

STATE OF IDAHO  
COUNTY OF KOOTENAI } SS  
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CLERK DISTRICT COURT

DEPUTY

Frank Davis  
Allied Bail Bonds, Inc.  
5433 Government Way  
Coeur d'Alene, ID 83815  
Telephone: 208-667-8334  
Fax: 208-765-9405

Petitioner

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

FRANK DAVIS of ALLIED BAIL BONDS,	)	Case No. CV 16- <u>775</u>
	)	
Petitioner,	)	<b>PETITION FOR RELIEF UNDER</b>
	)	<b>IDAHO PUBIC RECORDS ACT</b>
v.	)	
	)	
KOOTENAI COUNTY SHERIFF'S	)	
DEPARMENT and KOOTENAI COUNTY	)	
SHERIFF'S OFFICE RECORDS	)	
CUSTODIAN, IDAHO,	)	
	)	
Respondents.	)	

COMES NOW, the above-named Petitioner, FRANK DAVIS of ALLIED BAIL BONDS, pursuant to Idaho Code Sections 74-101, *et seq.*, and hereby asks this Court to issue an Order compelling the Respondents, KOOTENAI COUNTY SHERIFF'S DEPARTMENT and/or KOOTNEAI COUNTY SHERIFF'S DEPARTMENT OFFICE RECORDS CUSTODIAN, to comply with its duty to provide the requested public records as required pursuant to Idaho Code Sections 74-101, 74-102, and 74-116.

**Robert Caldwell**

## I. FACTS

On August 29, 2015 and September 3, 2015, Petitioner and his employee, Russell McHenry, respectively, filed Public Records Requests forms with the Respondents' office. See Exhibits A and B attached hereto. The Respondents denied Petitioner's request to release information. However, in its responses dated September 2 and 4, 2015, the Respondents failed to provide the Petitioner with any statutory authority for exempting the records and misconstrued the procedure for deciding a records request. See *Id.*

## II. ANALYSIS

"Every person has a right to examine and take a copy of any public record of this state [Idaho] and there is a presumption that all public records in Idaho are open at all reasonable times for inspection . . ." I.C. § 74-102. Petitioner has made the required formal request for the release of public records from the Respondents pursuant to the requisite statutory authority. See Exhibits A and B. Respondents denied the request but provided no statutory authority. See *Id.* However, in order for the Respondents to deny Petitioner's claim, Respondents are required to indicate the statutory authority for the denial. I.C. §74-103(4)<sup>1</sup>.

On the September 3, 2015 request, Respondents denied that request "pursuant to Idaho Code §§ 74-104 thru 74-111 and/or 74-124. See Exhibit A. Idaho Code requires that "[t]he notice of denial or partial denial also shall indicate the statutory authority for the denial and indicate clearly the person's right to appeal the denial or partial denial and the time periods for doing so." *Id.* While there is no case law defining what "indicat[ing] statutory authority" means, generally replying that the records are exempt because of a provision somewhere in Title 74 is

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<sup>1</sup> In relevant part I.C. § 74-103(4) reads, ". . . The notice of denial or partial denial also shall indicate the statutory authority for the denial and indicate clearly the person's right to appeal the denial or partial denial and the time periods for doing so." (emphasis added).

not sufficient to provide adequate notice of the specific authority justifying the denial. This is the antithesis of the idea of open government that Title 74 espousing. Therefore, the Respondents' denial does not comport with the law.

Similarly, Petitioner filed a request on August 29, 2015, which Respondents denied. See Exhibit B. But in this case, Respondents actually cited a specific code section, namely Idaho Code Section 74-113(3)(e). Still, the Respondents' denial under this code section completely misunderstands the law of public records. This code section states that, "[t]he right to inspect and amend records pertaining to oneself does not include the right to review . . . [r]ecords of a prisoner maintained by the state or local agency having custody of the prisoner or formerly having custody of the prisoner or by the commission of pardons and parole." *Id.* This provision is an exception to the exception of an agency's claim of exemption.

In other words, when presented with a public records request, the public agency's decision making process should proceed in the following fashion. The first question is whether the requested information is exempt or non-exempt from disclosure. If non-exempt, the agency must grant the request. If exempt, the next questions is whether there is an exception to the exemption from disclosure so as to mandate disclosure anyway. Idaho Code Section 74-113(1) provides one exception to exempt records.

Under that section, "[a] person may inspect and copy the records of a public agency or independent public body corporate and politic pertaining to that person, even if the record is otherwise exempt from public disclosure." I.C. §74-113(1). That means that if a person is seeking records about him or herself, the request should be granted (not exempt) unless there is an exception to disclosure under Idaho Code Section 74-113(3). Part "e" of that section provides

an exception to the non-exempt information by providing that, “[r]ecords of a prisoner maintained by ... [the] agency having custody of the prisoner or formerly having custody of the prisoner ...” cannot be disclosed to a person regarding that person. I.C. § 74-113(e).

In this case, the Kootenai County Sherriff’s Office skipped the first question in the process – whether the requested information is exempt or non-exempt from disclosure. It assumed that the records were exempt from disclosure without providing any notice of the denial and without providing the statutory authority for the denial as required by Idaho Code Section 74-103(4). In addition, the Sheriff’s Office effectively and incorrectly assumed the request was made by a “person” for that “person’s” records, and applied the exception to the exception of exemption. Therefore, the Sheriff’s Office’s responses to both requests are deficient and a violation of Idaho Code Section 74-103(4).

### **III. CAUSE OF ACTION**

Hence, the Petitioner requests that the Respondents, the proper custodian of the records, release the public records as required to do so pursuant to Idaho Code Section 74-103. This Court has grounds to grant the Petitioner’s request based upon the following:

1. The records contain information regarding prisoners that are or were in the custody of the Respondents, and/or is a public record otherwise subject to disclosure;
2. The records are within the custody and control of the Respondents;

3. The records requested in Exhibits A and B by the Petitioner in its formal Public Records Requests are subject to disclosure under the Public Records Act pursuant to I.C. § 74-102<sup>2</sup>;
4. The records requested in Exhibits A and B, Plaintiff's formal records request, are not exempt under Public Records Act;
5. The Petitioner is aggrieved by the Respondents' improper denial of the records requested in Exhibits A and B; and,
6. The respondents are improperly withholding the public records requested in Exhibits A and B in violation of the Public Records Act<sup>3</sup>.

#### **IV. PRAYER FOR RELIEF**

In accord with the aforementioned facts, law and arguments, the Petitioner respectfully requests the Court grant this Petition and Order the following:

1. Order the Respondents to disclose the requested records to the Petitioner as required pursuant to I.C. § 74-116(1);
2. Award the Petitioner fees and costs associated with this case as statutorily allowed pursuant to I.C. § 74-116(2)<sup>4</sup>; and,

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<sup>2</sup> I.C. § 74-102(1): 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. . . .

<sup>3</sup> I.C. § 74-116(1): Whenever it appears that certain public records are being improperly withheld from a member of the public, the court shall order the public official charged with withholding the records to disclose the public record or show cause why he should not do so. The court shall decide the case after examining the pleadings filed by the parties and such oral arguments and additional evidence as the court may allow. The court may examine the record in camera in its discretion.

<sup>4</sup> I.C. § 74-116(2): If the court finds that the public official's decision to refuse disclosure is not justified, it shall order the public official to make the requested disclosure. If the court determines that the public official was justified in refusing to make the requested record available, he shall return the item to the public official without disclosing its content and shall enter an order supporting the decision refusing disclosure. In any such action, the court shall award reasonable costs and attorney fees to the prevailing party or parties, if it finds that the request or refusal to provide records was frivolously pursued.

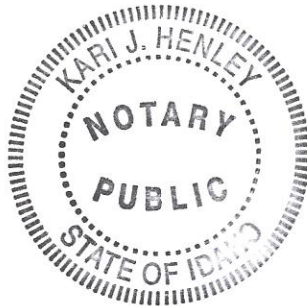
3. Provide the Petitioner with any other further relief that this Court deems proper and just.

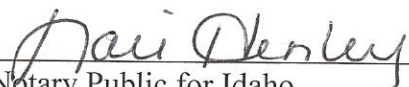
DATED this 25 day of January, 2016.

Frank Davis of Allied Bail Bonds, Inc.

By   
Frank Davis

SUBSCRIBED AND SWORN TO this 25 day of January, 2016.



  
Notary Public for Idaho  
Residing at: hootenai County  
My Commission Expires: 4-27-18



# KOOTENAI COUNTY SHERIFF'S OFFICE Public Records Request Form

Date: Sept 3<sup>rd</sup> 2015 Report # \_\_\_\_\_ CAD# \_\_\_\_\_

Name: Russell Masten

Mailing Address: 5433 N. GOAT Way Ida, ID 83815

Telephone Number: 208 660-2470 Email: alliedba1@gmail.com

I am requesting to copy or to examine certain records of the Kootenai County Sheriff's Office, which may be identified as follows:  Records  Evidence  911 Call  Jail

Date & time of Incident: \_\_\_\_\_  
Address or Location of Incident: Please provide all financial deposits for Dylan Thomas William D.O.B 4-23-1992, please include deposits into Dylan's Trust, commissary, phone, and any other account that he had while incarcerated from March 13 to 8-7-15  
Date and Time of Incarcerations: \_\_\_\_\_

### For Office Use Only below this line.

**Request Granted.**  
The requested record is attached. Sent: Mailed 9/4/15

**Response Delayed**  
 Additional time is necessary to process requested record(s). You should receive a response no later than three (3) working days following the date of your request.  
 Additional time is necessary to locate or retrieve the requested record. You should receive a response no later than ten (10) working days following the date of your request.  
 The electronic record requested will have to be converted to another electronic format which will take more than ten (10) working days following the date of your request to respond. Please contact the Kootenai County Sheriff's Office to discuss when you will receive a response.

**Advance Payment**  
The Kootenai County Sheriff's Office will require advance payment of the cost associated with responding to your request. Please contact the Kootenai County Sheriff's Office to discuss the amount and manner of the advance payment.

**Unable to Respond for One or More of the Following Reasons**  
 Record not known to exist.  
 The Kootenai County Sheriff's Office is not the custodian of the requested record.

**Notice of Denial**  
The requested record is exempt from disclosure pursuant to Idaho Code §§ 74-104 thru 74-111 and/or 74-124.

**Notice of Partial Denial**  
Your request has been partially denied. Certain information has been determined to be exempt from disclosure pursuant to Idaho Code §§ 74-104 thru 74-111 and/or 74-124, and has therefore been redacted from the requested record. A copy of the requested record with the exempt information redacted is attached.

If your request has been denied or partially denied, the attorney for Kootenai County has reviewed the request, or Kootenai County has had the opportunity to consult with an attorney regarding the request for examination or copying of a record and has chosen not to do so. If you wish to appeal the denial or partial denial of your request for public records you may do so pursuant to the provisions of Idaho Code § 74-115, which requires that a petition be filed in the District Court within 180 days from the date of the mailing of the notice of denial or partial denial.

Signature of Kootenai County Sheriff's Office Representative: \_\_\_\_\_

Date: 9/4/15



# KOOTENAI COUNTY SHERIFF'S OFFICE Public Records Request Form

Date: 8-29-15 Report # \_\_\_\_\_ CAD# \_\_\_\_\_  
 Name: Frank Davis  
 Mailing Address: 5433 Government Way Co. Id. 83815  
 Telephone Number: 208-667-8334 Email: cellie@Frontier.com

I am requesting to copy or to examine certain records of the Kootenai County Sheriff's Office, which may be identified as follows:  Records  Evidence  911 Call  Jail

Date & time of Incident: \_\_\_\_\_

~~Address or Location of Incident:~~ For Ryan Patrick Hoffman born in 1977 please provide an electronic copy of his inmate trust account activity including all deposits during April 2015 through July 2015.

Date and Time of Incarcerations: \_\_\_\_\_

**For Office Use Only below this line.**

**Request Granted**  
 The requested record is attached. Sent: \_\_\_\_\_

**Response Delayed**

- Additional time is necessary to process requested record(s). You should receive a response no later than three (3) working days following the date of your request.
- Additional time is necessary to locate or retrieve the requested record. You should receive a response no later than ten (10) working days following the date of your request.
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- Record not known to exist.
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 The requested record is exempt from disclosure pursuant to Idaho Code §§ 74-104 thru 74-111 and/or 74-124 <sup>74-113(3)(e)</sup>

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 Your request has been partially denied. Certain information has been determined to be exempt from disclosure pursuant to Idaho Code §§ 74-104 thru 74-111 and/or 74-124, and has therefore been redacted from the requested record. A copy of the requested record with the exempt information redacted is attached.

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Signature of Kootenai County Sheriff's Office Representative: Paula Selka

Date: 9/2/15