



## DEQ POLICY MEMORANDUM PM12-03

### POLICY FOR HANDLING PUBLIC RECORDS REQUESTS

#### PURPOSE

The purpose of this policy memorandum is to formalize a policy for handling public records requests (PRRs) received by the Idaho Department of Environmental Quality (DEQ) from the public under the Idaho Public Records Law, Idaho Code §§9-337 et seq. This policy and procedure shall supersede and take the place of the DEQ "Policy for Handling Public Records Requests" (PM07-04), dated October 11, 2007.

#### 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 PRR submitted by email, fax, or DEQ's online request form is considered a written request.

##### Response Time

3. The PRR shall be deemed to be received on the date a DEQ official or employee receives a written request. If the request is submitted electronically, the date of receipt shall be the date a DEQ official or employee opens the electronic file.
4. DEQ shall respond in writing, which includes email, to all PRRs within three working days after the date 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. PRR custodians shall save all requests and response letters in DEQ's PRR application.
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 requester is notified in writing that the additional time is needed.

##### Entering the Request

6. All PRRs received by a DEQ official or employee shall be forwarded to the designated division or regional office PRR custodian promptly upon receipt. The custodian shall enter

each request into the PRR application and ensure all appropriate divisions and/or regional offices are assigned.

7. When a PRR is submitted online, the PRR coordinator shall ensure all appropriate divisions and/or regional offices are assigned through the PRR application and that each request is responded to by DEQ.
8. If a PRR involves more than one division or regional office, the PRR coordinator shall coordinate responses from all involved parties. Response letters shall note that additional public records may be presented by another DEQ division or regional office.

### **Scope of the Request**

9. A requester shall not be asked why the public records are being sought except, as described in Idaho Public Records Law, to inquire whether a requested record or information will be used for purposes of a mailing or telephone list.
10. Where a request is broad or unclear or may incur substantial fees, a DEQ official or employee may contact the requester to determine if the person wants to narrow or clarify the scope of records sought. Any such correspondence shall be documented in the PRR application, making it accessible to other DEQ divisions and/or regional offices known to be handling the same request. If the requester changes the scope or substance of a PRR significantly before the request is filled by DEQ, the requester shall be encouraged to withdraw the original request and submit a new request or the changes to the original request may be documented in the PRR application and DEQ's response to the request.
11. A person may request to view or copy existing written documents and electronic files prepared, owned, used, or retained by DEQ that contain information relating to the conduct or administration of the public's business. DEQ will not prepare new documents in response to a PRR.

### **Requests Submitted by an Attorney**

12. When DEQ receives a PRR from an attorney or law office, review by the Office of the Attorney General (OAG) shall be sought before the request is filled or denied.

### **Communications to or from the Attorney General's Office**

13. If a PRR potentially encompasses any communications to or from the OAG, review by the OAG shall be sought before the request is filled or denied.

### **Confidential Business Information**

14. When DEQ receives a PRR that includes within its scope documents that may be a trade secret, review by the OAG 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 of which disclosure could cause economic or other competitive harm to the company that is the subject of the trade secret and that are claimed by the company to be subject to confidential treatment.
15. Trade secrets submitted to or obtained by DEQ and not otherwise required by federal or state law to be released shall not be disclosed to the public.

**Active Enforcement Actions and Litigation**

16. When DEQ receives a PRR to inspect or take a copy of materials that consist of investigatory records related to an ongoing or pending enforcement action or litigation, review by the OAG shall be sought before the request is filled or denied. Investigatory records include those records that, if disclosed, could compromise an ongoing investigation or enforcement action or reveal a confidential source (including complainants who wish to be anonymous).
17. If a DEQ official or employee knows that a particular matter within the scope of a PRR has been the source of litigation or enforcement action in the past, they shall contact the OAG to ensure that such matters are no longer active before the request is filled or denied.

**Personnel Information**

18. When DEQ receives a PRR for personnel information, it shall be routed through DEQ's human resources department before the request is filled or denied.

**Public Comment Packages**

19. 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 submit a PRR 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 the fee schedule.
20. 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 PRR.

**Contact Lists**

21. Whenever a person submits a PRR via the online request form or uses the DEQ Public Records Request Form, he or she must certify that disclosed information will not be used as a telephone or mailing list or for any other illegal purpose.
22. In some instances, a DEQ official or employee may suspect a requester is using disclosed information as a telephone or mailing list in violation of the law despite receipt of confirmation to the contrary from the requester. Often this will be the case when a request is received from a company or individual known to collect public information for marketing purposes or with a history of making such requests to DEQ. In these cases, the PRR custodian and/or PRR coordinator shall confer with the OAG on whether the request should be denied. If the OAG determines the request should be denied, a denial letter shall be sent to the requester. The denial letter will include instruction on how the requester may resubmit their request and obtain the requested documents if a letter is provided promising no commercial use.
23. 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 and Partial Denials**

24. 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.
25. Any time a requester is not allowed access to a document or any portion of a document that falls within the scope of the request, it is a denial or partial denial. All denials and partial denials must be reviewed by the OAG.
26. All denials and partial denials of PRRs shall be in writing and shall include reference to the following:
  - The fact that the OAG reviewed the request
  - The specific statutory authority serving as basis for the denial or partial denial
  - The requester's right to file an appeal within 180 days from the date of mailing the notice of denial or partial denial
27. Where possible, exempted portions of a record or document, or specific pages of a record or document, shall be removed or struck out so the rest of the material can be provided to the requester.
28. Where a PRR is denied and the requester subsequently asks for more detail regarding the nature of the documents withheld or the legal basis for the denial or partial denial, the requester shall be referred to the deputy attorney general who initially reviewed the denial or partial denial for further information.
29. Any records withheld as a denial or partial denial shall remain available until the end of the requester's 180 calendar day appeal period or until a decision has been rendered on any petition filed.

**Copying Records**

30. Where the number of documents is not voluminous, requested records may be copied or scanned and mailed or emailed at the request of the person submitting a PRR. Where a request is broad and the number of documents voluminous, the requester shall be sent a letter indicating that he or she may arrange to visit the DEQ office and examine the records in-house.
31. Where a requester 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 the format used by DEQ unless it is determined by a DEQ supervisor, with review by the OAG, that a valid reason exists for 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.
32. A certified copy of any public record, if feasible to produce, shall be provided upon request.

**Records Examinations**

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

### Fee Schedule

36. Idaho Code §9-338 authorizes DEQ to establish fees to recover actual costs associated with locating and copying documents in responding to a PRR. DEQ's Public Records Request Fee Schedule is located in Appendix A. From time to time, DEQ will revisit the PRR fee schedule to ensure compliance with Idaho Code and update fee amounts as necessary. PRR fee schedule updates may occur without updating this entire policy.
37. In establishing its fee schedule, DEQ has elected to bill at labor rates representing the lowest paid administrative employee (PRR custodian) working at DEQ rather than the rate of the lowest paid employee who worked on the request. DEQ has also elected to bill at the labor rate representing the lowest paid deputy attorney general working on behalf of DEQ rather than the rate of the lowest paid deputy attorney general who worked on the request. In almost all cases, this will result in lower bills to the requester, and it will never result in a bill that includes a labor rate exceeding actual labor costs to the department. This policy has been reviewed by the OAG and has been deemed consistent with the intent of Idaho Code §9-338(10)(e), which instituted more specific limitations on billing practices. This policy is also consistent with past practice at the agency, which has been to conservatively estimate DEQ costs to maximize customer service and access to open government.

### Prepayment of Fees

38. Where the costs associated with filling a PRR might cause the requester to withdraw or narrow the request, the requester may be informed of the estimated charges before DEQ acts on the request.
39. Prepayment of costs associated with filling a PRR may be required on a case-by-case basis if DEQ has reason to believe the charges might not be paid, the requester's name is on an unpaid debt list, the request is voluminous, or other circumstances exist that indicate prepayment is appropriate. Any overpayment shall be promptly refunded.

### Fee Waivers

40. The following government entities shall not be assessed any fees under this policy: state legislators; federal agencies; other state agencies (including departments, divisions, bureaus, commissions, and boards); cities and counties; school districts; health districts; and state-funded colleges and universities.
41. DEQ shall not charge any cost or fee for copies or labor when the requester demonstrates that examination and/or copying of public records meets *all* of the following conditions:
- Is likely to contribute significantly to the public's understanding of the operations or activities of the government (public interest clause)
  - 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
  - Will not occur if fees are charged because the requester has insufficient financial resources to pay such fees (insufficient financial resources clause)
42. The following factors will be considered when evaluating a requester's qualification for the public interest clause:
- Whether the requested record is already in the public domain

- Whether the subject of the requested records concerns government operations or activities
  - Whether the requested records would contribute to the public's interest or understanding of those operations or activities
  - Whether the requester will disseminate the information to the public
  - Whether disclosure of the record would benefit the broader public interest or understanding, not merely the private interests of the requester
43. The following factors will be considered when evaluating a requester's qualification for the insufficient financial resources clause:
- The extent to which the requester will receive an economic benefit by using the requested information
  - The financial assets and debts of the person or agency requesting the waiver
  - Whether the fee requirement inhibits the requester's ability to obtain the records
44. DEQ may seek additional information from a requester to demonstrate qualification for a fee waiver.
45. All requests for a waiver shall be evaluated on a case-by-case basis. Any response to a request for a fee waiver shall be reviewed by the OAG.

#### **Billing and Fee Collection**

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

#### **IMPLEMENTATION**

This policy shall be effective immediately.

Dated this 8 day of Nov., 2012



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Curt A. Fransen  
Director

## Appendix A. Public Records Request Fee Schedule

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

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

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

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

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