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May 7, 2020

To: Meredith Asay, Director of Governmental Relations
From: Tara Evans, Vice President and General Counsel, University of Wyoming
Re: Suggested Wyoming Public Records Act exemptions for consideration by the Joint Judiciary Committee

The University of Wyoming appreciates the chance to provide input on the language of the Wyoming Public Records Act. The University is not advocating for more or less transparency, but we are advocating for more clarity in the language of the exemptions to allow public records officers to more efficiently and effectively respond to requests for public documents with less ambiguity and without the need for interpretation.

Some exemptions to consider

1. W.S. 16-4-203(d)(iii). *Personnel file* is not defined, which creates ambiguity for public records officers when determining whether a requestor should be denied the right to inspect a particular record. Note that this section is a *shall deny* section, not a section that requires a balancing of the public's interest.
2. W.S. 16-4-203(d)(i). *Sociological data* is not defined, again creating some ambiguity for public records officers when determining whether a requestor should be denied the right to inspect a particular record. For example, some states define sociological data as personal cell phone numbers, residential addresses, social security numbers, banking or other financial information, email addresses, gender, race, religion, etc. Note that this section is a *shall deny* section, not a section that requires a balancing of the public's interest.
3. W.S. 16-4-203(d)(xi). *Cleary unwarranted invasion of personal privacy* is challenging to interpret and apply in a consistent manner. For example, the University conducts many types of investigations (sexual harassment, sexual assault, discrimination, fraud, academic misconduct, research misconduct, ethical violations, etc.). When does an investigation, or when do certain documents compiled during an investigation, rise to the level of *unwarranted invasion of personal privacy* for the complainant? Witnesses? Respondent? There also appears to be a contradiction between this exemption, which requires a balancing test, and the personnel files exemption ((d)(iii)), which is a *per se* denial.
4. W.S. 16-4-203(b)(v). Per case law, the *deliberative process privilege* falls under this exemption. The legislature might consider adding this privilege as an exemption, with a clearly defined definition of what meets this privilege.

5. W.S. 16-4-203(b)(iii). This exemption is clear (“the specific details of *bona fide research projects* being conducted by a state institution”); however, other states have language that is a bit more representative of the universe of documents that universities and community colleges would need to protect. For example, Vermont’s public records statute articulates the following exemption:

(23) Any data, records, or information produced or acquired by or on behalf of faculty, staff, employees, or students of the University of Vermont or the Vermont State Colleges in the conduct of study, research, or creative efforts on medical, scientific, technical, scholarly, or artistic matters, whether such activities are sponsored alone by the institution or in conjunction with a governmental body or private entity, until such data, records, or information are published, disclosed in an issued patent, or publicly released by the institution or its authorized agents. This subdivision applies to, but is not limited to, research notes and laboratory notebooks, lecture notes, manuscripts, creative works, correspondence, research proposals and agreements, methodologies, protocols, and the identities of or any personally identifiable information about participants in research. This subdivision shall not exempt records, other than research protocols, produced or acquired by an institutional animal care and use committee regarding the committee's compliance with State law or federal law regarding or regulating animal care.

6. *Redaction v. withholding*. There is a lack of direction on whether institutions are required to withhold an entire document (easier on resources but less transparent) or whether we are required to redact a document. Oftentimes, the University receives complicated and voluminous key word search requests. A majority of the time is spent redacting information that the University is not allowed to disclose per the law (medical information, student educational records, diagnostic records, bona fide research, etc.).

If the Joint Judiciary Committee is interested in exploring any of these suggestions, my office would be eager to work with the Committee or offer suggested language for its consideration.