



## MEMORANDUM

**To:** Joint Corporations, Elections & Political Subdivisions Interim Committee & Josh Anderson of LSO

**From:** Darlena Potter, Wyoming Public Records Ombudsman

**Date:** July 29, 2025

**Subject:** This memorandum serves to provide some initial feedback on the changes proposed for a change to the Wyoming Public Records Act.

I would like to take the opportunity to thank the Joint Corporations, Elections & Political Subdivisions Interim Committee for taking the time and consideration to review changes that are necessary for the Wyoming Public Records Act (WPRA). I understand that you have many equally important pieces of legislation that are also being considered, and appreciate your time and consideration.

I am very grateful to Mr. Anderson for taking the time to provide some starting legislation to get this ball rolling, and Mr. Bonnar for offering a constituent's perspective. In an effort to make this process as beneficial as I can, I would also like to offer my perspective on the draft revisions to the WPRA. I believe that reducing the reply time for acknowledging requests from seven to three business days could be problematic. Many individuals lack backup personnel for absences due to jury duty, illness, or vacation. Additionally, during peak periods, such as elections, the primary focus of staff in small communities is their core responsibilities. Public records requests often become an additional duty, squeezed in between other essential citizen services. Prioritizing election integrity, which involves lengthy workdays and meticulous attention to detail, can make prompt responses to record requests challenging. It is not a matter of unwillingness, but rather a capacity issue, as staff are also committed to ensuring compliance with state statutes and regularly work beyond normal hours in hopes of catching up. While an initial email response is straightforward, it initiates a countdown for follow-up and document production, requiring careful thought and deciphering of requests. It is important to consider where the focus should be: on ensuring smooth elections or on acknowledging and addressing public record inquiries. Both equally important to maintain transparency, but compete for time. Most counties and cities do not employ a full-time records designee, and creating such positions could incur potentially significant FTE costs for entities. I would add, that we are already reducing budgets to consolidate work within our current resources. The original timelines are more realistic to align with citizen and entity needs.

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At the state level, while it may appear somewhat easier, similar time constraints arise due to illness, training, vacations, and family emergencies. Automated systems that could assist with this process are costly and are currently utilized by only a few agencies due to funding. If state entities face affordability issues, local entities are even less likely to acquire such systems. Furthermore, most entities lack dedicated IT staff to design and implement these solutions. As I mentioned in my testimony on May 9, 2025, some entities may have only enough professional staff to cover the basic needs of their towns or cities. Several towns, particularly in our rural communities, can often only afford a receptionist, whom they have serve as the public records designee and may only have limited hours during a week to perform each assigned hat. While automated responses provide immediate notification to citizens, the actual processing of requests requiring human intervention and can only commence when staff are available to locate and review the information. Consequently, I believe that reducing the notification period to three business days would invariably set entities up for constant failure and more frustration on both sides.

I also respectfully disagree with the proposed ten-day production period for similar reasons. Staff turnover, shortages, and limited funding in some cases hinder entities' ability to efficiently retrieve documents and facilitate legal review. While the public generally advocates for readily available public records, requests for information spanning past two or three years often involve documents stored in physical archives, necessitating manual retrieval. Electronic documentation also requires dedicated personnel to locate and prepare for review by legal representatives to prevent potential fines for improper disclosure, as outlined in W.S. 16-4-205, which currently imposes a \$750 fine for knowing or intentional violations, increasing to \$2,000 under the proposed legislation. This raises a crucial question: do we prioritize thorough, accurate, and responsive information, or quick delivery? I believe the public desires both, which necessitates sufficient time and due diligence. I would propose adding context that states if all records can be produced within a ten-day production window, it should be done within that time frame as a best practice. Mr. Anderson did a thorough job regarding the proposed W.S. 16-4-202(c) section. If some of the records are available at that ten-calendar-day mark, then the requestor shall be notified of what is available with an estimated cost for what is currently available. They may be given the option of waiting until all documents are ready. If their request is piecemeal, then the designee will accommodate this request. At the ten-day mark, they should have a good sense of how long the entirety of the production should take and a good faith cost estimate available to the requestor. All documents must be provided within that thirty-day period unless there is an exceptional reason why it was not and the ombudsman has approved the delay. If there has been no communication regarding the delay with the requestor or ombudsman, there would be an automatic fine (set amount or daily sum, only suggestions) to be taken off of the requestor's cost for production of requested records. If the entity *does not* provide communication to the requesting party or the ombudsman, the entire cost will be waived, and the entity's name will be provided to the Legislature for further consideration of penalties.

Regarding the strengthening of enforcement mechanisms, while the suggested language may appear beneficial, it will still ultimately require the district attorney's or attorney general's office to review each case and decide whether to pursue fines or take any action on a complaint. These offices may, due to caseload constraints, choose not to engage their resources. Although I

acknowledge that the ombudsman position lacks the necessary licensure to independently advance citizen complaints, the proposed changes appears to yield a similar outcome to the current situation, lacking true enforcement power. It would merely introduce an additional layer for citizens to navigate before resorting to court, potentially delaying the resolution of disputes and causing a surge in filings to the district court. The current proposal, as written, still mandates the court to provide fines and enforcement of the production of documents, when the entity does not follow the ombudsman's intervention.

While I appreciate the Committee's consideration of citizens' and ombudsman's calls for reform, the proposed amendments to the Wyoming Public Records Act, in their current form, would significantly increase workloads for all entities, create additional barriers for dissatisfied requestors, and impose unnecessary burdens on the ombudsman, who endeavors to serve both parties fairly. I am confident that more beneficial changes can be implemented thoughtfully, benefiting both citizens and governmental entities, if the amendments to these laws are postponed until the 2026-2027 legislative year. This postponement would allow for comprehensive feedback to refine potential legislation. As ombudsman, I am committed to seeing positive changes enacted, but these must be realistic and well-considered, which requires adequate time. Rushing this process will, in my estimation, lead to increased chaos, diminished assistance, and ultimately, less favorable outcomes.

I respectfully ask the Committee to defer these changes to allow for the development of superior legislation, thereby preventing the need for further amendments within a year or two. I believe that while the legislature's intentions are commendable, a more profound understanding of the Act as a whole, including its intricate nuances, would result in a more effective law, which I feel are very much needed. Furthermore, based on my observations from interim Committee meetings this summer, the passage of several other legislative initiatives may also necessitate corresponding adjustments to the Wyoming Public Records Statutes.

If you have any questions or require further clarification, please do not hesitate to contact

Thank you for taking the time to review and improve the WPRA. I appreciate your efforts.

Sincerely,

Darlana Potter  
Public Records Ombudsman