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IDAHO BAR No. 5585

April 27, 2016

Breck Seiniger, Esq.
942 W. Myrtle St.
Boise, Idaho 83702

Re: Public Records/BCSD

Dear Mr. Seiniger:

I am in receipt of your April 13, 2016 letter and its attachments numbering 59 pages. I have discussed your letter and this response with BCSD administration, and at this time BCSD has no further documents to produce, nor will it amend any previous responses.

As an initial matter, your clients' reading of the Idaho Code is erroneous. You correctly recite Idaho Code Section 74-101(13) in your letter, but the interpretation is wrong. Indeed, Idaho Code Section 74-101(13) states:

(13) "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 any state agency, independent public body corporate and politic or local agency regardless of physical form or characteristics.

There is no question that information that is or may be present on Verizon's website, or purportedly recited to Ms. Browning in a telephone call to a service center, or via e-mail, was never in any way prepared, owned, used, or retained by BCSD. Consequently, records that may be present on third party websites such as Verizon, Idaho Power, Amazon.com, etc. are not Public Records of BCSD - or any other state agency in Idaho. This is especially true for records that have never been accessed by BCSD.

Your clients take the novel approach that because a school official could theoretically access a website to glean information from that website, the website's information is therefore not only a public record, but additionally within the custody of BCSD. That is simply not the case. If it were, then billions of web pages - i.e. every website to which BCSD officials have access - would become public records. The records sought simply have never been prepared, owned, used, or retained by BCSD. Rather they have been prepared owned, used, and retained by Verizon.

By way of analogy, if a local contractor comes to BCSD to fix a boiler and makes notes on what was done, those are the contractor's notes. Just because they were made on behalf of BCSD concerning BCSD equipment, they are not BCSD's records, and BCSD has no obligation to request them in response to a public record request.

Another novel theory is the puzzling notion that BCSD has contracted with Verizon to perform any of its duties or functions, citing Idaho Code Section 74-102(13). BCSD only contracts with Verizon for telephone service. Providing telephone service is not a duty or function of BCSD. Nor has BCSD contracted with Verizon to maintain public records on behalf of BCSD. BCSD maintains its own public records in the form of Verizon billing statements received by the District, but BCSD's records unfortunately do not contain the information your clients seek. Again, BCSD does not have any obligation to log in to third-party websites to locate third-party records.

Nor is *Idaho Conservation League v. Idaho State Department of Agriculture*, 143 Idaho 366 (2006) on point. In that case the state agency possessed the records in question and then gave them away. BCSD does not possess, nor has it ever possessed, records in the custody and control of Verizon. The *Idaho Conservation League* ruling does not hold that the Department of Agriculture was obliged to go out and find records maintained by third parties that it had never prepared, owned, used, or retained. The *Idaho Conservation* Court emphasized that a Public Record must "come into the hands" of a public agency. *Id.* At 369-70.

As for the format of records, BCSD maintains that it has no obligation to compile or create records. The citation to Idaho Code Section 74-(102)(10)(d)(iii) is misguided. The District may convert records at its option, but does not have any obligation to create records.

As for your clients' disagreement with the reasonableness of the charges, the time estimated is not only for reviewing emails for potentially exempted information. It should be noted that the costs are also for extracting, organizing, processing, and printing the 704 e-mails. Moreover, it is the policy and practice of the District that all documents that are produced are reviewed by a responsible party to ensure that the correct documents are being produced, and that no category of exempted information is produced. Here, where the correspondence sought is between the County Prosecuting Attorney and high-level district officials, there could easily be intermixed therein exempted correspondence related to students, prosecutions, and/or other confidential investigations. If the District were to inadvertently disclose such information it could be exposed to civil liability. The District maintains a schedule of charges, attached to this letter, which you should find informative.

Last, the District has no obligation to convert documents to an electronic form, even though they were requested that way. The purpose of permitting the request for the electronic format allows the District to scan and e-mail the documents that are ultimately produced - but the District must often print documents for review. The required review of the documents to preserve confidences and privileges is accomplished more easily and accurately with printed documents. That process is within the District's discretion.

ADAM B. KING, ATTORNEY AT LAW, PC

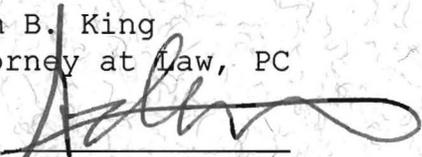
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Thank you for your inquiry, I trust I have addressed the numerous claims made by your clients, however, if I have overlooked something, please advise.

Very truly yours,

Adam B. King
Attorney at Law, PC

By: 

Adam B. King

**BLAINE COUNTY SCHOOL DISTRICT
COPYING AND LABOR FEE SCHEDULE FOR PUBLIC RECORDS REQUESTS**

COSTS OF COPYING

Note: No fee shall be charged for the first two (2) hours of labor in responding to a request for public records, or for copying the first one hundred (100) pages of paper records that are requested. (Idaho Code Section 74-102(10) all cost per in-house copy).

<u>Black & White</u>	<u>Color</u>
\$.05/page: 8.5"x11" Single-sided	\$.50/page: 8"x11"
\$.05/page: 8.5"x14" Single-sided	\$.50/page: 8"x14"
\$.10/page: 8.5"x11" Double-sided	
\$.10/page: 8.5"x14" Double-sided	
\$.15/page: 11"x17" Single-sided	\$ 1.00/page: 11"x17"
\$.30/page: 11"x17" Double-sided	

Cost for third party (out-of-house) copies for oversized materials which cannot be copied by the District:

24"x36" \$ 3.50/page
22"x34" \$ 3.00/page

In addition to the standard copying fee, the District may charge an additional \$2.00 fee per item if the request requires a notarized public record or personal document.

Pursuant to Idaho Code Section 74-102(10), the Labor Rates referenced below will apply under the following conditions:

- If the request is more than one hundred (100) pages of paper records; or
- The request includes records from which nonpublic information must be deleted; or
- The actual labor associated with locating and copying documents for a request that exceeds two (2) person hours.

LABOR RATES

District Administrator	Current salary divided by 1,968 or 2,080 hours per year
Technology Administrator	Current salary divided by 1,968 hours per year
Assistant or Associate	Current salary divided by 1,968 hours per year
Board Clerk	Current salary divided by 1,968 hours per year
District Attorney	Current hourly rate

OTHER CHARGES

For providing a duplicate of a video tape, computer disk, or similar or analogous record system containing public record information, the District shall charge a fee uniform to all persons that does not exceed the sum of the following:

- The District's direct cost of copying the information in that form, including labor at hourly rates specified above, overhead at rate specified above and cost of materials;
- The standard cost, if any, for selling the same information in the form of a publication;
- The cost of consultant services to research and copy public records request.

Payment of the applicable charges shall be made prior to the commencement of research or copying based upon the Board Clerk's estimated cost for meeting the public records request.