



STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL

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September 24, 1990

Gene M. Gray, Chairman  
Idaho Water Resource Board  
Statehouse  
Boise, ID 83720

THIS CORRESPONDENCE IS A LEGAL GUIDELINE OF THE  
ATTORNEY GENERAL SUBMITTED FOR YOUR GUIDANCE

Re: Inspection of Public Records

Dear Mr. Gray:

You have requested an opinion from this office as to whether certain documents retained by you in your capacity as Chairman of the Idaho Water Resource Board constitute "public records" and are thus available for public inspection under the provisions of the Idaho Public Records Act, Idaho Code §§ 9-337 to 9-348.

The documents in question, as described in your letter, are individual poll ballots provided to you by members of the Payette River Advisory Group (PRAG). PRAG is composed of 30 individuals from the geographic area who have volunteered to serve as a local advisory group to inform the Board of local concerns in the development of a comprehensive water plan for the Payette River. PRAG's formation is provided for under the Board's Comprehensive State Water Plan Rules and Regulations.

According to your letter, the ballots were labeled "PRAG Internal Advisory Ballot" and sought individual member recommendations as to how various river reaches should be designated in the plan. The ballots were circulated to the PRAG members at an August 15, 1990 meeting. The PRAG members completed and returned the ballots to you at the same meeting with the explanation that the individual ballots would not be

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made public. A summary of the ballot results was prepared and made available to the PRAG members and the public.

You have asked whether the individual advisory ballots completed by the voluntary advisory group members are "public records," subject to the provisions of Idaho Code §§ 9-337 through 9-348, and thus must be released even though the cumulative results of the balloting have already been made public.

The Idaho Public Records Act, enacted by the 1990 Legislature defines "public record" to include, but not be limited to, "any writing containing information relating to the conduct or administration of the public's business prepared, owned, used or retained by any state or local agency regardless of physical form or characteristics." Idaho Code § 9-337(10). "State agency" is defined as "every state officer, department, division, bureau, commission and board or any committee of a state agency including those in the legislative or judicial branch, except the state militia." Idaho Code § 9-337(11). Finally, the Act defines "public official" to mean "any state, county, local district or government official or employee, whether elected, appointed or hired." Idaho Code § 9-337(9).

In your capacity as Chairman of the Idaho Water Resource Board, a constitutional "agency" of the state of Idaho, there is no doubt that you are a "public official" within the meaning of the Public Records Act. See Idaho Const. art. 15, § 7; Idaho Code § 42-1732. Further, in performing your duties as chairman of a local advisory group to inform the Board of local concerns in formulating a comprehensive state water plan pursuant to Idaho Code § 42-1734A, it is clear that you are performing tasks "relating to the conduct or administration of the public's business."

The advisory ballots described in your opinion request must, therefore, be deemed writings containing information relating to the conduct or administration of the public's business retained by a state agency. As such, the ballots must be made available for public inspection under the Public Records Act unless an exception is expressly provided by statute. Idaho Code § 9-338. A careful examination of the types of records exempt by statute from disclosure under the Act does not reveal any exemption which

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could even arguably apply to the advisory ballots in question.  
See Idaho Code § 9-340.

We therefore conclude that the individual advisory ballots in your possession are public records and must be made available for public inspection under the provisions of the Public Records Act even though the cumulative results of the balloting may have been made public.

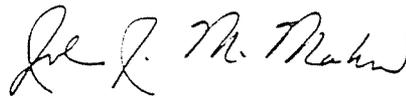
Your letter expresses a concern that it is necessary to protect the opinions of individual members of the advisory group if volunteers are expected to continue to serve in such a capacity. There is no recognition under the Act of a general need to protect the identity of individuals who provide specific recommendations or advice to public officials or boards in carrying out the public's business. In fact, the policy behind the Act appears to be quite the opposite:

Every person has a right to examine and take a copy of any public record of this state and there is a presumption that all public records in Idaho are open at all reasonable times for inspection except as otherwise expressly provided by statute.

Idaho Code § 9-338(1).

If additional clarification is required, please do not hesitate to contact this office.

Sincerely,



JOHN J. McMAHON  
Chief Deputy

JJM/mkf

cc: Honorable Cecil D. Andrus, Governor  
R. Keith Higginson, Idaho Department of Water Resources