

The following information is not new law, but agency guidance designed to clarify the existing statutes or regulations including: 20 CFR 603 Subpart B; Idaho Code Title 72 Chapter 13 (Sections 1342, 1372, 1373, 1374); Idaho Code Title 74, Chapters 1 & 2; and IDAPA 09.01.08. For more information, contact Georgia Smith at 208-332-3570 x 2102.

DEPARTMENT OF LABOR
STATE OF IDAHO
Boise, Idaho

ADMINISTRATIVE ORDER NO. 624

April 26, 2016

TO: ADMINISTRATORS AND COST CENTER MANAGERS

SUBJECT: GUIDELINES FOR DISCLOSURE OF DEPARTMENT OF LABOR RECORDS

Introduction:

Disclosure of Department records is governed by the Idaho Public Records Act, the Employment Security Act, the Social Security Act, IDAPA 09.01.08 and 20 C.F.R. 603. The intent of the Public Records Act is that all records maintained by public agencies are open to the public for inspection and copying at all reasonable times, unless the information is specifically exempted from disclosure by law.

The Department's records contain identifying information submitted by claimants and employers pursuant to the requirements of the Employment Security Law, Idaho Code section 72-1301 *et seq.* These records are defined in the Public Records Act as "employment security information" and are made exempt from disclosure under the Public Records Act pursuant to Idaho Code section 74-106(7). Disclosure of employment security information in a manner that violates Idaho Code sections 74-106(7), 72-1342, IDAPA 09.01.08 and 20 C.F.R. 603 subjects the person making the disclosure to both civil and criminal penalties.

Definitions:

Key terms are defined in these laws. Some of the most important terms are:

1. Public Records -- 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 a public agency. "Writing" means, information maintained in many forms, including, for example: electronic mail, pictures, maps, tapes, magnetic cards, and computer disks.
2. Inspect -- the right to listen, view, and make notes of public records, as long as the public record is not altered or damaged.
3. Copy -- transcribing by handwriting, photocopying, duplicating machine, and reproducing by any other means, so long as the public record is not altered or damaged.
4. Custodian -- any public official or employee having physical custody and control of the public records, including those who respond to requests for information on a routine basis. "Custodian" also includes the person, whether elected or appointed, who is legally responsible for administering the public agency, or that person's designee.

5. Designated Custodian – an employee who is authorized to perform specific responsibilities that are described in this policy, including denying requests for information when appropriate to do so.
6. Agent – one who acts for or in the place of an individual or employer by authority of that individual or employer.
7. Person – any natural person, corporation, partnership, firm association, joint venture, state or local agency or any other recognized legal entity.
8. Third Party – one not representing the individual or employer whose information is sought.
9. Public Official – an official, agency, or public entity with the executive branch of federal, state, or local government, or an agent or contractor thereof who has responsibility for administering or enforcing the law, including research related to the law being administered, or an elected official in federal, state or local government.
10. Employment Security Information – any information descriptive of an identifiable person or persons received by, recorded by, prepared by, furnished to, or collected by the Department, or the Industrial Commission in the administration of the Employment Security Law.

Designated Custodian:

The following person is the Designated Custodian for this agency: Georgia Smith, Deputy Director.

General Subject Matter of Department Records:

Department records can be categorized into the following:

1. Program specific records: records pertaining to the Department's administration of programs under the Employment Security Act, including Unemployment Insurance, Employment Service, H-2A and Labor Market Information; records pertaining to the Department's administration of the Workforce Investment Act; records pertaining to the Disability Determinations Services; and records pertaining to the Wage & Hour section.
2. Personnel records: records pertaining to Department employees.
3. Miscellaneous administrative records: records pertaining to the general operation and administration of the Department as an agency of the State of Idaho, and any other miscellaneous records maintained by the Department.

Physical Location of Records:

Most records are maintained at the Department's Main Street office in Boise, Idaho. Program specific records may be located at one of the Department's local offices if the office has had some recent involvement in the matter or at the Department's Disability Determinations Services office in Boise, Idaho. Local offices also have access to program specific data maintained by the Department on computer via computer displays located in each office. Official personnel files of Department employees are maintained at the Central Office. Miscellaneous administrative records are maintained at the Central Office and at each of the local offices.

Requests for Department Records:

Any person may request a copy of any record maintained by the Department. Records requests sent via electronic mail will be accepted by the Department only through the Department's website at records.request@labor.idaho.gov. Records requests sent to any other Department electronic mail address will not be accepted. It is the Department's policy to provide access to and copies of disclosable records immediately upon request whenever possible. Examination of records should be done during normal working hours, unless the director or the Designated Custodian authorizes otherwise. A certified copy, if feasible to produce or required by law, will be provided upon request. For security reasons, the Department will not provide confidential records via electronic mail.

The Department has the right to determine whether a written request will be required when an oral request for records is received. A written request will not be required if the information is routinely provided by the Department and is readily available. If there is any doubt about whether requested information may be disclosed or if the information is not readily available, the person requesting the records will be asked to put the request in writing addressed to: Designated Custodian, Idaho Department of Labor, 317 West Main Street, Boise, Idaho 83735.

A person making a records request in writing or via electronic mail through the Department's website must include his or her name, mailing address and telephone number. The person will be required to provide identification if the requested records are exempt from disclosure to the general public. A request for records will usually be granted or denied within three working days of the date of receipt of the request. If a longer time is needed to locate or retrieve the records, the person requesting the records will be notified of this in writing. The Department will then respond to the request within ten working days of receipt of the request. If no response is provided within ten working days, the request should be deemed to have been denied. It is the policy of this Department, however, to provide a response to every request for information.

Requests for Employment Security Information:

1. **Request by an individual or employer for their own records:**

After providing identification, an individual or employer may inspect or copy employment security information pertaining to them.

2. **Request by an attorney:**

- a. An attorney representing an individual or employer requesting records concerning that individual or employer for Employment Security Law purposes need only submit a letter on letterhead to the Department confirming his representation of that individual or employer.
- b. An attorney representing an individual or employer for a non-Employment Security Law purpose must provide an "informed consent release" from the individual or employer authorizing the disclosure that meets the requirements of IDAPA 09.01.08.013.01.
- c. An attorney who does not represent the individual or employer whose records are sought must provide an "informed consent release" signed by the person whose records are sought that meets the requirements of IDAPA 09.01.08.013.01; and a "third party confidentiality agreement" signed by the attorney seeking the records that meets the requirements of IDAPA 09.01.08.013.02.

3. **Request by an agent:**

- a. An agent representing an individual or employer requesting records concerning that individual or employer for Employment Security Law purposes must provide either an "informed consent release" from the individual or employer authorizing the disclosure that meets the requirements of IDAPA 09.01.08.013.01; or submit clear and convincing evidence to the Department that the agent represents the individual or employer, an example of such evidence may be in the form of a power of attorney.
- b. An agent representing an individual or employer requesting records concerning that individual or employer for a non-Employment Security Law purpose must provide an "informed consent release" from the individual or employer authorizing the disclosure that meets the requirements of IDAPA 09.01.08.013.01.

4. **Request by a third party:**

An individual or business that does not represent the individual or employer whose records are sought must provide an "informed consent release" signed by the person whose records are sought that meets the requirements of IDAPA 09.01.08.013.01; and submit a "third party confidentiality agreement" signed by the person seeking the records that meets the requirements of IDAPA 09.01.08.013.02.

5. **Request by an elected official performing constituent services:**

An elected official performing constituent services who requests employment security information on behalf of a constituent that would be available to the constituent may receive the employment security information as provided in IDAPA 09.01.08.011.03.

6. **Request by public official, their agents or contractors:**

Information may be disclosed to public officials or their agents and contractors for use in the performance of their official duties if the release is:

- a. Required by federal law;
- b. Pursuant to a reciprocal agreement for the collection of contributions and payments in lieu contributions;
- c. Pursuant to a written agreement meeting the requirements of IDAPA 09.01.08.012.5;
- d. A disclosure that is of benefit to the Department; or
- e. A disclosure to public officials contacted for assistance when the safety of Department staff or property may be at risk.

Costs to be Charged for Copies of Records:

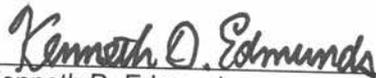
The Department is required to charge for the costs associated with the disclosure of information that is not released for an Employment Security Law purpose. If the disclosure is for a non-Employment Security Law purpose, the recipient of the information must pay all the costs of locating, copying and sending the disclosed information, unless the disclosure involves only incidental and nominal costs. The Department considers total costs of \$100.00 or less to be incidental and nominal. If greater costs are incurred, the Department may require advance payment of these costs. The fee charged for locating, copying and sending a disclosable record to its recipient will include the cost of any computer resource utilization, the cost of providing information in the form of computer tapes, disks, microfilm, or other media and, if applicable, the agency's cost of conversion, or the cost of a conversion charged by a third

party, if an existing electronic record is converted to another electronic format. The Department is not required to provide more than one copy of the same document per request. The Department has established a rate of 20¢ per page and \$41.50 per hour of staff time associated with the disclosure of information not for an Employment Security Law purpose. Entities making ongoing requests will be required to pay the Department's expenses that exceed incidental and nominal costs. If the information is also available in publication form, the agency may offer the published material to the individual in that form.

Inspection or Correction of an Individual's Own Records:

After providing identification, an individual may inspect, copy or request correction of public records pertaining to that person, except as provided below. If the individual requests a correction, the correction or a written refusal to make the correction will be made within ten calendar days. Idaho Code section 9-342(3) prohibits access to certain records pertaining to one's self if the information: relates to exempt investigatory records of ongoing investigations; is compiled in reasonable anticipation of litigation which is not otherwise discoverable; relates to adoption records; or is otherwise exempt from disclosure by statute.

This order is effective on April 26, 2016, and supersedes Administrative order No. 581, dated February 20, 2009.



Kenneth D. Edmunds
Director