

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 618

BY JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

AN ACT

1 RELATING TO PUBLIC RECORDS; AMENDING SECTION 74-101, IDAHO CODE, TO DE-  
2 FINE TERMS; AMENDING SECTION 67-4126, IDAHO CODE, TO REVISE A CODE  
3 REFERENCE; AMENDING SECTION 67-5241, IDAHO CODE, TO REVISE A CODE REF-  
4 ERENCE; AMENDING SECTION 74-105, IDAHO CODE, TO REVISE CODE REFERENCES;  
5 AMENDING SECTION 74-109, IDAHO CODE, TO REVISE A CODE REFERENCE; AND  
6 DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.  
7

8 Be It Enacted by the Legislature of the State of Idaho:

9 SECTION 1. That Section 74-101, Idaho Code, be, and the same is hereby  
10 amended to read as follows:

11 74-101. DEFINITIONS. As used in this chapter:

12 (1) "Applicant" means any person formally seeking a paid or volunteer  
13 position with a public agency. "Applicant" does not include any person seek-  
14 ing appointment to a position normally filled by election.

15 (2) "Biometric identifiers" means fingerprints, palm veins, face  
16 recognition, DNA, palm prints, hand geometrics, iris recognition, and simi-  
17 lar information unique to a particular individual's physical makeup.

18 (3) "Copy" means transcribing by handwriting, photocopying, duplicat-  
19 ing machine and reproducing by any other means so long as the public record is  
20 not altered or damaged.

21 (34) "Custodian" means the person or persons having personal custody  
22 and control of the public records in question.

23 (45) "Independent public body corporate and politic" means the Idaho  
24 housing and finance association as created in chapter 62, title 67, Idaho  
25 Code.

26 (56) "Inspect" means the right to listen, view and make notes of public  
27 records as long as the public record is not altered or damaged.

28 (67) "Investigatory record" means information with respect to an iden-  
29 tifiable person, group of persons or entities compiled by a public agency or  
30 independent public body corporate and politic pursuant to its statutory au-  
31 thority in the course of investigating a specific act, omission, failure to  
32 act, or other conduct over which the public agency or independent public body  
33 corporate and politic has regulatory authority or law enforcement author-  
34 ity.

35 (78) "Law enforcement agency" means any state or local agency given law  
36 enforcement powers or which has authority to investigate, enforce, prose-  
37 cute or punish violations of state or federal criminal statutes, ordinances  
38 or regulations.

39 (89) "Local agency" means a county, city, school district, municipal  
40 corporation, district, public health district, political subdivision, or  
41 any agency thereof, or any committee of a local agency, or any combination  
42 thereof.

1           (910) "Person" means any natural person, corporation, partnership,  
2 firm, association, joint venture, state or local agency or any other recog-  
3 nized legal entity.

4           (11) "Personal identifying information" means identifiers such as  
5 name, birthdate, age, sex, home address, telephone number, email address,  
6 business address and telephone number, social security number, driver's  
7 license number, employee identification number, personal financial infor-  
8 mation, passwords and access codes, medical records, biometric identifiers,  
9 and other information reasonably likely to be used to identify, locate, or  
10 harass the person who is the subject of the identifying information.

11           (102) "Prisoner" means a person who has been convicted of a crime and is  
12 either incarcerated or on parole for that crime or who is being held in cus-  
13 tody for trial or sentencing.

14           (113) "Public agency" means any state or local agency as defined in this  
15 section.

16           (124) "Public official" means any state, county, local district, inde-  
17 pendent public body corporate and politic or governmental official or em-  
18 ployee, whether elected, appointed or hired.

19           (135) "Public record" includes, but is not limited to, any writing con-  
20 taining information relating to the conduct or administration of the pub-  
21 lic's business prepared, owned, used or retained by any state agency, in-  
22 dependent public body corporate and politic or local agency regardless of  
23 physical form or characteristics. Provided, however, that personal notes  
24 created by a public official solely for his own use shall not be a public  
25 record as long as such personal notes are not shared with any other person or  
26 entity.

27           (146) "Requester" means the person requesting examination and/or copy-  
28 ing of public records pursuant to section 74-102, Idaho Code.

29           (157) "State agency" means every state officer, department, division,  
30 bureau, commission and board or any committee of a state agency including  
31 those in the legislative or judicial branch, except the state militia and the  
32 Idaho state historical society library and archives.

33           (168) "Unwarranted invasion of personal privacy" means disclosure of  
34 personal identifying information of a juvenile or a victim of an alleged  
35 crime of mass violence, domestic violence, or physical or sexual abuse, or  
36 where disclosure of personal identifying information is likely to violate  
37 legitimate and substantial privacy interests of the person identified when  
38 such interests are weighed against general public curiosity, such as dis-  
39 closure of embarrassing or intimate personal details. Release of the name,  
40 age, and sex of a deceased person after notification of next of kin shall not  
41 constitute an unwarranted invasion of privacy and shall be disclosed unless  
42 otherwise exempt under this chapter.

43           (19) "Writing" includes, but is not limited to, handwriting, typewrit-  
44 ing, printing, photostating, photographing and every means of recording,  
45 including letters, words, pictures, sounds or symbols or combination  
46 thereof, and all papers, maps, magnetic or paper tapes, photographic films  
47 and prints, magnetic or punched cards, discs, drums or other documents.

48           SECTION 2. That Section 67-4126, Idaho Code, be, and the same is hereby  
49 amended to read as follows:

1           67-4126.   POWERS AND DUTIES OF BOARD. The board of trustees of the soci-  
2 ety shall have powers and duties as follows:

3           1. To appoint a director of the society as provided herein and advise  
4 him in the performance of his duties and formulate general policies affect-  
5 ing the society.

6           2. To encourage and promote interest in the history of Idaho and encour-  
7 age membership in the society.

8           3. To collect for preservation and display artifacts and information  
9 illustrative of Idaho history, culture and society.

10          4. To print such publications and reports as may be deemed necessary.

11          5. To encourage creation of county historical societies and museums in  
12 the counties of Idaho.

13          6. To facilitate the use of Idaho records for official reference and  
14 historical research.

15          7. To be responsible for records management services for state gov-  
16 ernment. Records management services include the management, storage and  
17 retrieval of all state created records under retention. State created  
18 records shall mean any document, book, paper photograph, sound recording  
19 or other material, regardless of physical form or characteristic, made or  
20 received pursuant to law or in connection with the transaction of official  
21 state business. The board may charge reasonable amounts for records man-  
22 agement services. The records managed pursuant to this subsection will  
23 not be subject to the exemption in public records law provided in section  
24 74-101(157), Idaho Code.

25          8. To accept from any state, county, or city, or any public official,  
26 any official books, records, documents, original papers, newspaper files,  
27 printed books, or portraits, not in current use. When such documents are  
28 so accepted, copies therefrom shall be made and certified under the seal of  
29 the society upon application of any person, which person shall pay for such  
30 copies reasonable fees established by the society.

31          9. To require that any state, county, or city, or any public official,  
32 deposit official books, records, documents, or original papers, not in cur-  
33 rent use, which are of definite historical importance, in the society for  
34 preservation and to provide methods whereby such materials, which have no  
35 significance, may be destroyed.

36          10. To establish such rules as may be necessary to discharge the duties  
37 of the society.

38          11. To employ such personnel as may be necessary for the administration  
39 of its duties in accordance with the rules of the administrator of the divi-  
40 sion of human resources promulgated pursuant to chapter 52, title 67, Idaho  
41 Code.

42          12. To have and use an official seal.

43          13. To delegate and provide subdelegation of any such authority.

44          14. To identify historic, architectural, archaeological, and cultural  
45 sites, buildings, or districts, and to coordinate activities of local his-  
46 toric preservation commissions.

47          15. To serve as the geographic names board of the state of Idaho.

48           SECTION 3. That Section 67-5241, Idaho Code, be, and the same is hereby  
49 amended to read as follows:

1           67-5241.   INFORMAL DISPOSITION. (1) Unless prohibited by other provi-  
2 sions of law:

3           (a) an agency or a presiding officer may decline to initiate a contested  
4 case;

5           (b) any part of the evidence in a contested case may be received in writ-  
6 ten form if doing so will expedite the case without substantially preju-  
7 dicing the interests of any party;

8           (c) informal disposition may be made of any contested case by negotia-  
9 tion, stipulation, agreed settlement, or consent order. Informal set-  
10 tlement of matters is to be encouraged;

11           (d) the parties may stipulate as to the facts, reserving the right to  
12 appeal to a court of competent jurisdiction on issues of law.

13           (2) An agency or a presiding officer may request such additional in-  
14 formation as required to decide whether to initiate or to decide a contested  
15 case as provided in subsection (1) of this section.

16           (3) If an agency or a presiding officer declines to initiate or decide  
17 a contested case under the provisions of this section, the agency or the of-  
18 ficer shall furnish a brief statement of the reasons for the decision to all  
19 persons involved. This subsection does not apply to investigations or in-  
20 quiries directed to or performed by law enforcement agencies defined in sec-  
21 tion 74-101(7), Idaho Code.

22           (4) The agency may not abdicate its responsibility for any informal  
23 disposition of a contested case. Disposition of a contested case as provided  
24 in this section is a final agency action.

25           SECTION 4. That Section 74-105, Idaho Code, be, and the same is hereby  
26 amended to read as follows:

27           74-105.   RECORDS EXEMPT FROM DISCLOSURE -- LAW ENFORCEMENT RECORDS,  
28 INVESTIGATORY RECORDS OF AGENCIES, EVACUATION AND EMERGENCY RESPONSE PLANS,  
29 WORKER'S COMPENSATION. The following records are exempt from disclosure:

30           (1) Investigatory records of a law enforcement agency, as defined in  
31 section 74-101(7), Idaho Code, under the conditions set forth in section  
32 74-124, Idaho Code.

33           (2) Juvenile records of a person maintained pursuant to chapter 5,  
34 title 20, Idaho Code, except that facts contained in such records shall be  
35 furnished upon request in a manner determined by the court to persons and  
36 governmental and private agencies and institutions conducting pertinent  
37 research studies or having a legitimate interest in the protection, welfare  
38 and treatment of the juvenile who is thirteen (13) years of age or younger.  
39 If the juvenile is petitioned or charged with an offense which would be a  
40 criminal offense if committed by an adult, the name, offense of which the  
41 juvenile was petitioned or charged and disposition of the court shall be sub-  
42 ject to disclosure as provided in section 20-525, Idaho Code. Additionally,  
43 facts contained in any records of a juvenile maintained under chapter 5,  
44 title 20, Idaho Code, shall be furnished upon request to any school district  
45 where the juvenile is enrolled or is seeking enrollment.

46           (3) Records of the custody review board of the Idaho department of ju-  
47 venile corrections, including records containing the names, addresses and  
48 written statements of victims and family members of juveniles, shall be ex-  
49 empt from public disclosure pursuant to section 20-533A, Idaho Code.

1 (4) (a) The following records of the department of correction:

2 (i) Records of which the public interest in confidentiality, pub-  
3 lic safety, security and habilitation clearly outweighs the pub-  
4 lic interest in disclosure as identified pursuant to the authority  
5 of the state board of correction under section 20-212, Idaho Code;

6 (ii) Records that contain any identifying information, or any in-  
7 formation that would lead to the identification of any victims or  
8 witnesses;

9 (iii) Records that reflect future transportation or movement of a  
10 prisoner;

11 (iv) Records gathered during the course of the presentence inves-  
12 tigation;

13 (v) Records of a prisoner, as defined in section 74-101(10),  
14 Idaho Code, or probationer shall not be disclosed to any other  
15 prisoner or probationer.

16 (b) Records, other than public expenditure records, related to pro-  
17 posed or existing critical infrastructure held by or in the custody  
18 of any public agency only when the disclosure of such information is  
19 reasonably likely to jeopardize the safety of persons, property or the  
20 public safety. Such records may include emergency evacuation, escape  
21 or other emergency response plans, vulnerability assessments, oper-  
22 ation and security manuals, plans, blueprints or security codes. For  
23 purposes of this paragraph, "system" includes electrical, computer  
24 and telecommunication systems, electric power (including production,  
25 generating, transportation, transmission and distribution), heating,  
26 ventilation, and air conditioning. For purposes of this subsection,  
27 "critical infrastructure" means any system or asset, whether physical  
28 or virtual, so vital to the state of Idaho, including its political sub-  
29 divisions, that the incapacity or destruction of such system or asset  
30 would have a debilitating impact on state or national economic secu-  
31 rity, state or national public health or safety or any combination of  
32 those matters.

33 (c) Records of the Idaho commission of pardons and parole shall be ex-  
34 empt from public disclosure pursuant to section 20-1003, Idaho Code,  
35 and section 20-1005, Idaho Code. Records exempt from disclosure shall  
36 also include those containing the names, addresses and written state-  
37 ments of victims.

38 (5) Voting records of the former sexual offender classification board.  
39 The written record of the vote to classify an offender as a violent sexual  
40 predator by each board member in each case reviewed by that board member  
41 shall be exempt from disclosure to the public and shall be made available  
42 upon request only to the governor, the chairman of the senate judiciary and  
43 rules committee, and the chairman of the house of representatives judiciary,  
44 rules and administration committee, for all lawful purposes.

45 (6) Records of the sheriff or Idaho state police received or maintained  
46 pursuant to sections 18-3302, 18-3302H and 18-3302K, Idaho Code, relating  
47 to an applicant or licensee except that any law enforcement officer and law  
48 enforcement agency, whether inside or outside the state of Idaho, may access  
49 information maintained in the license record system as set forth in section  
50 18-3302K(16), Idaho Code.

1 (7) Records of investigations prepared by the department of health and  
2 welfare pursuant to its statutory responsibilities dealing with the protec-  
3 tion of children, the rehabilitation of youth, adoptions and the commitment  
4 of mentally ill persons. For reasons of health and safety, best interests of  
5 the child or public interest, the department of health and welfare may pro-  
6 vide for the disclosure of records of investigations associated with actions  
7 pursuant to the provisions of chapter 16, title 16, Idaho Code, prepared by  
8 the department of health and welfare pursuant to its statutory responsibili-  
9 ties dealing with the protection of children except any such records regard-  
10 ing adoptions shall remain exempt from disclosure.

11 (8) Records including, but not limited to, investigative reports,  
12 resulting from investigations conducted into complaints of discrimination  
13 made to the Idaho human rights commission unless the public interest in  
14 allowing inspection and copying of such records outweighs the legitimate  
15 public or private interest in maintaining confidentiality of such records.  
16 A person may inspect and copy documents from an investigative file to which  
17 he or she is a named party if such documents are not otherwise prohibited from  
18 disclosure by federal law or regulation or state law. The confidentiality of  
19 this subsection will no longer apply to any record used in any judicial pro-  
20 ceeding brought by a named party to the complaint or investigation, or by the  
21 Idaho human rights commission, relating to the complaint of discrimination.

22 (9) Records containing information obtained by the manager of the Idaho  
23 state insurance fund pursuant to chapter 9, title 72, Idaho Code, from or on  
24 behalf of employers or employees contained in underwriting and claims for  
25 benefits files.

26 (10) The worker's compensation records of the Idaho industrial commis-  
27 sion provided that the industrial commission shall make such records avail-  
28 able:

29 (a) To the parties in any worker's compensation claim and to the indus-  
30 trial special indemnity fund of the state of Idaho; or

31 (b) To employers and prospective employers subject to the provisions of  
32 the Americans with disabilities act, 42 U.S.C. 12112, or other statu-  
33 tory limitations, who certify that the information is being requested  
34 with respect to a worker to whom the employer has extended an offer of  
35 employment and will be used in accordance with the provisions of the  
36 Americans with disabilities act, 42 U.S.C. 12112, or other statutory  
37 limitations; or

38 (c) To employers and prospective employers not subject to the provi-  
39 sions of the Americans with disabilities act, 42 U.S.C. 12112, or other  
40 statutory limitations, provided the employer presents a written autho-  
41 rization from the person to whom the records pertain; or

42 (d) To others who demonstrate that the public interest in allowing in-  
43 spection and copying of such records outweighs the public or private in-  
44 terest in maintaining the confidentiality of such records, as deter-  
45 mined by a civil court of competent jurisdiction; or

46 (e) Although a claimant's records maintained by the industrial commis-  
47 sion, including medical and rehabilitation records, are otherwise ex-  
48 empt from public disclosure, the quoting or discussing of medical or re-  
49 habilitation records contained in the industrial commission's records  
50 during a hearing for compensation or in a written decision issued by the

1 industrial commission shall be permitted; provided further, the true  
2 identification of the parties shall not be exempt from public disclo-  
3 sure in any written decision issued and released to the public by the in-  
4 dustrial commission.

5 (11) Records of investigations compiled by the commission on aging in-  
6 volving vulnerable adults, as defined in section 18-1505, Idaho Code, al-  
7 leged to be abused, neglected or exploited.

8 (12) Criminal history records and fingerprints, as defined in section  
9 67-3001, Idaho Code, and compiled by the Idaho state police. Such records  
10 shall be released only in accordance with chapter 30, title 67, Idaho Code.

11 (13) Records furnished or obtained pursuant to section 41-1019, Idaho  
12 Code, regarding termination of an appointment, employment, contract or  
13 other insurance business relationship between an insurer and a producer.

14 (14) Records of a prisoner or former prisoner in the custody of any state  
15 or local correctional facility, when the request is made by another prisoner  
16 in the custody of any state or local correctional facility.

17 (15) Except as provided in section 72-1007, Idaho Code, records of the  
18 Idaho industrial commission relating to compensation for crime victims un-  
19 der chapter 10, title 72, Idaho Code.

20 (16) Records or information identifying a complainant maintained by the  
21 department of health and welfare pursuant to section 39-3556, Idaho Code,  
22 relating to certified family homes, unless the complainant consents in writ-  
23 ing to the disclosure or the disclosure of the complainant's identity is re-  
24 quired in any administrative or judicial proceeding.

25 (17) Records of any certification or notification required by federal  
26 law to be made in connection with the acquisition or transfer of a firearm,  
27 including a firearm as defined in 26 U.S.C. 5845(a).

28 (18) The following records of the state public defense commission:

29 (a) Records containing information protected or exempted from disclo-  
30 sure under the rules adopted by the Idaho supreme court, attorney work  
31 product, attorney-client privileged communication, records containing  
32 confidential information from an individual about his criminal case or  
33 performance of his attorney, or confidential information about an in-  
34 quiry into an attorney's fitness to represent indigent defendants.

35 (b) Records related to the administration of the extraordinary litiga-  
36 tion fund by the state public defense commission, pursuant to section  
37 19-850(2)(e), Idaho Code, to the extent that such records contain in-  
38 formation protected or exempted from disclosure under rules adopted  
39 by the Idaho supreme court, attorney work product or attorney-client  
40 privileged communication. This exemption does not include the amount  
41 awarded based upon an application for extraordinary litigation funds.

42 (19) Records and information received by the office of the state con-  
43 troller from any local government, state agency and department, or volunteer  
44 nongovernmental entity for purposes of entry into the criminal justice  
45 integrated data system pursuant to section 19-4803, Idaho Code, and all  
46 records created by persons authorized to research and analyze information  
47 entered into the criminal justice integrated data system, regardless of  
48 whether such records were previously exempted from disclosure or redacted  
49 pursuant to state or federal law or court order. This exemption does not  
50 apply to projects, reports, and data analyses approved for release by the

1 data oversight council and issued by persons authorized to conduct research  
2 and analysis as set forth in chapter 48, title 19, Idaho Code. Records and  
3 information relating to the management of the criminal justice integrated  
4 data system shall not be exempt from disclosure except as otherwise provided  
5 in law.

6 SECTION 5. That Section 74-109, Idaho Code, be, and the same is hereby  
7 amended to read as follows:

8 74-109. RECORDS EXEMPT FROM DISCLOSURE -- DRAFT LEGISLATION, RE-  
9 SEARCH, PERSONAL COMMUNICATIONS, PERSONALLY IDENTIFYING INFORMATION, WORK  
10 PAPERS, AND DRAFT REDISTRICTING PLANS. The following records are exempt from  
11 disclosure:

12 (1) Records consisting of draft legislation and documents related to  
13 draft legislation, including requests for research or analysis submitted to  
14 the legislative services office by a member of the Idaho legislature and any  
15 documents related to such request.

16 (2) Records consisting of personal communication by a member of the  
17 Idaho legislature or between members of the Idaho legislature that does not  
18 relate to the conduct or administration of the public's business.

19 (3) Personally identifying information relating to a private citizen  
20 contained in a writing to or from a member of the Idaho legislature. As used  
21 in this subsection, "private citizen" does not include a lobbyist registered  
22 with the office of the secretary of state, a public official, or an individ-  
23 ual who is communicating on behalf of an organization. As used in this sub-  
24 section, "public official" has the same meaning as in section 74-101(12),  
25 Idaho Code, except that it does not include elected or appointed members of  
26 the Idaho legislature and legislative staff.

27 (4) Records consisting of or that are related to the work papers in the  
28 possession of the director of legislative performance evaluations prior to  
29 the release of the final performance evaluation.

30 (5) Records consisting of or that are related to the work papers in the  
31 possession of the division of legislative audits prior to release of the re-  
32 lated final audit.

33 (6) Records consisting of draft congressional and legislative redis-  
34 tricting plans and documents specifically related to such draft redistrict-  
35 ing plans or research requests submitted to the commission staff by a member  
36 of the commission for reapportionment for the purpose of placing such draft  
37 redistricting plan into form suitable for presentation to the full member-  
38 ship of the commission, unless the individual commission member having sub-  
39 mitted or requested such plans or research agrees to waive the provisions of  
40 confidentiality provided by this subsection.

41 SECTION 6. An emergency existing therefor, which emergency is hereby  
42 declared to exist, this act shall be in full force and effect on and after  
43 July 1, 2022.