

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 61

BY KING

AN ACT

1 RELATING TO THE INDEPENDENT ETHICS COMMISSION ACT; AMENDING TITLE 67, IDAHO
2 CODE, BY THE ADDITION OF A NEW CHAPTER 84, TITLE 67, IDAHO CODE, TO DE-
3 FINE TERMS, TO ESTABLISH THE INDEPENDENT ETHICS COMMISSION, TO PROVIDE
4 THE POWERS AND DUTIES OF THE INDEPENDENT ETHICS COMMISSION, TO PROVIDE
5 THAT CERTAIN INFORMATION, COMPLAINTS AND REPORTS ARE CONFIDENTIAL AND
6 EXEMPT FROM DISCLOSURE AND TO PROHIBIT RETALIATION; AMENDING SECTION
7 9-340C, IDAHO CODE, AS AMENDED BY SECTION 2, CHAPTER 103, AND SECTION
8 1 CHAPTER 309, LAWS OF 2012, TO PROVIDE THAT CERTAIN INFORMATION, COM-
9 PLAINTS AND REPORTS ARE EXEMPT FROM DISCLOSURE AND TO MAKE TECHNICAL
10 CORRECTIONS; AND PROVIDING AN EFFECTIVE DATE.
11

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

13 SECTION 1. That Title 67, Idaho Code, be, and the same is hereby amended
14 by the addition thereto of a NEW CHAPTER, to be known and designated as Chap-
15 ter 84, Title 67, Idaho Code, and to read as follows:

16 CHAPTER 84

17 INDEPENDENT ETHICS COMMISSION ACT

18 67-8401. DEFINITIONS. As used in this chapter:

19 (1) "Commission" means the independent ethics commission established
20 in section 67-8402, Idaho Code.

21 (2) "Governmental entity" means:

22 (a) The state of Idaho, including all branches, departments, divi-
23 sions, agencies, boards, commissions and other governmental bodies of
24 the state; and

25 (b) Counties, cities, districts and all other political subdivisions
26 of the state of Idaho.

27 67-8402. INDEPENDENT ETHICS COMMISSION. (1) There is hereby estab-
28 lished in the office of the attorney general the independent ethics commis-
29 sion to be comprised of the following members:

30 (a) Two (2) members who are residents of the state of Idaho appointed by
31 the governor;

32 (b) One (1) member from the office of the attorney general appointed by
33 the attorney general;

34 (c) One (1) nonpartisan member from the division of financial manage-
35 ment appointed by the administrator of the division of financial man-
36 agement; and

37 (d) One (1) nonpartisan member from the legislative services office ap-
38 pointed by the director of the legislative services office.

39 (2) The five (5) member commission shall select a chairperson from its
40 membership. Members serve at the pleasure of the appointing authority.

1 Three (3) members of the commission shall constitute a quorum for the pur-
2 poses of conducting business and exercising powers. The two (2) commission
3 members appointed by the governor shall not be from the same political party
4 and each such member shall be registered with a political party represented
5 in the Idaho state legislature.

6 (3) No person may serve on the commission who:

7 (a) Is not a registered voter of this state at the time of appointment;

8 (b) Is or has been within one (1) year prior to appointment a registered
9 lobbyist; or

10 (c) Is or has been within three (3) years prior to appointment a member
11 of the legislature.

12 (4) A person who has served on the commission shall be precluded from
13 serving in either house of the Idaho state legislature for a period of one (1)
14 year following such service on the commission.

15 (5) Each member of the commission shall be compensated as provided by
16 section 59-509(h), Idaho Code.

17 67-8403. POWERS AND DUTIES OF THE INDEPENDENT ETHICS COMMISSION. The
18 commission shall have the following powers and duties:

19 (1) Receive and review complaints from citizens of the state of Idaho
20 relating to allegations of a breach of ethics, waste of public funds, prop-
21 erty or manpower or a violation of a law or rule within any governmental en-
22 tity;

23 (2) Establish practices, procedures and a process to be followed for
24 communicating with citizens who wish to report an allegation of a breach of
25 ethics, waste of public funds, property or manpower or a violation of a law or
26 rule within any governmental entity;

27 (3) Hold at least one (1) meeting quarterly or at the call of the chair-
28 person for the purpose of determining whether to notify the appropriate gov-
29 ernmental entity or the appropriate prosecuting attorney's office of com-
30 plaints received by the commission;

31 (4) Establish practices and procedures to be followed for providing
32 timely notice to the appropriate governmental entity of a complaint that the
33 commission deems meritorious, valid and worthy of further investigation;

34 (5) Establish practices and procedures to be followed for providing
35 timely notice to the appropriate prosecuting attorney's office when the com-
36 mission has reasonable grounds to believe there has been a violation of state
37 criminal law or that there may otherwise be an imminent danger to the public;

38 (6) Prepare a report of each complaint submitted to the commission that
39 states, at minimum, whether a breach of ethics, an act of waste of public
40 funds, property or manpower or a violation of a law or rule has been found
41 and, if so, to which governmental entity such finding was communicated for
42 further investigation and the remedial or disciplinary action taken by such
43 governmental entity, if any; provided that such reports shall not contain
44 personal or identifying information about the citizen making the complaint;
45 and

46 (7) Retain all written complaints and reports prepared pursuant to this
47 section for a period of not less than three (3) years from the date the com-
48 plaint or report was made.

1 67-8404. EXEMPTIONS FROM DISCLOSURE -- RETALIATION PROHIBITED. (1)
2 The following shall be confidential and exempt from disclosure as provided
3 in section 9-340C, Idaho Code:

4 (a) Personal or identifying information about a citizen who submits or
5 makes a complaint to the independent ethics commission;

6 (b) All complaints submitted to the independent ethics commission,
7 unless and until the commission determines that any such complaint has
8 merit, is valid and is worthy of further investigation, at which point
9 such complaint shall no longer be confidential and exempt from disclo-
10 sure; and

11 (c) All commission reports relating to complaints that the commission
12 determines to be without merit, not valid and not worthy of further in-
13 vestigation.

14 (2) No disciplinary or retaliatory action shall be taken against any
15 citizen for reporting a complaint pursuant to this chapter including, but
16 not limited to, reprimand, suspension, discharge, demotion or denial of a
17 promotion or transfer. Citizens making complaints pursuant to this chapter
18 shall be subject to the protections provided in chapter 21, title 6, Idaho
19 Code.

20 SECTION 2. That Section 9-340C, Idaho Code, as amended by Section 2,
21 Chapter 103, Laws of 2012 and Section 1, Chapter 309, Laws of 2012, be, and
22 the same is hereby amended to read as follows:

23 9-340C. RECORDS EXEMPT FROM DISCLOSURE -- PERSONNEL RECORDS, PER-
24 SONAL INFORMATION, HEALTH RECORDS, PROFESSIONAL DISCIPLINE. The following
25 records are exempt from disclosure:

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

43 (2) Retired employees' and retired public officials' home addresses,
44 home telephone numbers and other financial and nonfinancial membership
45 records; active and inactive member financial and membership records and
46 mortgage portfolio loan documents maintained by the public employee retire-
47 ment system. Financial statements prepared by retirement system staff,
48 funding agents and custodians concerning the investment of assets of the

1 public employee retirement system of Idaho are not considered confidential
2 under this chapter.

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

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

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

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

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

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

25 (e) Vital statistics records; and

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

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

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

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

1 Idaho Code, under an assurance of confidentiality. As used in this section
2 and in chapter 13, title 72, Idaho Code, "employment security information"
3 means any information descriptive of an identifiable person or persons that
4 is received by, recorded by, prepared by, furnished to or collected by the
5 department of labor or the industrial commission in the administration of
6 the employment security law.

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

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

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

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

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

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

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

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

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

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

49 (18) Records of the department of health and welfare relating to a sur-
50 vey, resurvey or complaint investigation of a licensed nursing facility

1 shall be exempt from disclosure. Such records shall, however, be subject to
2 disclosure as public records as soon as the facility in question has received
3 the report, and no later than the fourteenth day following the date that
4 department of health and welfare representatives officially exit the facil-
5 ity pursuant to federal regulations. Provided however, that for purposes
6 of confidentiality, no record shall be released under this section which
7 specifically identifies any nursing facility resident.

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

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

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

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

19 (c) Mortgage portfolio loan documents;

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

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

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

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

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

1 (25) The physical voter registration card on file in the county clerk's
2 office; however, a redacted copy of said card shall be made available consis-
3 tent with the requirements of this section. Information from the voter reg-
4 istration card maintained in the statewide voter registration database, in-
5 cluding age, will be made available except for the voter's driver's license
6 number, date of birth and, upon a showing that the voter comes within the pro-
7 visions of subsection (30) of this section or upon showing of good cause by
8 the voter to the county clerk in consultation with the county prosecuting
9 attorney, the physical residence address of the voter. For the purposes of
10 this subsection good cause shall include the protection of life and property
11 and protection of victims of domestic violence and similar crimes.

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

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

25 (a) If requested by a law enforcement agency, to the law enforcement
26 agency; or

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

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

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

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

43 (a) If directed by a court order, to a person identified in the court
44 order;

45 (b) If requested by a law enforcement agency, to the law enforcement
46 agency;

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

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

3 (31) All information exchanged between the Idaho transportation de-
4 partment and insurance companies, any database created, all information
5 contained in the verification system and all reports, responses or other
6 information generated for the purposes of the verification system, pursuant
7 to section 49-1234, Idaho Code.

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

11 (32~~3~~) Personal information including, but not limited to, property
12 values, personal and business addresses, phone numbers, dates of birth, so-
13 cial security and driver's license numbers or any other identifying numbers
14 or information maintained by the administrator of the unclaimed property
15 law set forth in chapter 5, title 14, Idaho Code. Nothing in this subsection
16 shall prohibit the release of names, last known city of residence, property
17 value ranges and general property information by the administrator for the
18 purpose of reuniting unclaimed property with its owner.

19 (34) Personal or identifying information about a citizen who submits a
20 complaint to the independent ethics commission, all complaints submitted to
21 such commission determined by the commission to be without merit, not valid
22 and not worthy of further investigation and all reports prepared by such com-
23 mission relating to complaints determined to be without merit, not valid and
24 not worthy of further investigation, as set forth in chapter 84, title 67,
25 Idaho Code.

26 SECTION 3. This act shall be in full force and effect on and after July
27 1, 2014.