



DEQ POLICY MEMORANDUM PM07-04

POLICY FOR HANDLING PUBLIC RECORDS REQUESTS

PURPOSE:

To formalize a policy for the handling of requests received by DEQ from the public under the Idaho public records statute, Idaho Code §§ 9-337, *et seq.* This policy and procedure shall supersede and take the place of the DEQ Policy for Handling of Public Records Requests PM03-2, dated on May 13, 2003.

STATEMENT OF POLICY:

Requests to be in Writing

1. Except for members of the Idaho Legislature, all persons requesting access to DEQ records shall be required to make a written request.
2. A public records request submitted by electronic mail or facsimile shall be deemed to be a written request.

Response Time

3. The public records request shall be deemed to be received on the date that a DEQ official or employee receives a written request. If the request is submitted electronically, the date of receipt shall be the date that a DEQ official or employee opens the electronic file.
4. DEQ shall respond in writing to all public records requests within three working days after the date that the request is received. The response shall either grant the request, deny the request, or give notice that additional time is needed to fill the request. Public Records Custodians shall keep a file containing copies of all response letters sent to requestors.
5. If more than three working days are required to retrieve or locate any requested records, an additional seven working days may be taken to fill the request so long as the person making the request is notified in writing, within three working days of receipt of the request, that the additional time is needed.

Logging in the Request

6. All public records requests received by a DEQ employee or official shall be forwarded to their designated program or regional office Public Records Custodian promptly upon receipt. The Public Records Custodian shall log in each request and ensure that each request is responded to by DEQ.
7. A copy of all public records requests received by a designated program or regional office Public Records Custodian shall be forwarded to the State Office Public Records Request Coordinator promptly upon receipt. On a statewide basis, the Public Records Coordinator shall log in all requests and ensure that all requests are responded to by DEQ.
8. In the event that a public records request involves more than one regional or state program office, the Public Records Coordinator shall coordinate one response with all involved parties.

Scope of the Request

9. A person making a public records request shall not be asked the reason for the request except to inquire whether a list of persons will be used for a mailing or telephone list, or if additional information is necessary for DEQ to evaluate a request for a fee waiver.
10. Where a request is broad or unclear, the DEQ staff person assigned to the request, the custodian, the coordinator, or the Attorney General's office may contact the person making the request to determine if the person wants to narrow or clarify the scope of records sought. Any such conversations shall be documented in writing by DEQ and the documentation should be given to any other DEQ section or office known to be handling the same request. If the scope or substance of a public records request is changed significantly by the person making the request before the request is filled by DEQ, the person shall be encouraged to withdraw the original request and submit a new request or the changes to the original request may be documented in DEQ's response to the request.
11. A person may request to view or copy existing written documents and electronic files containing information relating to the conduct or administration of the public's business prepared, owned, used or retained by DEQ. DEQ will not prepare new documents in response to a public records request.

Lists

12. Unless the persons whose names are on a list have given their consent for the list to be used as a telephone or mailing list, whenever a person submits a request to inspect or take a copy of a list that could potentially be used as a phone or mailing list, the custodian shall ask whether the list will be used as a phone or mailing list. If the response is "yes", the request shall be denied in writing. If the response is "no", then the person making the request may inspect and/or obtain a copy of the list.
13. Before distribution, DEQ staff shall place the following notice on any list that could potentially be used as a phone or mailing list without consent of the persons on the list: "WARNING: USE OF THIS LIST AS A MAILING LIST OR A TELEPHONE LIST IS PROHIBITED BY IDAHO CODE § 9-348 AND PUNISHABLE BY A CIVIL PENALTY UP TO \$1,000."

Denials of Public Records Requests

14. Certain records may be withheld from disclosure due to their confidential nature; the exceptions to public records disclosure are described in the Idaho Public Records Law.
15. Any time that a person submitting a public records request is not allowed access to a document or any portion of a document which falls within the scope of the request, it is a denial. All denials must have attorney review.
16. All denials of public records requests shall be in writing and shall include reference to:
 - a. The specific statutory provision which is the basis for the denial;
 - b. The fact that there has been attorney review of the request; and
 - c. The requesting person's right to file an appeal within 180 days from the date of mailing of the notice of denial.
17. Where possible, exempted portions of a record or document, or specific pages of a record or document, shall be removed or struck out so that the rest of the material can be provided to the person making the request. Notice of partial denial shall, in all respects, be made in the same manner as a complete denial.
18. Where a public records request is denied and the person who submitted the request subsequently asks for more detail regarding the nature of the documents withheld or the legal basis for the denial, the person shall be referred to the attorney who initially reviewed the denial for further handling.
19. Trade Secrets submitted to or obtained by DEQ and not otherwise required by federal or state law to be released shall not be disclosed to the public.

Copying of Records

20. Where the number of documents are not voluminous, requested records may be copied and mailed at the request of the person submitting a public records request. Where a request is broad, the person submitting the public records request shall be sent a letter indicating that the person may arrange to visit the DEQ office and examine the records in-house.
21. Where a requestor seeks access to a DEQ record in a format not used by the agency in the normal course of business, the record shall be provided in that format unless it is determined by a DEQ supervisor, with attorney review, that a valid reason exists for not providing that particular record to the public in the format requested. Under no circumstances shall one person be denied access to a record in a particular format when the record has been or will be made available to another member of the public in that format.

Copying Fee Schedule

22. Idaho Code Section 9-338 authorizes the DEQ to establish a copying fee schedule not to exceed the actual cost to the DEQ of copying the record. The provision further provides that the actual cost to the DEQ shall not include any administrative or labor costs resulting from locating and providing a copy of the public record; provided however, that the DEQ may establish a fee to recover the actual labor cost associated with locating and copying documents if: (1) the request is for more than one hundred (100) pages; (2) the request includes records from which nonpublic information must be deleted; or (3) the actual labor associated with locating and copying documents for a request exceeds two (2) person hours. Pursuant to Idaho Code Section 9-338, the DEQ adopts the following fee schedule:

Idaho Code Reference	Type of work involved	Costs
§ 9-338(8)(a)	Photocopying less than 50 sheet pages on standard 8 ½" x 11" paper	No charge
§ 9-338(8)(a)	Photocopying more than 50 sheet pages but less than 100 pages on standard 8 ½" x 11" paper	Actual copying cost of \$.10 per page
§ 9-338(8)(a)	Photocopying on sheets other than standard 8 ½" x 11" paper (e.g. blueprints, maps)	Actual copying cost, varies depending on size
§ 9-338(8)(a)	Retrieval of archived information	\$3 per box, actual out of pocket cost
§ 9-338(8)(a)(i)	Photocopying more than 100 sheet pages on standard 8 ½" x 11" paper	\$12 per hour plus \$.10 per page
§ 9-338(8)(a)(ii)	Request includes records from which non-public information must be deleted	\$12 per hour plus \$.10 per page
§ 9-338(8)(a)(iii)	Where actual labor associated with locating and photocopying/printing hard copy and/or electronic documents equals or exceeds two (2) person hours	\$12 per hour plus \$.10 per page
§ 9-338(8)(b)(i)	Where DEQ has an out of pocket cost	Actual out of pocket cost
§ 9-338(8)(b)(ii)	Where DEQ has a standard charge for selling information in the form of a publication	Standard cost for selling information in the form of the publication

DEQ may choose to obtain copies made to satisfy a public records request from a commercial copying service. In such cases, the person making the request shall be responsible for the cost charged by the commercial copying service if the cost is \$5.00 or more.

The fees to be charged for providing public records in the form of computer tape, computer disk, compact disk (CD), microfilm or similar or analogous record shall be DEQ's direct cost of copying the information in that form.

If there is reason to believe that a requestor or group of requestors is attempting to break a request down into a series of requests for the purpose of avoiding the assessment of fees, DEQ will aggregate such requests to determine the total fee and will charge accordingly.

23. When copies or printouts are duplexed, each side of the copy on which print appears shall be treated as a single copy for the purpose of fee assessment. In this way, fees for duplexed copies shall be assessed according to the same schedule as fees for single-sided copies.
24. Idaho sales tax shall be assessed on copy fees and DEQ's out-of-pocket costs.

Shipping and Mailing Fees

25. Where copies of records are mailed or shipped at the request of the person seeking access to the records, and the cost is \$5.00 or more, the person shall be responsible for reimbursement to DEQ of the actual mailing or shipping cost incurred by DEQ.

Prepayment of Fees

26. Where the costs associated with filling a public records request might cause the person making the request to withdraw or narrow the request, the person may be informed of the estimated charges before DEQ acts on the request.
27. Prepayment of costs associated with copying records may be required on a case-by-case basis if there is reason to believe the charges might not be paid, the requestor's name is on an unpaid debt list, the request is voluminous, or other circumstances exist which indicate prepayment is appropriate. Any overpayment shall be promptly refunded.

Fee Waivers & Exemptions

28. The following government entities shall not be assessed any fees under this policy: state legislators; federal agencies (including the U.S. Environmental Protection Agency); other state agencies (including departments, divisions, bureaus, commissions, boards); cities and counties; school districts; health districts; and state funded colleges and universities.

29. Fees may be waived if the requestor demonstrates either:
 - a. The inability to pay; or
 - b. 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.
30. Factors which shall be considered in evaluating whether a requestor has demonstrated an inability to pay a fee assessed for access to public records include:
 - a. The extent to which the requestor will receive an economic benefit by using the requested information; and
 - b. The financial assets and debts of the person requesting the waiver.
31. Factors which shall be considered in evaluating whether a requestor has demonstrated that a public interest waiver is warranted include:
 - a. Whether the subject of the requested records concerns government operations or activities;
 - b. Whether the requested records would contribute to the public's interest or understanding of those operation or activities;
 - c. The requestor's identity
 - d. The purpose for which the requestor intends to use the information;
 - e. Whether the requestor will disseminate the information to the public;
 - f. Whether disclosure of the record would benefit the broader public interest or understanding, not merely the private interests of the requestor;
 - g. Whether the requested record is already in the public domain; and
 - h. Whether the fee requirement inhibits the requestor's ability to obtain the records.
32. DEQ may seek additional information from a requestor to support a demonstration of qualification for a fee waiver.
33. All requests for a waiver shall be evaluated on a case-by-case basis. Any response to a request for a waiver of fees shall have attorney review.

Billing and Fee Collection

34. When a fee is charged for the copying or printing of public records and/or an associated DEQ out-of-pocket cost, the requestor shall be sent an invoice. The requestor has thirty days to remit payment to DEQ.
35. In the event that a requestor has not remitted a payment within 30 days and remains delinquent on such payment, DEQ will disclose and allow examination of the requested records but will not undertake any actions that would result in additional fees under any fee schedule contained in this policy until the overdue payment has been remitted.
36. In the event that a requestor has not remitted a payment within 120 days and remains delinquent on such payment, DEQ will place the requestor's name on an unpaid debt list that would result in the requirement of prepayment of costs associated with fees under any fee schedule contained in this policy until either 4 years have lapsed since the requestor's name was placed on the list or the overdue payment has been remitted.

Records Examinations

37. While DEQ records are being examined in-house, a staff member shall be present in the same room or at a nearby location.

DEQ Location Where Request Received

38. Intra-Office Handling of Requests: A public records search for records which might be within the scope of a public records request will be conducted only at the DEQ Office to which the request is addressed unless 1) the DEQ person handling the request has reason to believe that there are DEQ records within the scope of the request located at another DEQ office, or 2) the request specifically asks for the records at another DEQ office.
39. Requests Received by Regional Offices: Where a public records request is received by a DEQ regional office and there is reason to believe that additional relevant records may be located at another DEQ regional office or at the State Office, the custodian shall notify the Public Records Coordinator.

Requests Submitted by an Attorney

40. When DEQ receives a public records request from an attorney or law office, the Public Records Coordinator shall forward a copy to the Attorney General's Office for review.

Communications to or From the Attorney General's Office

41. If a public records request potentially encompasses any communications to or from the Attorney General's Office, attorney review shall be sought before the request is filled or denied.

Active enforcement Actions and Litigation

42. Whenever a person submits a public records request to inspect or take a copy of materials which consist of investigatory records related to an ongoing or pending enforcement action or litigation, attorney review shall be sought before the request is filled or denied. Investigatory records include those records which, if disclosed, could compromise an ongoing investigation or enforcement action, or reveal a confidential source (including complainants who wish to be anonymous).

Confidential business Information

43. Upon receipt of a public records request which includes within its scope documents which might be a trade secret, attorney review shall be sought before the request is filled or denied. Trade secrets are those records or information given to, submitted to, or otherwise obtained by DEQ the disclosure of which could cause economic or other competitive harm to the company which is the subject of the trade secret, and which are claimed by the company to be subject to confidential treatment.

Personnel Information

44. All requests for personnel information shall be routed through DEQ's Human Resources Unit.

Public Comment Packages

45. Where DEQ records are made available to the public for review during a comment period required by statute or regulation, members of the public are not required to make a public records request prior to reviewing the records on the public comment package. Unless prohibited by the controlling statute, a fee may be imposed for copies of records in a public comment package pursuant to this policy.
46. Any relevant or peripheral documents not included in a public comment package and not exempt from disclosure shall be made available to the public pursuant to a formal public records request.

IMPLEMENTATION:

This policy shall be effective immediately.
Dated this 11 day of October, 2007.



TONI HARDESTY
DIRECTOR