

CLERK OF THE DISTRICT COURT MANUAL

23.0 ACCESS TO COURT RECORDS

Revised April 2008

23.1 OVERVIEW

Although most of the Court's records are open to the public, many are not. The question of who may have access to Court records and under what circumstances is generally governed by Idaho Court Administrative Rule 32. I.C.A.R. 32 also addresses how a person asks to see a court record and how that request should be handled.

In accordance with Rule 32(j), efforts should be made to respond promptly to requests for records.

23.2 REQUESTING ACCESS TO COURT RECORDS

Who May Ask:

Any person may request access to court records. (R32 (j)).

Reasons for Asking:

No reason is required to see a court record, except as to adoptions and terminations where medical information is being sought. (R32 (g)(11) & (12)).

Form of Request to See Court Records:

1. Requests need not be in writing, especially where rights of access are clear and the record requested is readily available.
2. A written request may be required, however, if disclosure of the records is questionable, or if the request is "so involved or lengthy as to need further definition." (R32 (j)). (See attached Form 1 for a sample request form).
3. Proof of identity may be required to see records which are not open to the public. The Custodian of the record should make a photocopy of such proof and attach it to the request.
4. The request must clearly identify each record requested so that the custodian can locate the record without doing extensive research. Continuing requests for documents not yet in existence need not be considered. (Rule 32(j))

Clerical Duties - Responding to a Request for Access to Court Records:

1. Refer the requester to the custodian of the record or, if the request is in writing, refer the request to the custodian. (For records in a case file, the custodian is the elected clerk, or a deputy or deputies designated in writing. For records not in a case file, the custodian is the trial court administrator, or a judge designated by the administrative judge.)
2. If a custodian is not immediately available, or if you are a custodian and are unsure whether the record requested is open (or if you believe it to be closed), or if the request will take some time to fulfill, give the requester a Records Request Form (Form 1, below) to complete. If the record is open and available, a written request is not necessary.
3. Within three working days from the receipt of either an oral or written request, the Custodian must either disclose the records requested; **OR**
 - A. refer the request to the Custodian Judge for determination; **OR**
 - B. deny the request in writing, (see Form 1); **OR**
 - C. notify the person making the request that it will take more than three days to determine if the request should be granted, and that a response will be made within 10 working days from the receipt of the request. (Form 1) (R32 (j)).
4. If the documents requested are disclosed, no further action is required.
5. Place copies of all request related documents in the storage file maintained in your court. (See Maintaining Copies of Requests, below.)

23.3 OTHER ACCESS RELATED ISSUES

Restrictions on Certain Requests:

The custodian is not under a duty to compile or summarize information contained in court records, nor is the custodian obligated to create new records for the requesting party. Requests for electronically compiled information should be forwarded to the Administrative Office of the Supreme Court. (R32(f)). The custodian may also deny a request for a copy of all or part of a transcript of an administrative or judicial proceeding or other voluminous publication or document when by rule or statute it may be obtained from the preparer of such record after payment of a fee. (R32 (j))

Permissible Charges and Effects of Nonpayment:

1. Delay in payment extends the time for responding to the request. (R32 (j)).

Type of Access:

1. When access is granted, that person may examine the record and/or obtain copies (upon prepayment of applicable fees).
2. Examination should ordinarily take place under direct supervision of a custodian clerk or deputy, so that the custodian can insure the continuing integrity of the records.
3. Court records should not be removed from the court environment unless accompanied by a custodian, except when ordered by the custodian judge.

Maintaining Copies of Requests:

1. A file of written requests to see case file records, the responses to those requests, and any other related documents (including a copy of any written order by a Custodian Judge), should be maintained by the Custodian Clerk. Documents relating to requests for access to non-case file records shall be retained by the Trial Court Administrator, who is designated the Custodian of such records. (R32(j))
2. Retention Period. The length of time for retention of records requesting documents is not explicitly addressed in ICAR 37 or 38, which are the general rules relating to record retention standards. ICAR 32(j) says however that if a person disagrees with the ruling on their request for a record, they may sue under Idaho Code 9-343, which gives them 180 days, from the date of the mailing of the denial to file their petition. Once a petition has been filed, however ICAR 37 would control the further retention of the documents in that case.

23.4 COURT RECORDS**Court Records Defined:**

According to ICAR 32(b)(4) a "Court Record" includes (A) Any document, information or other thing that is collected, received, or maintained by a court or clerk of court in connection with a judicial proceeding; (B) Any index, calendar, docket, register of actions, official record of the proceedings, order, decree, judgment, minute, and any information in an automated case management system created by or prepared by the court or clerk of court that is related to a judicial proceeding, including existing ISTARs reports. ICAR 32(b)(5) defines "Physical record" and (6) defines court records in "Electronic form." As noted above, although most of the Court's records are open to the public, many are not.

Public Records:

Rule 32 (d) provides that (with certain exceptions) the following records may be examined, inspected and copied. Nevertheless in certain kinds of cases, or where ordered by the court, these records too may be closed to the public.

1. Minutes, orders, opinions, findings of fact, conclusions of law, judgments, and notices.
2. Transcripts and recordings of trials and hearings and records offered or introduced as exhibits in trials or hearings.
3. Pleadings, motions, affidavits, responses, memoranda, briefs, etc.
4. Administrative or other records of the clerk, judge, magistrate or staff of the court unless exempt from disclosure by statute, case law, or court rule.

Closed Records:

ICAR 32(g) contains 26 subclauses listing records that are “exempt from disclosure”(that is, closed to the public). The following list is only a summary. Please refer to Rule 32 for complete details.

1. Records restricted by state or federal laws.
2. Presentence investigation reports.
3. Records relating to unreturned search and arrest warrants.
4. Unreturned search warrants.
5. Unreturned arrest warrants and unreturned summonses in criminal cases.
6. Materials relating to intercepted communications (wiretaps, etc.).
7. Grand Jury records.
8. Trial jury names, qualifications and questionnaires.
9. All Child Protective Act cases, most cases under the former Juvenile Rehabilitation Act, and some cases under the current Juvenile Corrections Act (all of them up to the admit/deny hearing; see Form 2, below, but note that the age of the offender and the nature of the offense can change the confidentiality requirements under the rule and note also that schools may receive information in court records about a juvenile).
10. Mental commitment records.

11. Adoption records.
12. Termination of parental rights.
13. Records relating to consent for a minor's abortion.
14. Records of sterilization procedures.
15. Documents filed "in camera" ("in camera" means "in chambers," and these records will have a judge's order making them confidential).
16. Domestic abuse files, except for the orders of the court.
17. Psychological reports, home studies, substance abuse evaluations and other records not admitted into evidence that are gathered or created for the court to help it in making decisions in a case.
18. A judge's (and the judge's staff's) notes, memoranda, drafts, etc. used in preparing a final decision or order.
19. Personnel records.
20. Applications to be included on a court roster.
21. Computer programs and records which the court has acquired to maintain confidentially.
22. State law library records identifying a borrower's request or specific interests.
23. State bar records relating to attorney misconduct.
24. Applications for the bar examination and for admission to practice law.
25. Magistrate Commission and Judicial Council records.
26. Bulk distribution of electronic court data.

Other Closed Records:

In addition to the specific records listed above, records that might be libelous, or which could embarrass or cause financial or physical harm to someone may be ordered sealed by a judge. (R32 (j)).

Clerical Duties – Closed Records:

1. If the entire case file is sealed make certain the outside of the physical case file is

obviously marked as sealed and that the ISTARs case has been sealed in the system.

- A. To seal a case in ISTARs the clerk selects 'Cases' from the top menu bar. The clerk then selects 'seal case'. He/she then types in the case number for the case and clicks retrieve. A message will come up which states the cases is unsealed, do you want to seal it. The clerk clicks on yes, and the ISTARs record will be sealed, thus limiting who can have access to it according to the user's set up in the security table.
- B. To unseal a case the clerk goes through the same process as outlined in 'a' above, but the question will come up that the case is sealed, would you like to unseal it. The clerk clicks on yes to unseal the entire ISTARs case record thus making it visible to all.

Where only specific portions of the case file are sealed, the clerk should mark the entry in the register of actions "Document Sealed" indicating what has been sealed. By doing this only users who have been set up in the security table with rights to see sealed records will be able to see the name of the document on the ROA, other users will see a red banner stating "filed record sealed".

(When a partial record is sealed local practice may vary in what is required regarding the sealing of the entire physical file and corresponding ISTARs records or may be limited to only those documents ordered to be sealed as described in the above paragraph.)

- 2. When a clerk receives any request – oral or written – for inspection of records **which are exempt from disclosure**, the request should be immediately referred to the custodian of records for response or processing. **THE RECEIVING CLERK SHOULD NOT DISCLOSE OR DENY THE EXISTENCE OF THESE RECORD(S).**

Any requests that a clerk is not certain regarding what should or should not be disclosed should be forward to the custodian for further handling .

- 3. If upon examination of the record where the record or a portion of the record was previously sealed, a clerk or custodian determines that a sealing order has terminated, the sealed material or documents that were previously sealed with the order should then be physically marked as unsealed and the file folder marked accordingly if it involves the entire case file. If a single document or group of documents are no longer sealed in a case that is otherwise open to the public, the register of actions for those documents that are no longer sealed should be updated by un-checking the box in the ROA that states the document is sealed.

Note: Any Case which is sealed will not show up on the case history for an individual as seen by a user who does not have authority to "view" sealed records.

For the users who do have authority to see sealed cases, the case will appear as all other cases do but will display a red banner stating that the case is sealed.

When an ROA is sealed the ROA code and the date and judge remain viewable to the user who does not have authority to see sealed case information, but the verbiage in the text box will be blocked by a red banner stating that the “Filed Record is Sealed”. The user who has authority to see sealed cases will see a red banner to the right of the text box stating that the “Filed Record is Sealed” all information about the ROA will be visible.

Exceptions to the Rule:

Otherwise closed records may be disclosed under the following conditions (R32 (c))

1. If approved by the custodian judge, a federal, state or local official (or their agent) may examine a closed record in the exercise of their official duties and powers; however, requests for numerous records or records from more than one county must be approved by the Chief Justice.
2. Parties to an action, and their attorneys, may examine the court file, unless restricted by order of the court except as limited in paragraphs (g)(11) adoptions, (12) terminations, (15) “in camera” documents and (17)(f) Family Law Case Information Sheets.
3. A custodian may disclose statistical information that does not identify specific persons.
4. Employees may have access to their own personnel files.
5. Judges, clerks, trial court administrators, or other staff employed by or working under the supervision of the courts who are acting **within the scope of their duties** may have access to closed records.

23.5 CUSTODIANS AND CUSTODIAN JUDGES OF COURT RECORDS

1. For **case file records**, the Elected Clerk or a deputy designated in writing is the custodian, and the custodian judge is the presiding judge, or other judge designated in writing by the Administrative Judge;
2. For **non-case file records**, the Trial Court Administrator, or a designated judge, is the custodian; and the custodian judge is the Administrative District Judge, or a judge designated in writing by the Administrative Judge
3. For the purpose of the ISTARs system, the ISTARs Datawarehouse, and compiled information, the custodian is the Administrative Director of the Courts or other person designated in writing by the Chief Justice.

23.6 MEDIA REQUESTS FOR COURT RECORDS AND ACCESS TO COURT PROCEEDINGS

Records Available to the Media:

Any record that is open to the public is available to a reporter or other media representative, and any record that is not open to the public is not available for inspection or copying by a member of the media. (For more information on records that are "exempt from disclosure" under Court Administrative Rule 32, see Section 6.22.4, above.) However, because the needs of the media for court records can be extensive and regular, it is not uncommon for a court to provide certain accommodations for those needs which it might not do for the public, such as routinely setting aside files or copies of documents for later review without requiring a specific request. Such accommodations can provide efficiencies for court staff as well as for the media representative. However these accommodations must not alter what records or parts of records may be made available to the media. Where possible, it is best not to delay media access, and if for example, the file is unavailable because it is in a judge's office, contact should be made with the judge's secretary or clerk to determine whether the file can be temporarily removed.

Information Not In Court Records:

Sometimes a reporter may ask court staff for information that may not be in a court record, such as why a judge did (or didn't do) something, or the significance of a particular event in a case, or may even ask the court staff's opinion about particular individuals involved in the case or the court. Such questions should not be answered, except perhaps by saying, "I'm sorry, but I don't know the answer. Would you like to speak to my supervisor?" It may also be that your court has a particular person on staff who is assigned to talk to members of the media about such things, in which case you could refer the reporter to that person.

Media Guide for Reporters:

The Supreme Court has published a brochure entitled *The Courts of Idaho: A Media Guide for Reporters* which is available in hard copy in each courthouse and is on the Supreme Courts web site in both pdf and html format as *The Internet Guide to the Idaho Courts* (<http://www.isc.idaho.gov/judicial.html>). This is an electronic companion to the Media Guide. Topics in the *Internet Guide* are in the same order as topics in the *Media Guide*. Both *Guides* are designed to provide a quick source of basic information for journalists covering the Idaho court system. The *Internet Guide* contains links to numerous relevant laws and rules, as well as to other Internet sources of legal information and has been updated since the publication of the *Media Guide*.

High Interest Cases:

Where there is a high profile court case, there may be many requests for access to the file, which may not be convenient to the judge and staff who may also require access to the

file. It may be useful to create a copy or copies of the complete file (or of selected documents) so that the "shadow" or "dummy" copy may be readily available to the press and public without inconveniencing the court. Copies of the documents and other case related information could also be placed on the Court's website, or other dedicated website, for even greater ease of access.

Broadcast Coverage and Photography:

There is one area in which members of the media have a privilege not given to the general public and that involves video, audio and/or photographic coverage of public proceedings, which is authorized and regulated under Idaho Court Administrative Rule 45. Where the request is to take photographs or broadcast outside of the courtroom in a public area such as a lobby or hallway, local practices differ, according to the order of the Administrative District Judge, with some districts requiring special approval beforehand, and some not. Check with your supervisor to see what your district's practice is. Form 3 (see below) provides a sample request for media permission to broadcast or photograph court proceedings.

Clerical Duties - Media Requests for Access to Court Records:

1. Refer the requester to the custodian of the record or, if the request is in writing, refer the request to the custodian.
2. If a custodian is not immediately available, or if you are a custodian and you are uncertain whether the record requested is open (or if you believe it to be closed), or if the request will take some time to fulfill, give the requester a Records Request Form (Form 1, below) to complete. If the record is open, the custodian may provide the record without a written request.
3. Within three working days from the receipt of either an oral or written request, the Custodian must either disclose the records requested; **OR**
 - A. refer the request to the Custodian Judge for determination; **OR**
 - B. deny the request in writing, (see Form 1); **OR**
 - C. notify the person making the request that it will take more than three days to determine if the request should be granted, and that a response will be made within 10 working days from the receipt of the request. (Form 1) (R32 (j)).
4. Place copies of all request-related documents in the storage file of records requests maintained in your court.

Form 1

REQUEST TO INSPECT OR COPY JUDICIAL RECORDS

Revised: June 9, 2005

Printed Name Address Telephone

requests examination and/or ____ copies of the following described records:

Date of Request

Signature of Requestor

ACTION TAKEN BY CUSTODIAN

Request granted on ____, ____.

Cost \$____ per ____ . TOTAL \$_____
(To be paid in advance.)

Notice given to requestor that response will be delayed up to ten (10) working days from the date of the request.

Request denied on _____, 20____.

Reason for Denial:

Custodian

REQUEST FOR RULING AFTER DENIAL BY CUSTODIAN

The Requestor is advised that a ruling by a judge may be demanded if a custodian has denied the request for records.

I request a ruling by the custodian judge.

Date of Request

Signature of Requestor

End of Form 1

Form 2

**IN THE DISTRICT COURT OF THE _____ JUDICIAL DISTRICT IN AND FOR
_____ COUNTY**

**In the Interest of) Order Regarding Confidentiality
) of Juvenile Records and Proceedings
Johnny Doe, a minor) Under ICAR 32**

FINDINGS AND ORDER

The juvenile is under 14 years of age or, if older, is not charged with a felonious act.

The court's records and proceedings shall be open.

The court's records and proceedings shall be closed.

The juvenile is 14 years of age or older and is charged with a felonious act.

The court's records and proceedings shall be open as provided by rule.

The court's records and proceedings shall be closed due to extraordinary circumstances that justify confidentiality, specifically:

This file, having been previously opened, is hereby closed pursuant to ICAR 32(g)(9)(C).

Date

Magistrate Judge

End of Form 2

Form 3

Request for Approval of Broadcasting or Photographing Court Proceedings

IN THE DISTRICT COURT OF THE _____ JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF _____

_____)	
Plaintiff)	Case Number _____
V.)	
)	Request for Approval to Broadcast
_____)	And/or Photograph Court Proceedings
Defendant)	

I hereby request approval to broadcast and/or photograph the following court proceeding:

Date: _____ Time: _____

Location: _____ Presiding Judge: _____

I have read Idaho Court Administrative Rule 45 governing cameras in the courtroom, and will comply in all respects with the Rule and the Orders of the Court.

Print Name Signature

News Organization Represented Date

* * * * *

ORDER

THE COURT, having considered the above Request for Approval, hereby orders that permission to broadcast and/or photograph the above hearing is:

[] Denied

[] Granted; under the following restrictions:

Date District/Magistrate Judge

End of Form 3