

IN THE SENATE

SENATE BILL NO. 1366

BY EDUCATION COMMITTEE

AN ACT

RELATING TO RECORDS EXEMPT FROM DISCLOSURE; AMENDING SECTION 9-340D, IDAHO CODE, TO EXEMPT CERTAIN FINANCIAL RECORDS OBTAINED OR CREATED BY THE DIRECTOR OF THE STATE BOARD OF EDUCATION OR A REPRESENTATIVE OF THE BOARD.

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

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

9-340D. RECORDS EXEMPT FROM DISCLOSURE -- TRADE SECRETS, PRODUCTION RECORDS, APPRAISALS, BIDS, PROPRIETARY INFORMATION. The following records are exempt from disclosure:

(1) Trade secrets including those contained in response to public agency or independent public body corporate and politic requests for proposal, requests for clarification, requests for information and similar requests. "Trade secrets" as used in this section means information, including a formula, pattern, compilation, program, computer program, device, method, technique, process, or unpublished or in progress research that:

(a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; and

(b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

(2) Production records, housing production, rental and financing records, sale or purchase records, catch records, mortgage portfolio loan documents, or similar business records of a private concern or enterprise required by law to be submitted to or inspected by a public agency or submitted to or otherwise obtained by an independent public body corporate and politic. Nothing in this subsection shall limit the use which can be made of such information for regulatory purposes or its admissibility in any enforcement proceeding.

(3) Records relating to the appraisal of real property, timber or mineral rights prior to its acquisition, sale or lease by a public agency or independent public body corporate and politic.

(4) Any estimate prepared by a public agency or independent public body corporate and politic that details the cost of a public project until such time as disclosed or bids are opened, or upon award of the contract for construction of the public project.

(5) Examination, operating or condition reports and all documents relating thereto, prepared by or supplied to any public agency or independent public body corporate and politic responsible for the

1 regulation or supervision of financial institutions including, but not
2 limited to, banks, savings and loan associations, regulated lenders,
3 business and industrial development corporations, credit unions, and
4 insurance companies, or for the regulation or supervision of the issuance of
5 securities.

6 (6) Records gathered by a local agency or the Idaho department of
7 commerce, as described in chapter 47, title 67, Idaho Code, for the specific
8 purpose of assisting a person to locate, maintain, invest in, or expand
9 business operations in the state of Idaho.

10 (7) Shipping and marketing records of commodity commissions used to
11 evaluate marketing and advertising strategies and the names and addresses of
12 growers and shippers maintained by commodity commissions.

13 (8) Financial statements and business information and reports
14 submitted by a legal entity to a port district organized under title 70,
15 Idaho Code, in connection with a business agreement, or with a development
16 proposal or with a financing application for any industrial, manufacturing,
17 or other business activity within a port district.

18 (9) Names and addresses of seed companies, seed crop growers, seed
19 crop consignees, locations of seed crop fields, variety name and acreage
20 by variety. Upon the request of the owner of the proprietary variety, this
21 information shall be released to the owner. Provided however, that if a seed
22 crop has been identified as diseased or has been otherwise identified by the
23 Idaho department of agriculture, other state departments of agriculture,
24 or the United States department of agriculture to represent a threat to
25 that particular seed or commercial crop industry or to individual growers,
26 information as to test results, location, acreage involved and disease
27 symptoms of that particular seed crop, for that growing season, shall be
28 available for public inspection and copying. This exemption shall not
29 supersede the provisions of section 22-436, Idaho Code, nor shall this
30 exemption apply to information regarding specific property locations
31 subject to an open burning of crop residue pursuant to section 39-114, Idaho
32 Code, names of persons responsible for the open burn, acreage and crop type
33 to be burned, and time frames for burning.

34 (10) Information obtained from books, records and accounts required
35 in chapter 47, title 22, Idaho Code, to be maintained by the Idaho oilseed
36 commission and pertaining to the individual production records of oilseed
37 growers.

38 (11) Records of any risk retention or self-insurance program prepared
39 in anticipation of litigation or for analysis of or settlement of potential
40 or actual money damage claims against a public entity and its employees
41 or against the industrial special indemnity fund except as otherwise
42 discoverable under the Idaho or federal rules of civil procedure. These
43 records shall include, but are not limited to, claims evaluations,
44 investigatory records, computerized reports of losses, case reserves,
45 internal documents and correspondence relating thereto. At the time
46 any claim is concluded, only statistical data and actual amounts paid in
47 settlement shall be deemed a public record unless otherwise ordered to be
48 sealed by a court of competent jurisdiction. Provided however, nothing
49 in this subsection is intended to limit the attorney client privilege or

1 attorney work product privilege otherwise available to any public agency or
2 independent public body corporate and politic.

3 (12) Records of laboratory test results provided by or retained by the
4 Idaho food quality assurance laboratory. Nothing in this subsection shall
5 limit the use which can be made, or availability of such information if used,
6 for regulatory purposes or its admissibility in any enforcement proceeding.

7 (13) Reports required to be filed under chapter 13, title 62, Idaho
8 Code, identifying electrical or natural or manufactured gas consumption
9 data for an individual customer or account.

10 (14) Voluntarily prepared environmental audits, and voluntary
11 disclosures of information submitted on or before December 31, 1997, to an
12 environmental agency as defined in section 9-803, Idaho Code, which are
13 claimed to be confidential business information.

14 (15) Computer programs developed or purchased by or for any public
15 agency or independent public body corporate and politic for its own use. As
16 used in this subsection, "computer program" means a series of instructions
17 or statements which permit the functioning of a computer system in a manner
18 designed to provide storage, retrieval and manipulation of data from the
19 computer system, and any associated documentation and source material that
20 explain how to operate the computer program. Computer program does not
21 include:

22 (a) The original data including, but not limited to, numbers, text,
23 voice, graphics and images;

24 (b) Analysis, compilation and other manipulated forms of the original
25 data produced by use of the program; or

26 (c) The mathematical or statistical formulas that would be used if the
27 manipulated forms of the original data were to be produced manually.

28 (16) Active investigative records and trademark usage audits of the
29 Idaho potato commission specifically relating to the enforcement of chapter
30 12, title 22, Idaho Code, until the commencement of formal proceedings
31 as provided by rules of the commission; purchase and sales information
32 submitted to the Idaho potato commission during a trademark usage audit,
33 and investigation or enforcement proceedings. Inactive investigatory
34 records shall be disclosed unless the disclosure would violate the standards
35 set forth in subsections (1) (a) through (f) of section 9-335, Idaho Code.
36 Nothing in this subsection shall limit the use which can be made, or
37 availability of such information if used, for regulatory purposes or its
38 admissibility in any enforcement proceeding.

39 (17) All records copied or obtained by the director of the department of
40 agriculture or his designee as a result of an inspection pursuant to section
41 25-3806, Idaho Code, except:

42 (a) Records otherwise deemed to be public records not exempt from
43 disclosure pursuant to this chapter; and

44 (b) Inspection reports, determinations of compliance or noncompliance
45 and all other records created by the director or his designee pursuant
46 to section 25-3806, Idaho Code.

47 (18) All data and information collected by the division of animal
48 industries or the state brand board pursuant to the provisions of section
49 25-207B, Idaho Code, or rules promulgated thereunder.

1 (19) Records disclosed to a county official by the state tax commission
2 pursuant to subsection (4) (c) of section 63-3029B, Idaho Code.

3 (20) Records, data, information and materials collected, developed,
4 generated, ascertained or discovered during the course of academic research
5 at public institutions of higher education if the disclosure of such could
6 reasonably affect the conduct or outcome of the research, or the ability
7 of the public institution of higher education to patent or copyright the
8 research or protect intellectual property.

9 (21) Records, data, information and materials collected or utilized
10 during the course of academic research at public institutions of higher
11 education provided by any person or entity other than the public institution
12 of higher education or a public agency.

13 (22) The exemptions from disclosure provided in subsections (20)
14 and (21) of this section shall apply only until the academic research is
15 publicly released, copyrighted or patented, or until the academic research
16 is completed or terminated. At such time, the records, data, information,
17 and materials shall be subject to public disclosure unless: (a) another
18 exemption in this chapter applies; (b) such information was provided to the
19 institution subject to a written agreement of confidentiality; or (c) public
20 disclosure would pose a danger to persons or property.

21 (23) The exemptions from disclosure provided in subsections (20) and
22 (21) of this section do not include basic information about a particular
23 research project that is otherwise subject to public disclosure, such as the
24 nature of the academic research, the name of the researcher, and the amount
25 and source of the funding provided for the project.

26 (24) Records of a county assessor containing information showing the
27 income and expenses of a taxpayer, which information was provided to the
28 assessor by the taxpayer to permit the assessor to determine the value of
29 property of the taxpayer.

30 (25) Results of laboratory tests which have no known adverse impacts to
31 human health conducted by the Idaho state department of agriculture animal
32 health laboratory, related to diagnosis of animal diseases of individual
33 animals or herds, on samples submitted by veterinarians or animal owners
34 unless:

35 (a) The laboratory test results indicate the presence of a state or
36 federally reportable or regulated disease in animals;

37 (b) The release of the test results is required by state or federal law;
38 or

39 (c) The test result is identified as representing a threat to animal or
40 human health or to the livestock industry by the Idaho state department
41 of agriculture or the United States department of agriculture.
42 Nothing in this subsection shall limit the use which can be made, or
43 availability of such information if used, for regulatory purposes or
44 its admissibility in any enforcement proceeding, or the duty of any
45 person to report contagious or infectious diseases as required by state
46 or federal law.

47 (26) Results of laboratory tests conducted by the Idaho state
48 department of agriculture seed laboratory on samples submitted by seed
49 producers or seed companies. Nothing in this subsection shall limit the

1 use which can be made, or availability of such information pursuant to the
2 provisions of subsections (9) and (10) of section 22-418, Idaho Code.

3 (27) For policies that are owned by private persons, and not by a public
4 agency of the state of Idaho, records of policies, endorsements, affidavits
5 and any records that discuss policies, endorsements and affidavits that may
6 be required to be filed with or by a surplus line association pursuant to
7 chapter 12, title 41, Idaho Code.

8 (28) Financial records obtained or created by the director of the state
9 board of education or a representative of the board pursuant to section
10 33-2402 or 33-2403, Idaho Code, and any administrative rule promulgated
11 pursuant to such sections.