public and persons shall be permitted to attend any meeting except as otherwise provided by this act." The court found that the commission made it "practically impossible for the public to be present while the visit was conducted" in that it did not allow the public "to get close enough to the hearing body to hear what is being said" and "precluded the public from even listening to the hearing." *Id.*, 148 Idaho at 943.

In 2008, the Idaho Attorney General issued an opinion on the application of the executive session exceptions set forth I.C. § 67-2345 indicating that such exceptions "should be interpreted narrowly in order to fulfill the broad public purpose of allowing citizens to observe their governments at work." 2008 Idaho Op. Atty. Gen 42, Idaho Op. Atty. Gen. No. 08-3, 2008 WL 4360202 (Idaho). The opinion continues: "Violation of the OMA should be avoided whenever possible. If an entity is in doubt as to the propriety of an executive session, the doubt should be resolved in favor of openness. If a violation occurs, the entity should acknowledge the violation as soon as possible and take the appropriate steps to correct the violation, even if that means holding the entire meeting *de novo* and as if the prior improper meeting never occurred." *Id.* at *5.

Open Records

I. STATUTE — BASIC APPLICATION

A. Who can request records?

1. Status of requestor.

Any person can make a request for access to public records. Idaho Code § 9-338(1). A "person" is broadly defined to mean "any natural person, corporation, partnership, firm, association, joint venture, state or local agency or any other recognized legal entity." Idaho Code § 9-337(9). There is no distinction made between citizens of the State of Idaho and others, nor is there any distinction noted between citizens of the U.S. and other countries. Any person who makes a request for access to a public record is permitted to examine and copy such record. The custodian of the records may require written requests and that the requester provide their name, a mailing address and telephone number. Idaho Code § 9-338(4). In practice, larger local and state agencies routinely require written requests on forms provided by the agency.

2. Purpose of request.

A person need not state a purpose for a request for public records. Furthermore, the statute prohibits public agencies from inquiring as to why a person wants to a public record, "except to verify the identity of the person requesting a record . . . to ensure that the requested record or information will not be used for purposes of a mailing or telephone list prohibited by section 9-348, Idaho Code, or as otherwise provided by law." Idaho Code § 9-338(4).

3. Use of records.

The Idaho Public Records Act generally prohibits sale or distribution of information contained in public records for use as a mailing or telephone number list. Idaho Code § 9-348(1). Accordingly, some agencies will require the requester to state that the records are not being sought for such a purpose.

B. Whose records are and are not subject to the act?

The definition of "public record" makes reference to state and local agencies. Idaho Code § 9-337(13). A "state agency" includes "every state officer, department, division, bureau, commission and board or any committee of a state agency including those in the legislative or judicial branch, except the state militia." Idaho Code § 9-337(14). A "local agency" includes "a county, city, school district, municipal corporation, district, public health district, political subdivision, or any agency thereof, or any committee of a local agency, or any combination thereof." Idaho Code § 9-337(8).

1. Executive branch.

The definition of "state agency" includes the executive branch, with the single exception of the state militia. Idaho Code § 9-337(14). In addition, the act defines "public official" as "any state, county, local district, independent public body corporate and politic or governmental official or employee, whether elected, appointed or hired." Idaho Code § 9-337(12).

a. Records of the executives themselves.

As all officers of the executive branch are included in the definition of state agency and public official, all records maintained by public officers in the executive branch in connection with their official functions are accessible to the public. This seeming "open door" to the governor's files has never been expressly tested, however.

2. Legislative bodies.

The definition of "state agency" in the Public Records Act also includes all legislative bodies. Idaho Code § 9-337(14). The records maintained by officers of all legislative bodies, except as expressly provided otherwise by law, are open to the public.

3. Courts.

The judiciary is included within the Idaho Public Records Act. The statute specifically provides that officers of the court and all related judicial bodies are subject to the provisions of the Act. Idaho Code § 9-337(14). However, the act delegates to the judiciary the task of specifying by rule those judicial proceeding records that are exempt from public inspection (except where such information is necessary for a background check on an individual that is required by federal law regulating the sale of firearms, guns or ammunition). Idaho Code § 9-340A(2). See Rule 32 of the Idaho Court Administrative Rules (ICAR) for specific exemptions identified by the judicial branch.

4. Nongovernmental bodies.

a. Bodies receiving public funds or benefits.

There have been no reported decisions on the applicability of the Idaho Public Records Act to such bodies. To the extent that such bodies meet the broad definition of either a “state agency” or “local agency,” their records would be considered “public records” under the act.

b. Bodies whose members include governmental officials.

There have been no reported decisions on the applicability of the Idaho Public Records Act to such bodies. To the extent that such bodies meet the broad definition of either a “state agency” or “local agency,” their records would be considered “public records” under the act.

5. Multi-state or regional bodies.

There have been no reported decisions on the applicability of the Idaho Public Records Act to such bodies. To the extent that such bodies meet the broad definition of either a “state agency” or “local agency,” their records would be considered “public records” under the act.

6. Advisory boards and commissions, quasi-governmental entities.

There have been no reported decisions on the applicability of the Idaho Public Records Act to such bodies. To the extent that such bodies meet the broad definition of either a “state agency” or “local agency,” their records would be considered “public records” under the act.

C. What records are and are not subject to the act?

1. What kind of records are covered?

Public records include but are not limited to “any writing containing information relating to the conduct or administration of the public’s business prepared, owned, used or retained by any state agency, independent public body corporate and politic or local agency regardless of physical form or characteristics.” Idaho Code § 9-337(13). A “writing” is defined to include but not be limited to “handwriting, typewriting, printing, photostating, photographing and every means of recording, including letters, words, pictures, sounds or symbols or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums or other documents.” Idaho Code § 9-337(15).

2. What physical form of records are covered?

There is no apparent limitation on the physical form of records covered by the Act.

3. Are certain records available for inspection but not copying?

The Idaho Public Records Act provides that a person can inspect and take a copy of any public record. Idaho Code § 9-338(1). Both “inspect” and “copy” are defined terms in the statute. Idaho Code § 9-337(2); (5). A person can copy a record by handwriting, photocopying, duplicating machine and reproducing a public record by any other means so long as the record is not altered or damaged. Idaho Code § 9-337(2). “Inspect” is defined as “the right to listen, view and make

notes of public records as long as the public record is not altered or damaged.” Idaho Code § 9-337(5).

D. Fee provisions or practices.

In most instances, the labor and administrative expense of allowing examination and copying of records is considered part of the public business already funded by taxpayers.

1. Levels or limitations on fees.

Idaho Code § 9-338(8)(a) dictates that any fees charged for copying a public record cannot exceed “the actual cost to the agency of copying the record.” The public agency may establish fees to cover the actual labor costs associated with locating and copying documents if “(1) the request is for more than 100 pages of paper records; or (2) the request includes records from which nonpublic information must be deleted, or (3) that actual labor associated with locating and copying documents for the request exceeds two (2) person hours.” Idaho Code § 9-338(8)(a)(i)-(iii).

2. Particular fee specifications or provisions.

a. Search.

The public agency may establish fees to cover the actual labor costs associated with locating and copying documents if “(1) the request is for more than 100 pages of paper records; or (2) the request includes records from which nonpublic information must be deleted, or (3) that actual labor associated with locating and copying documents for the request exceeds two (2) person hours.” Idaho Code § 9-338(8)(a)(i)-(iii).

b. Duplication.

The act provides that any fees charged for copying a public record cannot exceed “the actual cost to the agency of copying the record if another fee is not otherwise provided by law.” Idaho Code § 9-338(8).

c. Other.

The public agency or independent public official may charge a fee for providing a duplicate of a computer tape, computer disk, microfilm or similar record system containing public record information. Idaho Code § 9-338(8)(b). This fee must be uniform to all persons and cannot exceed the sum of the agency’s direct cost of copying the information in that form, the standard cost for selling the same information in the form of a publication and 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. Idaho Code § 9-338(b)(i)-(iii). The custodian of these public records may require advance payment for the cost of copying the records in this form. *Id.*

3. Provisions for fee waivers.

The act provides that a public agency “may not charge any costs or fee for copies or labor” when the requester has demonstrated an inability to pay or it is in the public’s interest or public’s understanding of the operations or activities of the government or its records would suffer by an assessment or collection of a fee. Idaho Code § 9-338(8)(c).

4. Requirements or prohibitions regarding advance payment.

Requiring the advance payment of copy costs is permissible under the law. Idaho Code § 9-338(8)(b).

5. Have agencies imposed prohibitive fees to discourage requesters?

The public agency is prohibited from imposing fees above the actual cost to the agency of copying the record “if another fee is not otherwise provided by law.” Idaho Code § 9-338(8)(a). Additionally, the public agency is prohibited from imposing a fee for copying computer records above the agency’s direct cost and the standard cost for selling the information in the form of a publication. *Id.* However, as set forth

above, agencies may establish fees to cover the actual labor costs under certain circumstances. See Section D.1. above.

E. Who enforces the act?

The act provides that the “sole remedy for a person aggrieved by the denial of a request for disclosure” is to file an action in the district court where the records are located. Idaho Code § 9-343(1). Thus, the act is enforced through private enforcement.

1. Attorney General’s role.

Given that the act only provides for private enforcement, the attorney general’s role is limited to providing information to the public, not enforcement. To that end, the attorney general’s office publishes an “Idaho Public Records Law Manual” to inform the public of their rights under the act. Copies of the manual are available from the Office of the Attorney General in Boise or online at www2.state.id.us/ag/manuals/index.htm. The attorney general also encourages compliance by state agencies and officials and conducts training on the act throughout the state for such individuals and entities.

2. Availability of an ombudsman.

The Act does not provide for an ombudsman or similar role to assist in the enforcement of its provisions.

3. Commission or agency enforcement.

Not available.

F. Are there sanctions for noncompliance?

Idaho Code § 9-344(2) provides that, in any action to enforce the provisions of the Idaho Public Records Act, a “Court shall award reasonable costs and attorney fees to the prevailing party or parties, if it finds that the request or refusal to provide records was frivolously pursued.” In addition, the Act provides that a court may assess a civil penalty of up to \$1,000 against any public official who it finds “has deliberately and in bad faith improperly refused a legitimate request for inspection and copying.” Idaho Code § 9-345.

II. EXEMPTIONS AND OTHER LEGAL LIMITATIONS

All public records are subject to inspection and copying unless otherwise expressly provided by statute. Idaho Code § 9-338(1). Idaho has listed actual types of records exempt from public disclosure.

A. Exemptions in the open records statute.

1. Character of exemptions.

a. General or specific?

The exemptions contained in the Idaho Public Records Law are specific. Idaho Code § 9-340A-H details each exemption.

b. Mandatory or discretionary?

Generally these exemptions are mandatory; however, there are a few which are discretionary or can be waived.

Importantly, the public records act was crafted to encourage the release of a public record even in those cases in which it may be a close call as to whether the public record is exempt from public disclosure. If the record is released “in good faith in attempting to comply” with the public records act, then the public agency, public official or custodian involved is immune from any claim for loss or damage based upon the release of the record. Idaho Code § 9-346. In actual practice, despite this protection some agencies remain concerned about possible liability for release of their records and make decisions to deny disclosure that appear to be influenced by such a concern.

c. Patterned after federal Freedom of Information Act?

Only Idaho’s police investigatory record statute, Idaho Code § 9-335, patterned after Exemption 7 of the federal Freedom of Infor-

mation Act, is specifically based upon a federal statute.

2. Discussion of each exemption.

These are the specific exemptions as detailed in Idaho Code § 9-340A-H (including reference to law enforcement records in Idaho Code § 9-335):

(1) Investigatory records compiled for law enforcement purposes by a law enforcement agency. However, this exemption from disclosure applies only to the extent that the production of such records would:

(a) Interfere with enforcement proceedings;

(b) Deprive a person of a right to a fair trial or an impartial adjudication;

(c) Constitute an unwarranted invasion of personal privacy;

(d) Disclose the identity of a confidential source or confidential information furnished only by a confidential source;

(e) Disclose investigative techniques and procedures; or

(f) Endanger the life or physical safety of law enforcement personnel. Idaho Code § 9-335(1).

(2) Any public record exempt from disclosure by federal or state law or federal regulations to the extent specifically provided for by such law or regulation. Idaho Code § 9-340A(1).

(3) Records contained in Court files or judicial proceedings whose disclosure is prohibited by the rules adopted by the Idaho Supreme Court and any drafts or any working memoranda related to judicial decision making. However, this exemption does not apply to the extent that such records or information are necessary for a background check required by federal law regulating the sale of firearms, guns, or ammunition. Idaho Code § 9-340A(2).

(4) Investigatory records of law enforcement agency as defined in Idaho Code § 9-337(7) under the conditions set forth in Idaho Code § 9-335. Idaho Code § 9-340B(1).

(5) Juvenile records, except that facts contained in such records shall be furnished upon request in a manner determined by the Court to persons in governmental and private agencies and institutions conducting pertinent research studies having a legitimate interest in protection, welfare and treatment of juvenile who is 13 years of age or younger. If the juvenile is charged with the offense which would be a criminal offense if committed by an adult, the name, offense of which the juvenile is petitioned or charged and the disposition of the Court shall be subject to disclosure as provided in Idaho Code § 20-525. Additionally, any facts requested by a school district where the juvenile is enrolled or seeking enrollment shall be furnished. Idaho Code § 9-340B(2).

(6) Records of the custody review board of the Idaho department of juvenile corrections, including records containing the names, addresses and written statements of victims and family members of juveniles. Idaho Code § 9-340B(3).

(7) Any records of the department of corrections which the public interest in confidentiality, public safety, security and habitation clearly outweighs the public interest in disclosure (9-340B(4)(a)(i)), records that contain any identifying information, or any information that would lead to the identification of any victims or witnesses (9-340B(4)(a)(ii)), records that reflect future transportation or movement of a prisoner (9-340B(4)(a)(iii)), records gathered during the course of the presentence investigation, and records of a prisoner or probationer shall not be disclosed to any other prisoner or probationer, and are exempt from disclosure. Idaho Code § 9-340B(a)(v). Records of buildings, facilities, infrastructure and systems held by or in the custody of any public agency are exempt if the disclosure of such information would jeopardize the safety or persons or the public safety. Idaho Code § 9-340B(4)(b). Records of commissions or pardons and parole,

along with names, addresses and written statements of victims are not disclosable. Idaho Code § 9-340B(4)(c).

(8) Voting records of the sexual offender classification board. However, the written record of the vote to classify an offender as a violent sexual predator by each board member and each case reviewed by that board member shall be made available upon request only to the Governor, chairman of the Senate Judiciary and Rules Committee, and the chairman of the House of Representatives Judiciary, Rules and Administration Committee. Idaho Code § 9-340B(5).

(9) Records of the sheriff or Idaho State Police received or maintained pursuant to Idaho Code § 18-3302 relating to an applicant or licensee. Idaho Code § 9-340B(6).

(10) Records of investigations prepared by the Department of Health and Welfare dealing with protection of children, rehabilitation of youth, adoptions and commitment of mentally ill persons. Idaho Code § 9-340B(7).

(11) Records including, but not limited to, investigative reports resulting from investigations conducted by the Idaho human rights commission, unless the public interest in allowing the inspection and copying of such records outweighs the legitimate public or private interests in maintaining confidentiality of such records. However, a person may inspect and copy documents from an investigative file to which he or she is a named party if such documents are not otherwise prohibited from disclosure by federal or state law regulation. Idaho Code § 9-340B(8).

(12) Records containing information obtained by the manager of the Idaho State Insurance Fund pursuant to chapter 9, title 72, Idaho Code, from or on behalf of employers or employees contained in underwriting in claims for benefit files. Idaho Code § 9-340B(9).

(13) Worker's compensation records of the Idaho industrial commission provided that the industrial commission shall make such records available:

(a) To parties in any worker's compensation claim and to the Industrial Special Indemnity Fund of Idaho; or

(b) To employers or prospective employers subject to the provisions of the Americans with Disabilities Act or other statutory limitations; or

(c) To employers or prospective employers not subject to provisions of the Americans with Disabilities Act or other statutory limitations, provided the employer presents written authorization from the person to whom the records pertain; or

(d) To others who demonstrate the public interest in allowing inspection and copying of such records outweighs the public or private interest in maintaining the confidentiality of such records, determined by a civil Court of competent jurisdiction; or

(e) Although a claimant's records maintained by the industrial commission are exempt, the quoting or discussing of medical or rehabilitative records contained within the industrial commission's records during hearing or in a written decision shall be permitted except that that true identities of the parties shall be exempt. Idaho Code § 9-340B(10)(a)-(e).

(14) Records of investigations compiled by the Commission on Aging involving vulnerable adults alleged to be abused neglected or exploited. Idaho Code § 9-340B(11).

(15) Criminal history records and fingerprints compiled by the Idaho State Police. However, these records shall be released in accordance with Idaho Code § 67-300. Idaho Code § 9-340B(12).

(16) Records furnished or obtained pursuant to Idaho Code § 41-1019 regarding termination of an appointment, employment, contract

or other insurance business relationship between an insurer and a producer. Idaho Code § 9-340B(13).

(17) Records of a prisoner or former prisoner in the custody of any state or local correctional facility, when the request is made by another prisoner in the custody of any state or local correctional facility. Idaho Code § 9-340B(14). [Note: this exemption appears to duplicate, in large part, the exemption found in Idaho Code § 9-340B(4)(a)(v).]

(18) Except as provided in Idaho Code § 72-1007, records of the Idaho industrial commission relating to compensation for crime victims under chapter 10, title 72, Idaho Code. Idaho Code § 9-340B(15).

(19) Records or information identifying a complainant maintained by the Department of Health and Welfare pursuant to section 39-3556, Idaho Code, relating to certified family homes, unless the complainant consents in writing to the disclosure or disclosure of complainant's identity is required in any administrative or judicial proceeding. Idaho Code § 9-340B(16).

(20) All personnel records of a current or former public official other than a public official's public service or employment history, classification, longevity, gross salary and salary history, status, workplace and employing agency. However, a public official or authorized representative may inspect and copy his or her personnel records except for material used to screen and test for employment. Idaho Code § 9-340C(1).

(21) Retired employees and retired public official's home addresses, home telephone numbers and other financial and non-financial membership records; active and inactive member, financial and membership records and mortgage portfolio loan documents maintained by the Public Employee Retirement System. Financial statements prepared by the retirement system staff, funding agents and custodians concerning the investment of assets that Public Employees Retirement System of Idaho are not considered confidential under this act. Idaho Code § 9-340C(2).

(22) Information and records submitted to the Idaho State Lottery for the performance of background investigations of employees, lottery retailers and major procurement contractors; validation and security tests of the state lottery for lottery games; business records and information submitted and documents and information obtained and held for the purpose of lottery security investigative action as determined by lottery rules, unless the public interest substantially outweighs the private need for protection from public disclosure. Idaho Code § 9-340C(3).

(23) Records of a personal debt filed with a public agency or independent public body; personal bank records compiled by a public depositor for the purpose of public funds transactions; records of ownership or financial obligations and instruments of a public agency or independent public body, such as bonds, compiled by public agency or independent public body; records, with regard to ownership of, and for security interest in, registered public obligations; vital statistic records; and military records as described in Idaho Code § 65-301. Idaho Code § 9-340C(4)(a)-(f).

(24) Information in an income or other tax return measured by items of income or sales, which is gathered by a public agency for the purpose of administering the tax, except such information to the extent disclosed in a written decision of the Tax Commission pursuant to a taxpayer protest of a deficiency determination by the Tax Commission under the provisions of Idaho Code § 63-3045B. Idaho Code § 9-340C(5).

(25) Records of a personal nature related directly or indirectly to the application for and provision of state statutory services rendered to persons applying for public care for the elderly, indigent, or mentally or physically handicapped, or participation in an environmental or a public health study. However, this exemption shall not apply to the extent that such records or information are necessary for a background check required by federal law regulating the sale of firearms, guns or

ammunition. Idaho Code § 9-340C(6).

(26) Employment security information and unemployment insurance benefits except when all interested parties waive the exemption. Idaho Code § 9-340C(7).

(27) Any personal records, other than names, business addresses and business phone numbers, such as parentage, race, religion, sex, height, weight, tax identification and Social Security numbers, financial worth or medical conditions submitted to any public agency or independent public body, pursuant to a statutory requirement for licensing, certification, permit or bonding. Idaho Code § 9-340C(8).

(28) Information obtained as part of an inquiry into a person's fitness to be granted or retain a license, certificate, permit, privilege, or commission or position, private association or peer review committee records, unless provided by agency rule. Idaho Code § 9-340C(9).

(29) The records, findings, determinations and decisions of any pre-litigation screening panel formed under chapter 10 and 23, title 6, Idaho Code. Idaho Code § 9-340C(10).

(30) Complaints received by the Board of Medicine and investigations and informal proceedings, including informal proceedings of any committee of the Board of Medicine. Idaho Code § 9-340C(11).

(31) Records of the Department of Health and Welfare or public health district that identify a person infected with a reportable disease. Idaho Code § 9-340C(12).

(32) Records of hospital care, medical records, including prescriptions, drug orders, records or any other prescription information that specifically identifies an individual patient, or records of psychiatric care or treatment and professional counseling records relating to an individual condition, diagnosis, care or treatment. However, this exemption does not apply to records or information necessary for a background check required by federal law regulating the sale of firearms, guns or ammunition. Idaho Code § 9-340C(13).

(33) Information collected pursuant to the Directory of New Hires Act, chapter 16, title 72, Idaho Code. Idaho Code § 9-340C(14).

(34) Personal information contained in motor vehicle and driver records that is exempt from disclosure under the provisions of Idaho Code § 49-200. Idaho Code § 9-340C(15).

(35) Records of the financial status of prisoners. Idaho Code § 9-340C(16).

(36) Records of Idaho State Police or Department of Correction relating to DNA databases and databanks. Idaho Code § 9-340C(17).

(37) Records of the Department of Health and Welfare relating to a survey, resurvey or complaint investigation of a licensed nursing facility. However, such records shall be subject to disclosure as soon as the facility in question has received the report, and no later than the fourteenth day following the date that the Department of Health and Welfare representatives officially exit the facility pursuant to federal regulations. However, no records shall be released under this section that specifically identify any nursing facility resident. Idaho Code § 9-340C(18).

(38) Records and information contained in the registry of immunizations against childhood diseases maintained in the Department of Health and Welfare, including information disseminated to others from the registry by the Department of Health and Welfare. Idaho Code § 9-340C(19).

(39) Records of the Idaho Housing and Finance Association ("IHFA") relating to the following:

(a) Records containing personal, financial, family, health or similar personal information submitted to or otherwise obtained by the IHFA;

(b) Records submitted to or otherwise obtained by the

IHFA with regard to obtaining and serving mortgage loans and all records related to the review, approval or rejection by the IHFA of said loans;

(c) Mortgage portfolio loan documents;

(d) Records of a current or former employee other than the employee's duration of employment with an association, position held and location of employment. Idaho Code § 9-340C(20).

(40) Records of the Department of Health and Welfare related to child support services in cases in which there is reasonable evidence of domestic violence that could be used to locate any individuals in this child support case. However, there is an exception for records produced in response to a Court order. Idaho Code § 9-340C(21).

(41) Records of the Idaho state bar lawyer's assistance program pursuant to chapter 49, title 54, Idaho Code, unless a participant in the program authorizes the release pursuant to subsection (4) of section 54-4901, Idaho Code. Idaho Code § 9-340C(22).

(42) Records and information contained in the trauma registry created by chapter 20, title 57, Idaho Code, together with any reports, analyses and compilations created from such information and records. Idaho Code § 9-340C(23).

(43) Records contained in the Court files, or other records prepared as part of the proceedings for judicial authorization of sterilization procedure pursuant to chapter 39, title 39, Idaho Code. Idaho Code § 9-340C(24).

(44) The physical voter registration card on file in the county clerk's office; however, a redacted copy of said card shall be made available consistent with the requirements of this section. Information from the voter registration card maintained in the statewide voter registration database, including age, will be made available except for the voter's driver's license number, date of birth and, upon showing of good cause by the voter to the county clerk in consultation with the county prosecuting attorney, the physical residence address of the voter. For the purposes of this subsection good cause shall include the protection of life and property and protection of victims of domestic violence and similar crimes. Idaho Code § 9-340C(25).

(45) File numbers, passwords and information in the files of the health care directive registry maintained by the secretary of state under section 39-4515, Idaho Code, are confidential and shall not be disclosed to any person other than to the person who executed the health care directive or the revocation thereof and that person's legal representatives, to the person who registered the health care directive or revocation thereof, and to physicians, hospitals, medical personnel, nursing homes, and other persons who have been granted file number and password access to the documents within that specific file. Idaho Code § 9-340C(26).

(46) Records in an address confidentiality program participant's file as provided for in chapter 57, title 19, Idaho Code, other than the address designated by the secretary of state, except under the following circumstances:

(a) If requested by a law enforcement agency, to the law enforcement agency; or

(b) If directed by a Court order, to a person identified in the order. Idaho Code § 9-340C(27).

(47) Except as otherwise provided by law relating to the release of information to a governmental entity or law enforcement agency, any personal information including, but not limited to, names, personal and business addresses and phone numbers, sex, height, weight, date of birth, social security and driver's license numbers, or any other identifying numbers and/or information related to any Idaho fish and game licenses, permits and tags unless written consent is obtained

from the affected person. Idaho Code § 9-340C(28).

(48) Documents and records related to continuing education and recordkeeping violations that are maintained by the Idaho board of veterinary medicine under the provisions of section 54-2118(1)(b), Idaho Code, provided the requirements set forth therein are met. Idaho Code § 9-340C[29](28).

(49) Trade secrets, including those contained in response to public agency requests for proposal, requests for clarification, requests for information and similar requests. “Trade secrets” means information, including a formula, pattern, compilation, program, computer program, device, method, technique, process or unpublished or in progress research that:

(a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; and

(b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. Idaho Code § 9-340D(1).

(50) Production records, housing production, rental and financing records, sale or purchase records, catch records, mortgage portfolio loan documents, or similar business records of a private concern or enterprise required by law to be submitted to or inspected by a public agency or submitted to or otherwise obtained by an independent public body. Idaho Code § 9-340D(2).

(51) Records relating to the appraisal of real property, timber or mineral body rights prior to its acquisition, sale, or lease by a public agency or independent public body. Idaho Code § 9-340D(3).

(52) Any estimate prepared by a public agency or independent public body that details the cost of a public project until such time as disclosed or bids are opened, or upon award of the contract for construction of the public project. Idaho Code § 9-340D(4).

(53) Examination, operating or condition reports and all documents relating thereto, prepared by or supplied to any public agency or independent public body responsible for the regulation or supervision of financial institutions including but not limited to banks, savings and loan associations, regulated lenders, business industrial development corporations, credit unions, and insurance companies, or for the regulation or supervision of the issuance of securities. Idaho Code § 9-340D(5).

(54) Records gathered by a local agency or the Idaho Department of Commerce for the specific purpose of assisting a person to locate, maintain, invest in, or expand business operations in the State of Idaho. Idaho Code § 9-340D(6).

(55) Shipping and marketing records of commodity commissions used to evaluate marketing and advertising strategies and the names and addresses of growers and shippers maintained by commodity commissions. Idaho Code § 9-340D(7).

(56) Financial statements, business information, and reports submitted by a legal entity to a port district in connection with a business agreement, or with a development proposal or with a financing application for any industrial, manufacturing, or other business activity within a port district. Idaho Code § 9-340D(8).

(57) Names and addresses of seed companies, seed crop growers, seed crop consignees, locations of seed crop fields, variety, name and acreage by variety. However, if the seed crop has been identified as diseased or has been otherwise identified by the Idaho Department of Agriculture, other state departments of agriculture, or the United States Department of Agriculture to represent a threat to that particular state or commercial crop industry or to the individual growers, test results, location, acreage involved and disease symptoms of that particular seed crop for that growing season shall be available for

public inspection and copying. This exemption does not supersede the standards set forth in Idaho Code § 22-436. Idaho Code § 9-340D(9).

(58) Information obtained from books, records and accounts to be maintained by the Idaho Canola and Rapeseed Commission and pertaining to the individual production records of canola or rapeseed growers. Idaho Code § 9-340D(10).

(59) Records of any risk retention or self insurance programs prepared in anticipation of litigation or for analysis or settlement of potential or actual money damage claims against a public entity and its employees or against the Industrial Special Indemnity Fund, except as otherwise discoverable under the Idaho or Federal Rules of Civil Procedure. These records include, but are not limited to, claims valuations, investigatory records, computerized reports of losses, case reserves, internal documents and correspondence relating thereto. This exemption does not limit the attorney client privilege or attorney work product privilege otherwise available to public agency or independent public body. Idaho Code § 9-340D(11).

(60) Records of laboratory test results provided by or retained by the Idaho Food Quality Assurance Laboratory. Idaho Code § 9-340D(12).

(61) Reports required to be filed identifying the electrical or natural or manufactured gas consumption data for the individual customer or account. Idaho Code § 9-340D(13).

(62) Voluntarily prepared environmental audits, and voluntary disclosures of information submitted on or before December 31, 1997, to an environmental agency which are claimed to be confidential business information. Idaho Code § 9-340D(14).

(63) Computer programs developed or purchased by or for any public agency for its own use. However, “computer program” does not include:

(a) The original data including, but not limited to, numbers, text, voice, graphics and images;

(b) Analysis, compilation and other manipulated forms of the original data produced by use of the program; or

(c) The mathematical or statistical formulas that would be used if the manipulated forms of the original data were to be produced manually. Idaho Code § 9-340D(15).

(64) Active investigative records and trademark usage audits of the Idaho Potato Commission specifically related to enforcement until the commencement of formal proceedings as provided by the rules of the Commission; purchase and sales information to submitted the Idaho Potato Commission during a trademark usage audit, and investigative or enforcement proceedings. However, inactive investigatory records shall be disclosed unless the disclosure would violate the standards set forth in Idaho Code § 9-335(1)(a)-(f). Idaho Code § 9-340D(16).

(65) All records copied or obtained by the director of the department of agriculture of his designee as a result of an inspection pursuant to section 25-3806, Idaho Code, except:

(a) Records otherwise deemed to be public records not exempt from disclosure pursuant to this chapter; and

(b) Inspection records, determinations of compliance or noncompliance and all other records created by the director of his designee pursuant to section 25-3806, Idaho Code. Idaho Code § 9-340D(17).

(66) All data and information collected by the division of animal industries or the state brand board pursuant to the provisions of section 25-207B, Idaho Codes, or rules promulgated thereunder. Idaho Code § 9-340D(18).

(67) Records disclosed to a county official by the state tax commission pursuant to subsection (4)(c) of section 63-3029B, Idaho Code. Idaho Code § 9-340D(19).

(68) Records, data, information and materials collected, developed, generated, ascertained or discovered during the course of academic research at public institutions of higher education if the disclosure of such could reasonably affect the conduct or outcome of the research, or the ability of the public institution of higher education to patent or copyright the research or protect intellectual property. Idaho Code § 9-340D(20).

(69) Records, data, information and materials collected or utilized during the course of academic research at public institutions of higher education provided by any person or entity other than the public institution of higher education or a public agency. Idaho Code § 9-340D(21).

(70) The exemptions from disclosure provided in subsections (20) and (21) of this section shall apply only until the academic research is publicly released, copyrighted or patented, or until the academic research is completed or terminated. At such time, the records, data, information, and materials shall be subject to public disclosure unless: (a) another exemption in this chapter applies; (b) such information was provided to the institution subject to a written agreement of confidentiality; or (c) public disclosure would pose a danger to persons or property. Idaho Code § 9-340D(22).

(71) The exemptions from disclosure provided in subsections (20) and (21) of this section do not include basic information about a particular research project that is otherwise subject to public disclosure, such as the nature of the academic research, the name of the researcher, and the amount and source of the funding provided for the project. Idaho Code § 9-340D(23).

(72) Records of a county assessor containing information showing the income and expenses of a taxpayer, which information was provided to the assessor by the taxpayer to permit the assessor to determine the value of property of the taxpayer. Idaho Code § 9-340D(24).

(73) Results of laboratory tests which have no known adverse impacts to human health conducted by the Idaho state department of agriculture animal health laboratory, related to diagnosis of animal diseases of individual animals or herds, on samples submitted by veterinarians or animal owners unless:

(a) The laboratory test results indicate the presence of a state or federally reportable or regulated disease in animals;

(b) The release of the test results is required by state or federal law; or

(c) The test result is identified as representing a threat to animal or human health or to the livestock industry by the Idaho state department of agriculture or the United States department of agriculture. Nothing in this subsection shall limit the use which can be made, or availability of such information if used, for regulatory purposes or its admissibility in any enforcement proceeding, or the duty of any person to report contagious or infectious diseases as required by state or federal law. Idaho Code § 9-340D(25).

(74) Results of laboratory tests conducted by the Idaho state department of agriculture seed laboratory on samples submitted by seed producers or seed companies. Nothing in this subsection shall limit the use which can be made, or availability of such information pursuant to the provisions of subsections (9) and (10) of section 22-418, Idaho Code. Idaho Code § 9-340D(26).

(75) For policies that are owned by private persons, and not by a public agency of the state of Idaho, records of policies, endorsements, affidavits and any records that discuss policies, endorsements and affidavits that may be required to be filed with or by a surplus line association pursuant to chapter 12, title 41, Idaho Code. Idaho Code § 9-340D(27).

(76) Individual financial statements of a postsecondary educational institution or a proprietary school submitted to the state board of education, its director or a representative thereof, for the purpose of

registering the postsecondary educational institution or proprietary school pursuant to section 33-2402 or 33-2403, Idaho Code, or provided pursuant to an administrative rule of the board adopted pursuant to such sections. Idaho Code § 9-340D(28).

(77) Records, maps or other records identifying the location of archeological or geophysical sites or endangered species, if not already known to the general public. Idaho Code § 9-340E(1).

(78) Archeological and geological records concerning exploratory drilling, logging, mining, and other excavation, when such records are required to be filed by statute for the time provided by statute. Idaho Code § 9-340E(2).

(79) The records of a library, which when examined alone, or when examined with other public records, would reveal the identity of the library patron checking out, requesting, or using an item from a library. Idaho Code § 9-340E(3).

(80) The material of a library, museum or archive which has been contributed to by a private person, to the extent of any limitation that is a condition on the contribution. Idaho Code § 9-340E(4).

(81) Test questions, scoring keys and other data used to administer a licensing examination, employment, academic or other examination or testing procedure before the examination is given if the examination is to be used again. Records establishing procedures for and instructing persons administering, grading or evaluating examination or testing procedures are included in this exemption, to the extent the disclosure would create a risk that the result might be affected. Idaho Code § 9-340E(5).

(82) Records consisting of draft legislation, documents specifically related to draft legislation, or research requests submitted to the Legislative Services Office by a member of the Idaho Legislature for the purpose of placing such draft legislation into a form suitable for introduction as official proposed legislation, unless the individual legislator having submitted a request of such records or research agrees to waive the provisions of confidentiality. Idaho Code § 9-340F(1).

(83) All records and correspondence or other supporting materials comprising the work papers in the possession of the Legislative Services Office or the Director of the Legislative Performance Evaluations prior to the release of the related final audit, and all other records or material in possession of the Legislative Service office or the Director of the Legislative Performance Evaluations that would otherwise be confidential or exempt from disclosure. Idaho Code § 9-340F(2).

(84) Draft congressional legislative redistricting plans, documents specifically related to such draft redistricting plans, or research requests submitted to the commission's staff by members of the commission for reapportionment for the purpose of placing such draft redistricting plans in a form suitable for presentation to the full membership of the commission, unless the individual commission member having submitted or requested such plans or research agrees to waive the provisions of the confidentiality. Idaho Code § 9-340F(3).

(85) Records that identify the method by which the Idaho State Tax Commission selects tax returns for audit review. Idaho Code § 9-340F(4).

(86) Underwriting and claims records of the Idaho petroleum clean water trust fund. Provided, however, that this subsection shall not prevent the Idaho petroleum clean water trust fund's submittal to the Idaho department of environmental quality, or other regulatory agencies of information necessary to satisfy an insured's correction action requirement under applicable federal or state standards in the event of a release in to the environment from a petroleum storage tank; and provided further that nothing in this subsection shall prevent the Idaho petroleum clean water trust fund from providing auditing, reporting, or actuarial information as otherwise required of it pursuant to law. Idaho Code § 9-340F(5).

(87) In accordance with Idaho Code § 18-609A, records contained

in Court files of judicial proceedings arising under Idaho Code § 18-609A, Idaho Code. Idaho Code § 9-340G.

(88) A record obtained or created by the director of the department of finance or a representative of the director in connection with an audit or inspection under section 30-14-411(d), Idaho Code, or an investigation under section 30-14-602, Idaho Code. Idaho Code § 9-340H(1).

(89) A part of a record filed in connection with a registration statement under section 30-14-301, Idaho Code, and sections 30-14-303 through 30-14-305, Idaho Code, or a record under section 30-13-411(d), Idaho Code, that contains trade secrets or confidential information if the person filling the registration statement or report has asserted a claim of confidentiality or privilege that is authorized by law. Idaho Code § 9-340H(2).

(90) A record that is not required to be provided to the director of the department of finance or filed under chapter 14, title 30, Idaho Code, and is provided to the director only on the condition that the records will not be subject to public examination or disclosure. Idaho Code § 9-340H(3).

(91) A nonpublic record received from a person specified in section 30-14-608(a), Idaho Code. Idaho Code § 9-340H(4).

(92) Any Social Security number, residential address unless used as a business address, and residential telephone number unless used as a business telephone number, contained in a record that is filed pursuant to chapter 14, title 30, Idaho Code. Idaho Code § 9-340H(5).

B. Other statutory exclusions.

Idaho law also exempts certain tax documents from public disclosure. *See, e.g.*, Idaho Code §§ 63-3076, 63-3077, 9-340C(5). Even so, Idaho Code § 9-349 requires that any statute that provides for confidentiality or closure of any public records shall be placed in this chapter or such provision will be considered “null and void.”

C. Court-derived exclusions, common law prohibitions, recognized privileges against disclosure.

Idaho Code § 9-342(1) provides “a person may inspect and copy the records of a public agency or independent public body corporate and politic pertaining to that person, even if the record is otherwise exempt from public disclosure.” In *Bolger v. Lance*, 137 Idaho 792, 53 P.3d 1211 (2002), the Idaho Supreme Court held that the Office of the Attorney General is a law enforcement agency under the public records act and an individual does not have the right to examine investigatory records about himself during an ongoing investigation.

D. Are segregable portions of records containing exempt material available?

If a public record contains “mixed” information – that is, some information that is exempted from public disclosure and other information that is not – the act requires that the exempt information be separated from the non-exempt information and the non-exempt material be provided to the requesting person. Idaho Code § 9-341.

E. Homeland Security Measures.

There are no new homeland security measures that have been enacted under the Public Records Act.

III. STATE LAW ON ELECTRONIC RECORDS

A. Can the requester choose a format for receiving records?

There is no provision in the Idaho Public Records Act relating to format selection.

B. Can the requester obtain a customized search of computer databases to fit particular needs?

There is no provision in the Idaho Code relating to custom searches.

C. Does the existence of information in electronic format affect its openness?

Idaho Code § 9-337(13) defines writing to include discs or other means of recording, which can be interpreted to include electronic information. In *Cowles Publishing Co. v. Kootenai Co. Bd. of County Commissioners*, 144 Idaho 259, 159 P.3d 896 (2007), the Idaho Supreme Court held that a series of e-mail messages, of a personal nature, between an elected official and a public employee were public records within Idaho Code § 9-337(13).

D. How is e-mail treated?

There is no provision in the Idaho Code regarding e-mail. But, the Idaho Supreme Court in *Cowles, supra*, held that e-mail messages would be considered public records within the meaning of the Act when: (1) the e-mail message contains information relating to the conduct or administration of the public’s business, and (2) was prepared, owned, used or retained by a governmental agency. *Id.*, 144 Idaho at 263.

1. Does e-mail constitute a record?

See above.

2. Public matter on government e-mail or government hardware

See above.

3. Private matter on government e-mail or government hardware

See above.

4. Public matter on private e-mail

See above.

5. Private matter on private e-mail

See above.

E. How are text messages and instant messages treated?

Not addressed by the courts or the Idaho Public Records Act.

H. Computer software

Idaho Code § 9-340D(15) exempts computer programs developed or purchased by or for any public agency for its own use from disclosure under the Public Records Act. The definition of a “computer program” does not include: “(a) The original data including, but not limited to, numbers, text, voice, graphics and images; (b) Analysis, compilation and other manipulated forms of the original data produced by use of the program; or (c) The mathematical or statistical formulas that would be used if the manipulated forms of the original data were to be produced manually.”

I. How are fees for electronic records assessed?

Fees for electronic records are assessed under the provisions of Idaho Code § 9-338(8)(b)(i)-(ii)

J. Money-making schemes.

No law or statute on point.

K. On-line dissemination.

No law or statute on point.

IV. RECORD CATEGORIES — OPEN OR CLOSED

A. Autopsy reports.

Autopsy reports are not specifically exempted under the public records act. Generally, most county coroners treat them as available to the public. However, at least one law enforcement agency has taken

the position that an autopsy record is a police investigatory record not available for public inspection.

B. Administrative enforcement records (e.g., worker safety and health inspections, or accident investigations)

C. Bank records.

An individual's personal bank records, by definition, do not fall within the provisions of Idaho's public records act. The provisions of Idaho Code § 9-340D(5) exempt certain financial reports prepared by or supplied to any public agency or independent public body corporate and politic responsible for the regulation or supervision of financial institutions.

E. Business records, financial data, trade secrets.

Most proprietary business records and trade secret information are exempt from inspection and copying. Idaho Code §§ 9-340D(1)-(3), (5), (6), (8).

F. Contracts, proposals and bids.

Contracts, proposals and bids are subject to public inspection and copying after bids are opened or after the contract is awarded. Idaho Code § 9-340D(4).

G. Collective bargaining records.

Collective bargaining records are not specifically exempt under Idaho law. However, deliberations concerning labor negotiations may be held in executive session, and the records of such proceedings would likely be viewed as nonpublic. Idaho Code § 67-2345(1)(c).

H. Coroners reports.

Coroners' reports are not specifically exempt under the public records act. Generally, most county coroners treat them as available to the public. However, at least one law enforcement agency has taken the position that an autopsy record is a police investigatory record not available for public inspection.

I. Economic development records.

Idaho Code § 9-340D(6) specifically exempts records gathered by a local agency or the Idaho Department of Commerce for the specific purpose of assisting a person to locate, maintain, invest in or expand business operations in Idaho.

J. Election records.

Election records are generally open to the public. Idaho Code § 9-340C(25) specifically exempts the release of "the physical voter registration card on file in the county clerk's office," but allows the release of a redacted form.

1. Voter registration records.

Idaho Code § 9-340C(25) exempts physical voter registration cards from disclosure. Information from voter registration cards maintained in the statewide voter registration database, including age, will be made available except for the voter's driver's license number, date of birth and, upon a showing of good cause, the physical residence address of the voter.

K. Gun permits.

Idaho Code § 9-340A(2) provides that material in Court files that may otherwise be exempt from disclosure is not exempt "to the extent that such records or information contained in those records are necessary for a background check on an individual that is required by federal law regulating the sale of firearms, guns or ammunition." Once a permit is issued, however, it is open to the public.

L. Hospital reports.

Hospital reports, if they concern an individual's medical condition, are exempt from disclosure except as they are necessary for a background check on an individual required by federal law regulating the sale of firearms, guns or ammunition. Idaho Code § 9-340C(13). If the reports are non-medical and relate to the management or financial condition of a *public* hospital, they are generally open to the public.

M. Personnel records.

Personnel records are only partially open to the public, as provided in Idaho Code § 9-340C(1). In *Federated Publications Inc. v. Boise City*, 128 Idaho 459, 915 P.2d 21 (1996) the Idaho Supreme Court held that the term "applicant" in the provision of public records laws exempting from disclosure certain personnel information refers to an applicant for a position as a public employee. The Court noted that the exemption does not apply to applicants for appointment to vacancies in the city council. *Id.* The Court also found that administrative review of a police shooting incident, which reviewed policies and training and determined completeness of internal discipline procedures was not exempt from disclosure under the public records laws under Idaho Code § 9-340C(1). *Id.* More recently, in *Cowles Publishing Co. v. Kootenai Co. Bd. of Commissioners*, 144 Idaho 259, 159 P.3d 896 (2007), the Idaho Supreme Court rejected an argument that e-mail messages, of a personal nature, sent between an elected public official and a public employee were exempt personnel records. The Court held "although the e-mails may be a form of correspondence, they are not the type of communication the legislature meant to exempt in Idaho Code § 9-340C(1). . . . The legislature meant to exempt only those types of correspondence typically found in a personnel file – for instance, a letter of recommendation, formal correspondence between a superior and employee, or a letter commenting favorably or unfavorably on an employee's professional conduct." *Id.*, 144 Idaho at 264-265. Personnel records have been a frequent point of conflict between public agencies and persons requesting such information.

N. Police records.

Police records are subject to disclosure pursuant to Idaho Code § 9-335, which generally exempts active and inactive investigatory records. This exemption was grandfathered into the Idaho Public Records Act and has generated substantial disagreement between law enforcement authorities and members of the media.

1. Accident reports.

Idaho Code § 9-335(2) provides that any person involved in a motor vehicle accident which is investigated by a law enforcement agency, that person's authorized legal representative and the insurer shall have a right to a complete, unaltered copy of the impact report, or its successors, and the final report prepared by the agency.

2. Police blotter.

These records are routinely made available to the public.

3. 911 tapes.

There is no express exemption that applies to 911 tapes, thus they are presumed to be open.

4. Investigatory records.

Idaho Code § 9-340B(1) provides that investigatory records of a law enforcement agency, as defined in section 9-337(7), Idaho Code, under the conditions set forth in section 9-335, Idaho Code, are exempt from disclosure under the Public Records Act.

a. Rules for active investigations.

Deprive a person of a right to a fair trial or an impartial adjudication;

Idaho Code § 9-335(1) provides that active investigatory records compiled for law enforcement are exempt from disclosure when the

production of such records would: (a) interference with enforcement proceedings; (b) deprive a person of a right to a fair trial or an impartial adjudication; (c) constitute an unwarranted invasion of personal privacy; (d) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement agency in the course of a criminal investigation, confidential information furnished only by the confidential source; (e) disclose investigative techniques and procedures; or (f) endanger the life or physical safety of law enforcement personnel.

“Investigatory record” shall not include: (a) the time, date, location, and nature and description of a reported crime, accident or incident; (b) the name, sex, age, and address of a person arrested, except as otherwise provided by law; (c) the time, date, and location of the incident and of the arrest; (d) the crime charged; (e) documents given or required by law to be given to the person arrested; (f) information and indictments except as otherwise provided by law; and (g) criminal history reports. Idaho Code § 9-335(3).

b. Rules for closed investigations.

Idaho Code § 9-335(3) provides that “an inactive investigatory record shall be disclosed unless the disclosure would violate the provisions of subsection (1)(a) through (f) of this section.”

5. Arrest records.

Arrest records are not exempt from disclosure under the Public Records Act. Idaho Code § 9-335(3)(b).

6. Compilations of criminal histories.

Criminal histories are not categorically exempt from disclosure under the Public Records Act. Idaho Code § 9-335(3)(g). *But see* Idaho Code § 9-340B(12) (“criminal history records and fingerprint compiled by Idaho state police are exempt, but may be released in accordance with chapter 30, title 67, Idaho Code”).

7. Victims.

Department of Corrections records related to the identity of victims are exempt from disclosure. Idaho Code § 9-340B(4)(a)(ii).

8. Confessions.

Confessions are not specifically addressed in the Idaho open records statutes. Most law enforcement agencies and prosecutors consider confessions to be “investigative records” and therefore exempt from disclosure, unless and until the confession is filed with the court or introduced in open court. Whether that interpretation would withstand a court challenge is an open question.

9. Confidential informants.

Information in an investigatory record compiled for law enforcement that would disclose the identity of a confidential source is exempt from disclosure. Idaho Code § 9-335(1)(d).

10. Police techniques.

Information in an investigatory record compiled for law enforcement that would disclose investigative techniques and procedures is exempt from disclosure. Idaho Code § 9-335(1)(e).

11. Mug shots.

Mug shots are routinely made available to the public.

12. Sex offender records.

Information contained within the sexual offender registry is available to the public pursuant to Idaho Code § 18-8323. But, voting records of the Sexual Offenders Classification Board are not subject to disclosure. Idaho Code § 9-340B(5).

O. Prison, parole and probation reports.

Idaho Code § 9-340B(4)(v) provides that Department of Correction

records of a prisoner shall not be disclosed to any other prisoner or probationer. And, Idaho Code § 9-340B(14) provides that records of a prisoner or former prisoner in the custody of any state or local correctional facility are exempt from disclosure when the request is made by another prisoner in the custody of any state or local correctional facility. Finally, Idaho Code § 9-340B(4)(iii) provides that Department of Correction records that reflect future transportation or movement of a prisoner are exempt from disclosure.

P. Public utility records.

Public utility records are confidential under general exemptions provided to business entities, unless such records become part of the public record in a utility proceeding before the Idaho Public Utilities Commission. Furthermore, reports identifying the electrical or natural or gas consumption data for the individual customer or account are exempt from disclosure. Idaho Code § 9-340D(13).

Q. Real estate appraisals, negotiations.

1. Appraisals.

Idaho Code § 9-340D(3) exempts records relating to the appraisal of real property, timber or mineral rights prior to its acquisition, sale or lease by a public agency or independent public body corporate and politic.

3. Transactions.

Idaho Code § 9-340D(4) exempts any estimate prepared by a public agency or independent public body corporate and politic that details the cost of a public project until such time as disclosed or bids are opened, or upon award of the contract for construction of the public project.

R. School and university records.

1. Athletic records.

The financial records of the athletic programs of a public school or university are subject to public inspection.

2. Trustee records.

The trustee records of a public school or university are generally open, subject to exemptions for personnel and similar records.

3. Student records.

The Idaho Public records act incorporates federal law under Idaho Code section 9-340A(1), which generally ensures privacy for student records.

S. Vital statistics.

All records of vital statistics are exempt from disclosure pursuant to Idaho Code § 9-340C(4)(e).

4. Infectious disease and health epidemics.

Idaho Code § 9-340C(19) exempts records and information contained in the registry of immunizations against childhood diseases maintained by the Department of Health and Welfare. § 9-340C(12) exempts records of the Department of Health and Welfare that identify a person infected with a reportable disease.

V. PROCEDURE FOR OBTAINING RECORDS

A. How to start.

1. Who receives a request?

Often, the individual seeking access to public records will already know the specific record or document sought. Idaho’s Public Records Act does not require local agencies to specifically detail the types of records maintained by the agencies. However, the act requires every state agency to adopt guidelines that identify the general subject mat-

ter of all public records kept or maintained by the agency and to further identify the custodian and physical location of such documents. Idaho Code § 9-347. Thus, if a person is unsure what records might exist in the specific area of interest, a threshold step could be to request a copy of the agency record guidelines.

Each state agency generally maintains records dealing with matter indigenous to its mission. Examples would include:

- Records of the state Board of Corrections concerning number of inmates in prison facilities, number of escapes, etc.
- Records of regulatory agencies such as an air pollution control agency (e.g., DEQ) that keeps track of pollution control program compliance, etc.
- Records of the State Agriculture Department regarding crop production reports, pesticide testing, bee kills, etc.
- Reports of the State Department of Health and Welfare regarding conditions in the state hospitals, conditions in state-funded shelter homes and totals of infectious diseases, etc.
- Records of complaints made to the State Insurance Commission and action taken on such complaints.

The best reference work for reviewing the organization of state government and the numerous state boards and commissions is the *Idaho Blue Book*. This book, compiled and published by the office of the Secretary of State, has in the past been updated every two years. There are no comparable publications that list governmental organizations in the various Idaho municipalities and counties, but such information can be obtained from county or city clerk offices.

2. Does the law cover oral requests?

Idaho Code § 9-338(4) provides that the person requesting a public record “*may be required to make a written request* and provide their name, mailing address and telephone number” (emphasis added). Routine requests are often handled based on oral requests; however, many agencies often insist upon written requests on their own forms.

a. Arrangements to inspect & copy.

The examination of public records under the Act must be conducted during regular office or working hours unless the custodian of the records authorizes the examination of records in other than regular office or working hours. Idaho Code § 9-338(7). However, if the examination of the records occurs in other than regular office or working hours, the person designated to represent the custodian during such an examination is entitled to a reasonable compensation to be paid to them out of funds provided in advance by the person examining such records. *Id.* Additionally, the custodian of the records is entitled to maintain “such vigilance as is required to prevent alteration of any public record while it is being examined.” Idaho Code § 9-338(6).

b. If an oral request is denied:

It is not specified what happens when an oral request is denied. However, a requester should proceed in the same manner as if a written request were denied if they intend to challenge the denial of access.

(1). How does the requester memorialize the refusal?

Idaho Code § 9-339(3) provides that agency denials, even in part, must be done in writing. Idaho Code § 9-339(4) sets forth what the contents of a written agency denial must include.

3. Contents of a written request.

A request should describe, as completely as possible, the records sought. Generally, the request will be directed to the custodian of the records, although in some circumstances the request may need to be sent to the agency head. The actual request may be informal or formal.

a. Description of the records.

A request should describe, as completely as possible, the records sought. Generally, the request will be directed to the custodian of the records, although in some circumstances the request may need to be sent to the agency head. The actual request may be informal or formal.

b. Need to address fee issues.

It is not specified in the Act. In practice, many media requesters indicate that they are willing to pay some amount in copying fees for their public records request and ask the responding agency to let them know if such amount is likely to cover the actual cost of copying.

B. How long to wait.

1. Statutory, regulatory or court-set time limits for agency response.

The Idaho Public Records Act sets out specific time limits for an agency response to a request for inspection. An agency has three (3) working days to either grant or deny the request for information. Idaho Code § 9-339(1). Although agencies legally have up to three (3) working days to respond, agencies should not delay three (3) days to provide any information that is readily accessible. If you feel that the agency is able to provide you with access to a public record in a shorter period than three (3) working days and is refusing to provide you with more timely access for some improper reason, you should complain to a superior in the agency and to an Idaho legislator. At the time the Act was passed into law, the legislature indicated that groundless delays in providing access to records would lead to a shortening of the allowable response period.

If more than three (3) working days is needed to either locate the requested records or to retrieve the information, the agency must notify the requester in writing that more time is necessary and then grant or deny the request in full or in part within ten (10) working days from the date of request. Idaho Code § 9-339(1).

If a request for examination of public records is denied, the agency making the denial is to notify the requesting party in writing of the denial, identify the specific statutory basis for the denial and indicate that the agency has consulted with its attorney or chosen not to do so. The written denial is also required to clearly advise the requesting party of the right to appeal the denial and the time period allowed for doing so. Idaho Code § 9-339(3)-(4). A 180-day appeal period begins from the date of mailing of the notice of denial. Idaho Code § 9-343 (1)-(4).

2. Informal telephone inquiry as to status.

Informal telephone inquiry as to status is allowed. It may be useful to follow a written request with a telephone inquiry to the agency, but there is no requirement that such an inquiry be initiated.

3. Is delay recognized as a denial for appeal purposes?

In the event that there is no response from the agency, the request will be deemed denied within ten (10) working days following the request. Idaho Code § 9-339(2).

C. Administrative appeal.

Not applicable.

2. To whom is an appeal directed?

4. Contents of appeal letter.

D. Court action.

1. Who may sue?

The “sole remedy” for a “person aggrieved” by the denial of a request for inspection is to institute proceedings in the district court of the county where the records are located. Idaho Code § 9-343(1). The statute is not specific as to who is considered aggrieved by such a de-

nial but unquestionably the person requesting the record may initiate a Court action to protest the denial. It is not clear whether a person who did not actually make the request, but was aggrieved as a result of the denial requested by another person, would be able to seek redress.

2. Priority.

To begin proceedings, a petition must be filed (with the district court) protesting the denial of access within 180 days from the date of mailing of the notice of denial by the public agency. Idaho Code § 9-343(1). After a petition is filed, the court sets a time for the public agency to file a response and for a hearing at the “earliest possible time,” and in no event later than 28 calendar days after the protest petition is filed. Idaho Code § 9-343(1). At that time, the court has the discretion to examine the documents at issue *in camera* and shall consider both written and oral presentations from the person filing the petition and the agency. Idaho Code § 9-344(1). If the court finds the records are not exempt from public disclosure, the agency will be required to make them available. If the court finds in favor of the public agency, the records will remain with the agency without being disclosed. Idaho Code § 9-344(2).

3. Pro se.

There are no prohibitions against a *pro se* proceeding. A *pro se* applicant should have a reasonable opportunity to prevail, unless he or she has a complicated statutory argument. Because Idaho law allows access to all public records, unless a statute expressly provides otherwise, and because public records are broadly defined, the legal issues confronting a court reviewing a denial are not necessarily complex.

4. Issues the court will address:

The court will consider whether the denial was proper and also whether the actions of the respective parties were legitimately pursued. If the court finds that the “request or refusal to provide records was frivolously pursued,” the court shall award reasonable costs and attorney fees to the prevailing party. Idaho Code § 9-344(2). See *Idaho Conservation League, Inc. v. Idaho State Department of Agriculture*, 143 Idaho 366, 146 P.3d 632 (2006) (Idaho Supreme Court awarded fees to requestor when agency’s appeal “was frivolously pursued”).

a. Denial.

If the Court determines that the public official was justified in refusing to make the requested record available, he shall return the item to the public official without disclosing its content and shall enter an order supporting the decision refusing disclosure. Idaho Code § 9-344(2).

5. Pleading format.

The only particular pleading format requirement is that the action be styled as a “petition.” Idaho Code § 9-343(1). Otherwise, the pleading should mirror a complaint and contain the basic facts of the request, the denial, the agency involved and other facts underlying the claim.

6. Time limit for filing suit.

A person aggrieved by the denial of a request for a public record must file a petition within 180 days of the date of mailing of the denial. Idaho Code § 9-343(1).

7. What court.

The petition must be filed in the state district court of the county in which the records are physically located. Idaho Code § 9-343(1).

8. Judicial remedies available.

The court may order that the records be released and may order that court costs and reasonable attorney fees be assessed. Although the Act does not specifically address the subject, the court should also be able to render declaratory or injunctive relief in appropriate circumstances. Idaho Code § 9-344, 9-345.

9. Litigation expenses.

The court shall award reasonable costs and attorney fees to the prevailing party if it finds the request or refusal to provide records was frivolously pursued. Idaho Code § 9-344(2). See, e.g., *Idaho Conservation League, Inc. v. Idaho State Department of Agriculture*, 143 Idaho 366, 146 P.3d 632 (2006).

a. Attorney fees.

The court shall award reasonable costs and attorney fees to the prevailing party if it finds the request or refusal to provide records was frivolously pursued. Idaho Code § 9-344(2).

b. Court and litigation costs.

The court shall award reasonable costs and attorney fees to the prevailing party if it finds the request or refusal to provide records was frivolously pursued. Idaho Code § 9-344(2).

10. Fines.

The Court may impose a civil penalty not to exceed \$1,000 upon a public official who deliberately and in bad faith improperly refuses a legitimate request for inspection and copying. Idaho Code § 9-345.

11. Other penalties.

None specified.

12. Settlement, pros and cons.

There are no particular pros or cons to settlement of actions to enforce a right to inspect and copy a public record, other than would be present in any other type of litigation.

E. Appealing initial court decisions.

1. Appeal routes.

The appeal of a district court decision is governed by the Idaho Appellate Rules, and thus is treated like any ordinary appeal.

2. Time limits for filing appeals.

Appeals must be filed within 42 days after the entry of the appealable judgment. Idaho Appellate Rule 14.

3. Contact of interested amici.

The Idaho Supreme Court is generally quite liberal in its allowance of the filing of *amicus* briefs. The filing of such briefs is governed by the provisions of Idaho Appellate Rule 8. Respective *amicus* participants must file an application for leave of Court to file a brief, to participate in oral argument or both.

The Reporters Committee for Freedom of the Press often files *amicus* briefs in cases involving significant media law issues before a state’s highest Court.

F. Addressing government suits against disclosure.

There are no cases in Idaho on this point.

Open Meetings

I. STATUTE — BASIC APPLICATION.

Idaho's Open Meeting Law is set forth in Idaho Code §§ 67-2340 through 67-2347. The Open Meeting Law was first enacted in 1974 and has been amended on several occasions since that time. The legislature's statement of purpose included with the 1974 enactment of the Law contains broad language saying that it is the "policy of this state that the formation of public policy is public business and shall not be conducted in secret." Idaho Code § 67-2340.

A. Who may attend?

In Idaho, meetings of a governing body of a public agency are open to the public unless closure of such meetings is expressly permitted under the Open Meeting Law. Idaho Code § 67-2342(1). The meetings are expressly open to the "public and all persons shall be permitted to attend any meeting." Idaho Code § 67-2342(1). Although "public" and "persons" are not defined terms under the Law, there is nothing in the law to suggest that any distinction is to be made between different members of the public, whether they are citizens, residents, journalists or otherwise.

B. What governments are subject to the law?

The Open Meeting Law covers various state, county, local and municipal bodies, as described in the definitions of "governing body" under Idaho Code § 67-2341(5) (1998) and "public agency." Idaho Code §§ 67-2341(4)-(5).

1. State.

In *Safe Air for Everyone v. Idaho State Department of Agriculture, et al*, 145 Idaho 164, 177 P.3d 378 (2008), the Idaho Supreme Court was asked to consider whether the Open Meetings Act applied when Department of Agriculture employees attended an intergovernmental meeting to discuss issues related to crop residue burning. After noting that the crop residue disposal program was not a sub-agency of the Department of Agriculture, the court turned its attention to the definition of "governing body" under Idaho Code § 67-2341(5). The court held that a "governing body" must have "the authority to make decisions for or recommendations to a public agency regarding any matter." *Id.* Since the employees at issue did not have "the authority" to make decisions for or recommendation to the Department of Agriculture, they did not constitute members of a "governing body" subject to the requirements of the Open Meetings Act. "The legislature has required that various bodies and commissions transact business at a meeting where a quorum is present. It has not imposed that requirement upon groups of public employees." *Safe Air for Everyone*, 145 Idaho at 168 (internal citations omitted).

2. County.

County Boards of Commissioners are subject to the Open Meeting Law. See *Noble v. Kootenai County*, 148 Idaho 937, 942, 231 P.3d 1034, 1039 (2010).

C. What bodies are covered by the law?

1. Executive branch agencies.

"Governing body" means the members of any public agency that consists of two or more members, with the authority to make decisions for, or recommendations to, a public agency regarding any matter. Idaho Code § 67-2341(5).

"Public agency" is defined in Idaho Code § 67-2341(4) as:

(a) any state board, commission, department, authority, educational institution or other state agency which is created by or pursuant to statute, other than courts and their agencies and divisions, and the judicial council, and the district magistrates com-

mission;

(b) any regional board, commission, department or authority created by or pursuant to statute;

(c) any county, city, school district, special district, or other municipal corporation or political subdivision of the State of Idaho;

(d) any subagency of a public agency which is created by or pursuant to statute, ordinance, or other legislative act.

Those reported decisions which have construed the Idaho Open Meeting Law have generally not addressed any issues concerning whether a particular governmental body is subject to the provisions of the law. The cases have assumed the governmental body involved was subject to the Open Meeting Law and have considered actions of a city council, a school district board, the state commission for the blind, a county commission and a public hospital board. However, the Idaho Supreme Court has held that an administrative committee of the State Water Resources Board (which did not include a full quorum of the entire Water Resources Board) was not a "governing body" entrusted with the formation of public policy and therefore was not subject to the Open Meeting Law. *Idaho Water Resources Board v. Kramer*, 97 Idaho 535, 548 P.2d 35 (1976). Moreover, in *Safe Air for Everyone v. Idaho State Department of Agriculture, et al*, 145 Idaho 164, 177 P.3d 378 (2008), the Idaho Supreme Court held that employees of a state agency did not constitute a "governing body." *Id.*, 145 Idaho at 168.

a. What officials are covered?

Idaho's Open Meeting Law excludes elected officials such as the governor, lieutenant governor, state treasurer, mayors, and so on, when they are acting in an official, executive capacity. Deliberations of the Board of Tax Appeals, the Public Utilities Commission and the Industrial Commission in which "a fully submitted adjudicatory proceeding in which hearings, if any are required" have been held, are specifically excepted from the open meeting requirements of the Open Meeting Law. However, those bodies have the discretion to conduct such deliberations in a public meeting. Idaho Code § 67-2342(2).

Meetings of the Idaho Life and Health Insurance Guaranty Association, the Idaho Insurance Guaranty Association and the Surplus Line Association are not required to take place in a meeting open to the public. Idaho Code § 67-2342(3).

b. Are certain executive functions covered?

Although elected officials are excluded when acting in their official individual capacities, many officials are statutory members of other public bodies. For instance, the governor, attorney general, secretary of state, superintendent of public instruction, and state auditor are all members of the State Board of Land Commissioners ("Land Board"), which makes policy decisions concerning the use and/or transfer of state owned lands. See Idaho Code § 58-101 *et seq.* The Land Board acting as a body is subject to the Idaho Open Meeting Law.

c. Are only certain agencies subject to the act?

All "public agencies" as defined in the Open Meeting Law are subject to the law's requirements. Executive branch agencies are therefore covered by the law to the extent they fall within the definition of "public agency."

2. Legislative bodies.

The legislative branches are not expressly included in the definition of "public agency" found at Idaho Code § 67-2341(4) (1998). However, the law specifically provides that all "standing, special or select committees" meetings of either house "shall be open to the public at all times." Idaho Code § 67-2346. This statutory provision is in direct conflict with internal rules of the respective bodies of the legislature that allow such meetings to be closed in the discretion of the committee members. In practice, such meetings (with the exception of political party caucus meetings) are nearly always open. In 2004, the Idaho Press Club brought a constitutional challenge to the legislature's use

of closed committee meetings, relying on Article III, § 12 of the Idaho Constitution. In *Idaho Press Club, Inc. v. State Legislature of the State of Idaho*, 142 Idaho 640, 132 P.3d 397 (2006), the Idaho Supreme Court held that the legislature's use of closed committee meetings did not violate the Idaho Constitution.

3. Courts.

Courts and related bodies, including court agencies and divisions, the judicial council and the district magistrates commission, are all expressly excluded from the operation of the Idaho Open Meeting Law. Idaho Code § 67-2341(4)(a).

4. Nongovernmental bodies receiving public funds or benefits.

The question of whether nongovernmental bodies that receive public funds or benefits are subject to the provisions of the Idaho Open Meeting Law has not been addressed by any appellate court in Idaho. The application of the Open Meeting Law to such bodies probably turns upon whether the body was created by some public act (such as a statute, ordinance or other legislative act), rather than upon whether governmental officials who might otherwise be subject to the act are included in its membership or upon whether public funds are received by the body. Hence, a meeting of State Department of Health and Welfare officials that results in state grant monies being provided to a privately operated shelter home would probably be subject to the Open Meeting Law. However, a meeting of the board of the privately run shelter home (even if the board included one or more of those same officials which had helped make the decision to send public grant monies to the shelter home) would probably not be subject to the law since the shelter home does not exist or was not created by the virtue of any statute, ordinance or other public act.

5. Nongovernmental groups whose members include governmental officials.

The question of whether nongovernmental bodies whose members include governmental officials are subject to the provisions of the Idaho Open Meeting Law has not been addressed by any appellate court in Idaho.

6. Multi-state or regional bodies.

Regional bodies within the State of Idaho, such as planning authorities, are subject to the Open Meeting Law if they are created by or pursuant to statute. Idaho Code § 67-2341(4)(b). The law does not expressly encompass multistate bodies, although its language is broad enough to arguably include them within its scope so long as they are created by or pursuant to statute. The law does not address any jurisdictional disputes that might be raised in attempting to impose the law's requirements upon a multistate body.

7. Advisory boards and commissions, quasi-governmental entities.

The Idaho Open Meeting Law draws no distinctions as to appointed boards, advisory boards or quasi-governmental entities. If the agency or entity falls under the law's definition of a public agency, then it is subject to the law's other requirements.

8. Other bodies to which governmental or public functions are delegated.

All meetings of any "standing, special, or select committee of either house of the legislature" are open to the public pursuant to a particular reference in the Open Meeting Law. See Idaho Code § 67-2346. However, to the extent that a committee, board or commission which otherwise falls within the definition of a "public agency" under the Open Meeting Law does not have the authority to make decisions for or recommendations to a public agency regarding any matter, then that particular entity is not subject to the Open Meeting Law because the definition of "governing body" is expressly limited to entities with such authority. Idaho Code § 67-2341(5).

9. Appointed as well as elected bodies.

Idaho has myriad commissions and boards that are primarily composed of members appointed by the governor. See, e.g., Title 67, Idaho Code; *Idaho Blue Book* (published biennially by Idaho Secretary of State). These entities, which exist by statute, are subject to the Open Meeting Law.

D. What constitutes a meeting subject to the law.

1. Number that must be present.

The Idaho Open Meeting Law defines "meeting" as the "convening of a governing body of a public agency to make a decision or deliberate toward a decision on any matter." Idaho Code § 67-2341(6). Meetings are also broken down into two types – "regular" and "special" – each of which has its own meeting and agenda notice requirements. Idaho Code § 67-2341(6)(a)-(b). "Decision" and "deliberations" are also defined terms under the law. Idaho Code § 67-2341(1)-(2).

a. Must a minimum number be present to constitute a "meeting"?

By definition, a governing body must consist of two or more members. Idaho Code § 67-2341(5). The definition, therefore, squares with a common sense understanding that at least two members of the governing body must be present or participating to constitute a meeting.

b. What effect does absence of a quorum have?

The absence of a quorum may negate the possibility of a "decision" (Idaho Code § 67-2341(1)) being made by the governing body but does not necessarily mean that a meeting of less than a quorum is not subject to the Open Meeting Law. If the meeting involves "deliberation," (Idaho Code § 67-2341(2)) the meeting is still subject to the law.

2. Nature of business subject to the law.

There is no attempt in the Open Meeting Law to distinguish between various types of meetings such as "information gathering" or "fact-finding" sessions. The litmus test is simply whether the meeting has been convened "to make a decision or to deliberate toward a decision on any matter." Idaho Code § 67-2341(6). However, the definition of "deliberate" should bring "information gathering" or "fact-finding" sessions under the ambit of the law. Idaho Code § 67-2341(2).

a. "Information gathering" and "fact-finding" sessions.

See above.

b. Deliberations toward decisions.

See above.

3. Electronic meetings.

Idaho Code § 67-2342(5) provides that meeting may be conducted using telecommunication devices that would enable all members of a governing body participating in the meeting to communicate with each other. Participation by a member of the governing body through telecommunication devices shall constitute presence in person by such member at the meeting; provided, however, that at least one (1) member of the governing body, or the director of the public agency, or the chief administrative officer of the public agency shall be physically present at the location designated in the meeting notice.

a. Conference calls and video/Internet conferencing.

If the participants in the conference call constitute a quorum of the governing body and the facts otherwise indicate that a meeting as defined by the law is occurring, then the conference call constitutes a meeting and is subject to the requirements of the Open Meeting Law. Idaho Code § 67-2342(5).

b. E-mail.

E-mail is not addressed in the Open Meeting Law. Such communications are, however, public records and should be available for inspection unless exempted under the open record statutes.

c. Text messages.

Not addressed.

d. Instant messaging.

Not addressed.

e. Social media and online discussion boards.

Not addressed.

E. Categories of meetings subject to the law.

“Meeting” has a general definition under Idaho’s Open Meeting Law but it is also further defined to identify various types of meetings that are subject to different public notice requirements such as “special meetings” or “executive sessions.”

The Open Meeting Law makes no distinction between informal or formal types of meetings. The Idaho Attorney General has concluded that the Open Meeting Law requirements must be followed in any meeting otherwise subject to the law, whether formal, informal or social. Nonetheless, the Idaho Supreme Court has cast doubt upon that conclusion in decisions that have construed the Open Meeting Law. *See, e.g., Baker v. Independent School District of Emmett*, 107 Idaho 608, 691 P.2d 1223 (1984); *State ex rel. Roark v. City of Hailey*, 102 Idaho 511, 633 P.2d 576 (1981). However, the definition and notice provisions of the Idaho Open Meeting were substantially revised in 1992 in amendments that substantially remedied the difficulties caused by these court decisions.

1. Regular meetings.

a. Definition.

A “regular meeting” means the convening of a governing body of a public agency on the date fixed by law or rule, to conduct the business of the agency. Idaho Code § 67-2341(6)(a).

b. Notice.

Notice of a regular meeting must be given no fewer than five calendar days prior to the meeting unless specifically provided otherwise by statute. Idaho Code § 67-2343(1). If a public agency holds regular meetings at intervals of at least once a month, and those meetings are scheduled in advance for the year, then a notice at least once a year which provides the schedule will suffice. In addition to the notice of the meetings to be held, a 48-hour agenda notice is required in advance of every meeting. Additional agenda items may be included after completion of the 48-hour notice up to and including the hour of the actual meeting, provided that there is a good faith effort to incorporate all probable topics of discussion in the 48-hour notice so the public is well informed and has the opportunity to prepare for discussion at the meeting. Public agencies may satisfy these requirements by posting adequate notices in a prominent place at the principal office of the agency or in the building where the meeting shall be held. Idaho Code § 67-2343(1).

Notice of a special meeting shall be given at least twenty-four (24) hours in advance, and the agenda notice shall also be provided at least twenty-four (24) hours in advance unless an emergency exists. The notice required under this section shall include at a minimum the meeting date, time, place and name of the public agency calling for the meeting. Idaho Code § 67-2343(2).

Notice of an executive session shall be given at least twenty-four (24) hours prior to the meeting, and an agenda shall also be provided at that time. Idaho Code § 67-2343(3). The notice shall provide the reason and specific provision of law authorizing the executive session.

Id.

There are no penalties or remedies for failure to give adequate notice apart from the general penalties provided for any violation of the law, which include nullification of the action taken and civil penalties against members of a governing body who knowingly participate in a meeting that violates the law. Idaho Code § 67-2347(1).

(1). Time limit for giving notice.

See above.

(2). To whom notice is given.

See above.

(3). Where posted.

See above.

(4). Public agenda items required.

See above.

(5). Other information required in notice.

See above.

(6). Penalties and remedies for failure to give adequate notice.

See above.

c. Minutes.

(1). Information required.

A governing body of a public agency is required to provide written minutes to the public within a reasonable time after a meeting, to include at least the following information:

(1) All members of the governing body present;

(2) All motions, resolutions, orders or ordinances proposed and their disposition;

(3) The results of all votes, and upon the request of a member, the vote of each member, by name.

The law does not require that a full transcript, nor a recording of the meeting, be prepared, unless otherwise provided by law. Idaho Code § 67-2344(1). *See also State v. Yzaguirre*, 144 Idaho 471, 478, 163 P.3d 1183, 1190 (2007).

(2). Are minutes public record?

Yes. Note that even the “raw notes” taken by the county clerk during a Board of County Commissioners meeting may be deemed to be a public writing. *See Fox v. Estep*, 118 Idaho 454, 797 P.2d 854 (1990).

2. Special or emergency meetings.

a. Definition.

A “special meeting” is the “convening of the governing body pursuant to a special call for the conduct of business as specified in the call.” Idaho Code § 67-2341(6)(b).

b. Notice requirements.

The notice required for a special meeting shall include, at a minimum, the meeting date, time, place and name of the public agency calling for the meeting. Idaho Code § 67-2343(2).

(1). Time limit for giving notice.

“Special Meetings” require at least a 24-hour meeting and agenda notice. Notice of a special meeting may not be necessary in certain emergency circumstances. Idaho Code § 67-2343(2). An emergency is a situation involving injury or damages to persons or property, or immediate financial loss, of the likelihood of such injury, damage or

loss, when the notice requirements of this section would make such notice impracticable, or increase the likelihood or severity of such injury, damage or loss, and the reason for the emergency is stated at the outset of the meeting. Idaho Code § 67-2343(2).

(2). To whom notice is given.

In addition to providing for general notice to the public, the law provides that the public agencies maintain a list of news media requesting notification of meetings and shall make a good faith effort to provide advance notice of the time and place of each meeting to them. Idaho Code § 67-2343(2).

c. Minutes.

The minutes required for special meetings are apparently the same as those required for regular meetings. Idaho Code § 67-2344(1) makes no distinction between the two types of meetings and the minutes required. *See also* I.E.1.c., *supra*. Minutes must be available to the public within a reasonable time after the meeting. Idaho Code § 67-2344(1).

(1). Information required.

The following information must be included in the minutes:

- (a) All members of the governing body present;
- (b) All motions, resolutions, orders, or ordinances proposed and their disposition;
- (c) The results of all votes, and upon the request of a member, the vote of each member, by name.

Idaho Code § 67-2344(1).

(2). Are minutes a public record?

Yes.

3. Closed meetings or executive sessions.

a. Definition.

An “executive session” is defined as “any meeting or part of a meeting of a governing body which is closed to any persons for deliberation on certain matters.” Idaho Code § 67-2341(3).

b. Notice requirements.

Executive sessions carry the same particular notice requirements in the Open Meeting Law as provided for regular or special meetings, if the executive session is part of such a meeting. If an executive session only will be held, a 24-hour meeting and agenda notice is required, otherwise consistent with special meeting notice requirements. The executive session notice must also state the reason and the specific provision of law authorizing the executive session. Idaho Code § 67-2343(3). The general penalties under the law also apply to violations of the notice requirements concerning executive sessions.

(1). Time limit for giving notice.

A 24-hour meeting and agenda notice is required. Idaho Code § 67-2343(3).

c. Minutes.

Minutes of executive sessions are required and must include reference to the specific statutory authority for holding the executive session. Idaho Code § 67-2344(2).

(1). Information required.

In addition to including the specific statutory authority for holding an executive session, the minutes of an executive session must “provide sufficient detail to identify the purpose and topic of the executive session but shall not contain information sufficient to compromise the purpose of going into executive session.” Idaho Code § 67-2344(2).

(2). Are minutes a public record?

Yes.

d. Requirement to meet in public before closing meeting.

Idaho Code § 67-2345(1) provides that a governing body must meet in a public session prior to closing a meeting. Such governing body shall identify the specific subsections of the Open Meeting Law that authorize the executive session and there must be a roll call vote on the motion recorded in the minutes. An executive session shall be authorized by a two-thirds (2/3) vote of the governing body. Idaho Code § 67-2345(3) further provides that “[i]t shall be a violation of this act to change the subject within the executive session to one not identified within the motion to enter the executive session or to any topic for which an executive session is not provided.”

e. Requirement to state statutory authority for closing meetings before closure.

Prior to beginning any executive session, the governing body’s presiding officer must identify the authorization under Idaho Code § 67-2345(1)-(2) for holding an executive session

f. Tape recording requirements.

In *State v. Yzaguirre*, 144 Idaho 471, 163 P.3d 1183 (2007), the Idaho Supreme Court held that Idaho Code § 67-2344(1)’s requirement that written minutes of all meetings be taken does not include an audio recording of a meeting. *Id.*, 144 Idaho at 477-478.

F. Recording/broadcast of meetings.

There is no specific reference in the Idaho Open Meeting Law to recording or broadcasting meetings subject to the law’s requirements. It is reasonable to argue that the freedom to record or broadcast such meetings is implied in the law, particularly since most of the public is ultimately informed of such meetings, as with so many other governmental activities, through journalists who report upon such proceedings. Obviously it would be impossible and impractical for a citizen to attend every governmental meeting, judicial trial, session of the legislature and so on.

In practice, recording and broadcasting meetings of governmental bodies is permitted, although broadcasting and recording generally only occurs in regard to statewide bodies or local bodies in larger cities and counties in Idaho. However, the Idaho Legislature has either by rule or by custom required that legislative committee chairpersons give permission before any recording or broadcasting of legislative committee proceedings can occur. This practice has not been challenged as possibly violating the Idaho Open Meeting Law.

1. Sound recordings allowed.

See above.

2. Photographic recordings allowed.

See above.

G. Are there sanctions for noncompliance?

Idaho Code § 67-2347 provides for sanctions in the event a governing body fails to comply with Idaho’s Open Meeting Law. Under Idaho Code § 67-2347(1) any actions taken at a meeting held in violation of the Open Meeting Law will be “null and void.” Under Idaho Code § 67-2347(2) a member of a governing body who “conducts or participates in a meeting which violates the provisions of this act” shall be subject to a civil penalty not to exceed \$50. Under Idaho Code § 67-2347(3), a member of a governing body who “knowingly violates the provisions of this act” shall be subject to a civil penalty not to exceed \$500. Finally, Idaho Code § 67-2347(4) provides that a member of any governing body who violates any provision of the Open Meeting Law and who has previously been determined (or admitted) to violating the law within twelve (12) months preceding this subsequent violation shall be a subject to a civil penalty not to exceed \$500.

II. EXEMPTIONS AND OTHER LEGAL LIMITATIONS

A. Exemptions in the open meetings statute.

1. Character of exemptions.

The Idaho Open Meeting Law expressly permits governing bodies of public agencies to conduct meetings closed to the public, but only under certain enumerated circumstances. Such closed meetings, referred to as executive sessions, may be held if, after proper notice, (1) the presiding officer has identified the authorization under the Open Meeting Law for the holding of an executive session, and (2) the members of the governing body agree by at least a two-thirds vote, recorded in the minutes of the meeting by individual vote, to hold such an executive session. Idaho Code § 67-2345(1).

2. Description of each exemption.

Executive sessions may only be held for the following purposes:

- (a) To consider hiring a public officer, employee, staff member or individual agent, wherein the respective qualities of individuals are to be evaluated in order to fill a particular vacancy or need. This provision does not apply to filling a vacancy in an elective office or deliberations about staffing needs in general;
- (b) To consider the evaluation, dismissal or disciplining of, or to hear complaints or charges brought against, a public officer, employee, staff member, or individual agent, or public school student;
- (c) To conduct deliberations concerning labor negotiations or to acquire an interest in real property which is not owned by a public agency;
- (d) To consider records that are exempt from disclosure under the Public Records Act;
- (e) To consider preliminary negotiations involving matters of trade or commerce in which the governing body is in competition with governing bodies in other states or nations;
- (f) To communicate with legal counsel for the public agency to discuss the legal ramifications of and legal options for pending litigation, or controversies not yet being litigated but imminently likely to be litigated. The mere presence of legal counsel at an executive session does not satisfy this requirement;
- (g) By the commission of pardons and parole, as provided by law.
- (h) By the sexual offender classification board.
 - (i) By the custody review board of Idaho Department of Juvenile Corrections. Idaho Code § 67-2345(1)(a)-(i);
 - (j) To engage in communications with a representative of the public agency's risk manager or insurance provider to discuss the adjustment of a pending claim or prevention of a claim imminently likely to be filed. The mere presence of a representative of the public agency's risk manager or insurance provider at an executive session does not satisfy this requirement.

Labor negotiations receive special treatment under the Idaho Open Meeting Law and are, in practice, usually closed to the public. Idaho Code § 67-2345(2) provides that either side in labor negotiations may request meetings to be conducted in executive session and, notwithstanding other provisions of the Open Meeting Law dealing with public notice of executive session, any subsequent session of the negotiations may continue to be closed without further public notice.

Idaho Code § 67-2345(3) reaffirms the overall policy of the Open Meetings Law when applying the executive session provisions: "The exceptions to the general policy in favor of open meetings stated in this section shall be narrowly construed. It shall be a violation of this act to change the subject within the executive session to one not iden-

tified within the motion to enter the executive session or to any topic for which an executive session is not provided."

B. Any other statutory requirements for closed or open meetings.

Although it may be questionable as a practical matter how many minds remain open after deliberations during an executive session, no final decisions can be made in executive session. Idaho Code § 67-2345(4) states flatly that "no executive session may be held for the purpose of taking any final action or making any final decision."

The Idaho Commission of Pardons and Parole is accorded limited exemption from this provision of the Open Meeting Law. While their meetings are generally open, deliberations *and decisions* concerning paroles can be made in executive session and the votes of individual parole board members on such decisions shall not be made public. But the public may obtain overall vote tallies of Commission's decisions. Idaho Code § 20-213A.

C. Court mandated opening, closing.

There are no known reported Idaho judicial decisions either closing public meetings otherwise subject to the Open Meeting Law or ordering that executive sessions be opened to the public. At least two appellate decisions have found that governing bodies violated the provisions of the Open Meeting Act by not allowing the public to meaningfully observe such meeting (*Noble v. Kootenai County*, 148 Idaho 937, 231 P.3d 1034 (2010)) and violating the executive session provisions (*State v. Yzaguirre*, 144 Idaho 471, 163 P.3d 1183 (2007)).

III. MEETING CATEGORIES — OPEN OR CLOSED.

Only those meetings which concern topics described in the ten categories contained in Idaho Code §§ 67-2345(1)(a)-(j) are properly conducted in executive session. All other meetings must be conducted in open session.

A. Adjudications by administrative bodies.

Adjudication by administrative bodies are open to the public if they fall within the definitions of the Open Meeting Law and constitute meetings taken to make a decision or to deliberate toward a decision on any matter. Idaho Code §§ 67-2341, 67-2342(1).

The Commission on Pardons and Parole is given a limited exemption from the law's requirements. The deliberations of the Commission on Pardons and Parole regarding parole and commutations may be held in executive session and the votes of the individual members of the commission will remain confidential and available only to specified elected officials. Only the Public Utilities Commission, Industrial Commission Board of Tax Appeals, Idaho Life and Health Insurance Guaranty Association, Idaho Insurance Guaranty Association, and Surplus Line Association are granted a limited exception from the law for specific meetings in fully submitted adjudicatory proceedings. Idaho Code § 67-2342(2)-(3).

B. Budget sessions.

The Open Meeting Law does not reference particular types of meetings, other than those identified as properly subject to executive session. Idaho Code § 67-2345. Budget sessions and federal programs generally are not proper subjects of an executive session.

C. Business and industry relations.

Meetings involving "preliminary negotiations involving matters of trade or commerce in which the governing body is in competition with governing bodies in other states and nations" are properly subject to executive session discussions. Idaho Code § 67-2345(1)(e).

D. Federal programs.

Federal programs generally are not proper subjects of an executive session.

E. Financial data of public bodies.

Generally, a meeting to discuss financial data of public bodies must be open if the meeting otherwise falls within the Open Meeting Law. However, there are various types of information held by governmental bodies in Idaho that are exempt from the general statutes dealing with the public's right to inspect governmental records. The Open Meeting Law expressly permits a governing body to hold an executive session to discuss such records that are otherwise exempt from public inspection. Idaho Code § 67-2345(1)(d).

F. Financial data, trade secrets or proprietary data of private corporations and individuals.

Most proprietary business records and trade secret information are exempt from inspection and copying. The Open Meeting Law expressly permits a governing body to hold an executive session to discuss records that are otherwise exempt from public inspection. Idaho Code § 67-2345(1)(d). Thus, this may be the proper subject of an executive session.

G. Gifts, trusts and honorary degrees.

Not specified.

H. Grand jury testimony by public employees.

Not specified.

I. Licensing examinations.

Not specified.

J. Litigation; pending litigation or other attorney-client privileges.

The Open Meeting Law contains an exemption for a governing body to "communicate with legal counsel for the public agency to discuss the legal ramifications of and legal options for pending litigation, or controversies not yet being litigated but imminently likely to be litigated. The mere presence of counsel at an executive session does not satisfy this requirement." Idaho Code § 67-2345(1)(f). Similarly, Idaho Code § 67-2345(1)(j) provides that an executive session may be held "to engage in communications with a representative of the public agency's risk manager or insurance provider to discuss the adjustment of a pending claim or prevention of a claim imminently likely to be filed. The mere presence of a representative of the public agency's risk manager or insurance provider at an executive session does not satisfy this requirement."

In *Farrell v. Board of Commissioners, Lemhi County*, 138 Idaho 378, 64 P.2d 304 (2002), the Idaho Supreme Court held that a county's entry of a stipulation for judgment was void because it was required to be accepted and voted upon during a public meeting.

K. Negotiations and collective bargaining of public employees.

An executive session may be held to conduct deliberations concerning labor negotiations. Idaho Code § 67-2345(1)(c).

Labor negotiations receive special treatment under the Idaho Open Meeting Law and are, in practice, usually closed to the public. Idaho Code § 67-2345(2) provides that either side in labor negotiations may request meetings to be conducted in executive session and, notwithstanding other provisions of the Open Meeting Law dealing with public notice of executive session, any subsequent session of the negotiations may continue to be closed without further public notice.

L. Parole board meetings, or meetings involving parole board decisions.

The Idaho Commission of Pardons and Parole is accorded limited exemption from this provision of the Open Meeting Law. Idaho Code § 67-2345(1)(g). While their meetings are generally open, deliberations *and decisions* concerning paroles can be made in executive session

and the votes of individual parole board members on such decisions shall not be made public. But the public may obtain overall vote tallies of Commission decisions. Idaho Code § 20-213A.

M. Patients; discussions on individual patients.

There are various types of information held by governmental bodies in Idaho that are exempt from the general statutes dealing with the public's right to inspect governmental records. The Open Meeting Law expressly permits a governing body to hold an executive session to discuss such records that are otherwise exempt from public inspection. Idaho Code § 67-2345(1)(d). Patient information may fall within this category.

N. Personnel matters.

1. Interviews for public employment.

Executive sessions may be held to consider hiring a public officer, employee, staff member or individual agent, wherein the respective qualities of individuals are to be evaluated in order to fill a particular vacancy or need. Idaho Code § 67-2345(1)(a). However, this paragraph does not apply to filling a vacancy in an elective office or deliberations about staffing needs in general. *Id.*

2. Disciplinary matters, performance or ethics of public employees.

An executive session may be held to consider the evaluation, disciplining of, or to hear complaints or charges brought against, a public officer, employee, staff member, or individual agent, or public school student. Idaho Code § 67-2345(1)(b).

3. Dismissal; considering dismissal of public employees.

An executive session may be held to consider the dismissal of, or to hear complaints or charges brought against, a public officer, employee, staff member, or individual agent, or public school student. Idaho Code § 67-2345(1)(b).

O. Real estate negotiations.

Deliberations concerning acquisition of an interest in real property that is not owned by a public agency can properly take place in executive session. Idaho Code § 67-2345(1)(c).

P. Security, national and/or state, of buildings, personnel or other.

There are various types of information held by governmental bodies in Idaho that are exempt from the general statutes dealing with the public's right to inspect governmental records. The Open Meeting Law expressly permits a governing body to hold an executive session to discuss such records that are otherwise exempt from public inspection under the Public Records Act. Idaho Code § 67-2345(1)(d).

Q. Students; discussions on individual students.

An executive session may be held to consider the evaluation, dismissal or disciplining of a public school student. Idaho Code § 67-2345(1)(b).

IV. PROCEDURE FOR ASSERTING RIGHT OF ACCESS

A. When to challenge.

Although the law does not specifically require it, a challenge should be initiated informally as soon as the violation of the law is known or suspected. In some instances, a governing body (particularly in some smaller local agencies) may simply be unaware or ill informed as to the law's requirements. If the governing body learns of its potential error in advance of the violation, the problem may be corrected.

The Idaho Open Meeting Law does not contain specific provision for reviewing requests to attend upcoming meetings. However, if it

is apparent that the proposed meeting will violate the law, a person may draw upon general declaratory and injunctive judicial remedies to prevent the violation from occurring.

The only “bar” to challenging an Open Meeting Law violation is the statutory period for bringing a claim under the law, found at Idaho Code § 67-2347(6). In some instances, permanent injunctive relief may be sought to prevent future violations of the law. A suit brought to have an action declared null and void because it happened at a meeting in violation of the Open Meeting Law needs to be commenced within 30 days of the time of the decision or action that results. Any other suit brought needs to be brought within 180 days of the time of the alleged violation.

B. How to start.

The initial protest of an informal nature should be directed at the governing body and/or the head of the public agency (*e.g.*, the city council and the mayor), if the violation is apparent before it occurs or during its occurrence. However, there is no specific requirement in the law that a protest be filed with the agency or governing board prior to a court action. Persons who are directly affected by a decision made in violation of the law should, nonetheless, review whether the administrative law “exhaustion” doctrine applies to any legal challenge made to the decision apart from or in conjunction with a claim under the Open Meeting Law.

The state attorney general has specific responsibility for enforcing the Open Meeting Law in relation to state agencies. Idaho Code § 67-2347(5). In addition, an informal or formal opinion from the attorney general’s office as to the propriety of agency action in relation to the Open Meeting Law is often a sound alternative to litigation.

Court rulings may be obtained by proceeding under Idaho Code § 67-2347(6).

A person affected by a violation of the law may commence a civil action in the magistrate division of the district court of the county where the public agency ordinarily meets. Idaho Code § 67-2347(6).

1. Where to ask for ruling.

a. Administrative forum.

(1). Agency procedure for challenge.

The prosecuting attorneys of the various counties have the duty to enforce the Open Meeting Law in relation to local public agencies within their respective jurisdictions. In the event that there is reason to believe that a violation of the provisions of the law has been committed by members of a board of county commissioners or, for any other reason a county prosecuting attorney is deemed disqualified from proceeding to enforce the law, the prosecuting attorney or board of county commissioners shall seek to have a special prosecutor appointed for that purpose as provided in section 31-2603, Idaho Code. Idaho Code § 67-2347(5).

b. State attorney general.

The state attorney general has specific responsibility for enforcing the Open Meeting Law in relation to state agencies. Idaho Code § 67-2347(5).

2. Applicable time limits.

Idaho Code § 67-2347(6) provides that any private action brought by a person affected by a violation of the Open Meeting Law to declare a specific act or decision “null and void” must be instituted within thirty (30) days of the time of the act or decision being challenged. Any other suit brought under the Open Meeting Law must be commenced within one hundred eighty (180) days of the time of the violation or alleged violation of the law.

C. Court review of administrative decision.

1. Who may sue?

“Any person affected by a violation” of the Open Meeting Law may bring an action for the purpose of requiring compliance with the law or to have an action declared null and void. Idaho Code § 67-2347(6). There is no specific definition of “affected” under the law. Although representatives of local agencies argued during the 1992 amendment process that such actions should be limited only to those directly damaged by a violation, the language of the statute could allow a person who feels “shut out” of the decision process to also bring an action under the law.

2. Will the court give priority to the pleading?

Unlike Idaho’s Public Records Act, there is no requirement that a Court give priority to a lawsuit involving the Open Meeting Law. If immediate injunctive relief is also sought, however, at least that portion of the action should receive priority attention from the Court.

3. Pro se possibility, advisability.

There is no prohibition against bringing a *pro se* action under the Open Meeting Law. However, one can expect some difficulty in mustering the evidentiary proof necessary to establish that a decision or deliberation occurred in a closed meeting, and experienced counsel can make that task easier.

4. What issues will the court address?

The court will consider any issue raised by the pleadings that deal with compliance with the Open Meeting Law or for the purpose of having an action declared or determined to be null and void for having resulted in violations of the law. However, there is no private right to seek assessment of a civil penalty against a member of the public agency, nor is there any private right of action for damages arising out of violations of the law. Idaho Code § 67-2347(6). Although not specifically defined, the reference to “damages” in Idaho Code § 67-2347(6) is thought to refer only to money damages.

a. Open the meeting.

See above.

b. Invalidate the decision.

See above.

c. Order future meetings open.

See above.

5. Pleading format.

The statute requires no specific pleading format. The complaint should describe the violation and relief sought with sufficient specificity to meet the notice pleading requirements of the Idaho Rules of Civil Procedure and otherwise comply with those rules.

6. Time limit for filing suit.

Severe time constraints are placed upon actions filed under the Open Meeting Law. Any suit seeking to declare an action null and void must be brought within 30 days of the time of violation or alleged violation of the law. Idaho Code § 67-2347(6). Any other suit must be commenced within 180 days of the time of the violation or alleged violation of the law. Idaho Code § 67-2347(6).

7. What court.

Suits are filed in the magistrate division of the district court of the county in which the public agency ordinarily meets. Idaho Code § 67-2347(6).

8. Judicial remedies available.

The full range of judicial remedies under Idaho law is available to require compliance with the law or declare action taken in violation of the law null and void, including injunctive and declaratory relief. However, private suits may not be brought for damages or to impose the civil penalty described in Idaho Code §§ 67-2347(2)-(4). Idaho Code § 67-2347(6).

9. Availability of court costs and attorneys' fees.

There is no specific provision for court costs and attorney fees in the law. Thus, fees and costs issues will be determined by other applicable provisions of the Idaho Code and Idaho Rules of Civil Procedure. Plaintiffs should review all such statutes and rules.

10. Fines.

The Open Meeting Law provides for three levels of civil penalties. Idaho Code § 67-2347(2) imposes a civil penalty not to exceed \$50 for any member of the governing body who “conducts or participates in a meeting” which violates the Open Meeting Law. Idaho Code § 67-2347(3) imposes a civil penalty not to exceed \$500 upon any member of a governing body who “knowingly violates” the Open Meeting Act. And, Idaho Code § 67-2347(4) provides that any member of a governing body who has violated the Open Meeting Act (knowingly or unintentionally) more than once in a twelve (12) month period shall be subject to a civil penalty not to exceed \$500.

Idaho Code § 67-2347(7) was added recently to encourage and allow governing bodies to “cure” any violations of the Open Meeting Law. Under section 67-2347(7)(a), a violation of the law may be cured by a public agency upon: (a) the agency’s self-recognition or a violation; or (b) the service of a complaint alleging a violation of the Law. Once the agency is put on notice of such a violation, it has 14 days to respond by either acknowledging a violation and an intent to cure it or determining that no violation has occurred. Failure to respond shall be treated as a denial for purposes of proceeding with any enforcement action. I.C. § 67-2347(7)(a)(i)-(ii). If the agency acknowledges a violation, it has 14 days to cure the violation “by declaring that all actions taken at or resulting from the meeting in violation of this act void.” I.C. § 67-2347(7)(b). All enforcement actions are stayed during the “response and cure” periods but may recommence at the discretion of the complainant after the cure period has expired. I.C. § 67-2347(7)(c). An agency’s cure of an alleged violation “shall act as a bar to the imposition of the civil penalties” provided in the law. I.C. § 67-2347(7)(d).

11. Other penalties.

Any action taken in a meeting which violates the Open Meeting Law, or which stems from deliberations or decision making in a meeting that violates the law, “shall be null and void.” Idaho Code § 67-2347(1).

D. Appealing initial court decisions.

1. Appeal routes.

Because actions filed under the Open Meeting Law begin in magistrate court, the first level of appeal is to the district court. Appeals

from magistrate court to district court are governed by Rule 83 of the Idaho Rules of Civil Procedure and a party undertaking such an appeal should review the current rules for guidance. Appeals from the district court are handled as other appeals and are governed by the Idaho Appellate Rules. Appeals are assigned to either the intermediate Court of Appeals or directly to the Idaho Supreme Court. If decided by the intermediate Court of Appeals, a party may seek further review before the Idaho Supreme Court.

2. Time limits for filing appeals.

See above.

3. Contact of interested amici.

Amicus appearances are generally liberally allowed by the Idaho appellate courts. Provisions for seeking leave to make such an appearance and procedures for *amicus* briefing and argument are also found in the Idaho Appellate Rules.

The Reporters Committee for Freedom of the Press often files *amicus* briefs in cases involving significant media law issues before a state’s highest Court.

V. ASSERTING A RIGHT TO COMMENT.

A. Is there a right to participate in public meetings?

The Open Meeting Law does not specifically provide for public participation. However, by uniform and local practice, public participation is universally allowed, subject to the governing body’s particular practice.

B. Must a commenter give notice of intentions to comment?

Generally the governing body will ask for persons to sign a list of persons seeking to comment upon particular agenda items. The Open Meeting Law does not address such an issue, however.

C. Can a public body limit comment?

The Open Meeting Law does not specifically address this question. Idaho governing bodies generally try to impose time limits on comments, however.

D. How can a participant assert rights to comment?

The Open Meeting Law does not provide for any particular method for asserting a right to comment. Individuals should be able to assert a right to comment by providing written notice prior to the meeting or by standing and asking for the opportunity to give public comment. It would also be prudent to ask that the request for comment be included in the meeting minutes.

E. Are there sanctions for unapproved comment?

There are no sanctions for unapproved comments in the Open Meeting Law. Disruptive or disorderly conduct would subject the person involved in such conduct to removal from the meeting, however, and possible arrest under general criminal statutes dealing with such conduct.

Statute

Open Records

Title 9. Evidence

Chapter 3. Public Writings

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.

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

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

(6) “Investigatory record” means information with respect to an identifiable person, group of persons or entities compiled by a public agency or independent public body corporate and politic pursuant to its statutory authority in the course of investigating a specific act, omission, failure to act, or other conduct over which the public agency or independent public body corporate and politic has regulatory authority or law enforcement authority.

(7) “Law enforcement agency” means any state or local agency given law enforcement powers or which has authority to investigate, enforce, prosecute or punish violations of state or federal criminal statutes, ordinances or regulations.

(8) “Local agency” means a county, city, school district, municipal corporation, district, public health district, political subdivision, or any agency thereof, or any committee of a local agency, or any combination thereof.

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

(10) “Prisoner” means a person who has been convicted of a crime and is either incarcerated or on parole for that crime or who is being held in custody for trial or sentencing.

(11) “Public agency” means any state or local agency as defined in this section.

(12) “Public official” means any state, county, local district, independent public body corporate and politic or governmental official or employee, whether elected, appointed or hired.

(13) “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.

(14) “State agency” means every state officer, department, division, bureau, commission and board or any committee of a state agency including those in the legislative or judicial branch, except the state militia.

(15) “Writing” includes, but is not limited to, handwriting, typewriting, printing, photostating, photographing and every means of recording, including letters, words, pictures, sounds or symbols or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums or other documents.

9-338 Public records — Right to examine.

(1) 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.

(2) The right to copy public records shall include the right to make photographs or photographic or other copies while the records are in the possession of the custodian of the records using equipment provided by the public agency or independent public body corporate and politic or using equipment designated by the custodian.

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

(4) The custodian shall make no inquiry of any person who applies for a public record, except to verify the identity of a person requesting a record in accordance with section 9-342, Idaho Code, to ensure that the requested record or information will not be used for purposes of a mailing or telephone list prohibited by section 9-348, Idaho Code, or as otherwise provided by law, and except as required for purposes of protecting personal information from disclosure under chapter 2, title 49, Idaho Code, and federal law. The person may be required to make a written request and provide their name, a mailing address and telephone number.

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

(6) Nothing herein contained shall prevent the custodian from maintaining such vigilance as is required to prevent alteration of any public record while it is being examined.

(7) Examination of public records under the authority of this section must be conducted during regular office or working hours unless the custodian shall authorize examination of records in other than regular office or working hours. In this event, the persons designated to represent the custodian during such examination shall be entitled to reasonable compensation to be paid to them by the public agency or independent public body corporate and politic having custody of such records, out of funds provided in advance by the person examining such records, at other than regular office or working hours.

(8) (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 public agency or independent public body corporate and politic or public official may establish a fee to recover the actual labor cost 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 exceeds two (2) person hours.

(b) 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.

(c) The public agency or independent public body corporate and politic may not charge any cost or fee for copies or labor when the requester demonstrates either:

(i) The inability to pay; or

(ii) That the public's interest or the public's understanding of the operations or activities of government or its records would suffer by the assessment or collection of any fee.

(9) A public agency or independent public body corporate and politic shall not prevent the examination or copying of a public record by contracting with a nongovernmental body to perform any of its duties or functions.

(10) Nothing contained herein shall prevent a public agency or independent public body corporate and politic from disclosing statistical information that is descriptive of an identifiable person or persons, unless prohibited by law.

(11) Nothing contained herein shall prevent a public agency or independent public body corporate and politic from providing a copy of a public record in electronic form if the record is available in electronic form and if the person specifically requests an electronic copy. A request for a public record and delivery of the public record may be conducted by electronic mail.

9-339 Response to request for examination of public records.

(1) A public agency or independent public body corporate and politic shall either grant or deny a person's request to examine or copy public records within three (3) working days of the date of the receipt of the request for examination or copying. If it is determined by employees of the public agency or independent public body corporate and politic that a longer period of time is needed to locate or retrieve the public records, the public agency or independent public body corporate and politic shall so notify in writing the person requesting to examine or copy the records and shall provide the public records to the person no later than ten (10) working days following the person's request. Provided however, if it is determined the existing electronic record requested will first have to be converted to another electronic format by the agency or by a third party and that such conversion cannot be completed within ten (10) working days, the agency shall so notify in writing the person requesting to examine or copy the records. The agency shall provide the converted public record at a time mutually agreed upon between the agency and the requester, with due consideration given to any limitations that may exist due to the process of conversion or due to the use of a third party to make the conversion.

(2) If the public agency or independent public body corporate and politic fails to respond, the request shall be deemed to be denied within ten (10) working days following the request.

(3) If the public agency or independent public body corporate and politic denies the person's request for examination or copying the public records or denies in part and grants in part the person's request for examination and copying of the public records, the person legally responsible for administering the public agency or independent public body corporate and politic or that person's designee shall notify the person in writing of the denial or partial denial of the request for the public record.

(4) The notice of denial or partial denial shall state that the attorney for the public agency or independent public body corporate and politic has reviewed the request or shall state that the public agency or independent public body corporate and politic has had an opportunity to consult with an attorney regarding the request for examination or copying of a record and has chosen not to do so. The notice of denial or partial denial also shall indicate the statutory authority for the denial and indicate clearly the person's right to appeal the denial or partial denial and the time periods for doing so.

9-340. Records exempt from disclosure. [Repealed.]

9-340A Records exempt from disclosure — Exemptions in federal or state law — Court files of judicial proceedings.

The following records are exempt from disclosure:

(1) Any public record exempt from disclosure by federal or state law or federal regulations to the extent specifically provided for by such law or regulation.

(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,

but only to the extent that confidentiality is provided under such rules, and any drafts or other working memoranda related to judicial decision-making, provided the provisions of this subsection making records exempt from disclosure shall not apply to the extent that such records or information contained in those records are necessary for a background check on an individual that is required by federal law regulating the sale of firearms, guns or ammunition.

9-340B Records exempt from disclosure — Law enforcement records, investigatory records of agencies, evacuation and emergency response plans, worker's compensation.

The following records are exempt from disclosure:

(1) Investigatory records of a law enforcement agency, as defined in section 9-337(7), Idaho Code, under the conditions set forth in section 9-335, Idaho Code.

(2) Juvenile records of a person maintained pursuant to chapter 5, title 20, Idaho Code, except that facts contained in such records shall be furnished upon request in a manner determined by the Court to persons and governmental and private agencies and institutions conducting pertinent research studies or having a legitimate interest in the protection, welfare and treatment of the juvenile who is thirteen (13) years of age or younger. If the juvenile is petitioned or charged with an offense which would be a criminal offense if committed by an adult, the name, offense of which the juvenile was petitioned or charged and disposition of the Court shall be subject to disclosure as provided in section 20-525, Idaho Code. Additionally, facts contained in any records of a juvenile maintained under chapter 5, title 20, Idaho Code, shall be furnished upon request to any school district where the juvenile is enrolled or is seeking enrollment.

(3) Records of the custody review board of the Idaho department of juvenile corrections, including records containing the names, addresses and written statements of victims and family members of juveniles, shall be exempt from public disclosure pursuant to section 20-533A, Idaho Code.

(4)(a) The following records of the department of correction:

(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;

(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 presentence investigation;

(v) Records of a prisoner, as defined in section 9-337(10), Idaho Code, or probationer shall not be disclosed to any other prisoner or probationer.

(b) Records of buildings, facilities, infrastructures and systems held by or in the custody of any public agency only when the disclosure of such information would jeopardize the safety of persons or the public safety. Such records may include emergency evacuation, escape or other emergency response plans, vulnerability assessments, operation and security manuals, plans, blueprints or security codes. For purposes of this section "system" shall mean electrical, heating, ventilation, air conditioning and telecommunication systems.

(c) Records of the commission of pardons and parole shall be exempt from public disclosure pursuant to section 20-213A, Idaho Code, and section 20-223, Idaho Code. Records exempt from disclosure shall also include those containing the names, addresses and written statements of victims.

(5) Voting records of the sexual offender classification board. In accordance with section 18-8315, Idaho Code, the written record of the vote to classify an offender as a violent sexual predator by each board member in each case reviewed by that board member shall be exempt from disclosure to the public and shall be made available upon request only to the governor, the chairman of the senate judiciary and rules committee, and the chairman of the house of representatives judiciary, rules and administration committee, for all lawful purposes.

(6) Records of the sheriff or Idaho state police received or maintained pursuant to sections 18-3302 and 18-3302H, Idaho Code, relating to an applicant or licensee.

(7) Records of investigations prepared by the department of health and welfare pursuant to its statutory responsibilities dealing with the protection of

children, the rehabilitation of youth, adoptions and the commitment of mentally ill persons.

(8) Records including, but not limited to, investigative reports, resulting from investigations conducted into complaints of discrimination made to the Idaho human rights commission unless the public interest in allowing inspection and copying of such records outweighs the legitimate public or private interest in maintaining confidentiality of such records. A person may inspect and copy documents from an investigative file to which he or she is a named party if such documents are not otherwise prohibited from disclosure by federal law or regulation or state law. The confidentiality of this subsection will no longer apply to any record used in any judicial proceeding brought by a named party to the complaint or investigation, or by the Idaho human rights commission, relating to the complaint of discrimination.

(9) Records containing information obtained by the manager of the Idaho state insurance fund pursuant to chapter 9, title 72, Idaho Code, from or on behalf of employers or employees contained in underwriting and claims for benefits files.

(10) The worker's compensation records of the Idaho industrial commission provided that the industrial commission shall make such records available:

(a) To the parties in any worker's compensation claim and to the industrial special indemnity fund of the state of Idaho; or

(b) To employers and prospective employers subject to the provisions of the Americans with disabilities act, 42 U.S.C. 12112, or other statutory limitations, who certify that the information is being requested with respect to a worker to whom the employer has extended an offer of employment and will be used in accordance with the provisions of the Americans with disabilities act, 42 U.S.C. 12112, or other statutory limitations; or

(c) To employers and prospective employers not subject to the provisions of the Americans with disabilities act, 42 U.S.C. 12112, or other statutory limitations, provided the employer presents a written authorization from the person to whom the records pertain; or

(d) To others who demonstrate that the public interest in allowing inspection and copying of such records outweighs the public or private interest in maintaining the confidentiality of such records, as determined by a civil Court of competent jurisdiction; or

(e) Although a claimant's records maintained by the industrial commission, including medical and rehabilitation records, are otherwise exempt from public disclosure, the quoting or discussing of medical or rehabilitation records contained in the industrial commission's records during a hearing for compensation or in a written decision issued by the industrial commission shall be permitted; provided further, the true identification of the parties shall not be exempt from public disclosure in any written decision issued and released to the public by the industrial commission.

(11) Records of investigations compiled by the commission on aging involving vulnerable adults, as defined in section 18-1505, Idaho Code, alleged to be abused, neglected or exploited.

(12) Criminal history records and fingerprints, as defined by section 67-3001, Idaho Code, and compiled by the Idaho state police. Such records shall be released only in accordance with chapter 30, title 67, Idaho Code.

(13) Records furnished or obtained pursuant to section 41-1019, Idaho Code, regarding termination of an appointment, employment, contract or other insurance business relationship between an insurer and a producer.

(14) Records of a prisoner or former prisoner in the custody of any state or local correctional facility, when the request is made by another prisoner in the custody of any state or local correctional facility.

(15) Except as provided in section 72-1007, Idaho Code, records of the Idaho industrial commission relating to compensation for crime victims under chapter 10, title 72, Idaho Code.

(16) Records or information identifying a complainant maintained by the department of health and welfare pursuant to section 39-3556, Idaho Code, relating to certified family homes, unless the complainant consents in writing to the disclosure or the disclosure of the complainant's identity is required in any administrative or judicial proceeding.

9-340C Records exempt from disclosure — Personnel records, personal information, health records, professional discipline.

The following records are exempt from disclosure:

(1) Except as provided in this subsection, 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. All other personnel information relating to a public employee or applicant including, but not limited to, information regarding sex, race, marital status, birth date, home address and telephone number, applications, testing and scoring materials, grievances, correspondence and performance evaluations, shall not be disclosed to the public without the employee's or applicant's written consent. Names of applicants to classified or merit system positions shall not be disclosed to the public without the applicant's written consent. Disclosure of names as part of a background check is permitted. Names of the five (5) final applicants to all other positions shall be available to the public. If such group is less than five (5) finalists, then the entire list of applicants shall be available to the public. A public official or authorized representative may inspect and copy his personnel records, except for material used to screen and test for employment.

(2) Retired employees' and retired public officials' home addresses, home telephone numbers and other financial and nonfinancial membership records; active and inactive member financial and membership records and mortgage portfolio loan documents maintained by the public employee retirement system. Financial statements prepared by retirement system staff, funding agents and custodians concerning the investment of assets of the public employee retirement system of Idaho are not considered confidential under this chapter.

(3) Information and records submitted to the Idaho state lottery for the performance of background investigations of employees, lottery retailers and major procurement contractors; audit records of lottery retailers, vendors and major procurement contractors submitted to or performed by the Idaho state lottery; validation and security tests of the state lottery for lottery games; business records and information submitted pursuant to sections 67-7412(8) and (9) and 67-7421(8) and (9), Idaho Code, and such documents and information obtained and held for the purposes of lottery security and investigative action as determined by lottery rules unless the public interest in disclosure substantially outweighs the private need for protection from public disclosure.

(4) Records of a personal nature as follows:

(a) Records of personal debt filed with a public agency or independent public body corporate and politic pursuant to law;

(b) Personal bank records compiled by a public depositor for the purpose of public funds transactions conducted pursuant to law;

(c) Records of ownership of financial obligations and instruments of a public agency or independent public body corporate and politic, such as bonds, compiled by the public agency or independent public body corporate and politic pursuant to law;

(d) Records, with regard to the ownership of, or security interests in, registered public obligations;

(e) Vital statistics records; and

(f) Military records as described in and pursuant to section 65-301, Idaho Code.

(5) Information in an income or other tax return measured by items of income or sales, which is gathered by a public agency for the purpose of administering the tax, except such information to the extent disclosed in a written decision of the tax commission pursuant to a taxpayer protest of a deficiency determination by the tax commission, under the provisions of section 63-3045B, Idaho Code.

(6) Records of a personal nature related directly or indirectly to the application for and provision of statutory services rendered to persons applying for public care for people who are elderly, indigent or have mental or physical disabilities, or participation in an environmental or a public health study, provided the provisions of this subsection making records exempt from disclosure shall not apply to the extent that such records or information contained in those records are necessary for a background check on an individual that is required by federal law regulating the sale of firearms, guns or ammunition.

(7) Employment security information, except that a person may agree, through written, informed consent, to waive the exemption so that a third party may obtain information pertaining to the person, unless access to the information by the person is restricted by subsection (3)(a), (3)(b) or (3)(d) of section 9-342, Idaho Code. Notwithstanding the provisions of section 9-342, Idaho Code, a person may not review identifying information concerning an informant who reported to the department of labor a suspected violation by the person of the employment security law, chapter 13, title 72, Idaho Code, under

an assurance of confidentiality. As used in this section and in chapter 13, title 72, Idaho Code, “employment security information” means any information descriptive of an identifiable person or persons that is received by, recorded by, prepared by, furnished to or collected by the department of labor or the industrial commission in the administration of the employment security law.

(8) Any personal records, other than names, business addresses and business phone numbers, such as parentage, race, religion, sex, height, weight, tax identification and social security numbers, financial worth or medical condition submitted to any public agency or independent public body corporate and politic pursuant to a statutory requirement for licensing, certification, permit or bonding.

(9) Unless otherwise provided by agency rule, information obtained as part of an inquiry into a person’s fitness to be granted or retain a license, certificate, permit, privilege, commission or position, private association peer review committee records authorized in title 54, Idaho Code. Any agency which has records exempt from disclosure under the provisions of this subsection shall annually make available a statistical summary of the number and types of matters considered and their disposition.

(10) The records, findings, determinations and decisions of any prelitigation screening panel formed under chapters 10 and 23, title 6, Idaho Code.

(11) Complaints received by the board of medicine and investigations and informal proceedings, including informal proceedings of any committee of the board of medicine, pursuant to chapter 18, title 54, Idaho Code, and rules adopted thereunder.

(12) Records of the department of health and welfare or a public health district that identify a person infected with a reportable disease.

(13) Records of hospital care, medical records, including prescriptions, drug orders, records or any other prescription information that specifically identifies an individual patient, prescription records maintained by the board of pharmacy under sections 37-2726 and 37-2730A, Idaho Code, records of psychiatric care or treatment and professional counseling records relating to an individual’s condition, diagnosis, care or treatment, provided the provisions of this subsection making records exempt from disclosure shall not apply to the extent that such records or information contained in those records are necessary for a background check on an individual that is required by federal law regulating the sale of firearms, guns or ammunition.

(14) Information collected pursuant to the directory of new hires act, chapter 16, title 72, Idaho Code.

(15) Personal information contained in motor vehicle and driver records that is exempt from disclosure under the provisions of chapter 2, title 49, Idaho Code.

(16) Records of the financial status of prisoners pursuant to subsection (2) of section 20-607, Idaho Code.

(17) Records of the Idaho state police or department of correction received or maintained pursuant to section 19-5514, Idaho Code, relating to DNA databases and databanks.

(18) Records of the department of health and welfare relating to a survey, resurvey or complaint investigation of a licensed nursing facility shall be exempt from disclosure. Such records shall, however, be subject to disclosure as public records as soon as the facility in question has received the report, and no later than the fourteenth day following the date that department of health and welfare representatives officially exit the facility pursuant to federal regulations. Provided however, that for purposes of confidentiality, no record shall be released under this section which specifically identifies any nursing facility resident.

(19) Records and information contained in the registry of immunizations against childhood diseases maintained in the department of health and welfare, including information disseminated to others from the registry by the department of health and welfare.

(20) Records of the Idaho housing and finance association (IHFA) relating to the following:

- (a) Records containing personal financial, family, health or similar personal information submitted to or otherwise obtained by the IHFA;
- (b) Records submitted to or otherwise obtained by the IHFA with regard to obtaining and servicing mortgage loans and all records relating to the review, approval or rejection by the IHFA of said loans;

(c) Mortgage portfolio loan documents;

(d) Records of a current or former employee other than the employee’s duration of employment with the association, position held and location of employment. This exemption from disclosure does not include the contracts of employment or any remuneration, including reimbursement of expenses, of the executive director, executive officers or commissioners of the association. All other personnel information relating to an association employee or applicant including, but not limited to, information regarding sex, race, marital status, birth date, home address and telephone number, applications, testing and scoring materials, grievances, correspondence, retirement plan information and performance evaluations, shall not be disclosed to the public without the employee’s or applicant’s written consent. An employee or authorized representative may inspect and copy that employee’s personnel records, except for material used to screen and test for employment or material not subject to disclosure elsewhere in the Idaho public records act.

(21) Records of the department of health and welfare related to child support services in cases in which there is reasonable evidence of domestic violence, as defined in chapter 63, title 39, Idaho Code, that can be used to locate any individuals in the child support case except in response to a Court order.

(22) Records of the Idaho state bar lawyer assistance program pursuant to chapter 49, title 54, Idaho Code, unless a participant in the program authorizes the release pursuant to subsection (4) of section 54-4901, Idaho Code.

(23) Records and information contained in the trauma registry created by chapter 20, title 57, Idaho Code, together with any reports, analyses and compilations created from such information and records.

(24) Records contained in the Court files, or other records prepared as part of proceedings for judicial authorization of sterilization procedures pursuant to chapter 39, title 39, Idaho Code.

(25) The physical voter registration card on file in the county clerk’s office; however, a redacted copy of said card shall be made available consistent with the requirements of this section. Information from the voter registration card maintained in the statewide voter registration database, including age, will be made available except for the voter’s driver’s license number, date of birth and, upon showing of good cause by the voter to the county clerk in consultation with the county prosecuting attorney, the physical residence address of the voter. For the purposes of this subsection good cause shall include the protection of life and property and protection of victims of domestic violence and similar crimes.

(26) File numbers, passwords and information in the files of the health care directive registry maintained by the secretary of state under section 39-4515, Idaho Code, are confidential and shall not be disclosed to any person other than to the person who executed the health care directive or the revocation thereof and that person’s legal representatives, to the person who registered the health care directive or revocation thereof, and to physicians, hospitals, medical personnel, nursing homes, and other persons who have been granted file number and password access to the documents within that specific file.

(27) Records in an address confidentiality program participant’s file as provided for in chapter 57, title 19, Idaho Code, other than the address designated by the secretary of state, except under the following circumstances:

- (a) If requested by a law enforcement agency, to the law enforcement agency; or
- (b) If directed by a Court order, to a person identified in the order.

(28) Except as otherwise provided by law relating to the release of information to a governmental entity or law enforcement agency, any personal information including, but not limited to, names, personal and business addresses and phone numbers, sex, height, weight, date of birth, social security and driver’s license numbers, or any other identifying numbers and/or information related to any Idaho fish and game licenses, permits and tags unless written consent is obtained from the affected person.

[(29)] (28) Documents and records related to continuing education and recordkeeping violations that are maintained by the Idaho board of veterinary medicine under the provisions of section 54-2118(1)(b), Idaho Code, provided the requirements set forth therein are met.

9-340D Records exempt from disclosure — Trade secrets, production records, appraisals, bids, proprietary information.

The following records are exempt from disclosure:

(1) Trade secrets including those contained in response to public agency or independent public body corporate and politic requests for proposal, requests for clarification, requests for information and similar requests. "Trade secrets" as used in this section means information, including a formula, pattern, compilation, program, computer program, device, method, technique, process, or unpublished or in progress research that:

(a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; and

(b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

(2) Production records, housing production, rental and financing records, sale or purchase records, catch records, mortgage portfolio loan documents, or similar business records of a private concern or enterprise required by law to be submitted to or inspected by a public agency or submitted to or otherwise obtained by an independent public body corporate and politic. Nothing in this subsection shall limit the use which can be made of such information for regulatory purposes or its admissibility in any enforcement proceeding.

(3) Records relating to the appraisal of real property, timber or mineral rights prior to its acquisition, sale or lease by a public agency or independent public body corporate and politic.

(4) Any estimate prepared by a public agency or independent public body corporate and politic that details the cost of a public project until such time as disclosed or bids are opened, or upon award of the contract for construction of the public project.

(5) Examination, operating or condition reports and all documents relating thereto, prepared by or supplied to any public agency or independent public body corporate and politic responsible for the regulation or supervision of financial institutions including, but not limited to, banks, savings and loan associations, regulated lenders, business and industrial development corporations, credit unions, and insurance companies, or for the regulation or supervision of the issuance of securities.

(6) Records gathered by a local agency or the Idaho department of commerce, as described in chapter 47, title 67, Idaho Code, for the specific purpose of assisting a person to locate, maintain, invest in, or expand business operations in the state of Idaho.

(7) Shipping and marketing records of commodity commissions used to evaluate marketing and advertising strategies and the names and addresses of growers and shippers maintained by commodity commissions.

(8) Financial statements and business information and reports submitted by a legal entity to a port district organized under title 70, Idaho Code, in connection with a business agreement, or with a development proposal or with a financing application for any industrial, manufacturing, or other business activity within a port district.

(9) Names and addresses of seed companies, seed crop growers, seed crop consignees, locations of seed crop fields, variety name and acreage by variety. Upon the request of the owner of the proprietary variety, this information shall be released to the owner. Provided however, that if a seed crop has been identified as diseased or has been otherwise identified by the Idaho department of agriculture, other state departments of agriculture, or the United States department of agriculture to represent a threat to that particular seed or commercial crop industry or to individual growers, information as to test results, location, acreage involved and disease symptoms of that particular seed crop, for that growing season, shall be available for public inspection and copying. This exemption shall not supersede the provisions of section 22-436, Idaho Code, nor shall this exemption apply to information regarding specific property locations subject to an open burning of crop residue pursuant to section 39-114, Idaho Code, names of persons responsible for the open burn, acreage and crop type to be burned, and time frames for burning.

(10) Information obtained from books, records and accounts required in chapter 47, title 22, Idaho Code, to be maintained by the Idaho oilseed commission and pertaining to the individual production records of oilseed growers.

(11) Records of any risk retention or self-insurance program prepared in anticipation of litigation or for analysis of or settlement of potential or actual money damage claims against a public entity and its employees or against the industrial special indemnity fund except as otherwise discoverable under the Idaho or federal rules of civil procedure. These records shall include, but are not limited to, claims evaluations, investigatory records, computerized reports

of losses, case reserves, internal documents and correspondence relating thereto. At the time any claim is concluded, only statistical data and actual amounts paid in settlement shall be deemed a public record unless otherwise ordered to be sealed by a Court of competent jurisdiction. Provided however, nothing in this subsection is intended to limit the attorney client privilege or attorney work product privilege otherwise available to any public agency or independent public body corporate and politic.

(12) Records of laboratory test results provided by or retained by the Idaho food quality assurance laboratory. Nothing in this subsection shall limit the use which can be made, or availability of such information if used, for regulatory purposes or its admissibility in any enforcement proceeding.

(13) Reports required to be filed under chapter 13, title 62, Idaho Code, identifying electrical or natural or manufactured gas consumption data for an individual customer or account.

(14) Voluntarily prepared environmental audits, and voluntary disclosures of information submitted on or before December 31, 1997, to an environmental agency as defined in section 9-803, Idaho Code, which are claimed to be confidential business information.

(15) Computer programs developed or purchased by or for any public agency or independent public body corporate and politic for its own use. As used in this subsection, "computer program" means a series of instructions or statements which permit the functioning of a computer system in a manner designed to provide storage, retrieval and manipulation of data from the computer system, and any associated documentation and source material that explain how to operate the computer program. Computer program does not include:

(a) The original data including, but not limited to, numbers, text, voice, graphics and images;

(b) Analysis, compilation and other manipulated forms of the original data produced by use of the program; or

(c) The mathematical or statistical formulas that would be used if the manipulated forms of the original data were to be produced manually.

(16) Active investigative records and trademark usage audits of the Idaho potato commission specifically relating to the enforcement of chapter 12, title 22, Idaho Code, until the commencement of formal proceedings as provided by rules of the commission; purchase and sales information submitted to the Idaho potato commission during a trademark usage audit, and investigation or enforcement proceedings. Inactive investigatory records shall be disclosed unless the disclosure would violate the standards set forth in subsections (1) (a) through (f) of section 9-335, Idaho Code. Nothing in this subsection shall limit the use which can be made, or availability of such information if used, for regulatory purposes or its admissibility in any enforcement proceeding.

(17) All records copied or obtained by the director of the department of agriculture or his designee as a result of an inspection pursuant to section 25-3806, Idaho Code, except:

(a) Records otherwise deemed to be public records not exempt from disclosure pursuant to this chapter; and

(b) Inspection reports, determinations of compliance or noncompliance and all other records created by the director or his designee pursuant to section 25-3806, Idaho Code.

(18) All data and information collected by the division of animal industries or the state brand board pursuant to the provisions of section 25-207B, Idaho Code, or rules promulgated thereunder.

(19) Records disclosed to a county official by the state tax commission pursuant to subsection (4)(c) of section 63-3029B, Idaho Code.

(20) Records, data, information and materials collected, developed, generated, ascertained or discovered during the course of academic research at public institutions of higher education if the disclosure of such could reasonably affect the conduct or outcome of the research, or the ability of the public institution of higher education to patent or copyright the research or protect intellectual property.

(21) Records, data, information and materials collected or utilized during the course of academic research at public institutions of higher education provided by any person or entity other than the public institution of higher education or a public agency.

(22) The exemptions from disclosure provided in subsections (20) and (21) of this section shall apply only until the academic research is publicly released,

copyrighted or patented, or until the academic research is completed or terminated. At such time, the records, data, information, and materials shall be subject to public disclosure unless: (a) another exemption in this chapter applies; (b) such information was provided to the institution subject to a written agreement of confidentiality; or (c) public disclosure would pose a danger to persons or property.

(23) The exemptions from disclosure provided in subsections (20) and (21) of this section do not include basic information about a particular research project that is otherwise subject to public disclosure, such as the nature of the academic research, the name of the researcher, and the amount and source of the funding provided for the project.

(24) Records of a county assessor containing information showing the income and expenses of a taxpayer, which information was provided to the assessor by the taxpayer to permit the assessor to determine the value of property of the taxpayer.

(25) Results of laboratory tests which have no known adverse impacts to human health conducted by the Idaho state department of agriculture animal health laboratory, related to diagnosis of animal diseases of individual animals or herds, on samples submitted by veterinarians or animal owners unless:

(a) The laboratory test results indicate the presence of a state or federally reportable or regulated disease in animals;

(b) The release of the test results is required by state or federal law; or

(c) The test result is identified as representing a threat to animal or human health or to the livestock industry by the Idaho state department of agriculture or the United States department of agriculture. Nothing in this subsection shall limit the use which can be made, or availability of such information if used, for regulatory purposes or its admissibility in any enforcement proceeding, or the duty of any person to report contagious or infectious diseases as required by state or federal law.

(26) Results of laboratory tests conducted by the Idaho state department of agriculture seed laboratory on samples submitted by seed producers or seed companies. Nothing in this subsection shall limit the use which can be made, or availability of such information pursuant to the provisions of subsections (9) and (10) of section 22-418, Idaho Code.

(27) For policies that are owned by private persons, and not by a public agency of the state of Idaho, records of policies, endorsements, affidavits and any records that discuss policies, endorsements and affidavits that may be required to be filed with or by a surplus line association pursuant to chapter 12, title 41, Idaho Code.

(28) Individual financial statements of a postsecondary educational institution or a proprietary school submitted to the state board of education, its director or a representative thereof, for the purpose of registering the postsecondary educational institution or proprietary school pursuant to section 33-2402 or 33-2403, Idaho Code, or provided pursuant to an administrative rule of the board adopted pursuant to such sections.

9-340E Exemptions from disclosure — Archaeological, endangered species, libraries, licensing exams.

The following records are exempt from disclosure:

(1) Records, maps or other records identifying the location of archaeological or geophysical sites or endangered species, if not already known to the general public.

(2) Archaeological and geologic records concerning exploratory drilling, logging, mining and other excavation, when such records are required to be filed by statute for the time provided by statute.

(3) The records of a library which, when examined alone, or when examined with other public records, would reveal the identity of the library patron checking out, requesting, or using an item from a library.

(4) The material of a library, museum or archive which has been contributed by a private person, to the extent of any limitation that is a condition of the contribution.

(5) Test questions, scoring keys, and other data used to administer a licensing examination, employment, academic or other examination or testing procedure before the examination is given if the examination is to be used again. Records establishing procedures for and instructing persons administering, grading or evaluating an examination or testing procedure are included in this exemption, to the extent that disclosure would create a risk that the result might be

affected.

9-340F Records exempt from disclosure — Draft legislation and supporting materials, tax commission, petroleum clean water trust fund.

The following records are exempt from disclosure:

(1) Records consisting of draft legislation and documents specifically related to such draft legislation or research requests submitted to the legislative services office by a member of the Idaho legislature for the purpose of placing such draft legislation into a form suitable for introduction as official proposed legislation of the legislature of the state of Idaho, unless the individual legislator having submitted or requested such records or research agrees to waive the provisions of confidentiality provided by this subsection.

(2) All papers, physical and electronic records and correspondence or other supporting materials comprising the work papers in the possession of the legislative services office or the director of legislative performance evaluations prior to release of the related final audit and all other records or materials in the possession of the legislative services office or the director of legislative performance evaluations that would otherwise be confidential or exempt from disclosure.

(3) Records consisting of draft congressional and legislative redistricting plans and documents specifically related to such draft redistricting plans or research requests submitted to the commission staff by a member of the commission for reapportionment for the purpose of placing such draft redistricting plan into form suitable for presentation to the full membership of the commission, unless the individual commission member having submitted or requested such plans or research agrees to waive the provisions of confidentiality provided by this subsection.

(4) Records that identify the method by which the Idaho state tax commission selects tax returns for audit review.

(5) Underwriting and claims records of the Idaho petroleum clean water trust fund obtained pursuant to section 41-4905, 41-4909, 41-4911A, 41-4912 or 41-4912A, Idaho Code. Provided however, that this subsection shall not prevent the Idaho petroleum clean water trust fund's submittal to the Idaho department of environmental quality, or other regulatory agencies of information necessary to satisfy an insured's corrective action requirement under applicable federal or state standards in the event of a release into the environment from a petroleum storage tank; and provided further that nothing in this subsection shall prevent the Idaho petroleum clean water trust fund from providing auditing, reporting, or actuarial information as otherwise required of it pursuant to section 41-4919, 41-4925A, 41-4928, 41-4930, 41-4932, 41-4937 or 41-4938, Idaho Code.

9-340G Exemption from disclosure — Records of Court proceedings regarding judicial authorization of abortion procedures for minors.

In accordance with section 18-609A, Idaho Code, the following records are exempt from public disclosure: all records contained in Court files of judicial proceedings arising under section 18-609A, Idaho Code, are exempt from disclosure.

9-340H Exemption from disclosure — Records related to the uniform securities act.

Except as otherwise determined by the director of the department of finance pursuant to section 30-14-607(c), Idaho Code, the following records are exempt from disclosure:

(1) A record obtained or created by the director of the department of finance or a representative of the director in connection with an audit or inspection under section 30-14-411(d), Idaho Code, or an investigation under section 30-14-602, Idaho Code;

(2) A part of a record filed in connection with a registration statement under section 30-14-301, Idaho Code, and sections 30-14-303 through 30-14-305, Idaho Code, or a record under section 30-14-411(d), Idaho Code, that contains trade secrets or confidential information if the person filing the registration statement or report has asserted a claim of confidentiality or privilege that is authorized by law;

(3) A record that is not required to be provided to the director of the department of finance or filed under chapter 14, title 30, Idaho Code, and is provided to the director only on the condition that the record will not be subject to public examination or disclosure;

(4) A nonpublic record received from a person specified in section 30-14-608(a), Idaho Code; and

(5) Any social security number, residential address unless used as a business address, and residential telephone number unless used as a business telephone number, contained in a record that is filed pursuant to chapter 14, title 30, Idaho Code.

9-341 Exempt and nonexempt public records to be separated.

If any public record contains material which is not exempt from disclosure as well as material which is exempt from disclosure, the public agency or independent public body corporate and politic shall, upon receipt of a request for disclosure, separate the exempt and nonexempt material and make the nonexempt material available for examination, provided that a denial of a request to copy nonexempt material in a public record shall not be based upon the fact that such nonexempt material is contained in the same public record as the exempt material.

9-342 Access to records about a person by a person.

(1) A person may inspect and copy the records of a public agency or independent public body corporate and politic pertaining to that person, even if the record is otherwise exempt from public disclosure.

(2) A person may request in writing an amendment of any record pertaining to that person. Within ten (10) days of the receipt of the request, the public agency or independent public body corporate and politic shall either:

(a) Make any correction of any portion of the record which the person establishes is not accurate, relevant, or complete; or

(b) Inform the person in writing of the refusal to amend in accordance with the request and the reasons for the refusal, and indicate clearly the person's right to appeal the refusal and the time period for doing so. The procedures for appealing a refusal to amend shall be the same as those set forth in sections 9-343 and 9-344, Idaho Code, and the Court may award reasonable costs and attorney's fees to the prevailing party or parties, if it finds that the request for amendment or refusal to amend was frivolously pursued.

(3) The right to inspect and amend records pertaining to oneself does not include the right to review:

(a) Otherwise exempt investigatory records of a public agency or independent public body corporate and politic if the investigation is ongoing;

(b) Information that is compiled in reasonable anticipation of a civil action or proceeding which is not otherwise discoverable;

(c) The information relates to adoption records;

(d) Information which is otherwise exempt from disclosure by statute or Court rule;

(e) Records of a prisoner maintained by the state or local agency having custody of the prisoner or formerly having custody of the prisoner or by the commission of pardons and parole.

9-342A Access to air quality and hazardous waste records — Protection of trade secrets.

(1) To the extent required by the federal clean air act and the resource conservation and recovery act for state primacy over any delegated or authorized programs, even if the record is otherwise exempt from disclosure under chapter 3, title 9, Idaho Code, any person may inspect and copy:

(a) Air pollution emission data;

(b) The content of any title V operating permit;

(c) The name and address of any applicant or permittee for a hazardous waste treatment, storage, or disposal facility permit pursuant to chapter 44, title 39, Idaho Code; and

(d) Any other record required to be provided to or obtained by the department of environmental quality pursuant to the federal clean air act and the resource conservation and recovery act, and the implementing state statutes, federal regulations and state rules, unless the record is a trade secret.

(2) For purposes of this section, a record, or a portion of the record, is a "trade secret" if the information contained in the record is a trade secret within the meaning of the Idaho trade secrets act, sections 48-801, et seq., Idaho Code, including commercial or financial information which, if disclosed, could

cause substantial competitive harm to the person from whom the record was obtained.

(3) Any record, or portion of a record, provided to or obtained by the department of environmental quality and identified by the person providing the record as a trade secret shall not be disclosed to the public and shall be kept confidential according to the procedures established in this section.

(4) Nothing in this section shall be construed as limiting the disclosure of a trade secret by the department of environmental quality:

(a) To any officer, employee, or authorized representative of the state or the United States, under a continuing claim of confidentiality, as necessary to carry out the provisions of state or federal law, or when relevant to any proceeding thereunder;

(b) As determined necessary by the director of the department of environmental quality (under a continuing confidentiality claim) to protect the public health and safety from imminent and substantial endangerment;

(c) As required by state or federal law, including section 9-343(3), Idaho Code, under a continuing claim of confidentiality and subsection (1), of this section; or

(d) With the consent of the person from whom the record is obtained.

(5) It shall be the responsibility of any person providing a record to the department of environmental quality to give notice of the existence of a trade secret on each page or other portion of information at the time of submittal and such person shall have the burden of demonstrating that the information is a trade secret.

(6) Notwithstanding the time frames set forth in section 9-339(1), Idaho Code, when a request is made to the department of environmental quality pursuant to the provisions of this chapter for the disclosure of information for which a trade secret claim has been made, and the information has not been demonstrated to be a trade secret to the satisfaction of the director of the department of environmental quality, within three (3) working days of receipt of the request for the disclosure of the information the department of environmental quality shall provide a written request for substantiation to the person making the confidentiality claim. A response shall be submitted to the department of environmental quality by the person claiming the trade secret protection within ten (10) working days after receipt of the request for substantiation or the information subject to the claim shall be disclosed without further notice. Upon receipt of a timely response to the request for substantiation, the director of the department of environmental quality shall determine whether the information is a trade secret subject to protection.

(a) If it is determined that the information, or any portion of the information, is a trade secret, within three (3) working days after receipt of the response, the director of the department of environmental quality shall notify the person requesting the information that the request is denied pursuant to sections 9-339(3) and (4), Idaho Code.

(b) If it is determined that the information, or any portion of the information, is not a trade secret and is, therefore, subject to disclosure, within three (3) working days after receipt of the response, the director of the department of environmental quality shall inform the person making the confidentiality claim of the determination. The decision shall be a final agency action directly appealable, de novo, to the district Court of the county where the records or some part thereof are located. An appeal contesting the decision of the director of the department of environmental quality to release information claimed to be a trade secret shall be filed within ten (10) working days from the date of receipt of the written notice of decision. The information claimed to be a trade secret shall not be disclosed until the period for appeal has expired with no appeal being taken, or a Court order has been issued finding that the information is not a trade secret and all appeals of that order have been exhausted.

(7) In any appeal taken pursuant to this section, the Court may award reasonable costs and attorney's fees to the prevailing party if it finds the claim of confidentiality or the decision of the director of the department of environmental quality to provide records was frivolously pursued.

(8) The department of environmental quality shall adopt rules which include:

(a) Appropriate measures to safeguard and protect against improper disclosure of trade secrets, including procedures to train all employees on the proper handling of trade secrets; and

(b) Any other provisions necessary to carry out this section.

(9) As it relates to the department of environmental quality, or to agents, contractors, or other representatives of the department, the immunity created in section 9-346, Idaho Code, shall apply only when disclosure of a trade secret is made consistent with this section.

9-343 Proceedings to enforce right to examine or to receive a copy of records — Retention of disputed records.

(1) The sole remedy for a person aggrieved by the denial of a request for disclosure is to institute proceedings in the district Court of the county where the records or some part thereof are located, to compel the public agency or independent public body corporate and politic to make the information available for public inspection in accordance with the provisions of sections 9-337 through 9-348, Idaho Code. The petition contesting the public agency's or independent public body corporate and politic's decision shall be filed within one hundred eighty (180) calendar days from the date of mailing of the notice of denial or partial denial by the public agency or independent public body corporate and politic. The time for responsive pleadings and for hearings in such proceedings shall be set by the Court at the earliest possible time, or in no event beyond twenty-eight (28) calendar days from the date of filing.

(2) The public agency or independent public body corporate and politic shall keep all documents or records in question until the end of the appeal period, until a decision has been rendered on the petition, or as otherwise statutorily provided, whichever is longer.

(3) Nothing contained in sections 9-337 through 9-348, Idaho Code, shall limit the availability of documents and records for discovery in the normal course of judicial or administrative adjudicatory proceedings, subject to the law and rules of evidence and of discovery governing such proceedings. Additionally, in any criminal appeal or post-conviction civil action, sections 9-335 through 9-348, Idaho Code, shall not make available the contents of prosecution case files where such material has previously been provided to the defendant nor shall sections 9-335 through 9-348, Idaho Code, be available to supplement, augment, substitute or supplant discovery procedures in any other federal, civil or administrative proceeding.

9-344 Order of the Court — Court costs and attorney fees.

(1) Whenever it appears that certain public records are being improperly withheld from a member of the public, the Court shall order the public official charged with withholding the records to disclose the public record or show cause why he should not do so. The Court shall decide the case after examining the pleadings filed by the parties and such oral arguments and additional evidence as the Court may allow. The Court may examine the record in camera in its discretion.

(2) If the Court finds that the public official's decision to refuse disclosure is not justified, it shall order the public official to make the requested disclosure. If the Court determines that the public official was justified in refusing to make the requested record available, he shall return the item to the public official without disclosing its content and shall enter an order supporting the decision refusing disclosure. In any such action, the Court shall award reasonable costs and attorney fees to the prevailing party or parties, if it finds that the request or refusal to provide records was frivolously pursued.

9-345 Additional penalty.

If the Court finds that a public official has deliberately and in bad faith improperly refused a legitimate request for inspection or copying, a civil penalty shall be assessed against the public official in an amount not to exceed one thousand dollars (\$1,000), which shall be paid into the general account.

9-346 Immunity.

No public agency or independent public body corporate and politic, public official, or custodian shall be liable, nor shall a

cause of action exist, for any loss or damage based upon the release of a public record governed by the provisions of this chapter if the public agency or independent public body corporate and politic, public official or custodian acted in good faith in attempting to comply with the provisions of this chapter.

9-347 Agency guidelines.

By January 1, 1991, every state agency or independent public body corporate and politic shall adopt guidelines that identify the general subject matter of all public records kept or maintained by the state agency or independent public body corporate and politic, the custodian, and the physical location of such documents.

9-348 Prohibition on distribution or sale of mailing or telephone number lists — Penalty.

(1) Except as provided in subsections (2), (3), (4), (5), (6), (7), (8) and (9) of this section, in order to protect the privacy of those who deal with public agencies or an independent public body corporate and politic:

(a) No agency or independent public body corporate and politic may distribute or sell for use as a mailing list or a telephone number list any list of persons without first securing the permission of those on the list; and

(b) No list of persons prepared by the agency or independent public body corporate and politic may be used as a mailing list or a telephone number list except by the agency or independent public body corporate and politic or another agency without first securing the permission of those on the list.

(2) Except as may be otherwise provided in this chapter, this section does not prevent an individual from compiling a mailing list or a telephone number list by examination or copying of public records, original documents or applications which are otherwise open to public inspection.

(3) The provisions of this section do not apply to the lists of registered electors compiled pursuant to title 34, Idaho Code, or to lists of the names of employees governed by chapter 53, title 67, Idaho Code.

(4) The provisions of this section shall not apply to agencies which issue occupational or professional licenses.

(5) This section does not apply to the right of access either by Idaho law enforcement agencies or, by purchase or otherwise, of public records dealing with motor vehicle registration.

(6) This section does not apply to a corporate information list developed by the office of the secretary of state containing the name, address, registered agent, officers and directors of corporations authorized to do business in this state or to a business information list developed by the department of commerce containing the name, address, telephone number or other relevant information of Idaho businesses or individuals requesting information regarding the state of Idaho or to business lists developed by the department of agriculture, division of marketing and development, used to promote food and agricultural products produced in Idaho.

(7) This section does not apply to lists to be used for ordinary utility purposes which are requested by a person who supplies utility services in this state. Ordinary utility purposes, as used in this chapter only, do not include marketing or marketing research.

(8) This section does not apply to lists to be used to give notice required by any statute, ordinance, rule, law or by any governing agency.

(9) This section does not apply to student directory information provided by colleges, universities, secondary schools and school districts to military recruiters for military recruiting purposes pursuant to the requirements of federal laws.

(10) If a Court finds that a person or public official has deliberately and in bad faith violated the provisions of subsection (1)(b) of this section, the person or public official shall be liable for a civil penalty assessed by the Court in an amount not in excess of one thousand dollars (\$1,000) which shall be paid into the general account.

9-349 Confidentiality language required in this chapter.

On and after January 1, 1996, any statute which is added to the Idaho Code and provides for the confidentiality or closure of any public record or class of public records shall be placed in this chapter. Any statute which is added to the Idaho Code on and after January 1, 1996, and which provides for confidentiality or closure of a public record or class of public records and is located at a place other than this chapter shall be null, void and of no force and effect regarding the confidentiality or closure of the public record and such public record shall be open and available to the public for inspection as provided in this chapter.

9-349A Severability.

The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act.

Open Meetings

67-2340 Formation of public policy at open meetings.

The people of the state of Idaho in creating the instruments of government that serve them, do not yield their sovereignty to the agencies so created. Therefore, the legislature finds and declares that it is the policy of this state that the formation of public policy is public business and shall not be conducted in secret.

67-2341 Open public meetings — Definitions.

As used in this act:

(1) “Decision” means any determination, action, vote or final disposition upon a motion, proposal, resolution, order, ordinance or measure on which a vote of a governing body is required, at any meeting at which a quorum is present, but shall not include those ministerial or administrative actions necessary to carry out a decision previously adopted in a meeting held in compliance with sections 67-2342 through 67-2346, Idaho Code.

(2) “Deliberation” means the receipt or exchange of information or opinion relating to a decision, but shall not include informal or impromptu discussions of a general nature which do not specifically relate to a matter then pending before the public agency for decision.

(3) “Executive session” means any meeting or part of a meeting of a governing body which is closed to any persons for deliberation on certain matters.

(4) “Public agency” means:

(a) any state board, commission, department, authority, educational institution or other state agency which is created by or pursuant to statute, other than Courts and their agencies and divisions, and the judicial council, and the district magistrates commission;

(b) any regional board, commission, department or authority created by or pursuant to statute;

(c) any county, city, school district, special district, or other municipal corporation or political subdivision of the state of Idaho;

(d) any subagency of a public agency which is created by or pursuant to statute, ordinance, or other legislative act.

(5) “Governing body” means the members of any public agency which consists of two (2) or more members, with the authority to make decisions for or recommendations to a public agency regarding any matter.

(6) “Meeting” means the convening of a governing body of a public agency to make a decision or to deliberate toward a decision on any matter.

(a) “regular meeting” means the convening of a governing body of a public agency on the date fixed by law or rule, to conduct the business of the agency.

(b) “special meeting” is a convening of the governing body of a public agency pursuant to a special call for the conduct of business as specified in the call.

67-2342 Governing bodies — Requirement for open public meetings.

(1) Except as provided below, all meetings of a governing body of a public agency shall be open to the public and all persons shall be permitted to attend any meeting except as otherwise provided by this act. No decision at a meeting of a governing body of a public agency shall be made by secret ballot.

(2) Deliberations of the board of tax appeals created in chapter 38, title 63, Idaho Code, the public utilities commission and the industrial commission in a fully submitted adjudicatory proceeding in which hearings, if any are required, have been completed, and in which the legal rights, duties or privileges of a party are to be determined are not required by this act to take place in a meeting open to the public. Such deliberations may, however, be made and/or conducted in a public meeting at the discretion of the agency.

(3) Meetings of the Idaho life and health insurance guaranty association established under chapter 43, title 41, Idaho Code, the Idaho insurance guaranty association established under chapter 36, title 41, Idaho Code, and the surplus line association approved by the director of the Idaho department of insurance as authorized under chapter 12, title 41, Idaho Code, are not required by this act to take place in a meeting open to the public.

(4) A governing body shall not hold a meeting at any place where discrimination on the basis of race, creed, color, sex, age or national origin is practiced.

(5) All meetings may be conducted using telecommunications devices which enable all members of a governing body participating in the meeting to communicate with each other. Such devices may include, but are not limited to, telephone or video conferencing devices and similar communications equipment. Participation by a member of the governing body through telecommunications devices shall constitute presence in person by such member at the meeting; provided however, that at least one (1) member of the governing body, or the director of the public agency, or the chief administrative officer of the public agency shall be physically present at the location designated in the meeting notice, as required under section 67-2343, Idaho Code, to ensure that the public may attend such meeting in person. The communications among members of a governing body must be audible to the public attending the meeting in person and the members of the governing body.

67-2343 Notice of meetings.

(1) Regular meetings. No less than a five (5) calendar day meeting notice and a forty-eight (48) hour agenda notice shall be given unless otherwise provided by statute. Provided however, that any public agency that holds meetings at regular intervals of at least once per calendar month scheduled in advance over the course of the year may satisfy this meeting notice by giving meeting notices at least once each year of its regular meeting schedule. The notice requirement for meetings and agendas shall be satisfied by posting such notices and agendas in a prominent place at the principal office of the public agency, or if no such office exists, at the building where the meeting is to be held.

(2) Special meetings. No special meeting shall be held without at least a twenty-four (24) hour meeting and agenda notice, unless an emergency exists. An emergency is a situation involving injury or damage to persons or property, or immediate financial loss, or the likelihood of such injury, damage or loss, when the notice requirements of this section would make such notice impracticable, or increase the likelihood or severity of such injury, damage or loss, and the reason for the emergency is stated at the outset of the meeting. The notice required under this section shall include at a minimum the meeting date, time, place and name of the public agency calling for the meeting. The secretary or other designee of each public agency shall maintain a list of the news media requesting notification of meetings and shall make a good faith effort to provide advance notification to them of the time and place of each meeting.

(3) Executive sessions. If an executive session only will be held, a twenty-four (24) hour meeting and agenda notice shall be given according to the notice provisions stated in subsection (2) of this section and shall state the reason and the specific provision of law authorizing the executive session.

(4) An agenda shall be required for each meeting. The agenda shall be posted in the same manner as the notice of the meeting. An agenda may be amended, provided that a good faith effort is made to include, in the original agenda notice, all items known to be probable items of discussion.

(a) If an amendment to an agenda is made after an agenda has been posted but forty-eight (48) hours or more prior to the start of a regular meeting, or twenty-four (24) hours or more prior to the start of a special meeting, then the agenda is amended upon the posting of the amended agenda.

(b) If an amendment to an agenda is proposed after an agenda has been posted and less than forty-eight (48) hours prior to a regular meeting or less than twenty-four (24) hours prior to a special meeting but prior to the start of the meeting, the proposed amended agenda shall be posted but shall not become effective until a motion is made at the meeting and the governing body votes to amend the agenda.

(c) An agenda may be amended after the start of a meeting upon a motion that states the reason for the amendment and states the good faith reason the agenda item was not included in the original agenda posting.

67-2344 Written minutes of meetings.

(1) The governing body of a public agency shall provide for the taking of written minutes of all its meetings. Neither a full transcript nor a recording of the meeting is required, except as otherwise provided by law. All minutes shall be available to the public within a reasonable time after the meeting, and shall include at least the following information:

(a) All members of the governing body present;

(b) All motions, resolutions, orders, or ordinances proposed and their disposition;

(c) The results of all votes, and upon the request of a member, the vote of each member, by name.

(2) Minutes pertaining to executive sessions. Minutes pertaining to an executive session shall include a reference to the specific statutory subsection authorizing the executive session and shall also provide sufficient detail to identify the purpose and topic of the executive session but shall not contain information sufficient to compromise the purpose of going into executive session.

67-2345 Executive sessions — When authorized.

(1) An executive session at which members of the public are excluded may be held, but only for the purposes and only in the manner set forth in this section. The motion to go into executive session shall identify the specific subsections of this section that authorize the executive session. There shall be a roll call vote on the motion and the vote shall be recorded in the minutes. An executive session shall be authorized by a two-thirds (2/3) vote of the governing body. An executive session may be held:

(a) To consider hiring a public officer, employee, staff member or individual agent, wherein the respective qualities of individuals are to be evaluated in order to fill a particular vacancy or need. This paragraph does not apply to filling a vacancy in an elective office or deliberations about staffing needs in general;

(b) To consider the evaluation, dismissal or disciplining of, or to hear complaints or charges brought against, a public officer, employee, staff member or individual agent, or public school student;

(c) To conduct deliberations concerning labor negotiations or to acquire an interest in real property which is not owned by a public agency;

(d) To consider records that are exempt from disclosure as provided in chapter 3, title 9, Idaho Code;

(e) To consider preliminary negotiations involving matters of trade or commerce in which the governing body is in competition with governing bodies in other states or nations;

(f) To communicate with legal counsel for the public agency to discuss the legal ramifications of and legal options for pending litigation, or controversies not yet being litigated but imminently likely to be litigated. The mere presence of legal counsel at an executive session does not satisfy this requirement;

(g) By the commission of pardons and parole, as provided by law;

(h) By the sexual offender classification board, as provided by chapter 83, title 18, Idaho Code;

(i) By the custody review board of the Idaho department of juvenile corrections, as provided by law; or

(j) To engage in communications with a representative of the public agency's risk manager or insurance provider to discuss the adjustment of a pending claim or prevention of a claim imminently likely to be filed. The mere presence of a representative of the public agency's risk manager or insurance provider at an executive session does not satisfy this requirement.

(2) Labor negotiations may be conducted in executive session if either side requests closed meetings. Notwithstanding the provisions of section 67-2343, Idaho Code, subsequent sessions of the negotiations may continue without further public notice.

(3) The exceptions to the general policy in favor of open meetings stated in this section shall be narrowly construed. It shall be a violation of this act to change the subject within the executive session to one not identified within the motion to enter the executive session or to any topic for which an executive session is not provided.

(4) No executive session may be held for the purpose of taking any final action or making any final decision.

67-2346 Open legislative meetings required.

All meetings of any standing, special or select committee of either house of the legislature of the state of Idaho shall be open to the public at all times, except in extraordinary circumstances as provided specifically in the rules of procedure in either house, and any person may attend any meeting of a standing, special or select committee, but may participate in the committee only with the approval of the committee itself.

67-2347 Violations.

(1) If an action, or any deliberation or decision making that leads to an action, occurs at any meeting which fails to comply with the provisions of sections 67-2340 through 67-2346, Idaho Code, such action shall be null and void.

(2) Any member of the governing body governed by the provisions of sections 67-2340 through 67-2346, Idaho Code, who conducts or participates in a meeting which violates the provisions of this act shall be subject to a civil penalty not to exceed fifty dollars (\$50.00).

(3) Any member of a governing body who knowingly violates the provisions of this act shall be subject to a civil penalty not to exceed five hundred dollars (\$500).

(4) Any member of a governing body who violates any provision of this act and who has previously admitted to committing or has been previously determined to have committed a violation of this act within the twelve (12) months preceding this subsequent violation shall be subject to a civil penalty not to exceed five hundred dollars (\$500).

(5) The attorney general shall have the duty to enforce this act in relation to public agencies of state government, and the prosecuting attorneys of the various counties shall have the duty to enforce this act in relation to local public agencies within their respective jurisdictions. In the event that there is reason to believe that a violation of the provisions of this act has been committed by members of a board of county commissioners or, for any other reason a county prosecuting attorney is deemed disqualified from proceeding to enforce this act, the prosecuting attorney or board of county commissioners shall seek to have a special prosecutor appointed for that purpose as provided in section 31-2603, Idaho Code.

(6) Any person affected by a violation of the provisions of this act may commence a civil action in the magistrate division of the district Court of the county in which the public agency ordinarily meets, for the purpose of requiring compliance with provisions of this act. No private action brought pursuant to this subsection shall result in the assessment of a civil penalty against any member of a public agency and there shall be no private right of action for damages arising out of any violation of the provisions of sections 67-2342 through 67-2346, Idaho Code. Any suit brought for the purpose of having an action declared or determined to be null and void pursuant to subsection (1) of this section shall be commenced within thirty (30) days of the time of the decision or action that results, in whole or in part, from a meeting that failed to comply with the provisions of this act. Any other suit brought under the provisions of this section shall be commenced within one hundred eighty (180) days of the time of the violation or alleged violation of the provisions of this act.

(7)(a) A violation may be cured by a public agency upon:

(i) The agency's self-recognition of a violation; or

(ii) Receipt by the secretary or clerk of the public agency of written notice of an alleged violation. A complaint filed and served upon the public agency may be substituted for other forms of written notice. Upon notice of an alleged open meeting violation, the governing body shall have fourteen (14) days to respond publicly and either acknowledge the open meeting violation and state an intent to cure the violation or state that the public agency has determined that no violation has occurred and that no cure is necessary. Failure to respond shall be treated as a denial of any violation for purposes of proceeding with any enforcement action.

(b) Following the public agency's acknowledgment of a violation pursuant to paragraph (a)(i) or (a)(ii) of this subsection, the public agency shall have fourteen (14) days to cure the violation by declaring that all actions taken at or resulting from the meeting in violation of this act void.

(c) All enforcement actions shall be stayed during the response and cure period but may recommence at the discretion of the complainant after the cure period has expired.

(d) A cure as provided in this section shall act as a bar to the imposition of the civil penalty provided in subsection (2) of this section. A cure of a violation as provided in subsection (7)(a)(i) of this section shall act as a bar to the imposition of any civil penalty provided in subsection (4) of this section.

