

Wyoming Public Records Act

Current Law and July 1, 2019, Amendments

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Public Records Act

- ▶ Wyoming Statutes 16-4-201 through 205

General Rule

“All public records shall be open for inspection by any person at reasonable times, during business hours of the state entity or political subdivision” W.S. 16-4-202

- ▶ Agencies may make rules and regulations reasonably necessary for the protection of records and prevention of unnecessary interference with the regular discharge of agency duties.

What is a public record?

- ▶ W.S. 16-4-201 Definitions.
- ▶ Public Records: “any *information* in a physical form created, accepted, or obtained by a governmental entity *in furtherance* of its official function and transaction of public business which is not privileged or confidential by law.” (emphasis added)

Public Records Include

- ▶ “[A]ny written communication or other *information*, whether in paper, electronic, or other physical form, received by a governmental entity *in futherance* of the transaction of public business of the state or agency, institution or political subdivision of the state. . . .” W.S. 16-4-201(emphasis added).
- ▶ **Information:** “means opinions, facts, or data of any kind and in whatever physical form kept or maintained, including, but not limited to, written, aural, visual, electronic or other physical form.” Id.

Applicability

- ▶ Governmental entities: “state of Wyoming, an agency, political subdivision or state institution of Wyoming.”
 - ❖ 2019 amendments simplified statutory language by using “governmental entities” throughout the Act.
 - ❖ Political subdivisions defined to include every county, city and county, city, incorporated and unincorporated town, school district and special district within the state.
- ▶ Who may inspect or get copies of public records?
 - ❖ Any person
 - ❖ Includes individuals, business entities, and media

Making a Request

- ▶ Request should be made in writing to the designated records person
 - ❖ SF0057 requires each agency to have a “designated public records person” to receive all public records requests. Previously, applications for public records requests were sent to the custodian of the record.
 - ❖ The designated public records person is not necessarily the official custodian of records within an agency.
 - ❖ The designated public records person *may* accept verbal requests at discretion.
- ▶ Custodian is the Official Custodian or any person having personal custody and control of public records
- ▶ Official Custodian is any officer or employee who is responsible for the maintenance and keeping of the records or any authorized person that has personal custody and control of the records

Mandatory Timelines

- ▶ General rule: allow the requestor to inspect the records at reasonable times
- ▶ Notify requestor within 7 business days from date of receipt of request if:
 - ❖ Records are not in custody or control of the governmental entity.
 - ❖ SF0057 removes the good cause exception and will require agencies to provide the name and contact information of the appropriate designated public records person if known.
 - ❖ Records are in active use or storage and not available at the time requestor asks for them.
 - ❖ SF0057 removes the good cause exception to this time requirement as well. SF0057 will also require the designated public records person to immediately forward the request to the custodian.

Immediate Release

- ▶ If a record is readily available, it must be released immediately so long as it would not impair the agency's ability to discharge its other duties

(1) Readily available

- ❖ What is “readily available” depends on the circumstances
 - ✓ For example, a copy of an existing meeting agenda is probably readily available
 - ✓ On the other hand, copies of emails spanning a six-month period are probably not readily available

(2) It would not impair the agency's ability to discharge its other duties

- ❖ Depends on the circumstances
 - ✓ For example, if the agency is down staff or unusually busy and the records requested are voluminous, releasing the records immediately might impair the agency's ability to discharge its other duties

NEW Release Requirements

- ▶ All public records shall be released not later than 30 calendar days from the date of acknowledged receipt of the request unless good cause exists to prevent release by that deadline.
- ▶ If good causes exists, records shall be released on a specified date mutually agreed to by the applicant and the governmental entity. If a release date cannot be agreed upon, the applicant may file a complaint with the ombudsman.
- ▶ Applicant mayat any time file a complaint with the ombudsman designated by the governor or may petition the district court for a determination as to whether the custodian has demonstrated good cause.

Ombudsman

- ▶ SF0057 creates and funds a position for a public records ombudsman, appointed by the Governor, to receive complaints.
- ▶ The ombudsman will receive complaints related to whether good cause existed for an agency to not meet the 30 day response deadline and failure to release documents.
- ▶ The ombudsman will determine whether good cause exists by considering whether the records are privileged or confidential by law or whether release of the records impairs or impedes the governmental entity's ability to discharge its other duties.
- ▶ The ombudsman shall review the records in camera and determine whether redaction of privilege or confidential information would permit release of the records.
- ▶ Upon the filing of a complaint, the ombudsman may also mediate disputes, prescribe timelines for release of the records, and waive any fees charged.

Right to Copies

- ▶ In all cases in which a person has the right to inspect and copy any public records, he also has a right to request that he be furnished with copies, printouts or photographs for a reasonable fee.
- ▶ If the custodian does not have facilities for making copies, then the applicant shall be granted access to the records for the purpose of making copies. These copies shall be made in the possession of the custodian.
- ▶ The Custodian *MAY* allow arrangements to take the records to a place to have copies made.

Fees for Record Copies

- ▶ May not charge a fee as a condition of making public records available.
- ▶ May charge a production or copy fee if set out in statute, rule, resolution, ordinance, executive order, or other like authority.
- ▶ A&I adopted uniform public record fee rules to be adopted by state agencies.

Electronic Records

- ▶ If records exist primarily or solely in electronic format, the custodian must notify the requestor.
- ▶ Additional requirements:
 - ❖ Alternative formats must be made available when practical and possible
 - ❖ Not required to compile data, extract data, or create a new document if it would impair the agency's ability to discharge its duties
 - ❖ Not required to allow inspection or copying if it would compromise the security or integrity of the original record or any proprietary software
 - ❖ Reasonable costs may be charged for producing copies of records - now covered by A&I uniform rules.

General Exemptions

- ▶ 3 general exemptions
 - ❖ Inspection would be contrary to state statute
 - ❖ Inspection would be contrary to any federal statute or regulation - HIPAA, social security numbers
 - ❖ Inspection is prohibited by court ruling or court order
- ▶ 1 catch-all exemption
 - ❖ Disclosure would do substantial injury to the public interest. Custodian required to apply to the district court

Exemptions must be construed narrowly

Specific Exemptions

- ▶ 26 specific exemptions
 - ❖ 7 discretionary
 - ❖ 19 mandatory

Discretionary Exemptions

- ▶ MAY deny on grounds that release is contrary to the public interest:
 - ▶ Investigatory records
 - ▶ Test questions, scoring keys, etc...
 - ▶ Specific details of bona fid research projects of state institutions
 - ▶ Real estate appraisals except as otherwise provided in statute
 - ▶ Intra-agency documents that would not be available by law during litigation
 - ▶ State building records that might jeopardize the security of any structure owned, leased, or operated by the State
 - ▶ Applications for the position of president of an institution of higher education

Mandatory Exemptions

- ▶ SHALL deny unless otherwise provided:
 - ❖ Medical, physiological, and sociological data on individuals
 - ❖ Adoption or welfare records on individuals
 - ❖ Personnel files
 - ❖ Letters of reference
 - ❖ Trade secrets, privileged information and confidential commercial or financial information
 - ❖ Library, archives and museum material contributed by private persons, to the extent of any limitations placed on the items during contribution
 - ❖ Hospital records
 - ❖ School district records regarding students
 - ❖ Income tax returns

Mandatory Exemptions - continued

- ▶ SHALL deny unless otherwise provided:
 - ❖ Library patron transaction and registration records
 - ❖ Information obtained through a 911 emergency call
 - ❖ Personnel investigation files that are unwarranted invasion of personal privacy
 - ❖ Information on State IT systems
 - ❖ Records relating to individual diagnoses of contagious and infectious diseases maintained or collected by the State veterinarian.
 - ❖ Information concerning agricultural operations
 - ❖ Individual records involved in any workers' compensation claim
 - ❖ Records of the consensus revenue estimating group
 - ❖ Information obtained through a police officer recording - with exceptions
 - ❖ Records of the investment funds committee

Redaction

- ▶ Custodian must segregate or redact exempt information and disclose remainder of the record.
- ▶ Where redaction would be pervasive, the entire record may be withheld.
- ▶ Determined on a case-by-case basis.

Violation

- ▶ Knowingly and intentionally violating this Act is a civil penalty not to exceed \$750.

How should a governmental entity
handle
a public records request?

Step 1

- ▶ Identify requested record(s)
 - ❖ If request is vague or confusing, ask for clarification.
 - ❖ Do you know what they are requesting so you can properly respond?

Step 2

- ▶ Determine whether agency is the custodian of the records
 - ❖ Responsible for the maintenance and keeping of the records?
 - ❖ Have personal custody and control of the records?

Step 3

▶ Send 7 day letter

- ❖ Records are not in custody or control - let them know who is the custodian if you know.
- ❖ Records are in active use or storage and not available but will be made available as soon as reasonably able to do so.
- ❖ Advise if there will be costs associated.
- ❖ If you know the request is overly broad let them know and ask if would like to narrow.

Step 4

- ▶ Gather records responsive to request.
- ▶ Include everything that even remotely could be what they are requesting.

Step 5

- ▶ Review records - ASK THESE QUESTIONS
 - ❖ Public records?
 - ❖ Exempt from disclosure?
 - ❖ Confidential by law?

Step 6

- ▶ Segregate or redact exempt information - work with attorney if possible

Step 8

- ▶ Release records within 30 days or mutually agreed upon date via copies or electronically;
- ▶ Allow inspection;
 - or -
- ▶ Withhold. Provide legal reasons for withholding.

Frequently asked questions

Question 1

- ▶ Is a custodian required to release e-mails regarding public business that were sent or received on a public employee's private personal computer?

Answer 1

- ▶ Yes, unless exempt from disclosure or confidential by law
- ▶ Emails created or accepted in connection with public business are public records

Question 2

- ▶ Is a custodian required to disclose the addresses of employees?

Answer 2

- ▶ It depends
- ▶ Not required to disclose addresses of government employees that are part of personnel file
 - ❖ *Laramie Cnty. School Dist. No. One v. Cheyenne Newspapers, Inc.*, 2011 WY 55, 250 P.3d 522 (Wyo. 2011)
- ▶ May be required to disclose addresses of non-government employees which are not part of personnel file
 - ❖ *Wyo. Dep't of Transp. v. Int'l Union of Operating Eng'rs*, 908 P.2d 970 (Wyo. 1995)

Question 3

- ▶ Is a custodian required to release a record immediately?

Answer 3

- ▶ It depends
- ▶ Records must be released immediately if they are:
 - (1) Readily available, and
 - (2) It would not impair the agency's ability to discharge its other duties

Question 4

- ▶ May a custodian charge for producing a copy of an electronic record when the request is for inspection of the record?

Answer 4

- ▶ It depends
- ▶ If the only way to provide the record is to produce a copy of it, the custodian may charge the reasonable costs of producing a copy
 - ❖ *Cheyenne Newspapers, Inc. v. Bd. of Trustees of Laramie Cnty. School Dist. No. One*, 2016 WY 113, 384 P.3d 679 (Wyo. 2016)
- ▶ Reasonable costs are not limited to direct costs of duplication

Question 5

- ▶ If the requestor is going to sell the information requested, does the custodian still need to provide it?

Answer 5

- ▶ Yes
- ▶ Reason for request is immaterial.
- ▶ Do not have to compile for them - which they often request

Question 6

- ▶ Does FOIA apply to the records of state agencies?

Answer 6

- ▶ No
- ▶ FOIA relates only to records of federal agencies

Question 7

- ▶ If an agency is not the custodian, is the agency required to refer the requestor to another agency that might be the custodian?

Answer 7

- ▶ Currently, no, but always nice to do so.
- ▶ Beginning July 1, 2019, yes, if you know who the custodian is.

Question 8

- ▶ If a request is for a record that does not exist but could be created from information contained in several other documents that exist, is the custodian required to create a new document?

Answer 8

- ▶ It depends
- ▶ Custodian is not required to create a new document to comply with a non-electronic record request
 - ❖ *Laramie Cnty. School Dist, No. One v. Cheyenne Newspapers, Inc.*, 2011 WY 55, 250 P.3d 522 (Wyo. 2011)
- ▶ Custodian is required to create a new document to comply with an electronic record request if it would not impair the duties of the office

Question 9

- ▶ May a custodian withhold a record that contains both public and exempt information?

Answer 9

- ▶ No
- ▶ Exempt information must be segregated or redacted
- ▶ Remainder of record must be disclosed
 - ❖ *Sheridan Newspapers, Inc. v. City of Sheridan*, 660 P.2d 785 (Wyo. 1982)
 - ❖ *Allsop v. Cheyenne Newspapers, Inc.*, 2002 WY 22, 39 P.3d 1092 (Wyo. 2002)

Questions