



WYOMING LEGISLATIVE SERVICE OFFICE

Memorandum

DATE July 2023

TO Representative Karlee Provenza

FROM Brian Fuller, Senior Staff Attorney
Katie Adams, Staff Attorney

SUBJECT Public Records Act and Peace Officer Standards and Training (POST) Commission

This Memorandum is intended to provide an overview of public records law, and provide information on the access the Peace Officer Standards and Training (POST) Commission has to personnel files.

Public Records Act and POST

Public Records Act, Generally

The Legislature first enacted public-records laws in 1969.¹ Generally, the first iteration of those laws provided that all of the state's public records shall be open for inspection by any person at reasonable times and provided procedures for appealing the denial of inspection and for procuring copies of public records.²

The Wyoming Supreme Court has discussed and interpreted Wyoming's Public Records Act on several occasions. The Court has said that the policy of the Act "is one of disclosure, not secrecy."³ The Court has also stated that the "legislature of this state has stressed the importance of making available to the public records, books and files of state agencies."⁴

¹ See 1969 Wyo. Session Laws Ch. 145.

² 1969 Wyo. Session Laws Ch. 145, § 1.

³ Freudenthal v. Cheyenne Newspapers, Inc., 2010 WY 80, ¶ 18, 233 P.3d 933, 938 (Wyo. 2010) (citation omitted).

⁴ Laramie River Conservation Council v. Dinger, 567 P.2d 731, 733 (Wyo. 1977).

These statements are, according to the Court, “pronouncements from this court having to do with making the public’s business available to the public whenever that is possible.”⁵

Generally, all public records “shall be open for inspection by any person at reasonable times, during business hours of the governmental entity, except as provided in this act.”⁶ The Public Records Act clarifies that all public records must “be released not later than thirty (30) calendar days from the date of acknowledged receipt of the request.”⁷ But the Public Records Act contains exceptions and grounds for denying the right of inspection of public records. As it pertains to the exceptions and grounds for denial, the Wyoming Supreme Court has liberally interpreted the Public Records Act to favor disclosure—noting that the “object of the public records act is disclosure, not secrecy”—and that exceptions are to be construed “narrowly.”⁸ The Court has recognized that the language of these provisions “imposes a legislative presumption which says that, where public records are involved, the denial of inspection is contrary to the public policy, the public interest and the competing interests of those involved.”⁹

The Public Records Act includes both discretionary and mandatory exceptions for denying the right of public inspection. For the discretionary exceptions, denial of access can be made only “on the ground that disclosure to the applicant would be contrary to the public interest.”¹⁰ One discretionary exception authorizes a public-records custodian of a governmental entity to, at its discretion, deny access to records of investigations.¹¹

The Wyoming Supreme Court has held that the documents contemplated by this exception are those related to law enforcement and prosecution purposes.¹² The Court has held that a police department cannot deny inspection of entire rolling logs, jail logs, or case reports based on this exception simply because the log or report may contain some exempt material concerning investigations.¹³

For the mandatory exceptions, the Public Records Act also provides that a custodian of public records “shall deny the right of inspection of the following records, unless otherwise provided by law.”¹⁴ One exception concerns personnel files:

⁵ Sheridan Newspapers v. Sheridan, 660 P.2d 785, 791 (Wyo. 1983).

⁶ W.S. 16-4-202(a).

⁷ W.S. 16-4-202(c)(iii).

⁸ Houghton v. Franscell, 870 P.2d 1050, 1052 (Wyo. 1994).

⁹ Sheridan Newspapers, 660 P.2d at 796.

¹⁰ W.S. 16-4-203(b)(intro).

¹¹ W.S. 16-4-203(b)(i).

¹² Allsop v. Cheyenne Newspapers, 2002 WY 22, ¶ 23, 39 P.3d 1092, 1099 (Wyo. 2002).

¹³ Sheridan Newspapers, 660 P.2d at 797, 799.

¹⁴ W.S. 16-4-203(d).

W.S. 16-4-203(d)(iii): Personnel files except those files shall be available to the duly elected and appointed officials who supervise the work of the person in interest. Applications, performance ratings and scholastic achievement data shall be available only to the person in interest and to the duly elected and appointed officials who supervise his work. Employment contracts, working agreements or other documents setting forth the terms and conditions of employment of public officials and employees are not considered part of a personnel file and shall be available for public inspection.¹⁵

It appears that most of the case law concerning this provision focuses on the inspection of employment contracts and salaries. The Wyoming Supreme Court has stated that the last sentence of this exception expressly contemplates the inspection of records documenting the amount of public monies that will be paid by the public body to the public employee for services rendered.¹⁶ The Court applied this principle in another case to hold that this exception did not apply to the names and salaries of a school district's employees.¹⁷

Another mandatory exception precludes access to public records concerning investigating violations:

W.S. 16-4-203(d)(xi): Records or information compiled solely for purposes of investigating violations of, and enforcing, internal personnel rules or personnel policies the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.¹⁸

The Wyoming Supreme Court has noted that this exception is one way the Legislature "has recognized the need to protect its citizens' privacy interests."¹⁹ The Court has held that this exception applies only to records exclusively compiled for investigations of violations of internal personnel rules, and a tape of a meeting that an employee surreptitiously recorded did not fall within this exception.²⁰

At least one other state supreme court has considered the disclosure of police-misconduct records in light of a similar provision in the state's public-records act. The Hawaii Supreme

¹⁵ W.S. 16-4-203(d)(iii).

¹⁶ Houghton, 870 P.2d at 1056.

¹⁷ Laramie Cty. Sch. Dist. No. 1 v. Cheyenne Newspapers, 2011 WY 55, ¶ 2, 250 P.3d 522, 529 (Wyo. 2011).

¹⁸ W.S. 16-4-203(d)(xi).

¹⁹ Howard v. Aspen Way Enters., 2017 WY 152, ¶ 24, 406 P.3d 1271, 1277 (Wyo. 2017).

²⁰ Sheaffer v. State, 2006 WY 99, ¶ 14, 139 P.3d 468, 473 (Wyo. 2006).

Court balances the public and private interests by considering (1) the significant privacy interest in police officers' disciplinary suspension records; and (2) the public interest in disclosure.²¹

Peace Officers Standards and Training Commission

The Peace Officers Standards and Training (POST) Commission was initially established in 1971.²² Statute prescribes the POST Commission's duties. Among other things, the Commission is required to:

- Establish standards for certification of peace officer training.²³
- Grant, suspend, or revoke certification of peace officers or dispatchers for substantial failure to comply with the POST statutes or the rules of the Commission, subject to contested-case procedures under the Wyoming Administrative Procedure Act.²⁴
- Adopt rules that establish procedures and criteria for the issuance, denial, renewal, suspension and revocation of correctional officer certification. The rules must include, as grounds for denial, suspension or revocation of certification, the "substantial failure" to comply with the POST statutes or Commission's rules.²⁵

Although statute authorizes the Commission to take actions to suspend or revoke a peace officer's certification, statute only specifies the following in terms of the Commission's ability to access or disseminate certain information regarding POST certification:

- If a peace officer is convicted of a felony, the director of the POST Commission must notify the peace officer and the officer's employing agency that the officer's certification has been automatically revoked as of the date of conviction.²⁶
- If a peace officer is terminated, the employing agency must notify the Commission (and the officer) of the termination, "setting forth in detail the facts and reasons for the termination." If the officer was terminated for violating the POST statutes or the Commission's rules, the notice must state that. An officer who is terminated is entitled to submit a written statement responding to the claims associated with the termination; that statement becomes "a permanent part of the file." A potential employer can contact the Commission to inquire as to the facts and reasons for the

²¹ Peer News LLC v. City & Cty. of Honolulu, 376 P.3d 1, 17-20 (Hawaii 2016); State Org. of Police Officers v. City & Cty. of Honolulu, 494 P.3d 1225, 1249-51 (Hawaii 2021).

²² W.S. 9-1-702(a); 1971 Wyo. Session Laws Ch. 178; 1991 Wyo. Session Laws Ch. 60.

²³ W.S. 9-1-702(e).

²⁴ W.S. 9-1-702(f)(v).

²⁵ W.S. 9-1-702(k)(ii).

²⁶ W.S. 9-1-704(h).

previous termination, and “[u]nless otherwise prohibited by law, the commission shall, upon request provide to the potential employer all pertinent information which is in its possession.”²⁷

Beyond this, statute does not specify whether the POST Commission has access to personnel and misconduct records. The Wyoming Supreme Court has stated that state agencies “can exercise only those powers authorized by statute.”²⁸ And when a statute provides a particular manner in which a power may be executed, an agency cannot exercise its power in a different way.²⁹

From this information, the following observations may be made about the POST Commission’s ability to access police-misconduct records:

- The Public Records Act does not appear to limit who can request public records.³⁰
- The Public Records Act generally precludes access to public records that are personnel files and records that concern investigative files associated with potential violations of internal rules.
- For the personnel-file exception, personnel files “shall be available to the duly elected and appointed officials who supervise the work of the person in interest.”³¹ It is unclear whether the POST Commission could be considered as appointed officials who supervise the work of the person in interest.
- For the discretionary investigation-record exception, it is unclear whether files concerning police misconduct would be considered “records of investigations” by law enforcement.
- The statutes creating the POST Commission are silent as to whether the Commission can (or cannot) access police-misconduct records.

The memorandum is intended to provide general information. Please let us know if you have any questions or would like further information.

²⁷ W.S. 9-1-704(j).

²⁸ Horse Creek Conservation Dist. v. State, 2009 WY 143, ¶ 30, 221 P.3d 306, 316 (Wyo. 2009).

²⁹ Id.

³⁰ See W.S. 16-4-202(a) (stating that all public records are open for inspection “by any person” at reasonable times, subject to exceptions).

³¹ W.S. 16-4-203(d)(iii).