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**IDAPA 31
TITLE 02
Chapter 01**

**31.02.01 - PUBLIC RECORDS ACT RULES OF THE
IDAHO PUBLIC UTILITIES COMMISSION**

000. LEGAL AUTHORITY (Rule 0).

These rules are adopted under the legal authority of Sections 9-337 through 9-349, Idaho Code (commonly known as the Public Records Act), and in particular Section 9-347, Idaho Code. (7-1-93)

001. TITLE AND SCOPE (Rule 1).

The name of this chapter is "Public Records Act Rules of the Idaho Public Utilities Commission". This chapter has the following scope: Every request for copies of records maintained by the Idaho Public Utilities Commission will be processed under these rules. (7-1-93)

002. WRITTEN INTERPRETATIONS--AGENCY GUIDELINES (Rule 2).

For rulemakings conducted before July 1, 1993, written interpretations to these rules in the form of explanatory comments accompanying the order of proposed rulemaking and review of comments submitted in the order adopting these rules are maintained in the files of the Secretary of the Idaho Public Utilities Commission and are available from the office of the Commission Secretary. The Commission Secretary may be contacted in writing at the Idaho Public Utilities Commission, PO Box 83720, Boise, Idaho 83720-0074, or may be reached by telephone at (208) 334-0300. For rulemakings conducted after July 1, 1993, written interpretations to these rules in the form of explanatory comments accompanying the notice of proposed rulemaking that originally proposed the rules and review of comments submitted in the rulemaking decision adopting these rules are published in the issues of the Idaho Administrative Bulletin proposing or adopting the rules. (7-1-93)

003. ADMINISTRATIVE APPEALS (Rule 3).

There is no provision for administrative appeals within the Idaho Public Utilities Commission from a decision that a record cannot be inspected, examined or copied. Judicial review is available under Sections 9-343 et seq., Idaho Code. (7-1-93)

004. PUBLIC RECORDS ACT COMPLIANCE (Rule 4).

Written requests to inspect, examine or copy public records are themselves public records. The Commission's written responses to requests to inspect, examine or copy public records are themselves public records. (7-1-93)

005. DEFINITIONS (Rule 5).

The following definitions are used in this title and chapter: (7-1-93)

01. Copy. "Copy" means transcription by handwriting, photocopy, duplicating machine or reproduction by any other means that does not alter or damage a public record. See Section 9-337(1), Idaho Code. (7-1-93)

02. Custodian. "Custodian" means the person having personal possession and control of public records. Ordinarily, official documents of the Idaho Public Utilities Commission are in the legal custody of the Commission Secretary and physical possession of the Secretary's staff. In addition, certain files and documents may be in the possession or control of the Commissioners, the public information officer, the fiscal officer, or the heads of the legal, regulated carrier, and utilities divisions, or personnel of the division staffs. See Section 9-337(2), Idaho Code. (7-1-93)

03. Inspection. "Inspection" means the right to listen, view and make notes of public records as long as the public record is not altered or damaged. See Section 9-337(3), Idaho Code. (7-1-93)

04. Investigatory Record. "Investigatory record" means information with respect to an identifiable person, group of persons or entities compiled by the Commission pursuant to its statutory authority to investigate specific acts, omissions, failures to act, or other conduct over which the Commission has regulatory authority or law enforcement authority. Investigatory records before the Commission include informal complaints or inquiries concerning utilities or regulated carriers, audits and investigations of utilities or regulated carriers, memoranda or similar documents recommending whether audits or investigations of utilities or regulated carriers should be initiated, or other information falling within the statutory definition of investigatory records. See Section 9-337(4), Idaho

Code.

(7-1-93)

05. Person. "Person" means any natural person, corporation, partnership, firm, association, joint venture, state or local agency or any other recognized legal entity. See Section 9-337(7), Idaho Code. (7-1-93)

06. Public Record. "Public record" 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 the Commission, regardless of physical form or characteristics. See Section 9-337(10), Idaho Code. (7-1-93)

07. Trade Secrets. "Trade secrets" mean information, including a formula, pattern, compilation, program, computer program, device, method, technique or process that: (7-1-93)

a. Derives independent economic value, actual or potential, from not being generally known to or not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; and (7-1-93)

b. Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. See Section 9-340(2), Idaho Code. (7-1-93)

08. Writing. "Writing" includes, but is not limited to, handwriting, typewriting, printing, photostating, photographing and every other means of recording, including letters, words, pictures, sounds or symbols or a combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, disks, drums or other documents. See Section 9-337(12), Idaho Code. (7-1-93)

006. CITATION (Rule 6).

The official citation of these rules is IDAPA 31.02.01.000 et seq. For example, this rule is cited as IDAPA 31.02.01.006. In documents submitted to the Commission or issued by the Commission however, these rules may be cited by their short title of Public Records Rules (PRR) and the parenthetical rule number. For example, this rule may be cited as PRR 6. (7-1-93)

007. EFFECTIVE DATE--HISTORY OF RULES (Rule 7).

The predecessors to these rules were originally adopted by General Order No. 183, effective January 1, 1991, and amended by General Order No. 183A, effective May 1, 1991. They were codified at IDAPA 31.P. They were readopted and reformatted by rulemaking decision in docket number 16-0201-9301 effective July 1, 1993. The history of these rulemaking proceedings preceding the initiation of the publishing of the Idaho Administrative Bulletin and the Idaho Administrative Code is available from the Commission Secretary. (7-1-93)

008. -- 100. (RESERVED).

**RULES 101 THROUGH 200 - KINDS OF PUBLIC RECORDS MAINTAINED--
CUSTODIAN--LOCATION OF RECORDS--
INSPECTION OR EXAMINATION OF RECORDS**

101. RECORDS OF FORMAL PROCEEDINGS (Rule 101).

Records of formal proceedings, which are described in the Commission's Rules of Procedure, IDAPA 31.01.01.000 et. seq., include all records in the Commission Secretary's official file as detailed in the Rules of Procedure. These records are in the custody and possession of the Commission Secretary and the Secretary's staff. Ordinarily, records pertaining to utilities are in the document room in the Commission's Administrative Division, and records pertaining to regulated carriers are in the Regulated Carrier Division, except that dated records may be in rented storage. All records of proceedings may be inspected, examined or copied by any person under the procedures of Section 9-338, Idaho Code, and of these rules, except as the Rules of Procedure, recognize statutory exemptions from disclosure of certain discoverable material, or unless exempted from disclosure under Section 9-340, Idaho Code. (7-1-93)

102. TARIFFS--PRICE LISTS--CERTIFICATES--PERMITS (Rule 102).

Proposed, current and past tariffs and/or price lists showing utilities' or regulated carriers' rates and charges for service, service offerings, conditions for service, rules for providing service, etc., are in the custody and possession of the Commission Secretary and the Secretary's staff or the clerical staff of the Utilities or Regulated Carrier Divisions. Ordinarily, records pertaining to utilities are in the document room in the Commission's Administrative Division or in the Utilities Division, and records pertaining to regulated carriers are in the Regulated Carrier Division, except that dated records may be in rented storage. These records may be inspected, examined or copied by any person under the procedures of Section 9-338, Idaho Code, and of these rules. (7-1-93)

103. STATUTORY REPORTING--REPORTS SUBMITTED PURSUANT TO ORDER OR RULE (Rule 103).

Reports submitted under Sections 61-401 through 61-406, 61-517, 61-531 through 61-537, 61-802B, 61-804, 61-1003, 62-611, Idaho Code or other statutes, and reports submitted pursuant to order or rule are in the custody and possession of the Commission Secretary and the Secretary's staff or the clerical staffs of the Utilities or Regulated Carrier Divisions. Ordinarily, reports pertaining to utilities are in the document room in the Commission's Administrative Division or in the Utilities Division, and reports pertaining to regulated carriers are in the Regulated Carrier Division, except that dated reports may be in rented storage. All those reports, except those protected as trade secrets under Section 9-340(2), Idaho Code, and rules implementing that Section, or unless exempted from disclosure under Section 9-340, Idaho Code, may be inspected, examined or copied by any person under the procedures of Section 9-338, Idaho Code, and of these rules. (7-1-93)

104. DECISION MEETINGS--AGENDAS FOR DECISION MEETINGS (Rule 104).

Minutes of the Commission's decision meetings and agendas of its decision meetings are in the custody and possession of the Commission Secretary in the Secretary's office. These records may be inspected, examined or copied under Section 9-338, Idaho Code, except, when the Commission has declared an executive session pursuant to Section 67-2345, Idaho Code, minutes from the portion of the decision meeting that involve the executive session are exempt from disclosure to the extent provided by Sections 67-2344 and 67-2345, Idaho Code. (7-1-93)

105. COMPUTER PROGRAMS--COMPUTER MODELING--COMPUTER DATA (Rule 105).

The Commission maintains substantial information on computers. Computer terminals with access to the information are located throughout the Commission's offices. Copyrightable computer programs or copyrightable compilations of data purchased, leased or obtained from sources outside Idaho state government, and other programs or data the release of which would contravene federal or state laws protecting intellectual property are exempt from disclosure under Section 9-340(2), Idaho Code. Unless covered by the previous sentence, or unless exempted from disclosure under Section 9-340, Idaho Code, computer programs and data bases used or developed by the Commission and its Staff may be inspected, examined or copied by any person under the procedures of Section 9-338, Idaho Code and of these rules. (7-1-93)

106. INVESTIGATORY RECORDS (Rule 106).

Investigatory records of the Commissioners and individual Staff members are in the custody and possession of personal or divisional files in offices throughout the Commission. Investigatory records are exempt from inspection, examination or copying under Section 9-340(22), Idaho Code; provided that, when investigatory records are placed in public files like the Commission Secretary's official file, they cease being exempt and they may be inspected, examined or copied by any person under the procedure of Section 9-338, Idaho Code, and of these rules. Investigatory records may be examined by or disclosed to the objects of the investigation pursuant to Section 9-335, Idaho Code. (7-1-93)

107. PERSONNEL RECORDS (Rule 107).

Personnel records for the Commission's employees are in the custody and possession of the Administrative and the Fiscal Divisions of the Commission, division heads or individual personnel. Personnel records are exempt from disclosure under Section 9-340(36), Idaho Code, except as made public by that section. (7-1-93)

108. MISCELLANEOUS RECORDS (Rule 108).

If records in the custody or possession of the Commission do not fit into any of the categories of Rules 101 through 107, they are considered miscellaneous records. Ordinarily, miscellaneous records are maintained in individual's offices or files. There will be a case-by-case determination whether miscellaneous records are open to inspection,

examination and copying under Section 9-338, Idaho Code, or are exempt from disclosure under Section 9-340, Idaho Code, except that materials protected from copying by federal copyright law are always exempt from copying. (7-1-93)

109. -- 200. (RESERVED).

**RULES 201 THROUGH 300 - REQUESTS TO INSPECT, EXAMINE OR COPY
PUBLIC RECORDS--RESPONSES TO REQUESTS**

201. STATEMENT OF POLICY (Rule 201).

It is the Commission's expectation that the overwhelming majority of requests to inspect, examine or copy public records will be routinely and informally granted. Ordinarily, the Commission anticipates that records made subject to inspection, examination and copying by statute may be requested orally in person or by telephone and the request will be promptly granted. However, when the request implicates records made exempt from disclosure by statute or involves voluminous material (more than one hundred (100) pages total), the request for inspection, examination and copying must be reduced to writing. (7-1-93)

202. TIMES FOR EXAMINATION (Rule 202).

Public records subject to inspection, examination and copying may be reviewed in the Commission's offices at 472 West Washington Street from 8:00 a.m. to 5:00 p.m., Monday through Friday, except state holidays or nonjudicial days. The examination may be reasonably restricted to allow the custodian of documents to retain control of the documents inspected or examined to prevent their removal, alteration, or destruction. The Commission may provide for inspection, examination or copying of public records outside normal business hours or outside the Commission's offices under appropriate circumstances. See Sections 9-338(6) and -(7), Idaho Code. (7-1-93)

203. REQUESTS IMPLICATING RECORDS EXEMPT FROM DISCLOSURE (Rule 203).

When a person requests to examine records that may be exempt from disclosure under Section 9-340, Idaho Code, the person making the request will be asked to reduce the request to writing. Within three (3) working days after receiving this written request, the requester will be notified in writing whether or to what extent the request will be granted or denied. If the request is denied in whole or in part, the written notification will be signed by a Commissioner, the Commission Secretary or one of the Secretary's deputies, or a Deputy Attorney General assigned to the Commission, and, if not signed by a Deputy Attorney General, shall indicate that a Deputy Attorney General assigned to the Commission has been consulted and believes that there is a statutory basis for the denial or partial denial of the request, listing the statutes relied upon. (7-1-93)

204. REQUESTS THAT CANNOT BE ANSWERED WITHIN THREE (3) WORKING DAYS (Rule 204).

If the Commission cannot grant or deny a person's request to inspect, examine or copy public records within three (3) working days from the receipt of the request because a longer time is needed to locate or retrieve the public records or because it cannot be determined within three (3) working days whether some or all of the request involves materials exempt from disclosure under Section 9-340, Idaho Code, the requester will be notified of the delay in writing within three (3) working days of the request. Within ten (10) working days of the request, the request will be granted or denied in whole or in part. (7-1-93)

205. VOLUMINOUS REQUESTS (Rule 205).

Requests to copy voluminous documents (requests from the same person in one (1) day to copy documents exceeding one hundred (100) pages total) must be in writing. (7-1-93)

206. -- 300. (RESERVED).

RULES 301 THROUGH 400 - COPYING

301. PHOTOCOPYING (Rule 301).

The charge for copies of papers easily reproducible by photocopy machines in the Commission's offices is five cents (\$.05) per page. Fees for copying requests totalling one dollar (\$1) or less may be waived. If materials can only be reproduced by special photocopy equipment not available in the Commission's offices, the requester may make arrangements for commercial photocopying of large or irregular documents at the requester's expense, including reasonable expense of Commission personnel to accompany documents taken from the Commission's office for photocopying. (7-1-93)

302. COMPUTER DISKS (Rule 302).

The cost of providing computer disks containing copies of information on the Commission's computers will be two dollars (\$2) per disk, except when the Commission incurs overtime labor costs or employs or contracts for temporary labor to answer a request for information contained on the Commission's computers, the Commission may include those overtime or temporary labor costs in its charges. (7-1-93)

303. ADVANCE CHARGES FOR COPYING (Rule 303).

When the Commission receives a request for copying the total charge for which will exceed fifteen dollars (\$15), the Commission may request advance payment of the copying charges. (7-1-93)

304. CHARGES FOR PAMPHLETS (Rule 304).

The Commission Secretary will post charges for copies of pamphlets or other material prepared for distribution to the general public. (7-1-93)

305. MAILING, FACSIMILE TRANSMISSION (FAX) (Rule 305).

Neither statute nor these rules obligate the Commission to provide postage and envelopes for mailing or facsimile transmission (FAX) for documents to be copied. Persons requesting that documents be copied and sent to them are responsible for providing envelopes and postage, arrangements for overnight delivery, etc. As time permits, the Commission Staff may respond to small requests for copying of documents by mailing them or transmitting them by FAX, but in those cases the requester will be charged for postage or telecommunications charges associated with the mailing or FAX transmission if the charges are not de minimus. (7-1-93)

306. -- 400. (RESERVED).

RULES 401 THROUGH 500 - RELATIONSHIP TO RULES AND PRACTICES

401. RULES AND PRACTICES NOT AFFECTED (Rule 401).

These rules implementing the Public Records Act neither expand nor contract the rights of persons or parties under other statutes, rules or practices of the Commission. (7-1-93)

402. DISCOVERY IN FORMAL CASES NOT COVERED BY THESE RULES (Rule 402).

The right of parties to a formal proceeding governed by the Commission's Rules of Procedure to obtain information as part of that formal proceeding is governed by the Commission's Rules of Procedure, IDAPA 31.01.01.000 et seq. These rules neither expand nor contract any party's rights under those rules. (7-1-93)

403. DISTRIBUTION OF DOCUMENTS UNAFFECTED (Rule 403).

The Commission's historical distribution of documents to parties to formal proceedings, to other governmental agencies, and to the media are neither expanded nor contracted by these rules. For example, copies of orders, press releases, Staff filings, etc., that have historically been distributed without fee or that are required to be distributed by rule or statute will continue to be distributed without fee. (7-1-93)

404. PARTIES TO FORMAL PROCEEDINGS MAY USE THESE RULES (Rule 404).

No party to a formal proceeding, member of the media, etc., is precluded from independently asserting the rights of any person to examine and copy public records under these rules, but these rules, rather than Rules of Procedure, IDAPA 31.01.01.000 et. seq., will govern such a request. (7-1-93)

405. -- 999. (RESERVED).