

**DRAFT ONLY
NOT APPROVED FOR
INTRODUCTION**

HOUSE BILL NO.

Public records-personnel files.

Sponsored by: Joint Judiciary Interim Committee

A BILL

for

1 AN ACT relating to public records; clarifying the right of
2 inspection for personnel files; providing definitions;
3 making conforming amendments; and providing for an
4 effective date.

5

6 *Be It Enacted by the Legislature of the State of Wyoming:*

7

8 **Section 1.** W.S. 16-4-201(a) by creating new paragraphs
9 (xv) and (xvi) and 16-4-203(b)(vii) and (d)(iii) are
10 amended to read:

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12 **16-4-201. Definitions; short title; designation of**
13 **ombudsman.**

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(a) As used in this act:

(xv) "Institution of higher education" means the University of Wyoming and any community college in this state;

(xvi) "Specified public employee" means any of the following employees of governmental entities:

STAFF COMMENT
The working group highlighted the question of whether the language in (xvi)(intro) above should be clarified as to whether it applies to both current and former employees, or just current employees; and if it applies to the latter, whether some temporal limit should be included for the availability of inspection of files of former employees.

(A) The attorney general and the director of any department of the executive branch appointed by the governor under W.S. 9-2-1706, or the director of any legislative agency;

1 (B) The president of any institution of
2 higher education;

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4 (C) The chief executive officer or director
5 of any separate operating agency under W.S. 9-2-1704(d);

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7 (D) Commissioners of the public service
8 commission and members of the state board of equalization;

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10 (E) Managers and assistant managers of any
11 county or municipality in Wyoming.

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14 *****
15 STAFF COMMENT

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17 W.S. 9-2-1704(d), referenced above, includes the following
18 government employees:

19
20 (d) The entities of state government specified in
21 this subsection are designated as separate operating
22 agencies, which are separate and distinct from the
23 departments and offices specified in subsection (a) of this
24 section because of their quasi-judicial responsibility or
25 because of their unique, specialized function which
26 precludes their inclusion in another department. This act
27 does not otherwise apply to separate operating agencies.
28 Separate operating agencies are as follows:

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30 (i) Adjutant general's department;

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32 (ii) State public defender's office;

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- 1 (iii) State building commission;
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3 (iv) Public service commission;
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5 (v) State board of equalization;
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7 (vi) University of Wyoming;
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9 (vii) Community college commission;
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11 (viii) Oil and gas conservation commission;
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13 (ix) State geological survey;
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15 (x) State board of parole;
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17 (xi) Office of administrative hearings created
18 by W.S. 9-2-2201;
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20 (xii) Wyoming water development office;
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22 (xiii) Office of state lands and investments;
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24 (xiv) Environmental quality council;
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26 (xv) School facilities commission established
27 under W.S. 21-15-113;
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29 (xvi) Wyoming enhanced and improved oil recovery
30 commission;
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32 (xvii) Office of guardian ad litem.
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34 The Committee may also wish to consider whether other
35 public officials of municipal government (i.e., mayors)
36 should be included in the subparagraph above, and whether
37 counties should be referenced in subparagraph (E) above.
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39 The employees specified in this definition are based on the
40 working group's direction and based on the language in the
41 Ethics and Disclosure Act defining "public employee." The
42 Committee may wish to consider whether these employees or
43 other employees not listed here should be included in this
44 bill draft.
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4 16-4-203. Right of inspection; grounds for denial;
5 access of news media; order permitting or restricting
6 disclosure; exceptions.

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8 (b) The custodian may deny the right of inspection of
9 the following records, unless otherwise provided by law, on
10 the ground that disclosure to the applicant would be
11 contrary to the public interest:

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13 (vii) An application for the position of
14 president of an institution of higher education, letters of
15 recommendation or references concerning the applicant and
16 records or information relating to the process of searching
17 for and selecting the president of an institution of higher
18 education, if the records or information could be used to
19 identify a candidate for the position. This paragraph shall
20 not apply to current presidents of institutions of higher
21 education;. ~~As used in this paragraph "institution of~~
22 ~~higher education" means the University of Wyoming and any~~
23 ~~community college in this state;~~

24

1 (d) The custodian shall deny the right of inspection
2 of the following records, unless otherwise provided by law:

3
4 (iii) Personnel files except ~~those~~as otherwise
5 provided by this paragraph. For all employees of
6 governmental entities, personnel files shall be available
7 to the duly elected and appointed officials who supervise
8 the work of the person in interest. Applications,
9 performance ratings and scholastic achievement data for all
10 employees of a governmental entity shall be available ~~only~~
11 to the person in interest and to the duly elected and
12 appointed officials who supervise his work. Employment
13 contracts, working agreements or other documents setting
14 forth the terms and conditions of employment of public
15 officials and employees of a governmental entity are not
16 considered part of a personnel file and shall be available
17 for public inspection. For all employees of a governmental
18 entity, personal information that would constitute an
19 unwarranted invasion of personal privacy shall not be
20 available for inspection. Applications, performance ratings
21 and elements of performance for specified public employees
22 shall be available for public inspection. Subject to the
23 provisions of this act, documents placed within a personnel

1 file are not automatically exempt from inspection under
2 this paragraph;

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6 STAFF COMMENT

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8 The amendments to the personnel-file exemption are based on
9 the working group's direction. The Committee may wish to
10 consider the following as it reviews these changes:

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12 • There is no definition for what is meant by an
13 "element of performance." Defining that term may bring
14 clarity to the application of this exemption for
15 specified public employees. Below are possible
16 definitions for the Committee to consider. By no means
17 is this an exhaustive list:

18 ○ "'Elements of performance' means any information
19 that bears on the public duties of a specified
20 public employee."

21 ○ "'Elements of performance' means any personnel
22 records of a specified public employee that
23 concern the specified public employee's public
24 service, employment history, classification, pay
25 grade or classification, salary history and job
26 classification."

27 ○ "'Elements of performance' means employment-
28 related information contained in the personnel
29 file of a specified public employee, including
30 but not limited to information related to a
31 specified public employee's application,
32 selection, demotion, transfer, leave, salary,
33 employment contract, benefits, suspension,
34 performance evaluation, disciplinary actions and
35 termination."

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37 • The working group noted the need for clarifying that
38 personal information should not be available for
39 inspection. A sentence based on other states' public-
40 records law is included in the amended language above
41 ("For all employees of a governmental entity, personal
42 information that would constitute an unwarranted

1 invasion of personal privacy shall not be available
2 for inspection."); if the Committee prefers that
3 approach, the Committee may wish to consider defining
4 "unwarranted invasion of personal privacy."

5 • In a case regarding W.S. 16-4-203(d)(vii), the
6 exemption that concerns "hospital records relating to
7 medical administration, medical staff, personnel,
8 medical care and other medical information," the
9 Wyoming Supreme Court adopted Georgia's standard for
10 what would constitute an "unwarranted invasion of
11 privacy": "unwarranted publicity, unwarranted
12 appropriation or exploitation of one's personality, or
13 the publicizing of one's private affairs with which
14 the public had no legitimate concern." Houghton v.
15 Franscell, 870 P.2d 1050, 1056 (Wyo. 1994) (quoting
16 Richmond Cty. Hosp. Auth. v. S.E. Newspapers Corp.,
17 311 S.E.2d 806, 807 (Ga. 1984)).

- 18 • Below are examples of other states' definitions:
 - 19 ○ One state defines it as "the disclosure of
20 information that is highly personal or
21 objectionable to a reasonable person and in which
22 the subject's right to privacy outweighs any
23 legitimate public interest in obtaining the
24 information."
 - 25 ○ Other states spell out what "personal
26 information" is in terms of what is not available
27 for inspection; for example: "the employee's or
28 the employee's family members' home address, home
29 telephone number, personal mobile telephone
30 number, personal pager number, personal email
31 address, social security number, insurance
32 coverage, marital status, or payroll deductions."

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37 **Section 2.** This act is effective July 1, 2021.

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39 (END)