

Idaho Open Meeting Law and Public Records Act



Kim C. Stanger
(7-23)

Preliminaries

This presentation is similar to any other legal education materials designed to provide general information on pertinent legal topics. The statements made as part of the presentation are provided for educational purposes only. They do not constitute legal advice nor do they necessarily reflect the views of Holland & Hart LLP or any of its attorneys other than the speaker. This presentation is not intended to create an attorney-client relationship between you and Holland & Hart LLP. If you have specific questions as to the application of law to your activities, you should seek the advice of your legal counsel. Circumstances or changes in the law that occur after his presentation may affect the analysis in this presentation.

Idaho Open Meeting Law: Idaho Code 74-201 et seq



**OPEN TO
PUBLIC**

Idaho Open Meeting Law Manual

Office of the
Attorney General

Idaho Open Meeting Law Manual

Idaho Code §§ 74-201 through 74-208



January 2023

RAÚL R. LABRADOR
Attorney General
700 West Jefferson Street

- Available at <https://www.ag.idaho.gov/content/uploads/2018/04/OpenMeeting.pdf>

Open Meeting Law

- Penalties
- What constitutes a “meeting”?
- Notice
- Agenda
- Minutes
- Executive sessions
- Curing a violation

Why Do We Care?

- Acts at or arising from illegal meeting are void if challenged within 30 days.
 - Citizen may bring lawsuit to void actions.
- Civil penalties against individual board members.
 - Board member participates in illegal meeting: ≤ \$250 civil penalty.
 - Board member knowingly violates Open Meeting Law: ≤ \$1,500 penalty.
 - Board member knowingly violates Open Meeting Law and knowingly violated law within prior 12 months: ≤ \$2,500 penalty.

(IC 74-208)

- Individual board member must pay, not hospital.

(Idaho Open Meeting Law Manual at 20)

Why Do We Care?

- Criminal penalties against individual board members.
 - IC 18-315: prohibits the “willful omission to perform any duty enjoined by law upon any public officer, or person holding any public trust or employment...”
 - IC 18-317: “When an act or omission is declared by a statute to be a public offense and no penalty for the offense is prescribed in any statute, the act or omission is punishable as a misdemeanor.”

(Idaho Open Meeting Law Manual at 22)

- Board may cure a violation (see discussion below...)

General Rule

- “It is the policy of this state that the formation of public policy is public business and shall not be conducted in secret.”

(IC 74-201)

- “[A]ll meetings of a governing body of a public agency shall be open to the public and all persons shall be permitted to attend any meeting except as otherwise provided by this act.”

(IC 74-203(1))

Meeting

- “*Meeting* means the [1] convening of a governing body ... [2] to make a decision or to deliberate toward a decision on any matter.”
- “*Decision* means any determination, action, vote or final disposition upon a motion, proposal, resolution, ... or measure on which a vote of a governing body is required, at any meeting at which a quorum is present, but shall not include those ministerial or administrative actions necessary to carry out a [previous] decision ...”
- “*Deliberation* means the receipt or exchange of information or opinion relating to a decision, but shall not include informal or impromptu discussions of a general nature that do not specifically relate to a matter then pending before the public agency for decision.”

(IC 74-202, emphasis added)

Meeting of Quorum

- Hospital bylaws
 - Require Board to meet at regular intervals;
 - Require attendance; and
 - Specify frequency of meetings.

(IC 16.03.14.200.01(b))

“A majority of the members of the board shall constitute a quorum at any meeting.”

(IC 39-1329)

Meeting of Quorum

- “[A] ‘meeting’ is the convening of a governing body to make a decision or deliberate toward a decision. Additionally, a quorum must be present.”
- “[I]t is the opinion of the Attorney General that the provisions of the Open Meeting Law must be complied with whenever [1] a quorum of the members of the governing body of a public agency meets [2] to decide or deliberate on matters which are within the ambit of official business. Those meetings can be formal, informal, or social. So long as [1] a quorum is present and [2] the intent is to deliberate or make a decision, then the meeting must be open.”

(Idaho Open Meeting Law Manual at 6, 8; see also Idaho Water Resources Board v. Kramer, 97 Idaho 535, 571, 548 P.2d 45, 71 (1976))

Meeting of Subagency

- Open Meeting Law applies to “subagencies” (e.g., committees) if:
 - the subagency is created pursuant to statute, ordinance or other legislative act, and
 - the subagency has the authority to decide or make recommendations to the hospital.
- Open Meeting Law does not apply to subagency (e.g., committee) if:
 - it is not created pursuant to statute or legislative act,
 - it is not entrusted with formation of public policy but merely carries out policy established by board, and/or
 - its activities do not constitute the making of “decision for or recommendations to” the hospital.

(Open Meeting Law Manual at 4; see IC 74-202)

Committee Meetings

- Is there a quorum of the board present?
 - “Meetings” generally require a quorum. *See Idaho Water Resources Board v. Kramer*, 97 Idaho 535, 571, 548 P.2d 45, 71 (1976).
 - Is the quorum “deliberating” or “deciding”, including receiving info toward board decision?
- Is the committee a “subagency”?
 - Is it “created by or pursuant to statute, ordinance or other legislative act”? (IC 74-202(4)(d))
 - Does it have “the authority to make decisions for or recommendations to a public agency”? (IC 74-202(5))
 - Not meetings of employees without the authority. (*See Safe Air for Everyone v. Idaho State Dept. of Agriculture*, 145 Idaho 164, 168, 177 P.3d 378, 382 (2008))
 - Is it “deliberating” or “deciding” issue?

Open Meeting Law

- When in doubt, open the meeting...
 - If noticed, people will usually not pay attention.
 - If people think something is secret, they will pay more attention.

Contact Outside Meeting

- Cannot avoid Open Meeting Law by:
 - Using go-between for board members.
 - Having serial discussions with board members.
 - Scheduling meetings with less than a quorum.
- “The requirement that the Open Meeting Law be complied with whenever a quorum of a governing body meets to deliberate or to make a decision should not be evaded by holding smaller meetings with less than a quorum present or by having a go-between contact each of the governing body members to ascertain his/her sentiment.”

(Idaho Open Meeting Law Manual at 8)

Contact Outside Meeting

- Letters, e-mails or texts may violate Open Meeting Law if board members are deliberating or deciding matters.
 - Board members may not use computer or texting to conduct private conversations among themselves about board business.
 - One-way e-mail or text from one board member to another, when it does not result in the exchange of board member's comments or responses on subject requiring board action, does not constitute a meeting subject to Open Meeting Law.
- Letters, e-mails or texts may be subject to Public Records Act.

(Idaho Open Meeting Law Manual at 16)

Contact Outside Meeting

- “While it is the opinion of the Attorney General that the Open Meeting Law must be complied with whenever a quorum of the members of a governing body of a public agency meet to decide or deliberate on matters which are within the ambit of official business, this Office does not believe that the Legislature intended for the Open Meeting Law to act as a bar to all communications between individual [board members] outside of open meetings.”

(Idaho Open Meeting Law Manual at 8)

Meetings and Notice

- Must meet regularly once each month at a time and place to be designated by the board.
(IC 39-1329)
- Must post notice + agenda in advance, but requirements vary:
 - Regular meetings
 - Special meetings
 - Executive session only meetings
- Must post notice:
 - Prominent place at hospital, and
 - Electronically if maintain web presence or social media.

(IC 74-204)

Notice: Regular Meeting

- Notice published at least 5 calendar days in advance.
- If hold meetings at regular intervals at least once per calendar month, may post notice of scheduled meetings at least once each year.
- Agenda published at least 48 hours in advance.

(IC 74-204)

Notice: Special Meeting

- “Special meetings may be held as often as the needs of the district require on notice to each member of the board.”
(IC 39-1329)
- Notice and agenda published at least 24 hours* in advance unless emergency exists.
 - Emergency = injury or damage to persons or property, or immediate financial loss, and notice is impractical or would increase the likelihood or severity of injury or damage.
 - State basis of emergency at beginning of meeting.
- Notice must include meeting date, time, and place.
- Notice and agenda must be given to media that requested notification of meetings, and secretary must make good faith effort to provide advance notice of the meeting to the media.
(IC 74-204)

Notice: Executive Session Only

- Notice and agenda published at least 24 hours in advance unless emergency.
- State reason for meeting.
- State specific section of law authorizing executive session.

(IC 74-204(3))

Agenda

- Must post agenda for meeting along with notice.
 - Regular meeting: at least 48 hours in advance.
 - Special meeting: at least 24 hours in advance unless there is emergency.

(IC 74-204(4))

- Agenda should include :
 - All items known to be probable items of discussion, and
 - If agenda items requires a vote, identify the item as an “action item.”

(See IC 74-204(4))

- “Agenda items should be listed with specificity and not buried in catchall categories such as ‘director’s report.’”

(*Idaho Open Meeting Law Manual* at 11-12).

Agenda: Amendments

- May amend agenda if good faith effort was made to include probable items in original agenda, and if satisfy following—
 - Regular meeting: post amended agenda at least 48 hours before meeting.
 - Special meeting: post amended agenda at least 24 hours before meeting.
 - Before start of meeting: post amended agenda and pass motion to amend agenda.
 - After start of meeting:
 - Pass motion stating (1) reason for amendment, and (2) good faith reason why the new item was not on the posted agenda.
 - No final action on added items unless emergency is declared and specified in minutes.

(IC 74-204(4))

Agenda: Amendments

- “To sum up, amending an agenda during a meeting or less than [48/24] hours before the start of the [regular/special] meeting requires:
 - (1) a motion,
 - (2) a good faith reason why the item was not included in the original agenda,
 - (3) a vote adopting the amended agenda, and
 - (4) a record of the motion and vote in the minutes of the meeting.”

(Idaho Open Meeting Law Manual at 12)

>> **SAMPLE FORM** <<

Public Agency: _____, Idaho
(name of county, city, district, etc.)

Governing Body: _____
(i.e., "Board of County Commissioners", "City Council", etc.)

Meeting Date, Time and Location: _____

MOTION AND ORDER TO AMEND AGENDA

(less than 48 hours before regular meeting or 24 hours before special meeting)

_____, (print name), _____ (print title),
MOVES THAT THIS GOVERNING BODY, PURSUANT TO IDAHO CODE § 74-204,
AMEND THE AGENDA FOR THIS MEETING AS FOLLOWS:

Good faith reason item not included in posted agenda (required):

	<u>YES</u>	<u>NO</u>	<u>ABSTAIN</u>
_____, Chair (print name)	_____	_____	_____
_____, Member (print name)	_____	_____	_____
_____, Member (print name)	_____	_____	_____

Clerk/Deputy Clerk: _____
(Signature)

Available at
<https://www.ag.idaho.gov/content/uploads/2018/04/OpenMeeting.pdf>

Minutes

- Minutes must be taken at all meetings.
 - Not required to record or transcribe meetings.
- General: minutes must include at least the following—
 - Members of board who are present.
 - All motions, resolutions, orders, and dispositions.
 - Results of votes and, if requested by board member, the vote of each person by name.
- Executive session: minutes must include the following—
 - Refer to specific statute authorizing executive session.
 - Provide sufficient detail to identify purpose and topic.
 - Do not include detail that compromises purpose of executive session.
- Available to public after meeting.

(IC 74-205; *see also* IC 39-1368; IDAPA 16.03.14.200.01(b))

**State of Idaho
Office of the Attorney General**

OPEN MEETING LAW CHECKLIST

Regular Meetings

Meeting Date and Time: _____

Meeting Location: _____

[Idaho Code § 74-203(4) and (5)]

Before Meeting

- Meeting Notice posted 5 or more calendar days prior to the meeting date.
[Idaho Code § 74-204(1)]
- Agenda Notice posted at least 48 hours prior to the meeting.
[Idaho Code § 74-204(1)]
- Posting of Amended Agenda [Idaho Code § 74-204(4)]

During Meeting

- First: Any agenda amendments? [Idaho Code § 74-204(4)(b) and (c)]
- Secretary or other person appointed to take minutes.
[Idaho Code § 74-205(1)]

After Meeting

- Minutes available to the public within a reasonable time after the meeting.
[Idaho Code § 74-205(1)]

Available at
<https://www.ag.idaho.gov/content/uploads/2018/04/OpenMeeting.pdf>

**State of Idaho
Office of the Attorney General**

OPEN MEETING LAW CHECKLIST

Special Meetings

Meeting Date and Time: _____

Meeting Location: _____

[Idaho Code § 74-203(4) and (5)]

Before Meeting

- Meeting and Agenda Notice posted **at least 24 hours** prior to the meeting. [Idaho Code § 74-204(2)]
- Notification provided to the news media. [Idaho Code § 74-204(2)]
- Posting of Amended Agenda [Idaho Code § 74-204(4)]

During Meeting

- First: Any agenda amendments? [Idaho Code § 74-204(4)(b) and (c)]
- Secretary or other person appointed to take minutes. [Idaho Code § 74-205(1)]

After Meeting

- Minutes available to the public within a reasonable time after the meeting. [Idaho Code § 74-205(1)]

Available at
<https://www.ag.idaho.gov/content/uploads/2018/04/OpenMeeting.pdf>

Executive Session

- May only be held for following purposes:
 - Hiring individual if qualities of individuals are evaluated to fill particular vacancy or need, not general personnel matters.
 - Evaluation, dismissal, discipline, or complaints against officer, employee, staff or agent.
 - Legal counsel re pending or imminently likely litigation; mere presence of attorney not enough.
 - Risk manager or insurer re pending or imminently likely claim; mere presence of risk manager or insurer not enough.
 - Acquire interest in real property not owned by public agency.
 - Consider preliminary negotiations re commerce if in competition with other states or nations.

(IC 74-206(1))

Executive Session: Bases

- May only be held for following purposes (cont.):
 - Consider records that are exempt from disclosure under Public Records Act, e.g.,
 - Medical records.
 - Records exempt from disclosure under federal or state law (e.g., patient info; peer review records; etc.)
 - Personnel records with limited exceptions.
 - Pre-litigation screening panels.
 - Trade secrets.
 - Others.
- Bases for executive session are narrowly construed.
(IC 74-206(1)-(2))

Executive Session: Process

- Must be valid open meeting.
- Make motion to go into executive session.
 - Identify specific subsection allowing executive session.
- Roll call vote recorded in minutes.
- 2/3 vote of board.
- May not change subject during executive session.
 - Return to open session and make another motion.
- May not take final action or make final decision in executive session.
 - Return to open session to take action or make decision.

(IC 74-206(2); *Idaho Open Meeting Law Manual* at 18)

State of Idaho
Office of the Attorney General
OPEN MEETING LAW CHECKLIST
Executive Sessions

Session Date and Time: _____

Session Location: _____

[Idaho Code § 74-203(4) and (5)]

Executive Session Only

- Meeting and Agenda Notice posted **at least 24 hours** prior to the session. [Idaho Code § 74-204(3)]
- Posting of Amended Agenda [Idaho Code § 74-204(4)]

Executive Session During Regular or Special Meeting

- Motion to enter Executive Session to discuss one of the exemptions listed in Idaho Code § 74-206.
- $\frac{2}{3}$ vote to enter Executive Session reflected in regular/special meeting minutes. [Idaho Code § 74-206(1)]

During Session

- First: Any agenda amendments? [Idaho Code § 74-204(4)(b) and (c)]
- Secretary or other person appointed to take minutes. [Idaho Code § 74-205(1)]

After Session

- Minutes must reference statutory subsection authorizing executive session and identify purpose and topic of session. [Idaho Code § 74-205(2)]
- Minutes available to the public within a reasonable time after the meeting. [Idaho Code § 74-205(1)]

Available at
<https://www.ag.idaho.gov/content/uploads/2018/04/OpenMeeting.pdf>

>> SAMPLE FORM <<

Public Agency: _____, Idaho
(name of county, city, district, etc.)

Governing Body: _____
(i.e., "Board of County Commissioners", "City Council", etc.)

Meeting Date, Time and Location: _____

EXECUTIVE SESSION MOTION AND ORDER

_____ (print name), _____ (print title),
MOVES THAT THE BOARD, PURSUANT TO IDAHO CODE § 74-206, CONVENE
IN EXECUTIVE SESSION TO: (identify one or more of the following)

- Consider personnel matters [Idaho Code § 74-206(1)(a) & (b)]
- Deliberate regarding an acquisition of an interest in real property [Idaho Code § 74-206(1)(c)]
- Consider records that are exempt from public disclosure [Idaho Code § 74-206(1)(d)]
- Consider preliminary negotiations involving matters of trade or commerce in which this governing body is in competition with another governing body [Idaho Code § 74-206(1)(e)]
- Communicate with legal counsel regarding pending/imminently-likely litigation [Idaho Code § 74-206(1)(f)]
- Communicate with risk manager/insurer regarding pending/imminently-likely claims [Idaho Code § 74-206(1)(i)]

Purpose/Topic summary (required): _____
AND THE VOTE TO DO SO BY ROLL CALL.

CONVENE AT: _____ ADJOURN AT: _____

	<u>YES</u>	<u>NO</u>	<u>ABSTAIN</u>
_____, Chair (print name)	_____	_____	_____
_____, Member (print name)	_____	_____	_____
_____, Member (print name)	_____	_____	_____

Clerk/Deputy Clerk: _____
(Signature)

Available at
<https://www.ag.idaho.gov/content/uploads/2018/04/OpenMeeting.pdf>

Voting

- Voice vote
 - Minutes must reflect the results of the votes.
 - If board member requests same, minutes must reflect how each member voted.
- Written ballot
 - Must be made available to public, and
 - Identify those casting ballot by signature or other means.
- May not use secret ballots.
(IC 74-203; *Idaho Open Meeting Law* at 14)

Telecommunication Devices

- May use telecommunication devices (e.g., conference call, video conference, etc.) if:
 - At least one board member or the hospital CEO is physically present at the location designated in the meeting notice;
 - All board members in meeting are able to communicate with each other; and
 - Board member communications must be audible to other board members and attending public.
- Board member who attends via telecommunication device is deemed to be present in person.

(IC 74-203(5))

Restrictions on Public

- Not required to open up for public comment.
 - “A public agency may adopt reasonable rules and regulations to ensure the orderly conduct of a public meeting and to ensure orderly behavior on the part of those persons attending meeting”, e.g., timed agenda, procedural rules, etc.
 - Likely may not prohibit recording, cameras, etc.
- ❖ Test: was the rule or restriction reasonable and/or did it practically prevent public attendance.
(*Idaho Open Meeting Law Manual* at 12-13)

Location for Meeting

- Board may specify location.

(IC 39-1327)

- May not be held at a place that discriminates on the basis of race, creed, color, sex, age, or national origin.

(IC 74-203(3))

- May not be held at location or in manner that practically makes public attendance impossible.

(*Open Meeting Law Manual* at 13)

Curing Violation

- Agency may recognize and act on its own violation.
- Secretary or clerk may receive written notice of violation.
 - Board has 14 days to respond publicly by acknowledging the violation and state intent to cure or determination that no violation occurred.
 - Failure to respond = denial of violation.
- After acknowledging violation, board has 14 days to cure violation by declaring that actions are void.
- Enforcement action stayed during cure period.
- Cure may bar penalty:
 - Cure bars penalty for “innocent” violation.
 - Cure by self-recognition bars penalty for “repeated” violation.

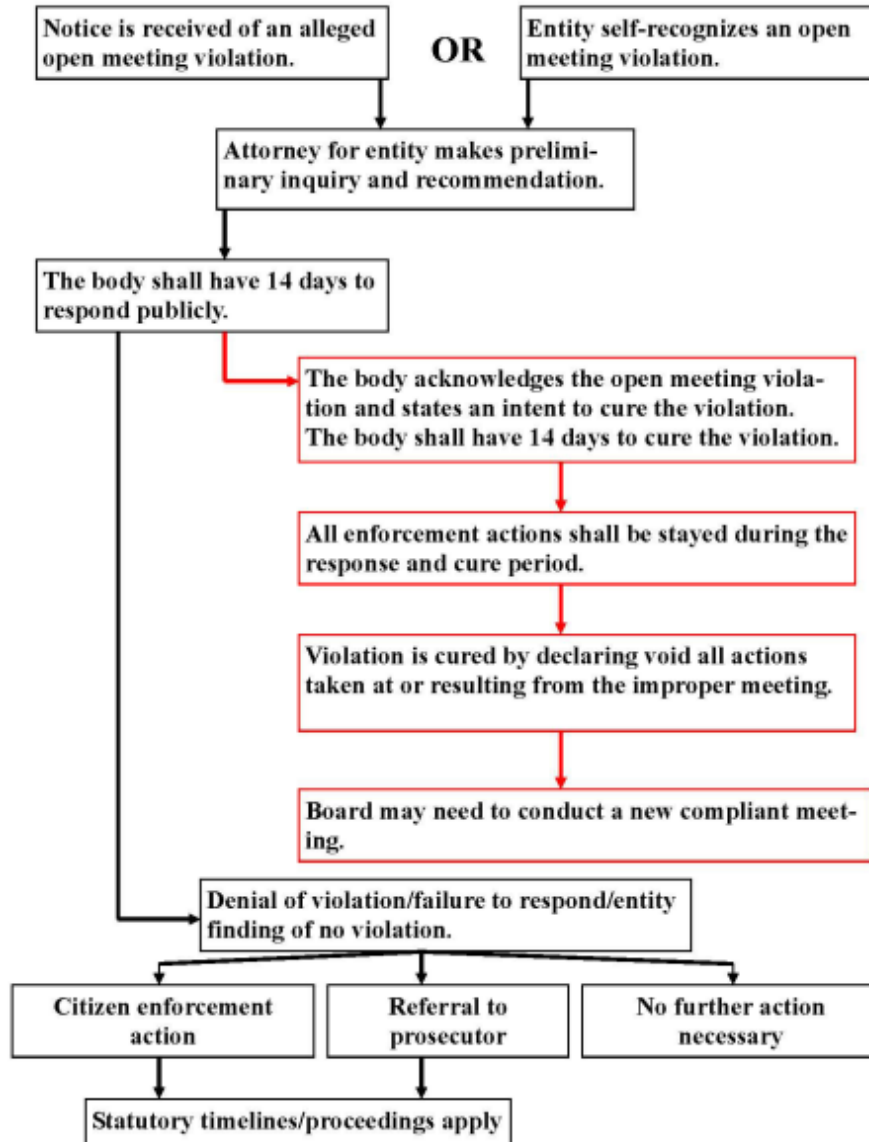
(IC 74-208(7))

Curing a Violation

- “A violation is cured by repealing any action taken at an illegal meeting or disregarding deliberations made in violation of the Open Meeting Law. Should it choose to, a governing body may, in a properly noticed meeting, repeat the deliberation or decision that occurred at the illegal meeting.”

(Idaho Open Meeting Law Manual at 21-22)

Curing Process – Idaho Code § 74-208(7)



Available at
<https://www.ag.idaho.gov/content/uploads/2018/04/OpenMeeting.pdf>

Idaho Public Records Act: IC 74-101 et seq.



Idaho Public Records Law Manual

Office of the
Attorney General

Idaho Public Records Law Manual

Idaho Code §§ 74-101 through 74-127



JANUARY 2023

RAÚL R. LABRADOR
Attorney General
700 West Jefferson Street
Boise, ID 83720-0010
www.ag.idaho.gov

- Available at <https://www.ag.idaho.gov/content/uploads/2018/04/PublicRecordsLaw.pdf>

General Rule

- Every person has a right to examine and take a copy of any public record, and records are open for public inspection at all reasonable times unless expressly excepted by statute.

(IC 74-102(1))

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

(IC 74-101)

Public Records

- “Public record” includes but is not limited any writing, printing, photographs, recordings, papers, maps, tapes, discs, or other documents containing info relating to hospital’s business prepared, owned, used, or retained by hospital regardless of form.

(IC 74-101)

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

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

- Not personal notes created solely for own use so long as not shared with anyone else.

(IC 74-101(13))

Beware What You Write,
Say or Do!



Examination

- Examination of records must be conducted during regular office or working hours unless custodian authorizes otherwise.
- If examination is to occur outside working hours, custodian may require the requester to pay in advance for the employee time outside regular working hours.

(IC 74-102(8))

Copies

- 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 hospitals normal course of business.
- “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 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.
- 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 rest for employment.

(IC 74-106)

- 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

- Hospital may require that a request for records be submitted in writing and include requester's name, mailing address, email address and telephone number.
- Request for records and delivery of records may be made by electronic mail.

(IC 74-102(4))

- “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)

Hospital Response

- Grant or deny request within 3 working days of receipt of request.
- If more time needed, notify requester in writing and respond within 10 working days of request.
- May get additional time if electronic record must be converted.
- If hospital denies the request in whole or part, must notify the requester in writing and state:
 - Hospital has consulted with attorney or had chance to do so;
 - Statutory basis for denial; and
 - Person has right to appeal and time periods for appeal.
- If hospital fails to respond within 10 days, request is deemed denied.

(IC 74-103)

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))

Fees

- May charge reasonable fee to recover actual labor and copying costs if:
 - Request is for more than 100 pages of paper records;
 - Response requires deletion of nonpublic info; or
 - Response will exceed 2 hours.
 - Send records.
- May charge fee to duplicate computer tape or disc so long as fee does not exceed:
 - Direct cost in copying record;
 - Standard cost of selling in form of a publication;
 - Cost of converting to another form.
- Limits on labor costs that may be charged.

(IC 74-102(10))

Fees

- No charge if requestor demonstrates that:
 - Disclosure contributes to public's understanding of govt actions;
 - Is not primarily in individual's interest; and
 - requester has insufficient resources to pay fees.
- Hospital must provide itemized statement of fees and charges.
- Requester may not file multiple requests to avoid fees.
- Hospital may require payment of fees in advance.
(IC 74-102(10)-(12))

Electronic Copies

- Public Records Act does not “prevent [hospital] from providing a copy of a public record in electronic form if the record is available in electronic form and if the person specifically requests an electronic copy.”

(IC 74-104(15))

Does this mean hospital must send electronic copy if requested instead of requiring examination onsite?

Remedy

- Person may sue to compel production of the information.
- Must file suit within 180 days of denial of request.
- Suit is subject to expedited proceeding.
- Court may award fees to the prevailing party.
- Public official who deliberately and in bad faith improperly refused to a legitimate request: civil penalty of \leq \$1,000.

(IC 74-115 to -117)

- Immunity from liability for releasing public record if public entity or official acted in good faith in attempting to comply with chapter.

(IC 74-118)

Required Guidelines

- Hospital must:
 - Have guidelines that identify
 - The general subject matter of all public records it maintains,
 - Custodian, and
 - Physical location of documents.
 - Designate:
 - Custodian responsible for receiving public records requests; and
 - Alternate custodian for contingencies.

(IC 74-119)

Questions?

Kim C. Stanger

kcstanger@hollandhart.com

208-383-3913