

FILED

SEP 13 2016 *YB*

Department of Insurance
State of Idaho

BEFORE THE DIRECTOR OF THE DEPARTMENT OF INSURANCE

STATE OF IDAHO

In the Matter of:

Demand for Administrative Hearing by
FRANK DAVIS

Docket No. 18-3160-16

**FINAL ORDER ON PETITIONER'S
MOTION FOR RECONSIDERATION**

On August 25, 2016, FRANK DAVIS ("Davis"), by and through his attorney of record, timely filed with the Director of the Department of Insurance ("Director") Petitioner's Motion for Reconsideration ("Motion"), wherein Davis requested the Director reconsider his August 17, 2016, Order on Motion for Reconsideration and Request for Administrative Hearing For Contested Case ("Final Order"). The Department of Insurance, by and through its attorney of record, timely filed an Objection to Petitioner's Motion for Reconsideration on September 2, 2016. For the following reasons, the Director denies in part and grants in part Davis' Motion for Reconsideration.

First, it is unclear if Davis is requesting reconsideration of the overall conclusion of the Final Order. As noted by the Department, Davis failed to identify any error as to fact or law in the Director's primary analysis or findings. Davis did not state any basis for reconsidering or modifying the Final Order. Rather, Davis' Motion focuses on a minor side issue concerning the Director's conclusion to not release certain correspondence from Quick Release Bail Bonds

(“Quick Release”) submitted to the Department in the fall of 2015. The Director therefore finds that Davis is not challenging the primary analysis and findings of the Final Order but instead is focused exclusively on the Director’s decision to withhold the Quick Release correspondence.

With regard to the Quick Release correspondence, Davis requested that the Director “reconsider, renounce and revise” his conclusion to not disclose the correspondence and in doing so requested that the Director justify his decision and distinguish three positions asserted by Davis as supporting release of the documents.

In the Final Order, the Director noted that not every aspect of a Department investigation is shared with the public or with the complaining individual. Some elements are proprietary or personal or concern the Department’s investigation process or are otherwise exempt under Idaho law and are withheld from public disclosure. The Director concluded that in this case disclosure of the Quick Release correspondence was not appropriate under the exemptions set forth in chapter 1, title 74, Idaho Code. The Final Order specifically referenced Idaho Code § 74-106(9), which exempts from disclosure information obtained as part of an inquiry into a person’s fitness to retain a license. Such information should be exempt to, among other things, encourage candid and complete responses from the party under investigation and to avoid public exposure to unsubstantiated complaints against a licensee. Davis’ complaints against Quick Release and the Department’s investigation into the activities of Quick Release were, in part, for the purpose of inquiring into Quick Release’s fitness to retain its bail license. Quick Release’s responses fall easily within the scope of the Idaho Code § 74-106(9) exemption. Davis does not dispute this conclusion.

Other exemptions also apply to the nondisclosure of the correspondence such as Idaho Code § 74-107(1) concerning trade secrets and proprietary information and Idaho Code §§ 74-

105(1) and 74-124 concerning open and closed investigations and release of information that could result in an unwarranted invasion of personal privacy. Furthermore, Davis' request for disclosure was untimely, occurring during the hearing and requesting documentation that was not submitted as an exhibit or necessary for the Director's decision. The Director's Final Order concluded the relevant information was already part of the record inasmuch that the Department's April 4, 2016, letter to Davis (*see* Exhibit 10) states that inmates received referral fees, and evidence submitted by Davis (*see* Exhibit 4) reflects payment from certain Quick Release bail agents to an inmate.

However, it appears that Davis uncovered a basis for production of at least a portion of the correspondence not previously considered by the Director. In his Motion, Davis argues that "matters directly pertaining to the outcome of the relief sought by Davis should [] be revealed pursuant to the provisions of Idaho Code 74-113(3) [sic] which provides in pertinent part 'a person may inspect and copy the records of a public agency ... pertaining to that person, even if the record is otherwise exempt from public disclosure.'" [Underlining in original.] Davis' rationale for applying Idaho Code § 74-113(1) is that since he filed the complaint against Quick Release he is entitled to see any document related to the outcome. Davis's rationale is wrong. If Quick Release's response only concerned Quick Release, Davis would have no right to obtain a copy of the letter based on Idaho Code § 74-113(1). This section applies to records about the requesting person, not records about a third party that the requesting person might find interesting, even if such records exist only because of the complaint of the requesting person. However, in a curious twist on this matter, the Quick Release letter references Davis, even though such reference is purely speculative.

Narrowly construed, this passing reference to Davis would not appear to “pertain to” Davis within the scope of the Idaho Code § 74-113(1) exception to documents exempt from production. Rather, this exception would apply to records created and maintained by a state agency and which concern specific details about an individual, such as birth records, licenses, applications for license or investigations into the activities of an individual. This narrow interpretation is supported by Idaho Code § 74-113(2), which allows an individual to amend a record that includes incorrect information. It is hard to imagine how the Director could amend a passing reference to Davis in a letter concerning Quick Release’s activities. Furthermore, in any other context, it would be unlikely that an agency would be aware that this record “pertaining to” Davis even existed since it would be unlikely to have been cross-referenced to any agency file maintained on Davis.

Broadly construed, Idaho Code § 74-113(1) entitles Davis to any documents that reference him by name or other specific identifying manner. “Pertain” means to have reference or relation; to relate. *See* Dictionary.com. Two paragraphs of the Quick Release letter reference Davis. As such, even though the letter could be withheld in its entirety as exempt under Idaho Code § 74-106(9), the portion that concerns Davis is subject to production under a broad interpretation of Idaho Code § 74-113(1).¹ It is the Director’s conclusion that the broad interpretation is consistent with the policy of set forth in the Public Records Act that, except in specific circumstances, all public records should be open to the public. The Director therefore amends the Final Order to the extent that he concluded that a copy of the letter should not be

¹ It is the Director’s conclusion that § 74-113(1) permits disclosure of records pertaining to a person even if other provisions of chapter 1, title 74, Idaho Code would exempt production, and that the reference to “statute” in § 74-113(3)(d) is a reference to statutes outside of the public records act. Hence, if a statute in another part of the Idaho Code prohibits disclosure, then the person would not be permitted access to the record. But if the only exemption to disclosure is within the public records act, then disclosure is permitted. This analysis does not prevent the Director from redacting exempt information in the document that does not pertain to the individual.

produced to Davis. With personal and proprietary information redacted, a copy of the Quick Release letter is attached hereto as Attachment A.

The Director stresses, however, that nothing in this decision otherwise modifies the Final Order. The Department's investigation was thorough. The conclusion of law concerning payment for referral fees is sound. Davis provides absolutely no basis in his Motion to conclude otherwise.

IT IS THEREFORE ORDERED that Davis' Motion for Reconsideration is denied in part and granted in part as provided for herein.

IT IS SO ORDERED.

DATED this 13 day of September, 2016.

STATE OF IDAHO
DEPARTMENT OF INSURANCE


DEAN L. CAMERON
Director

NOTIFICATION OF RIGHTS

This Order constitutes a final order of the Director in response to a party's motion for reconsideration. Pursuant to Idaho Code §§ 67-5270 and 67-5272, any party aggrieved by this final order may appeal it by filing a petition for judicial review in the district court of the county in which: (1) the hearing was held; or (2) the final agency action was taken; or (3) the aggrieved party resides or operates its principal place of business in Idaho; or (4) the real property or personal property that was the subject of the agency decision is located. An appeal must be filed within twenty-eight (28) days of: (a) the service date of this final order; or (b) an order denying a petition for reconsideration; or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. *See*, Idaho Code § 67-5273. The filing of a petition for judicial review does not itself stay the effectiveness or enforcement of the order under appeal.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 13 day of September, 2016, I caused a true and correct copy of the foregoing FINAL ORDER ON PETITIONER'S MOTION FOR RECONSIDERATION to be served upon the following by the designated means:

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