

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 233

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO DUTIES OF THE STATE CONTROLLER; AMENDING SECTION 9-340C, IDAHO
2 CODE, TO ALLOW THE RELEASE OF INFORMATION TO THE STATE CONTROLLER AS THE
3 STATE SOCIAL SECURITY ADMINISTRATOR AND TO MAKE TECHNICAL CORRECTIONS;
4 AMENDING SECTION 9-348, IDAHO CODE, TO ALLOW THE RELEASE OF INFORMATION
5 TO THE STATE CONTROLLER AS THE STATE SOCIAL SECURITY ADMINISTRATOR AND
6 TO MAKE A TECHNICAL CORRECTION; AMENDING CHAPTER 11, TITLE 59, IDAHO
7 CODE, BY THE ADDITION OF A NEW SECTION 59-1101A, IDAHO CODE, TO ALLOW THE
8 STATE CONTROLLER AS THE STATE SOCIAL SECURITY ADMINISTRATOR TO ACCESS
9 CERTAIN RECORDS AND TO DEFINE A TERM; AND DECLARING AN EMERGENCY.
10

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

12 SECTION 1. That Section 9-340C, Idaho Code, be, and the same is hereby
13 amended to read as follows:

14 9-340C. RECORDS EXEMPT FROM DISCLOSURE -- PERSONNEL RECORDS, PER-
15 SONAL INFORMATION, HEALTH RECORDS, PROFESSIONAL DISCIPLINE. The following
16 records are exempt from disclosure:

17 (1) Except as provided in this subsection, all personnel records of
18 a current or former public official other than the public official's pub-
19 lic service or employment history, classification, pay grade and step,
20 longevity, gross salary and salary history, status, workplace and employing
21 agency. All other personnel information relating to a public employee or ap-
22 plicant including, but not limited to, information regarding sex, race, mar-
23 ital status, birth date, home address and telephone number, applications,
24 testing and scoring materials, grievances, correspondence and performance
25 evaluations, shall not be disclosed to the public without the employee's or
26 applicant's written consent. Names of applicants to classified or merit
27 system positions shall not be disclosed to the public without the appli-
28 cant's written consent. Disclosure of names as part of a background check
29 is permitted. Names of the five (5) final applicants to all other positions
30 shall be available to the public. If such group is less than five (5) final-
31 ists, then the entire list of applicants shall be available to the public. A
32 public official or authorized representative may inspect and copy his per-
33 sonnel records, except for material used to screen and test for employment.

34 (2) Retired employees' and retired public officials' home addresses,
35 home telephone numbers and other financial and nonfinancial membership
36 records; active and inactive member financial and membership records and
37 mortgage portfolio loan documents maintained by the public employee retire-
38 ment system. Financial statements prepared by retirement system staff,
39 funding agents and custodians concerning the investment of assets of the
40 public employee retirement system of Idaho are not considered confidential
41 under this chapter.

1 (3) Information and records submitted to the Idaho state lottery for
2 the performance of background investigations of employees, lottery retail-
3 ers and major procurement contractors; audit records of lottery retailers,
4 vendors and major procurement contractors submitted to or performed by the
5 Idaho state lottery; validation and security tests of the state lottery for
6 lottery games; business records and information submitted pursuant to sec-
7 tions 67-7412(8) and (9) and 67-7421(8) and (9), Idaho Code, and such docu-
8 ments and information obtained and held for the purposes of lottery security
9 and investigative action as determined by lottery rules unless the public
10 interest in disclosure substantially outweighs the private need for protec-
11 tion from public disclosure.

12 (4) Records of a personal nature as follows:

13 (a) Records of personal debt filed with a public agency or independent
14 public body corporate and politic pursuant to law;

15 (b) Personal bank records compiled by a public depositor for the pur-
16 pose of public funds transactions conducted pursuant to law;

17 (c) Records of ownership of financial obligations and instruments of a
18 public agency or independent public body corporate and politic, such as
19 bonds, compiled by the public agency or independent public body corpo-
20 rate and politic pursuant to law;

21 (d) Records, with regard to the ownership of, or security interests in,
22 registered public obligations;

23 (e) Vital statistics records; and

24 (f) Military records as described in and pursuant to section 65-301,
25 Idaho Code.

26 (5) Information in an income or other tax return measured by items of
27 income or sales, which is gathered by a public agency for the purpose of ad-
28 ministering the tax, except such information to the extent disclosed in a
29 written decision of the tax commission pursuant to a taxpayer protest of a
30 deficiency determination by the tax commission, under the provisions of sec-
31 tion 63-3045B, Idaho Code.

32 (6) Records of a personal nature related directly or indirectly to the
33 application for and provision of statutory services rendered to persons
34 applying for public care for people who are elderly, indigent or have mental
35 or physical disabilities, or participation in an environmental or a public
36 health study, provided the provisions of this subsection making records
37 exempt from disclosure shall not apply to the extent that such records or
38 information contained in those records are necessary for a background check
39 on an individual that is required by federal law regulating the sale of
40 firearms, guns or ammunition.

41 (7) Employment security information, except that a person may agree,
42 through written, informed consent, to waive the exemption so that a third
43 party may obtain information pertaining to the person, unless access to
44 the information by the person is restricted by subsection (3) (a), (3) (b)
45 or (3) (d) of section 9-342, Idaho Code. Notwithstanding the provisions of
46 section 9-342, Idaho Code, a person may not review identifying information
47 concerning an informant who reported to the department of labor a suspected
48 violation by the person of the employment security law, chapter 13, title 72,
49 Idaho Code, under an assurance of confidentiality. As used in this section
50 and in chapter 13, title 72, Idaho Code, "employment security information"

1 means any information descriptive of an identifiable person or persons that
2 is received by, recorded by, prepared by, furnished to or collected by the
3 department of labor or the industrial commission in the administration of
4 the employment security law.

5 (8) Any personal records, other than names, business addresses and
6 business phone numbers, such as parentage, race, religion, sex, height,
7 weight, tax identification and social security numbers, financial worth or
8 medical condition submitted to any public agency or independent public body
9 corporate and politic pursuant to a statutory requirement for licensing,
10 certification, permit or bonding.

11 (9) Unless otherwise provided by agency rule, information obtained as
12 part of an inquiry into a person's fitness to be granted or retain a license,
13 certificate, permit, privilege, commission or position, private associa-
14 tion peer review committee records authorized in title 54, Idaho Code. Any
15 agency which has records exempt from disclosure under the provisions of this
16 subsection shall annually make available a statistical summary of the number
17 and types of matters considered and their disposition.

18 (10) The records, findings, determinations and decisions of any prelit-
19 igation screening panel formed under chapters 10 and 23, title 6, Idaho Code.

20 (11) Complaints received by the board of medicine and investigations
21 and informal proceedings, including informal proceedings of any committee
22 of the board of medicine, pursuant to chapter 18, title 54, Idaho Code, and
23 rules adopted thereunder.

24 (12) Records of the department of health and welfare or a public health
25 district that identify a person infected with a reportable disease.

26 (13) Records of hospital care, medical records, including prescrip-
27 tions, drug orders, records or any other prescription information that
28 specifically identifies an individual patient, prescription records main-
29 tained by the board of pharmacy under sections 37-2726 and 37-2730A, Idaho
30 Code, records of psychiatric care or treatment and professional counseling
31 records relating to an individual's condition, diagnosis, care or treat-
32 ment, provided the provisions of this subsection making records exempt from
33 disclosure shall not apply to the extent that such records or information
34 contained in those records are necessary for a background check on an indi-
35 vidual that is required by federal law regulating the sale of firearms, guns
36 or ammunition.

37 (14) Information collected pursuant to the directory of new hires act,
38 chapter 16, title 72, Idaho Code.

39 (15) Personal information contained in motor vehicle and driver records
40 that is exempt from disclosure under the provisions of chapter 2, title 49,
41 Idaho Code.

42 (16) Records of the financial status of prisoners pursuant to subsec-
43 tion (2) of section 20-607, Idaho Code.

44 (17) Records of the Idaho state police or department of correction re-
45 ceived or maintained pursuant to section 19-5514, Idaho Code, relating to
46 DNA databases and databanks.

47 (18) Records of the department of health and welfare relating to a sur-
48 vey, resurvey or complaint investigation of a licensed nursing facility
49 shall be exempt from disclosure. Such records shall, however, be subject to
50 disclosure as public records as soon as the facility in question has received

1 the report, and no later than the fourteenth day following the date that
2 department of health and welfare representatives officially exit the facil-
3 ity pursuant to federal regulations. Provided however, that for purposes
4 of confidentiality, no record shall be released under this section which
5 specifically identifies any nursing facility resident.

6 (19) Records and information contained in the registry of immunizations
7 against childhood diseases maintained in the department of health and wel-
8 fare, including information disseminated to others from the registry by the
9 department of health and welfare.

10 (20) Records of the Idaho housing and finance association (IHFA) relat-
11 ing to the following:

12 (a) Records containing personal financial, family, health or similar
13 personal information submitted to or otherwise obtained by the IHFA;

14 (b) Records submitted to or otherwise obtained by the IHFA with regard
15 to obtaining and servicing mortgage loans and all records relating to
16 the review, approval or rejection by the IHFA of said loans;

17 (c) Mortgage portfolio loan documents;

18 (d) Records of a current or former employee other than the employee's
19 duration of employment with the association, position held and loca-
20 tion of employment. This exemption from disclosure does not include the
21 contracts of employment or any remuneration, including reimbursement
22 of expenses, of the executive director, executive officers or commis-
23 sioners of the association. All other personnel information relating
24 to an association employee or applicant including, but not limited to,
25 information regarding sex, race, marital status, birth date, home ad-
26 dress and telephone number, applications, testing and scoring materi-
27 als, grievances, correspondence, retirement plan information and per-
28 formance evaluations, shall not be disclosed to the public without the
29 employee's or applicant's written consent. An employee or authorized
30 representative may inspect and copy that employee's personnel records,
31 except for material used to screen and test for employment or material
32 not subject to disclosure elsewhere in the Idaho public records act.

33 (21) Records of the department of health and welfare related to child
34 support services in cases in which there is reasonable evidence of domestic
35 violence, as defined in chapter 63, title 39, Idaho Code, that can be used
36 to locate any individuals in the child support case except in response to a
37 court order.

38 (22) Records of the Idaho state bar lawyer assistance program pursuant
39 to chapter 49, title 54, Idaho Code, unless a participant in the program au-
40 thORIZES the release pursuant to subsection (4) of section 54-4901, Idaho
41 Code.

42 (23) Records and information contained in the trauma registry created
43 by chapter 20, title 57, Idaho Code, together with any reports, analyses and
44 compilations created from such information and records.

45 (24) Records contained in the court files, or other records prepared as
46 part of proceedings for judicial authorization of sterilization procedures
47 pursuant to chapter 39, title 39, Idaho Code.

48 (25) The physical voter registration card on file in the county clerk's
49 office; however, a redacted copy of said card shall be made available consis-
50 tent with the requirements of this section. Information from the voter reg-

1 istration card maintained in the statewide voter registration database, in-
2 cluding age, will be made available except for the voter's driver's license
3 number, date of birth and, upon a showing that the voter comes within the pro-
4 visions of subsection (~~28~~30) of this section or upon showing of good cause
5 by the voter to the county clerk in consultation with the county prosecuting
6 attorney, the physical residence address of the voter. For the purposes of
7 this subsection good cause shall include the protection of life and property
8 and protection of victims of domestic violence and similar crimes.

9 (26) File numbers, passwords and information in the files of the health
10 care directive registry maintained by the secretary of state under section
11 39-4515, Idaho Code, are confidential and shall not be disclosed to any per-
12 son other than to the person who executed the health care directive or the re-
13 vocation thereof and that person's legal representatives, to the person who
14 registered the health care directive or revocation thereof, and to physi-
15 cians, hospitals, medical personnel, nursing homes, and other persons who
16 have been granted file number and password access to the documents within
17 that specific file.

18 (27) Records in an address confidentiality program participant's file
19 as provided for in chapter 57, title 19, Idaho Code, other than the address
20 designated by the secretary of state, except under the following circum-
21 stances:

22 (a) If requested by a law enforcement agency, to the law enforcement
23 agency; or

24 (b) If directed by a court order, to a person identified in the order.

25 (28) Except as otherwise provided by law relating to the release of in-
26 formation to a governmental entity or law enforcement agency, any personal
27 information including, but not limited to, names, personal and business ad-
28 dresses and phone numbers, sex, height, weight, date of birth, social secu-
29 rity and driver's license numbers, or any other identifying numbers and/or
30 information related to any Idaho fish and game licenses, permits and tags un-
31 less written consent is obtained from the affected person.

32 (~~28~~9) Documents and records related to continuing education and record-
33 keeping violations that are maintained by the Idaho board of veterinary
34 medicine under the provisions of section 54-2118(1) (b), Idaho Code, pro-
35 vided the requirements set forth therein are met.

36 (~~28~~30) The Idaho residential street address and telephone number of an
37 eligible law enforcement officer and such officer's residing household mem-
38 ber(s) as provided for in chapter 58, title 19, Idaho Code, except under the
39 following circumstances:

40 (a) If directed by a court order, to a person identified in the court
41 order;

42 (b) If requested by a law enforcement agency, to the law enforcement
43 agency;

44 (c) If requested by a financial institution or title company for busi-
45 ness purposes, to the requesting financial institution or title com-
46 pany; or

47 (d) If the law enforcement officer provides written permission for dis-
48 closure of such information.

1 (31) Nothing in this section shall prohibit the release of information
2 to the state controller as the state social security administrator as pro-
3 vided in section 59-1101A, Idaho Code.

4 SECTION 2. That Section 9-348, Idaho Code, be, and the same is hereby
5 amended to read as follows:

6 9-348. PROHIBITION ON DISTRIBUTION OR SALE OF MAILING OR TELEPHONE
7 NUMBER LISTS -- PENALTY. (1) Except as provided in subsections (2), (3), (4),
8 (5), (6), (7), (8) and (9) of this section, in order to protect the privacy of
9 those who deal with public agencies or an independent public body corporate
10 and politic:

11 (a) No agency or independent public body corporate and politic may dis-
12 tribute or sell for use as a mailing list or a telephone number list any
13 list of persons without first securing the permission of those on the
14 list; and

15 (b) No list of persons prepared by the agency or independent public
16 body corporate and politic may be used as a mailing list or a telephone
17 number list except by the agency or independent public body corporate
18 and politic or another agency without first securing the permission of
19 those on the list.

20 (2) Except as may be otherwise provided in this chapter, this section
21 does not prevent an individual from compiling a mailing list or a telephone
22 number list by examination or copying of public records, original documents
23 or applications which are otherwise open to public inspection.

24 (3) The provisions of this section do not apply to the lists of regis-
25 tered electors compiled pursuant to title 34, Idaho Code, or to lists of the
26 names of employees governed by chapter 53, title 67, Idaho Code.

27 (4) The provisions of this section shall not apply to agencies which is-
28 sue occupational or professional licenses.

29 (5) This section does not apply to the right of access either by Idaho
30 law enforcement agencies or, by purchase or otherwise, of public records
31 dealing with motor vehicle registration.

32 (6) This section does not apply to a corporate information list devel-
33 oped by the office of the secretary of state containing the name, address,
34 registered agent, officers and directors of corporations authorized to do
35 business in this state or to a business information list developed by the de-
36 partment of commerce containing the name, address, telephone number or other
37 relevant information of Idaho businesses or individuals requesting informa-
38 tion regarding the state of Idaho or to business lists developed by the de-
39 partment of agriculture, division of marketing and development, used to pro-
40 mote food and agricultural products produced in Idaho.

41 (7) This section does not apply to lists to be used for ordinary util-
42 ity purposes which are requested by a person who supplies utility services in
43 this state. Ordinary utility purposes, as used in this chapter only, do not
44 include marketing or marketing research.

45 (8) This section does not apply to lists to be used to give notice re-
46 quired by any statute, ordinance, rule, law or by any governing agency.

47 (9) This section does not apply to student directory information pro-
48 vided by colleges, universities, secondary schools and school districts to

1 military recruiters for military recruiting purposes pursuant to the re-
2 quirements of federal laws.

3 (10) Nothing in this section shall prohibit the release of information
4 to the state controller as the state social security administrator as pro-
5 vided in section 59-1101A, Idaho Code.

6 (11) If a court finds that a person or public official has deliberately
7 and in bad faith violated the provisions of subsection (1)(a) or (1)(b)
8 of this section, the person or public official shall be liable for a civil
9 penalty assessed by the court in an amount not in excess of one thousand dol-
10 lars (\$1,000) which shall be paid into the general account.

11 SECTION 3. That Chapter 11, Title 59, Idaho Code, be, and the same is
12 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
13 ignated as Section 59-1101A, Idaho Code, and to read as follows:

14 59-1101A. AUTHORITY TO ACCESS RECORDS. The state controller serv-
15 ing as the state social security administrator shall take such actions as
16 may be necessary to ensure compliance with 42 U.S.C. section 418 and for
17 this purpose shall have the power and authorization to inspect and copy,
18 at any reasonable time, the records maintained by an agency whenever it is
19 necessary for such compliance purposes. Access shall include, but not be
20 limited to, examining, copying, transferring, receiving and making use of
21 records, papers, letters, correspondence and transactions, whether printed
22 or electronic. Such records may include otherwise nonpublic confidential
23 employer and individual information necessary for the purposes of complying
24 with 42 U.S.C. section 418. The administrator as recipient will implement,
25 maintain and comply with technical and physical safeguards to protect the
26 security, confidentiality and integrity of information consistent with the
27 confidentiality rules and requirements of the issuing department or agency.
28 For purposes of this section, "agency" shall mean each department, divi-
29 sion, public body corporate and politic, elected and appointed board and
30 commission, office and institution, educational or otherwise and instrumen-
31 talities thereof, including agencies hereinafter created in state and local
32 government as set forth in chapter 11, title 59, Idaho Code.

33 SECTION 4. An emergency existing therefor, which emergency is hereby
34 declared to exist, this act shall be in full force and effect on and after its
35 passage and approval.