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10/29/2026 5:38 PM
Second Judicial District, Latah County
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IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF LATAH

EWU MEDIA LLC, a Nevada limited liability company,

Petitioner,

v.

CITY OF MOSCOW, IDAHO and MOSCOW POLICE DEPARTMENT,

Respondents.

KAREN LARAMIE, an individual; STACY CHAPIN, an individual; JAMES CHAPIN, an individual; and MAIZIE CHAPIN, an individual,

Intervenors.

Case No. CV29-26-162

MOTION TO RECONSIDER BY D.M. AND NOTICE OF HEARING

In the event this Court grants her motion to intervene, D.M. moves under Idaho Rule of Civil Procedure 11.2(b) for reconsideration of the Court's order dated October 20, 2026 ("October 20 Order"). The decision accompanying that order held that Respondents ("the

City") failed to prove that disclosure of records requested by Petitioner EWU Media LLC ("EWU") would constitute an "unwarranted invasion of personal privacy." Idaho Code (I.C.) § 74-124(1)(c); *see* Mem. Dec. 32–33. The City's failure included a failure to provide the withheld records for this Court to review. *E.g.*, Mem. Dec. 14. The City's failure, however, does not excuse this Court's acknowledged "duty to thoroughly review the withheld records." *Id.* at 26. Reconsideration is warranted so that the Court can discharge this duty.

I. Standard of Review

"The point of a motion for reconsideration is to reconsider the correctness of an order." *Cover v. Idaho Bd. of Correction*, 167 Idaho 721, 733, 476 P.3d 388, 400 (2020). Accordingly, "[w]hen a district court decides a motion to reconsider, 'the district court must apply the same standard of review that the court applied when deciding the original order that is being reconsidered.'" *Int'l Real Est. Sols., Inc. v. Arave*, 157 Idaho 816, 819, 340 P.3d 465, 468 (2014) (quoting *Fragnella v. Petrovich*, 153 Idaho 266, 276, 281 P.3d 103, 113 (2012)).

The original order at issue here ordered disclosure of investigatory records withheld as exempt under the Idaho Public Records Act ("IPRA"). *See* I.C. §§ 74-101 to 74-126. As the party withholding the records, the City "ha[d] the burden to show a reasonable probability that disclosure . . . would result in one or more of the harms identified by" the IPRA provision exempting certain investigatory records, I.C. § 7-124. *Wade v. Taylor*, 156 Idaho 91, 96, 320 P.3d 1250, 1255 (2014). In deciding whether the City met that burden, the Court must "narrowly construe[]" the claimed exemption. *Wade*, 156 Idaho at 97, 320 P.3d at 1256.

II. Analysis

D.M. seeks reconsideration of the October 20 order only on the issue of whether disclosure of the records withheld by the City would constitute "an unwarranted invasion of personal privacy." I.C. § 74-124(1)(c). For purposes of this motion, D.M. does not contest the following conclusion by this Court: "[T]he City has not demonstrated specific records were properly withheld from EWU's August 28, 2025, request based upon a specific exemption under the Idaho Public Records Act." Mem. Dec. 33. Moreover, D.M. agrees with this Court that, as part of the City's demonstration, the City should have provided the Court with the records that it withheld as exempt. *See* Mem. Dec. 14, 19, 26, 33. But under the circumstances of this case, the City's failure to do its duty does not excuse this Court's acknowledged "duty to thoroughly review the withheld records to determine if the exemption applies." *Id.* at 26.

A. This Court Has a Duty to Review the Withheld Documents

This Court recognized that it had a "duty to thoroughly review the withheld records to determine if the exemption [for unwarranted invasions of personal privacy] applies." Mem. Dec. 26. As this Court also recognized, that duty is imposed upon district courts by *Wade v. Taylor*, 156 Idaho 91, 320 P.3d 1250 (2014). The duty appears to be confirmed by the text of the IPRA.

In *Wade*, the Court reviewed the withholding of investigatory records under the IPRA provision then codified at I.C. § 9-335(1). The entity withholding the records was the Canyon County Prosecuting Attorney's Office ("CCPA"). CCPA argued that a district court should take a "categorical approach" to determine whether release of various types of investigatory records were exempt from disclosure. *Wade*, 156 Idaho at 99, 320 P.3d at 1258.

The Idaho Supreme Court rejected this "categorical" approach. *Id.* The Court held, instead, that a district court must conduct "a thorough review of the investigatory record" withheld and then determine whether that particular record was exempt. *Wade*, 156 Idaho at 100, 320 P.3d at 1259.

Wade thus establishes the need for a court's particularized review of each withheld document. *See id.*; *see also id.* at 101, 1260 ("[B]oth the district court and the public agency in custody of the requested public record have a duty to examine the documents subject to the request and separate the exempt and nonexempt material and make the nonexempt material available for examination.") (internal quotation marks omitted); *cf. Gibson v. Ada Cnty.*, 138 Idaho 787, 789, 69 P.3d 1048, 1050 (2002) (stating in IPRA case that, on parties' stipulation, Court had ordered "temporary remand to the district court because certain [withheld] documents were not reviewed by the district court in camera; therefore, the district court had not considered all of the relevant documents when it affirmed the County's denial of the Gibsons' [IPRA] request").

Here, this Court recognized its duty under *Wade* to thoroughly review each withheld document and the concomitant need for the City to provide the withheld documents to permit such review. "Again" and "[a]gain," in fact, the Court lamented that "the City did not provide investigatory records for this Court to review." Mem. Dec. at 19; *see also id.* at 9, 14, 15, 18, 26, 33 (all noting City's failure to provide Court with the actual records withheld). Furthermore, this Court recognized the connection between the City's duty to provide the records and this Court's duty to review each one:

> "It is the City's obligation to point to a specific record that is subject to a specific exemption from disclosure, and it is this Court's duty to thoroughly review the

withheld documents to determine if the exemption applies. No such records have been supplied to the Court for review." Mem. Dec. at 26.

It was obviously impossible for this Court to conduct the "through review" required by *Wade* without having the records before it to review. *See Wade*, 156 Idaho at 100, 320 P.3d at 1259.

Wade's requirement that a district court thoroughly review each withheld record appears to be confirmed by the IPRA itself. Section 74-124(4) addresses the procedure for judicial review of a claim that an investigative (i.e., investigatory) record is exempt from disclosure under that provision:

> "Whenever it is made to appear by verified petition . . . that certain investigative records are being improperly withheld . . ., the court shall order the officer or person charged with withholding the records to disclose the investigative record or show cause why he should not do so. The court ***shall*** *decide the case after* ***examining*** *the* ***record*** *in camera*, papers filed by the parties, and such oral argument and additional evidence as the court may allow." *Id.* (Emphasis added.)

In context, "the record" that the court "shall . . . examin[e]" means the "investigative record" referred to in the preceding sentence. *Id.*; *see also id.* ("If the judge determines that the public official was justified in refusing to make the record public, he *shall return* the item to the public official . . . .") (emphasis added).

It is true that a different IPRA provision, I.C. § 74-116(1), gives the district court discretion to examine a withheld document in camera but does not mandate such examination:

> "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*." *Id.* (Emphasis added.)

This in-camera provision in I.C. § 74-116(1), however, is more broadly applicable than the in-camera provision in I.C. § 74-124(4), the latter of which specifically governs withholding of investigatory records. As the more specific provision, I.C. § 74-124(4) controls, rather than I.C. § 74-116(1). *E.g.*, *Eller v. Idaho State Police*, 165 Idaho 147, 154, 443 P.3d 161, 168 (2019). Moreover, § 74-116(1) governs documents withheld under exemptions that might not invariably necessitate in camera review, such as the exemption for draft legislation. *See* I.C. § 74-109(1). Finally, § 74-124(4)'s seeming mandate to review withheld investigatory records accords with a district court's duty under *Wade* to conduct "thorough review" of each withheld record. *Wade*, 156 Idaho at 100, 320 P.3d at 1259.

The City's failure to provide this Court with the withheld documents *prevented* this Court from discharging its duty to thoroughly review them, but as discussed next, it did not *excuse* this Court from doing so under the circumstances of this case.

B. The City's Failure to Submit the Withheld Documents Does Not Excuse This Court's Duty to Review Them Under the Circumstances of This Case

Under the circumstances of this case, the Court's duty to thoroughly review the withheld records is not excused by the City's failure to provide them. Neither Section 74-124(4)'s apparent mandate to review the withheld investigative records, nor *Wade*'s clear

mandate to do so, is conditioned on the City's decision about whether or not to submit them for review. Indeed, the notion that the City's failure to provide the documents excuses the court's duty to review them cannot be squared with the protection of documents the disclosure of which would "[c]onstitute an unwarranted invasion of personal privacy." I.C. § 74-124(1)(c).

Such a notion would cause people in D.M.'s and the other Intervenors' situation to suffer "unwarranted invasion of personal privacy" solely because the City failed to do its job. As a federal court said in an analogous setting, "The law does not require that third parties pay for the Government's mistakes." *August v. FBI*, 328 F.3d 697, 698, 701 (D.C. Cir. 2003) (because disclosure "would jeopardize the safety and privacy of third parties," court allowed FBI, on rehearing, to assert an exemption under the Freedom of Information Act (FOIA) that it had not previously asserted); *see also Lakin Law Firm, P.C. v. FTC*, 352 F.3d 1122, 1124 (7th Cir. 2003) (rejecting argument that FTC's limited, prior disclosure of otherwise exempt personal information defeated FTC's subsequent exemption claim with respect to same information, stating, "The FTC cannot waive individual consumers' privacy interests—whatever it does or fails to do."). Accordingly, the Court must discharge its duty to thoroughly review the withheld documents despite the City's failure to submit them for in camera review.

The need to do so is particularly compelling in this case. That is because this Court recognized that if the City *had* provided the withheld documents for the Court's review, and *had* made a particularized showing of each one's exempt status, the Court's decision rejecting the exemption claim might have been different. For example, the Court stated at p. 15 of its decision:

> "Had the City identified specific portions of records or specific records sought by EWU that contained information such as a witness's phone number, address, or other personal information, and demonstrated a reasonable probability that disclosure of the requested records would result in an unwarranted invasion of personal privacy, this Court's ruling may be different. Based upon the record, *the City's failure to provide any records to the Court for review* or identify specific records or portions thereof requested by EWU, the Court finds that the City has not met its burden in proving documents or portions of documents redacted or withheld from EWU were proper under I.C. § 74-124(c)." Mem. Dec. 15 (emphasis added).

To similar effect, the Court stated at p. 19:

> "Again, had the City identified specific records or portions thereof, *or provided such records to the Court for review*, the Court's analysis may be different. Perhaps, the Court could have found that withholding of records that contain personal information was justified as disclosure would constitute an unwarranted invasion of personal privacy. However, based upon this record, the Court finds the City did not comply with IPRA by generally withholding records based upon this exemption." *Id*. at 19 (emphasis added).

It could not be clearer from these statements that the Court's October 20 order requires release of documents that might very well have been exempt from disclosure—and might very well have been found to be so, if this Court had conducted the "thorough review" required by *Wade*. 156 Idaho at 100, 320 P.3d at 1259.

In light of that distinct possibility, D.M. submits that the City's failure does not eliminate the need for thorough judicial review of the withheld documents. This would be a

different case if third parties' privacy interests were not at stake. If disclosure of the withheld records implicated only the City's interests, the City's failure to defend those interests adequately would justify an order requiring disclosure of the documents without further review. The City, after all, bears the burden of proving their exempt status. Here, however, the Intervenors will suffer the consequences of the City's failure. That result does not accord with *Wade*, the IPRA, or notions of basic fairness.

Rather than allowing disclosures that might well cause unwarranted invasions of personal privacy, this Court upon reconsideration can order the City to submit the withheld records for this Court to review, and, as discussed next, D.M. urges the Court to do so.

C. The Court Has Power to Order the City to Submit the Withheld Documents

This Court can discharge its duty of "thorough review" by ordering the City to submit the withheld documents for in camera review. Such an order is contemplated by the seeming mandate to conduct such review in I.C. § 74-124(4), quoted above, and by the clearcut mandate of *Wade*. And even if such an order were not mandatory but only discretionary under I.C. § 74-116(1), also quoted above, the order would be required, given the Court's acknowledgement that "thorough review" of the documents could have changed the Court's decision.

In addition to the statutory authority implicitly granted by I.C. §§ 74-124(4) and 74-116(1), case law supports ordering the City to provide the withheld documents to this Court. District courts in other cases have ordered government agencies to provide assertedly confidential documents and confidential testimony for in camera consideration. *See Abdullah v. State*, No. 48677, slip op. at 4 (Idaho Dec. 20, 2023) (observing that district court had "ordered personnel materials from the Boise Police Department, Internal Affairs,

and the Ombudsman Office to be submitted to it for an *in camera* review so that it could examine the records for discoverable *Brady* information); *see also State v. Couch*, 103 Idaho 205, 208–09, 646 P.2d 447, 450–51 (Ct. App. 1982) (trial court ordered in camera examination of informant to determine existence of *Brady* material). The power to order submission of documents that are held by a party and necessary to deciding a case properly would seem to inhere in the judicial power—in this case, the power to adjudicate a petition under the IPRA. *See generally* I.C. 1-1622 (giving court "all the means necessary" to exercise jurisdiction conferred on it).

As discussed below, the Court's ability to conduct thorough, in camera review of the withheld documents would benefit from requiring the City also to prepare a detailed index of those documents.

D. The Court Has Discretion to Order the City to Provide the Parties with a Detailed Index of the Withheld Records to Ensure the Required "Thorough Review"

In addition to ordering the City to produce the withheld documents for in camera review, the Court can and should order the City to prepare a detailed index of the withheld documents. This would enable D.M. and the other Intervenors to show why disclosure would "constitute an unwarranted invasion of personal privacy." I.C. § 74-124(1)(c). Without a detailed index, the Intervenors must depend on the City, which has already (by the Court's lights) fallen short of its duty to defend the withholding and which lacks essential evidence and perspective that Intervenors can supply. An order to produce a detailed index is abundantly justified here.

Under the particular exemption at issue here, "legitimate and substantial privacy interests" must be "weighed against general public information." I.C. § 74-101(17)(a)(ii) (defining "[u]nwarranted invasion of personal privacy"). This is a nuanced inquiry that must be made for each withheld document. It is difficult to undertake this particularized weighing process without evidence from, and the perspective of, those whose personal privacy is at stake.

To be sure, a detailed index is not invariably required to assess exemption claims. A court might be able to determine on a generalized basis that disclosure of some types of records would cause "extreme emotional distress" by their nature. *See*, *e.g.*, *Laramie v. City of Moscow*, No. CV29-25-0755, at 11 (discussing effect upon family members of release of photos and videos showing decedents' bodies and other "incredibly disturbing" material); *cf. Bolger v. Lance*, 137 Idaho 792, 794, 798, 53 P.3d 1211, 1213, 1217 (2002) (requester of public records argued that he was denied due process by government's failure to provide detailed index of withheld records that had been submitted under seal; court affirms withholding of records without addressing this argument but apparently rejects it as harmless error). It might be possible, as well, to make generalized determinations about the public value of such releases. *See id.* (finding "little to be gained by the public" in release of such records).

Here, however, the City has relied on "broad generalization[s]" in its exemption claim. Mem. Dec. 14. Intervenors thus lack even minimal information about the withheld records. Lacking such information, Intervenors cannot explain how release of the documents would affect their "legitimate and substantial privacy interests." I.C. § 74-101(17)(a)(ii). They are left in the dark.

In the federal courts, a detailed index of documents withheld under Freedom of Information Act ("FOIA"), called a "*Vaughn* index," is often used to facilitate judicial review of exemption claims. *See Rugiero v. U.S. Dep't of Justice*, 257 F.3d 534, 544 (6th Cir. 2001). In FOIA litigation, the *Vaughn* index gives the party requesting the documents "a meaningful opportunity to contest" the withholding of the documents. *Wiener v. FBI*, 943 F.2d 972, 977–79 (9th Cir. 1991). Here, such an index would give the Intervenors a meaningful opportunity to defend the withholding. *See Judicial Watch, Inc. v. FDA*, 449 F.3d 141, 145–46 (D.C. Cir. 2006) (stating that "*Vaughn* index" enables court to determine whether claimed exemptions apply). Such an opportunity would enhance this Court's ability to undertake the "thorough review" required by *Wade* while giving Intervenors a fair opportunity to articulate and substantiate the privacy interests at stake. 156 Idaho at 100, 320 P.3d at 1259.

A detailed index has particular value here, considering the nuanced inquiry involved in determining whether disclosure of each withheld record would cause an "unwarranted" invasion of Intervenors' privacy. I.C. § 74-101(17)(a)(ii). Of course, case law under the FOIA in no way controls interpretation of the IPRA. See, *e.g.*, *Magic Valley Newspapers, Inc. v. Magic Valley Regional Med. Ctr.*, 138 Idaho 143, 145–46, 59 P.3d 314, 316–17 (2002). But the *Vaughn* index can provide an example for effective judicial review of the exemption claim in this case as required by *Wade*. *See generally* U.S. Department of Justice, Office of Information Policy, Guide to the Freedom of Information Act, Litigation Considerations Part 2, "Vaughn Index," at 27–42 (posted Feb. 27, 2024), https://www.justice.gov/oip/doj-guide-freedom-information-act-0.

This Court has the power to order the City to prepare an index under I.C. § 74-124(1)(c). Section 74-124(1)(c) allows the Court to consider "additional evidence" besides the withheld records, papers filed by the parties, and oral argument. *See* I.C. § 74-124(1)(c); *see also id.* § 74-116(1) (same). The index will facilitate the production of "additional evidence" by Intervenors on the effects that disclosure of each withheld document would have on their privacy. *Cf. Hagadone Corp. v. N. Idaho Coll.*, No. CV28-23-1273 (Idaho 1st Jud. Dist., Kootenai County, July 3, 2023) (IPRA action ordering agency to provide details about withheld documents in context of responding to interrogatories), https://www.kcgov.us/DocumentCenter/View/22765/September-5-2023-Hagadone-v-North-Idaho-College-CV28-23-1273.

III. Relief Requested

In summary, D.M. asks that, if this Court grants her motion to intervene, it also grant reconsideration of the October 20 order and, upon reconsideration, (1) order the City to identify the requested-but-withheld records; (2) submit those records to this Court for in camera review; and (3) prepare, file, and serve upon the parties a detailed index of the withheld documents that describes the documents in enough detail to enable Intervenors meaningfully to defend the withholding of documents, or portions of documents, the disclosure of which would constitute an unwarranted invasion of their personal privacy.

A proposed order is submitted herewith.

NOTICE IS HEREBY GIVEN that this Motion shall be heard before the Honorable Megan E. Marshall on November 12, 2026, at 10:00 a.m. (Pacific), via Zoom.

Dated this 29th day of October, 2026.

/S/ Robyn L. McPherson
ROBYN L. MCPHERSON, ISBA #10512
Attorney for Intervenor D.M.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 29th day of October, 2026, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

LATAH COUNTY COURT CLERK	Via iCourt File & Serve
KERSTI H. KENNEDY Givens Pursley LLP Attorney for EWU Media LLC 601 West Bannock Street Boise, ID 83702	Via iCourt File & Serve
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/S/ Robyn L McPherson