

Idaho Public Records Act for Hospitals



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(5.26)

Preliminaries

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Idaho Public Records Law Manual

Office of the
Attorney General

Idaho Public Records Law Manual

Idaho Code §§ 74-101 through 74-127



- <https://www.ag.idaho.gov/content/uploads/2025/08/PublicRecordsLawManual.pdf>
- Includes sample:
 - Public records requests for
 - Resident
 - Non-resident
 - Response to public records requests
 - Resident
 - Non-resident

General Rule

- “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.”

(IC 74-102(1))

- “Inspect” = “right to listen, view and make notes of public records as long as the public record is not altered or damaged.”
- “Copy” = “transcribing by handwriting, photocopying, duplicating machine or reproducing by any other means as long as the public record is not altered or damaged.”

(IC 74-101)

Public Records

- “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 [the District] regardless of physical form or characteristics.”

(IC 74-101(13))

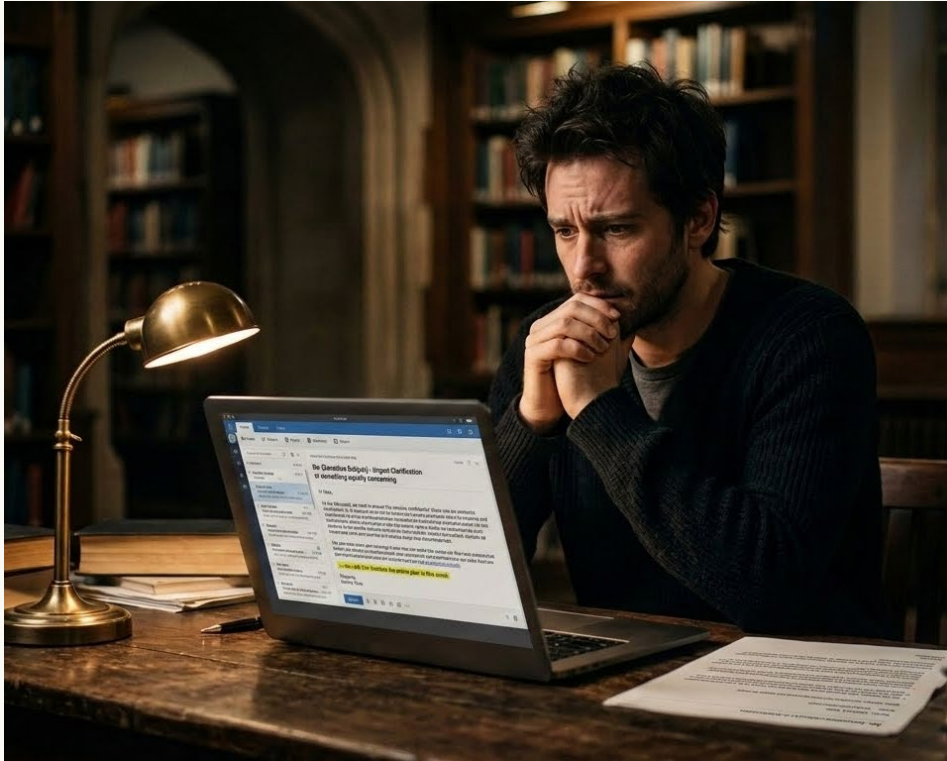
- It includes e-mails, texts, notes, and likely working papers and drafts.

(*Public Records Law Manual* at 5-6)

- Does not include “personal notes created by a public official solely for his own use ... as long as such personal notes are not shared with any other person or entity.”

(IC 74-101(13))

Public Records



Be prudent about what you put in writing because it may be subject to a Public Records Act request.

Examination or Copy

- Examination of records must be conducted during regular office or working hours unless custodian authorizes otherwise.

(IC 74-102(8))

- Person has a right to copy the record in possession of the custodian using equipment owned or designated by the hospital.
- Person has a right to either:
 - obtain a certified copy of the record, or
 - have opportunity to inspect or copy the record.

(IC 74-102(2)-(3))

- Only required to make records available in format used in hospital's normal course of business.

(*Idaho Public Records Act Manual* at 7, 9, emphasis added)

Public Records: Exceptions

- Exempt from disclosure by federal or state law, e.g., HIPAA, peer review records, etc.

(IC 74-104)

- Medical and mental health records.
- Personnel records other than employment history, classification, pay grade, longevity, salary, bonuses, severance, reimbursements, status and workplace.
 - Other personnel info requires employee's consent.
- Retired employees' home address, phone numbers, etc.
- Certain records of a personal nature.
- Personal information on application for public care.
- Licensing and credentialing records.
- Pre-litigation screening panel records.
- Trauma registry records.

(IC 74-106)

Public Records: Exceptions

- Attorney-client privileged communications, attorney work-product, including info prepared in anticipation of litigation at the request of an attorney.
- Trade secrets, including information in requests for proposals (“RFPs”).
- Computer programs developed by hospital.
- Real estate appraisals prior to acquisition.
- Estimates prepared for public projects prior to aware of contract.
- Records concerning certain risk retention or self-insurance programs prepared in anticipation of litigation or settlement.

(IC 74-107)

- Judicial proceedings authorizing abortions.

(IC 74-110)

Public Records: Exceptions

- If a record contains exempt and non-exempt info, the hospital must separate the info and provide the non-exempt material.

(IC 74-112)

- Employee may request and access their own personnel files except those used to screen to test for employment.

(IC 74-106(1))

- A person may inspect and copy a record pertaining to that person even if the record is otherwise exempt from disclosure.

- A person may request an amendment of any record pertaining to the person.

(IC 74-113)

Request

- Request should be made to the designated custodian.
 - “Custodian” = “person[s] having personal custody and control of the public records in question.” (IC 74-101(3))
 - Hospital must designate the custodian and alternates, and include name and contact info on its website. (IC 74-119).
- Request must clearly indicate that it is a public records request.
- Hospital is not obligated to respond to a public records request that fails to comply with the requirements.

(IC 74-103(1))

Request

- Hospital may require that a request for records be submitted in writing that includes:
 - Requestor's name, mailing address, email address and telephone number.
 - Written declaration by requestor affirming under oath whether he/she is a resident.
 - Specific description of the subject matter and records sought including date range for when records created.
- Requester shall be as specific as possible so as to allow the hospital to locate the records with reasonable effort.
- Request and delivery of records may be made by electronic mail.

(IC 74-102(4))

Hospital Response

RESIDENT

- Must grant or deny request within **3 working days** of receipt of request.
- If need more time, may notify requestor and have up to **10 working days** of receipt of request.
- May get more time if need to convert to different electronic format.

(IC 74-103(2))

NON-RESIDENT

- Must grant or deny request within **21 days** of receipt of request.
- If need more time, may notify requestor and have up to **35 days** of receipt of request.
- May get more time if need to convert to different electronic format.

(IC 74-103(2))

Hospital Response

- If hospital fails to respond within deadline, the request is deemed denied.

(IC 74-103(3))

- If hospital denies the request in whole or part, must notify the requester in writing and state:
 - Hospital has consulted with attorney or had opportunity but declined to do so;
 - Statutory basis for denial; and
 - Person has right to appeal and time period (i.e., 180 days) for appeal.

(IC 74-103(4)-(5))

Hospital Response

- Hospital may not question requester except:
 - To verify identify of person; or
 - To ensure info not used for mailing or telephone list;
 - As necessary to protect personal information from disclosure as required by federal law or state law.
- Hospital may provide info to help narrow scope of request.
- Hospital may not review, examine or scrutinize any copy, photo or memo in possession of the requester.
- Hospital must extend to requester reasonable comfort and facility to allow exercise of rights.
- Hospital may take action to prevent alteration of public record.
(IC 74-102(5)-(6), (9))

Hospital Response

- “The law requires an agency to provide public records to members of the public; the agency is not required to send the records to the person making the request.”

(Idaho Public Records Act Manual at 9, emphasis added)

- Sometimes, hospital may receive requests from national organizations collecting data asking hospital to send the data.
- In response, I suggest that you tell the entity that you will make the records available at the hospital as required by the Public Records Act, and ask the requester to contact the hospital to arrange a time.

Fees

- May charge requestor in advance for additional compensation if exam occurs outside regular office hours.
- May charge reasonable fee established by hospital to recover actual labor and copying costs if:
 - Request is for more than 100 pages of paper records;
 - Request includes records from which nonpublic info must be deleted;
 - Response requires deletion of nonpublic info; or
 - Response will exceed two (2) person hours.
- Hospital may establish different fee schedules for residents v. non-residents.

(IC 74-102(10)(a)-(b))

Fees for Copies

RESIDENTS

- Copying costs cannot exceed actual cost of copying records.
- For duplicate computer tape or disc, cannot exceed sum of direct cost in copying record, standard cost of selling in the form of a publication, and cost of converting to another electronic form.

(IC 74-102(10)(c)-(d))

NON-RESIDENTS

- At discretion of hospital as long as do not exceed actual costs to public agency.

(IC 74-102(10)(g))

Fees for Labor

RESIDENTS

- Cannot exceed reasonable labor costs necessarily incurred in responding to request considering personnel and quantity of time.
- Charge hourly rate of lowest admin staff needed to respond.
- If attorney needed to respond:
 - In-house attorney: lowest attorney rate.
 - Outside attorney: usual and customary rate.

(IC 74-102(10)(e))

NON-RESIDENTS

- At discretion of hospital as long as do not exceed actual costs to public agency.
(IC 74-102(10)(g))

Fees: Hardship Exception

RESIDENTS

- Cannot charge fee for copies or labor if requestor shows:
 - Likely to contribute significantly to public understanding of hospital operations;
 - Not primarily for requestor's interests; and
 - Requestor has insufficient resources to pay.

(IC 74-102(10)(f))

NON-RESIDENTS

- Does not apply to nonresidents.

Fees

- Statements of fees must be itemized to show:
 - Per page costs for copies.
 - Hourly rates of employees and attorneys.
 - Actual time spent.
 - Any separate fees charged to non-residents.

(IC 74-102(10)(h))

- Requestor may not file multiple requests to avoid fees.
 - Hospital may aggregate requests involving same subject.

(IC 74-102(11))

- Hospital may require advance payment of fees.

(IC 74-1012(12))

Appeal by Requestor

- Person who is denied request may appeal to district court to compel examination or copies.
 - Must be filed **within 180 days** from date of mailing of the notice of denial or partial denial by the hospital.
 - Court set responsive pleadings at earliest possible time but no more than 28 days from filing.
 - Hospital must retain records until end of 180-day appeal period or statutory retention period, whichever longer.
 - Court determines whether records should be produced.
- (IC 74-115 and -116)

Penalties

- Court shall award reasonable costs and fees to prevailing party if it finds the request or denial were frivolous.

(IC 74-116)

- If the court finds that a hospital official has deliberately and in bad faith improperly refused a legitimate request, it shall impose a civil penalty of up to \$1000 against the official.

(IC 74-117)

Immunity

- No public hospital official or custodian shall be liable for any loss or damage based on the release of public records if official or custodian acted in good faith in attempting to comply.

(IC 74-118)

Questions?



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