

POLICY TITLE: PUBLIC RECORD REQUESTS

Purpose: All records maintained by state and local government entities must be available for public access and copying. At the same time, the Legislature recognized the need to balance this policy of openness against the equally important need for privacy of certain information provided by citizens and businesses that is necessary for the conduct of the government's business. This balance is contained in Idaho Code § 74-102, which states that "all public records in Idaho are open at all reasonable times for inspection except as otherwise expressly provided by statute."

Records Available to Public

Subject to the limitations provided herein, and as provided by law, full access to public records concerning the administration and operations of the Agency shall be afforded to the public. Public access to Agency records shall be afforded according to appropriate administrative procedures.

Every person has the right to examine and take a copy of any public record at all reasonable times. All Agency records except those restricted by State and federal law shall be made available to citizens upon written request for inspection at the Clerk's office.

The Superintendent shall serve, or designate someone to serve, as "Public Records Coordinator" with the responsibility and authority for ensuring compliance with the display, indexing, availability, inspection, retention, and copying requirements of federal law, State law, and this policy. Responsibility and authority for indexing shall include identifying the general subject matter of all public records kept or maintained by the Agency, the custodian of these records, and their physical location. The identified physical location of the Agency's records is provided in the Retention of Agency Records Policy. The Public Records Coordinator shall authorize the inspection and copying of the Agency's records only in accordance with the criteria set forth in this policy and in compliance with State and federal laws.

A written copy of the Board's minutes shall be available to the general public within a reasonable time after the meeting in which they are approved. Drafts of the Board's minutes are considered to be public records and shall be produced upon request. However, the Agency shall watermark such public records with the statement "Unofficial Draft Minutes not yet reviewed or approved by Board."

Definitions

1. A "public record" includes, but is not limited to, any writing containing information relating to the conduct or administration of the public's business prepared, owned, used,

or retained by any State agency, independent public body corporate and politic, or local agency regardless of physical form or characteristics.

2. A "writing" includes, but is not limited to, handwriting, typewriting, printing, photocopying, 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.

3. Educational Record. Records that contain information directly related to a student and which are maintained by an educational agency or institution or by a party acting for the agency or institution.

4. Personnel File (also known as: Personnel Record). Per Idaho Code 33-518, an employee's "personnel file shall contain any and all material relevant to the evaluation of the employee... Personnel files are declared to be confidential and excepted from public access under any provision of the Idaho Code, including, but not limited to, sections 74-102 and 59-1009, Idaho Code..."

Family Educational Rights and Privacy Act (FERPA)

1. The Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99) is a Federal law that protects the privacy of student education records. The law applies to all schools that receive funds under an applicable program of the U.S. Department of Education.
2. Prohibits the improper disclosure of personally identifiable information derived from educational records or personnel records.

2. In addition to FERPA's general prohibition mentioned above, Idaho Code 74-104 thru 111 exempts several records from disclosure, including the following:

74-104. Court files of judicial proceedings.

74-105. Law enforcement records, investigatory records of agencies, evacuation and emergency response plans, and worker's compensation.

74-106. Personnel records, personal information, health records, professional discipline.

74-107. Trade secrets, production records, appraisals, bids, proprietary information.

74-108. Archaeological, endangered species, libraries, licensing exams.

74-109. Draft legislation and supporting materials, tax commission, unclaimed property, petroleum clean water trust fund.

74-110. Records of court proceedings regarding judicial authorization of abortion procedures for minors.

74-111. Records related to the uniform securities act.

Video Recordings

The COSSA Regional Technology and Education Center (CRTEC) has video cameras which record their images on Digital Video Records, in classrooms and public areas, for the purposes of maintaining safety and security. If a video recording is neither an educational nor personnel record, and is not exempt by FERPA or I.C. 74-104 thru 111, then it is eligible for a public records request. Parents, guardians, and interested patrons may request a copy of the public record using the procedures outlined in this policy.

Many COSSA employees work in consortium school districts, all of which have their own video camera and recording systems, for the purposes of maintaining safety and security within those schools. If the video recording in question is made in one of the consortium schools, the requestor must make a public records request of the school district where the video recording is kept.

Public Records Requests

The following procedure will be followed for all public records requests.

1. Request Form 4260-1 from the front office for all public records requests, including a request to “view” a public record video.
2. Educational and personnel records are exempt from public records requests, and requests for these records will be returned, unfilled, with a note explaining the exempt status of these records.
3. The requesting individual must make a “narrow” request, specifying the public record they are interested in receiving, or viewing, for a specific period of time. For the purposes of viewing video recordings, a specific “event” should be described so that COSSA Administration can narrow the time of the viewing. If the requested video recording contains the image of students and/or staff not directly related to the public records request, the request cannot be filled, and requests for these records will be returned, unfilled, with a note explaining that the video record cannot adequately isolate the event in question to ensure the privacy of other students and/or staff. Upon request, a school administrator may describe what he/she sees on the video record, specific to the event in question, to the requestor, without releasing the identity of students and/or staff not related to the requestor.
4. In filling the public records request, the time and expense of filling the request will be assessed as follows:
 - a. Upon receiving the completed Form 4260-1, the records request will be granted or denied. COSSA administration are allowed to determine that a longer period of time is needed to locate or retrieve information. Administration will notify the individual in writing that more time is needed and then grant or deny the request in whole or in part within ten (10) working days following the request. The written denial for

all or part of a request for information must state the statutory authority for the denial, and include a clear statement of the right to appeal and the time for doing so. If the administration makes no response to the request, it shall be deemed to be denied within ten (10) working days following the request.

b. The time of the COSSA staff member(s) tasked with filling the request is free for the first two hours it takes to fill the request. For any time over two hours, the staff member's time will be compensated to COSSA at that staff members' hourly rate. A partial hour will be compensated in 15 minute intervals ($\frac{1}{4}$ hour of time = $\frac{1}{4}$ hour of pay), rounded down to the nearest 15-minute interval.

c. The cost of paper copy is free up to and including the first 100 pages of paper. For any amount of paper and copy expense over 100 pages, COSSA will be compensated for that expense at a rate of two (2) cents per page. Front and back copying counts as two pages.

d. The cost of electronic files, including video files, is free except for the cost of the USB device used to record and transfer the files, unless the requesting individual provides their own USB device. The actual cost of the USB device will be charged to the requesting individual.

e. If, when reviewing the public records request, COSSA Administration determines that it can reasonably be expected to take over two hours of employee time, or over 100 pages of paper copy, or a USB device must be used, then COSSA Administration will ask for pre-payment of these anticipated expenses. The amount of pre-payment should be adequate to cover all expenses, with the expectation that a refund will be given to the requestor if the full amount is not realized, or that work in filling the public records request will cease if the pre-payment is inadequate, until a new pre-payment amount is received. Failure to pre-pay for the expense of filling a public records request within reasonable time (one week from submission) will invalidate the request.

Records Exempt from Disclosure

In accordance with Idaho Code, the following records shall NOT be subject to public inspection or copying:

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. Retired employees' and retired public officials' home addresses, home telephone numbers, and other financial and non-financial membership records.
3. Records of a current or former employee other than the employee's duration of employment with the Agency, position held, and location of employment. This exemption from disclosure does not include the contracts of employment or any

remuneration, including reimbursement of expenses. However, 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, net pay, 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.

4. Records relating to the appraisal of real property, timber, or mineral rights prior to its acquisition, sale, or lease by the Agency.
5. Any estimate prepared by the Agency 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.
6. 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 the Agency or its employees 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 from public funds 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.
7. Computer programs developed or purchased by or for the Agency 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. This 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.
8. Personal information from any file maintained for students. Information from student records shall be disclosed only in accordance with the requirements of the Family Educational Rights and Privacy Act, Idaho Code, and adopted Agency policy.

9. Test questions, scoring keys, or other examination data used to administer academic tests.
10. Records relevant to a controversy to which the Agency is a party, but which records would not be available to another party under the rules of pretrial discovery for cases pending resolution.
11. Records of buildings, facilities, infrastructures, and systems 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.

However, all personnel records of a current or former public official reflecting public service or employment history, classification, pay grade and step, longevity, gross salary and salary history, status, workplace, and employing agency are subject to public inspection and copying.

If the record requested for inspection and/or copying contains both information exempted from disclosure and nonexempt information, the Agency shall, to the extent practicable, produce the record with the exempt portion deleted and shall provide a written explanation for the deletion.

Response to Requests

The Agency shall require that a public records request be submitted in writing upon a form prescribed by the Agency with the requester's name, mailing address, email address, and telephone number. A request for public records may be conducted by electronic mail. The Agency 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 records requested are voluminous or costly.

The Agency shall either grant or deny a person's request to examine or copy public records within three working days of the date of the receipt of a request for public records. If a longer period of time is needed to locate or retrieve the records, the Agency shall notify the person requesting the records of the same and provide the records to such person not later than ten working days following the request. In the event an individual requests a record be provided in electronic format, the Agency shall provide the record in electronic format if the record is available in that format. If a record is requested in electronic format and the record cannot easily be converted to electronic format within ten working days, the Agency shall notify the person requesting the records of this fact and provide them with an estimate of the time necessary to complete the conversion. The documents shall then be provided at a time mutually agreeable to the parties giving consideration to any limitations that may exist regarding electronic conversion.

If the Agency fails to respond, the request shall be deemed to be denied within ten working days following the request. If the Agency denies the request for examination or copying the public records or denies in part and grants in part the request for examination and copying of the public records, the Public Records Coordinator shall notify the person in writing of the denial or partial denial of the request for the public record. The notice of denial or partial denial shall state that the attorney for the Agency has reviewed the request or shall state that the Agency 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 right to appeal the denial or partial denial and the time periods for doing so.

The Public Records Coordinator is authorized to seek an injunction to prevent the disclosure of records otherwise suitable for disclosure when it is determined that there is reasonable cause to believe that the disclosure would not be in the public interest and would substantially or irreparably damage any person or would substantially or irreparably damage vital governmental functions.

Fee Waiver

The Agency will adhere to its copying fee schedule unless it is determined by the Public Records Coordinator that the individual making such a request has demonstrated information sufficient to fulfill the following test:

1. That the requester's examination and/or copying of public records is likely to contribute significantly to the public's understanding of the operations and activities of the government;
2. That the requester's examination and/or copying of public records 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
3. That the requester's examination and/or copying of public records will not occur if fees are charged because the requester has insufficient financial resources to pay such fees.

Upon a request that fees not be charged, and the Public Records Coordinator's consideration of the above factors, the Public Records Coordinator shall notify the requester in writing of their decision within ten working days following the request.

If the fee waiver is denied, the requester shall then have seven days to file an appeal of the denial with the Superintendent. The Superintendent shall review the denial and either affirm or reverse the denial of the Public Records Coordinator in writing within ten working days of receipt of the appeal. In the event that the Superintendent is the Public Records Coordinator the appeal shall be filed within seven days with the Board. At the

Board's next regularly scheduled meeting, the Board shall review the denial of fee waiver and either affirm or reverse it. There shall be no further appeal beyond the Board.

The request shall not be fulfilled or prepared, and the time for response will not begin to run, until such time as the final determination as to fees has been addressed and any fees to be charged have been paid.

A requester may not file multiple requests for public records solely to avoid payment of fees. If the Agency suspects that this is the case, it can aggregate the related requests and charge based upon its copying fee schedule.

Fee Schedule

The copying fee schedule of the Agency is as follows:

1. The Agency shall not charge a fee for the first 100 pages of records or the first two hours of labor in responding to a request.
2. Copies of public records - 1¢ per page for copies beyond the first 100 pages or beyond the first two hours of labor in responding to a request.
3. The Agency will charge for the labor costs associated with locating and copying documents if:
 - A. The request is for more than 100 pages of records;
 - B. The request includes nonpublic information that must be redacted from the public records; or
 - C. The labor associated with locating and copying the records exceeds two hours.
4. The fees for labor associated with responding to a public records request shall be charged at the per hour pay rate of the lowest-paid administrative staff employee of the Agency who is necessary and qualified to process the request.
5. The fees associated with redactions required to be made by an attorney employed by the Agency shall be charged at the lowest-paid hourly rate of the lowest paid attorney employed by the Agency or, if there are no attorneys employed by the Agency, the rate shall be no more than the usual and customary rate of the attorney retained by the Agency.
6. Copy of a duplicate computer disc or similar record system the fee shall not exceed:
 - A. The Agency's cost of copying the information in that form;
 - B. The Agency's cost of conversion, or the cost of conversion charged by a third party, if the electronic record must be converted to electronic form.

Fees shall be collected in advance. The Agency shall provide requesters with an itemized statement of fees to show the “per page” costs for copies and the hourly rate of employees and attorneys involved in responding to the request.

LEGAL REFERENCES:

I.C. § 33-518	Personnel Files
I.C. § 74-101(13)	Public Record
I.C. § 74-101(16)	Writing
I.C. § 74-104 thru 111	Exemptions
I.C. § 74-204	Written Minutes of Meetings
IDAPA. 08.01.01.100	Procedures for Responding to Requests for Examination and/or Copying Public Records
	Idaho Public Records Law Manual, July 2015

POLICY HISTORY:

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REQUEST FOR RELEASE OF PUBLIC RECORDS
Canyon-Owyhee School Service Agency (COSSA)
Form 4260-1

Date request was received by COSSA: _____
Date request was filled/returned by COSSA: _____

Status of request upon return to requestor:

- _____ The request was filled on this date: _____
_____ The request was for a viewing of video files, which was filled on this date: _____
_____ The request was NOT filled; for the following reason:
_____ The request was for educational or personnel records, or records exempt by FERPA and/or Idaho Code 74-104 thru 111, and the request was not filled.
_____ The video record requested to be viewed cannot adequately isolate the event in question to ensure the privacy of other students and/or staff, and the request was not filled.
_____ The public records request was expected to exceed two (2) hours of employee time, or 100 pages of copy paper, or included a USB device, and the pre-payment of these expenses was not received in reasonable time (one week), and the request was not filled.

1. Date of public records request: _____

2. Name of requestor: _____

3. This request is for:

- _____ Paper or electronic copies of public records.
_____ Electronic copies of video public records.
_____ Viewing of public record video.

4. Attributes of the event and/or record in question used to narrow the search for the document, record, video, or other record:

a. Date (as close as possible) of the event, record, and/or video: _____

b. Description of event, record, and/or video: _____

c. Students and/or staff who are the subject of the event, record, and/or video: _____

5. To be completed by COSSA Administration. Estimate the costs associated with filling this request. Costs associated with this request, in excess of those allowed in Board Policy 4260, will be shared with the requestor before the costs are incurred.

- a. _____ Estimated cost of hours of employee time (first two hours are free).
b. _____ Estimated cost of pages of paper copy (first 100 pages are free).
c. _____ Estimated cost of USB device used to record and transfer electronic files.