

PUBLIC RECORDS – RULE 32, IDAHO COURT

ADMINISTRATIVE RULES

Introduction – Why are records open? And where do these rules come from?

Dalton v. Idaho Dairy Products Commission, 107 Idaho 6, 684 P.2d 983 (1984) – “Every citizen has a right to inspect and take a copy of any public writing of this state, except as otherwise expressly provided by statute.”

Public records law – 1990. “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.” I.C. § 9-338(1).

I.C. § 9-340A(2). “The following records are exempt from disclosureRecords contained in court files of judicial proceedings, the disclosure of which is prohibited by or under rules adopted by the Idaho supreme court, but only to the extent that confidentiality is provided under such rules, and any drafts or other working memoranda related to judicial decision-making”

Overview of ICAR 32

- (a) Statement of policy.
- (b) Definitions.
- (c) Special situations where exemptions from disclosure do not apply.
- (d) Access to court records and copying.
- (e) Access to electronic records.
- (f) Compiled information.
- (g) Records exempt from disclosure.

(h) Permissive Release of judicial decisions in exempted categories.

(i) Court decisions opening, sealing, or redacting records.

(j) Procedure on requests for records.

I. What records are available?

A. "The judicial department's declarations of law and public policy and . . . the records of all proceedings open to the public" – listed in more detail in subsection (d)

B. Exceptions

1. Records listed in subsection (g)

2. Other records sealed or redacted by order of the court under subsection (i)

II. The request -- subsection (j)(1)

A. May be made by "any person"

B. Must clearly identify the record so that it can be located without extensive research; continuing requests for documents not yet in existence will not be considered

C. Should not ask why the person wants to see the record – I.C. § 9-338

D. You may verify the identify of a person seeking otherwise exempt records about himself or herself

E. You may ask that the request be put in writing, including the person's name, mailing address and telephone number

- III. Who decides whether to grant the request?
 - A. Custodian of the records – subsection (j)(2)
 - 1. For case files: the clerk, or a deputy clerk designated in writing by the clerk
 - 2. For records not in case files: the Trial Court Administrator, or a judge designated by the ADJ
 - B. Custodian Judge – subsection (j)(3)
 - 1. For case files: the presiding judge, or a judge designated by the ADJ
 - 2. For records not in case files: ADJ, or judge designated by the ADJ
- IV. The response – subsection (j)(4)
 - A. Within 3 working days of receipt of the request, you must:
 - 1. Disclose the record
 - 2. Refer the request to the custodian judge
 - 3. Give written notice of denial
 - 4. Notify the person making the request it will take longer than 3 working days: (1) to decide whether to grant the request; or (2) to locate or retrieve the requested records. You then have up to 10 working days from the request to respond.
 - B. No duty to compile or summarize information contained in records, and no obligation to create new records
 - C. Costs for copying

1. \$1.00 per page for paper copies of records in case files
 2. Otherwise determined by order of the Supreme Court or the Administrative District Judge in accordance with the provisions of I.C. § 9-338(8)
- V. How does a person challenge a denial? – subsection (j)(7)
- A. If denied by the custodian, may file a request for a ruling by the custodian judge
 - B. If denied by the custodian judge, may petition the district court within 180 days after the denial – I.C. § 9-343
- VI. Records exempt from disclosure – subsection (g)
- (1) Restricted by state or federal law
 - (2) PSIs, except as provided in ICR 32
 - (3) Search or arrest warrant affidavits, sworn testimony, and records of proceedings, pending return of warrant
 - (4) Unreturned search warrants
 - (5) Unreturned arrest warrants, except bench warrants, or summonses – but may be disclosed by law enforcement
 - (6) “Wiretap” orders, documents and recordings
 - (7) Grand jury records
 - (8) Names of prospective jurors and questionnaires
 - (9) CPA and JCA
 1. CPA records

2. Juvenile case records – sealed until admit/deny hearing –
then decision made by judge

(10) Mental commitment records, with exceptions

(11) Adoption records, with exceptions (non-identifying medical
information, or where there is a compelling medical need for disclosure)

(12) Termination records, with exceptions

(13) Consent for minor abortion (judicial bypass proceedings)

(14) Sterilization proceedings

(15) Document filed or lodge in camera (for the court's viewing only)

(16) Domestic abuse (civil protection order) records, except for orders

(17) Records gathered to assist the court:

1. To determine an individual's need for counseling

2. To assist in appropriate disposition, including ADR
screening report

3. To provide a recommendation regarding custody of
children

4. To provide the court with a psychological evaluation of an
individual

5. To provide annual or other accountings by conservators
and guardians, except to interested parties.

6. Family law case information sheet

(18) A reference list of personal data identifiers or an unredacted copy of a
document filed under IRCP 3(c)

(19) Filings in guardianship or conservatorship cases, except for certain persons, and except for:

1. ROA
2. Letters of guardianship and conservatorship and any orders regarding the rights and duties of guardians and conservators
3. Order of court regarding bond by a conservator, and the conservator's bond
4. Any order concluding or otherwise disposing of the case

(20) Records in child custody, child support, and paternity cases, except for DHW employees in the performance of their duties, and except for:

1. ROA
2. Any order, decree or judgment, to be drafted in compliance with ICRP3(c)

(21) Judicial work product

(22) Personnel records, with exceptions

(23) Applications and testing to be included on a court roster

(24) Confidential computer programs and related records

(25) State law library patron records

(26) Allegations of attorney misconduct received by Idaho State Bar

(27) Bar applications

(28) Idaho Judicial Council records

(29) Bulk distribution of electronic court data

VII. Some people may be able to view records anyway – subsection (c)

- A. If approved by the custodian judge, state and local official when examining records in the exercise of their official duties
 - B. Parties to an action and their attorneys, unless restricted by order of the court, except for adoption records, termination records, documents filed or lodged in camera, and family law case information sheets
 - C. Disclosure by custodian of statistical information not descriptive of individual persons
 - D. Employees exercising right to access of their own personnel files
 - E. Court personnel working under the supervision of the courts who are acting within the scope of their duties
- VIII. Records may be disclosed, sealed or redacted by order of the court – subsection (i)

See the last paragraph of this subsection for procedures on handling sealed and redacted records