



Idaho State Police

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Colonel G. Jerry Russell
Director

C.L. "Butch" Otter
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To: All Idaho Prosecuting Attorneys
From: Major Ralph Powell, ISP Police Services Commander
Subject: Borkenstein Course Training Material Review
Date: February 17, 2010

Idaho State Police Forensic Services (ISPFS) has received a number of public records requests and been served with subpoenas duces tecum for employee training materials from the Robert F. Borkenstein Course on Alcohol & Highway Safety: Testing, Research and Litigation. However, the training materials are all copyrighted material of Indiana University. It is against the law for ISPFS to copy or reproduce any of this material without the permission of the copyright holder. Indiana University has not, and will not grant that permission to ISPFS (see attached letter). Those wishing to obtain a copy of the material will have to contact Indiana University directly. ISPFS will not violate copyright law by reproducing this training material in any way.

While we feel very strongly about protecting copyright and intellectual property, we will comply with the Idaho Public Writings Act and allow attorneys to view and inspect the documents in the Forensic Lab with the following conditions:

- A written request must be made to one of the three ISPFS Lab Managers pursuant to the Idaho Public Writings Act.
- The Lab Manager may notify the prosecutor on any active criminal case pertaining to the request and offer them (or a representative) the opportunity to be present at the viewing. The prosecutor will be afforded the same amount of time to review the documents.
- All viewing will take place in the ISPFS Laboratory where the records are stored.
- No photocopying, video recording, audio recording, photos, or transmission devices (such as cell phones) will be allowed in the viewing room. This will be strictly enforced.
- The attorney will be able to make notes according to "fair use" laws and must properly reference any material paraphrased, summarized, or quoted.
- After submitting the request, an appointment to view and inspect the records will be made at the convenience of the Lab Manager at a time that will produce the least distraction to operations.
- The viewing of records is not a deposition, and the scientists are not required (and will not) answer questions at the viewing time. The process will be under the supervision of the Lab Manager and an ISP representative will be present at all times to ensure compliance with the viewing regulations outlined above.
- To minimize the disturbance to the forensic scientists and loss of productive time, the viewing period will be limited to a period of two (2) hours. If additional time is required for the review, another request must be made and another appointment scheduled. ISP reserves the right to request reimbursement for expenses related to any review over the initial two hour time period pursuant to the Idaho Public Writings Act.

We understand the request to evaluate the Borkenstein information may be pertinent to a criminal trial and the procedures the ISPFS Laboratories have made to provide inspection of this material will allow that evaluation without the violation of Federal copyright laws.

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