



Public Records Access Policy

Approved by Board of Trustees for use after December 7, 2022

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I. STATEMENT OF PURPOSE

This policy outlines procedures for handling public records requests addressed to the Idaho Counties Risk Management Program (ICRMP). These procedures are adopted by the Program to assure that interested persons have access to available public information, while maintaining the confidentiality of Program operations, simultaneous with avoiding disadvantage to public agencies in defense of damage claims brought against them.

Disclosure of the Program's public records is governed by Idaho law, particularly provisions of title 74, chapter 3 of the Idaho Code. ICRMP is a joint powers self-insurance program. Of particular importance are the specific requirements and limitations of Idaho Code §74-107(11) that allow disclosure of statistical data and final amounts paid in resolution of a claim while recognizing that information "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 ..." need not be disclosed. ICRMP does not provide access to records of its constituent members, only to records of the ICRMP program itself. Whenever provisions of this policy conflict with established requirements of Idaho Code, provisions of Idaho Code shall prevail.

II. POLICY

If physical inspection is possible, records of ICRMP are available for public inspection during regular business hours. Arrangements for such examination must be made with the records custodian to assure that applicable provisions of the public records statute are followed and that orderly operation of program activities is not disrupted. Any records sought that deal with claims against ICRMP members will be disclosed only to the extent required by law. Copies of standard-sized records (black and white renderings of 8 1/2" by 11' documents may be made as provided by state statute. Copies of extraordinary records (by size or configuration) may be provided to a requester at the Program's cost of reproduction.

III. DESIGNATION OF RECORDS CUSTODIAN

The Secretary of the ICRMP Board is designated as the primary records custodian for official records of the Program. The Executive Director may assign a substitute in the Secretary's absence. The designated records custodian or the Executive Director may delegate response duties to fellow employees or subordinates, to act in their stead, or otherwise.

IV. PROCEDURE FOR MAKING AND RESPONDING TO RECORDS REQUESTS

A. Requests Must Be In Writing

Any request to inspect public records must be made in writing, delivered to the designated records custodian. For records requests so minor or so routine that no confusion could result, the records custodian may waive any formalities upon receiving such request. Requests may be addressed to the following location:

In person:

Office of the Board Secretary
ICRMP
3100 S. Vista Ave.
Boise, ID 83705

Telephone – (208) 336-3100
Fax - (208) 336-2100

By US Mail:

Office of the Board Secretary
ICRMP
P.O. Box 15249
Boise, ID 83715

By Electronic Mail:

intake@icrmp.org

The name and contact information of designated records custodian shall be set out on the website and shall promptly updated when it changes.

B. Requests – Required Information

Requests for records may be delivered by U.S. Mail, electronic mail, facsimile (fax) or in person. The requester's name and address or electronic address information must be provided for the purpose of enabling the records custodian to contact the requester in response or to clarify the request. The requester must submit a request containing all of the information called for on the records request form provided by ICRMP at the end of this policy.

Each person submitting a request to inspect or take a copy of a public record must agree by verifying the request form that the response, if in the form of a list, will not be used as a telephone or mailing list. Upon receipt of a completed written request, the records custodian will record the date and time of the request, and prepare a response as promptly as circumstances allow, seeking legal advice when necessary.

A public records request must clearly indicate that it is a public records request.

C. Time, Place and Manner of Inspection

It is the ICRMP program's policy to provide access to and copies of records promptly, whenever such disclosure can be accomplished within the legal constraints and without compromising the interests of the ICRMP program or

those of its constituent members. Examination of records must be done during normal business hours, unless otherwise authorized by the records custodian. Response to records requests is subordinate to accomplishment of everyday work for the benefit of ICRMP's members and the public. With respect to provision of public records, ICRMP will not compile or tabulate information to create a document or record that does not already exist. ICRMP will not provide multiple copies of the same document. ICRMP will not disclose the amount paid in settlement of any claim if the court record is sealed or if the specific claim is not identified. Statistical data shall be annual cumulative payments made by the program as a whole and the number of paid claims for all members included in the records of each year.

D. Responding to the Request – Timing

As circumstances permit a request to inspect or copy records will be granted or denied within the number of days required by then-current statute subsequent to the date when a legally-complete written request is received. However, if more time is needed to locate or retrieve the requested records, ICRMP may take up to the time period allowed by the then-current statute to respond. If additional time will be needed, ICRMP will endeavor to notify the requester, in writing, that additional time will be required. If no response has been provided within the time frame established by law, state law may provide that a request will be deemed to have been denied upon the passage of the requisite time period from the date of receipt of a legally-complete written request. ICRMP will strive to explain the legal reasons underlying any denial of access to any public record.

V. RECORDS EXEMPT FROM PUBLIC DISCLOSURE

A. Exemptions from Public Disclosure

Certain types of records are specifically exempted from disclosure requirements by law and will not be made available to the public. This policy does not include the substantive text of statutory exemptions but incorporates those exemptions by reference to the applicable statutes, particularly title 74, chapter 1, Idaho Code. ICRMP will address records access requests in reliance upon the full text and all exemptions of the law when determining whether to grant or deny a records request. Disclosure of public records where confidentiality is mandated by state law will only be made when a requester demonstrates an exception to the rule of nondisclosure recognized by statute or when ordered to disclose by a court or agency of competent jurisdiction. When state law declares that certain records need not be disclosed, typically ICRMP will not disclose such information unless it receives an explanation and determines that the public interest would be

served by disclosure, but not at disadvantage to ICRMP or its member(s). ICRMP may, on occasion, decline to disclose what it deems to be private or personal information and seek court direction concerning such release. ICRMP reserves the right to disclose public records of any type in order to defend ICRMP against claims of misconduct or failure to perform its duties.

B. Exempt and Non-exempt Records

If a requested public record contains information that is nonexempt, as well as information that is exempt from disclosure, ICRMP may find it necessary to redact the exempt information and provide the nonexempt information, along with a written explanation of the rationale and source of legal authority for the partial denial. If record assembly and removal of exempt information involves more than 2 hours of personnel time, ICRMP will estimate the time required and inform the requester that prepayment will be necessary before such expenses are incurred. Personnel costs will be charged at the lowest rate possible for the task at hand in accordance with statutory requirements. Whenever prepayment exceeds actual costs a refund will be issued within no more than ten (10) days after the record is provided. Whenever prepayment is insufficient to cover the costs of complying with a request, the full cost must be paid before any records from the request are released.

C. Denial of a Request to Inspect Records

Any response denying a request to inspect or copy a public record will be reviewed by an ICRMP attorney. A written denial or partial denial of a request will be provided to the requester stating the statutory authority for the denial and informing the requester about the rights of a requester to seek an order to compel disclosure. The time limit for doing so is currently (1/2012) one hundred eighty (180) days from the date of denial. Review of the applicable statute should confirm appeal procedures whenever a denial is issued.

VI. FEES AND CHARGES FOR PROVIDING PUBLIC RECORDS

A. Charging for Copies

Copies of one hundred (100) or fewer pages (not exceeding 8 ½" X 11", black monochrome, single-sided) that are readily available for copying will be provided free of charge, one time during a calendar year. When copies or printouts are duplexed, each printed side of the copy will be treated as a single copy. If a request exceeds the 100-copy threshold per calendar year, copying fees will be charged for all copies beyond 100. Multiple copy requests made during any calendar year will be aggregated in order to determine if copy charges are appropriate. If a request seeks color copies, oversized copies, manipulated copy images or any other specialized copying

requirements, such additional services will be provided at their net cost to ICRMP, whether accomplished by program personnel or by outside vendors. Whenever charges will be due, advance payment is required. The fees to be charged for copies beyond the free allowance will be based upon the then-current fee resolution that governs fees and charges. If a requester or group of requesters breaks a request down into a series of requests for the purpose of avoiding payment of fees, ICRMP will aggregate similar or related requests to determine when charges are appropriate. The base rate for black and white 8.5"X11" copies shall be five cents (\$.05) per page.

B. Charging For Labor

No fee will be charged for locating or copying a public record (up to 2 hours) on a cumulative basis within a calendar year. However, ICRMP will charge for labor costs involved in records examination oversight or records copying where: (1) satisfying the request requires more than two (2) hours of personnel time; or (2) the request includes records from which exempt information must be deleted. In order to sustain a productive workplace, ICRMP may retain temporary personnel to oversee records examination pursuant to this section. Such costs must be pre-paid by the requesting party. The costs of temporary personnel will not exceed the regular costs established by fee resolution. Advance payment for any such services is required. The records custodian is authorized to waive or adjust charges or requirements established by this policy consistent with the public interest and applicable statutory provisions.

C. Other Charges and Fees Related to Volume Considerations or Specialty Printing or Copying Needs

ICRMP may choose to obtain copies made to satisfy a public records request from a commercial copying service. In cases where such services are required because of the nature or the volume of the request, the person making the request shall be responsible for the actual cost charged by the commercial copying service with no additional mark-up by ICRMP. The fees to be charged for providing public records in digital form shall be ICRMP's direct cost of copying the information in that form, which costs shall include the cost of blank media and labor costs if the time for making copies and/or making redactions exceeds two (2) hours.

D. Shipping and Mailing Copies

If requested, ICRMP will mail copied records. If the cost of mailing exceeds the current first class postal charge for one ounce, ICRMP will require advance payment for the actual costs of postage and necessary mailing supplies.

VII. AUTHORIZATION TO RECORDS CUSTODIANS

The records custodians for ICRMP are hereby authorized to deviate from provisions of this resolution as they may deem appropriate in order to provide openness in public matters while maintaining a policy objective of recovering costs consistent with benefits provided. Such variation from adopted policy should not compromise efficiency of program operations or legally required confidentiality of public documents. No such disclosure shall be allowed to compromise the interests of ICRMP, or those of its members, as a shared self-insurance program.

IDAHO STATE STATUTES as of December 2022

74-102. 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) A public agency or independent public body corporate and politic may require that a request for public records be submitted to it in a writing that provides the requester's name, mailing address, e-mail address and telephone number. A request for public records and delivery of the public records may be made by electronic mail.
- (5) The custodian shall make no inquiry of any person who requests a public record, except:
 - (a) To verify the identity of the requester in accordance with section 74-113, Idaho Code; or

- (b) To ensure that the requested record or information will not be used for purposes of a mailing or telephone list prohibited by section 74-120, Idaho Code, or as otherwise provided by law; or
 - (c) As required for purposes of protecting personal information from disclosure under chapter 2, title 49, Idaho Code, and federal law.
- (6) 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.
- (7) 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.
- (8) 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.
- (9) The public agency or independent public body corporate and politic may provide the requester information to help the requester narrow the scope of the request or to help the requester make the request more specific when the response to the request is likely to be voluminous or require payment as provided in subsection (10) of this section.
- (10) (a) Except for fees that are authorized or prescribed under other provisions of Idaho law, no fee shall be charged for the first two (2) hours of labor in responding to a request for public records, or for copying the first one hundred (100) pages of paper records that are requested.
- (b) A public agency or independent public body corporate and politic or public official may establish fees to recover the actual labor and copying costs associated with locating and copying documents if:
- (i) The request is for more than one hundred (100) pages of paper records; or

- (ii) The request includes records from which nonpublic information must be deleted; or
 - (iii) The actual labor associated with responding to requests for public records in compliance with the provisions of this chapter exceeds two (2) person hours.
- (c) A public agency or independent public body corporate and politic or public official may establish a copying fee schedule. The fee may not exceed the actual cost to the agency of copying the record if another fee is not otherwise provided by law.
- (d) For providing a duplicate of a computer tape, computer disc, microfilm or similar or analogous record system containing public record information, a public agency or independent public body corporate and politic or public official may charge a fee, uniform to all persons that does not exceed the sum of the following:
 - (i) The agency's direct cost of copying the information in that form;
 - (ii) The standard cost, if any, for selling the same information in the form of a publication;
 - (iii) The agency's cost of conversion, or the cost of conversion charged by a third party, if the existing electronic record is converted to another electronic form.
- (e) Fees shall not exceed reasonable labor costs necessarily incurred in responding to a public records request. Fees, if charged, shall reflect the personnel and quantity of time that are reasonably necessary to process a request. Fees for labor costs shall be charged at the per hour pay rate of the lowest paid administrative staff employee or public official of the public agency or independent public body corporate and politic who is necessary and qualified to process the request. If a request requires redactions to be made by an attorney who is employed by the public agency or independent public body corporate and politic, the rate charged shall be no more than the per hour rate of the lowest paid attorney within the public agency or independent public body corporate and politic who is necessary and qualified to process the public records request. If a request is submitted to a public agency or independent public body corporate and politic that does not have an attorney on staff, and requires redactions by an attorney, the rate shall be no more than the usual and customary rate of the attorney who is retained by the public agency or independent public body corporate and politic for that purpose.

- (f) The public agency or independent public body corporate and politic shall not charge any cost or fee for copies or labor when the requester demonstrates that the requester's examination and/or copying of public records:
 - (i) Is likely to contribute significantly to the public's understanding of the operations or activities of the government;
 - (ii) Is not primarily in the individual interest of the requester including, but not limited to, the requester's interest in litigation in which the requester is or may become a party; and
 - (iii) Will not occur if fees are charged because the requester has insufficient financial resources to pay such fees.
- (g) Statements of fees by a public agency or independent public body corporate and politic shall be itemized to show the per page costs for copies, and hourly rates of employees and attorneys involved in responding to the request, and the actual time spent on the public records request. No lump sum costs shall be assigned to any public records request.
- (11) A requester may not file multiple requests for public records solely to avoid payment of fees. When a public agency or independent public body corporate and politic reasonably believes that one (1) or more requesters is segregating a request into a series of requests to avoid payment of fees authorized pursuant to this section, the public agency or independent public body corporate and politic may aggregate such requests and charge the appropriate fees. The public agency or independent public body corporate and politic may consider the time period in which the requests have been made in its determination to aggregate the related requests. A public agency or independent public body corporate and politic shall not aggregate multiple requests on unrelated subjects from one (1) requester.
- (12) The custodian may require advance payment of fees authorized by this section. 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. Any portion of an advance payment in excess of the actual costs of labor and copying incurred by the agency in responding to the request shall be returned to the requester.

- (13) 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.
- (14) 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.
- (15) 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.

New section

74-103. REQUEST AND RESPONSE TO REQUEST FOR EXAMINATION OF PUBLIC RECORDS. (1) All requests to examine public records shall be made to the designated custodian of such records as defined in section 74-101(3), Idaho Code. A public agency, a public official, or an employee of a public agency shall have no obligation and shall not be deemed to have assumed any obligation to respond to a public records request that fails to comply with the requirements of this subsection. A public records request must clearly indicate that it is a public records request.

74-107. Records exempt from disclosure - Trade secrets, production records, appraisals, bids, proprietary information.

The following records are exempt from disclosure: ...

- (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.

74-115. 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 this chapter. 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. In cases in which the records requested are claimed as exempt pursuant to section 74-107 (1) or (24) , Idaho Code, the petitioner shall be required to name as a party and serve the person or entity that filed or provided such documents to the agency, and such person or entity shall have standing to oppose the request for disclosure and to support the decision of the agency to deny the request. 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 this chapter 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, this chapter shall not make available the contents of prosecution case files where such material has previously been provided to the defendant nor shall this chapter be available to supplement, augment, substitute or supplant discovery procedures in any other federal, civil or administrative proceeding.

New section

74-119. AGENCY GUIDELINES. By January 1, 2019, every state agency shall adopt guidelines that identify the general subject matter of all public records kept or maintained by the state agency, the custodian or custodians, and the physical location of such documents. Public agencies shall designate at least one (1) person as custodian to receive public records requests and shall provide an alternate custodian or alternate custodians for contingencies. If a public agency has a website, the agency

shall note the name and contact information of its custodian of records on its website and shall promptly update such information when it changes.