

# Wyoming Public Records Act

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# Disclaimer

- ▶ The Attorney General's Office represents the Wyoming Department of Agriculture and the Wyoming Board of Agriculture. Through that role, the Attorney General's Office may be called upon to provide legal advice to conservation districts on issues of general interest, as requested by the Director of the Department of Agriculture.
- ▶ As a result, at the request of the Director of the Department of Agriculture, this presentation is intended to provide general information geared towards conservation districts.

# What is the Public Records Act?

- ▶ Wyoming Statutes §§ 16-4-201 through -205

# Special Districts Public Records and Meetings Act

- ▶ Wyoming Statutes §§ 16-12-101 through 105
- ▶ Applies to Conservation Districts
- ▶ Outlines what records must be kept by special districts: meeting minutes of the governing board and all subcommittees, audits, financial statements, election results, budgets, bylaws, rate schedules, policies and employment contracts with all administrators.
- ▶ Must make available 20 hours a week, if cannot make available, then must file copy with the county clerk.

# What is the general rule?

- ▶ Right of Inspection: “all public records shall be open for inspection by any person at reasonable times, during business hours of the state entity or political subdivision . . . .”
- ▶ May make reasonable rules necessary for protection of records or prevention of unnecessary interference with discharge of duties by office.

# What is a public record?

- ▶ Public Records: “any information in a physical form created, accepted, or obtained by the state or any agency, institution or political subdivision of the state in furtherance of its official function and transaction of public business which is not privileged or confidential by law.”
- ▶ 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.”

# Who does the Act apply to?

- ▶ Who may inspect or get copies of public records?
  - ❖ Any person includes individuals, business entities, and media
- ▶ Who is a custodian?
  - ❖ 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

# What is sufficient for a request?

- ▶ Request should be made to the custodian in writing
- ▶ Custodian may accept a verbal request
- ▶ Magic words not required
  - ❖ Request should reasonably describe the information or record sought
  - ❖ Custodian should not have to guess what records the requestor is seeking



# What is required by the custodian?

- ▶ Notify requestor within 7 business days from date of receipt of request if:
  - ❖ Records are not in custody or control
  - ❖ Records are in active use or storage and not available
- ▶ Allow the requestor to inspect the records at reasonable times
- ▶ 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

# When must records be released immediately?

▶ Records must be released immediately if they are:

## (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

# Right to Copies

- ▶ If a person has a right to inspect, they also have a right to copy any public records and 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
  - ▶ person is able to come inspect non-electronic copies for free
- ▶ May charge a production or copy fee if set out in statute, rule, resolution, ordinance, executive order, or other like authority

# What about 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

# What records are generally exempt from disclosure?

- ▶ 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 supreme court rule 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

# Specific Exemptions - MAY

- ▶ MAY deny on grounds that release is contrary to the public interest:
  - ▶ Investigation records
  - ▶ Test questions, scoring keys
  - ▶ 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 during litigation
  - ▶ ETC...



# Specific Exemptions - SHALL

- ▶ SHALL deny unless otherwise provided:
  - ❖ Medical, physiological, and sociological data on individuals
  - ❖ Adoption or welfare records on individuals
  - ❖ Personnel files
  - ❖ Trade secrets and confidential commercial or financial information
  - ❖ Hospital records
  - ❖ School district records regarding students
  - ❖ Income tax returns

# AG Exemption - Shall Deny

- ▶ Information concerning an agricultural operation, farming or conservation practice, or the land itself **IF** the information was provided by an agricultural producer or owner of agricultural land in order to participate in a program of the state . . .
- ▶ Geospatial information maintained about the agricultural land.
- ▶ **HOWEVER -**
  - ▶ MAY release when responding to a disease or pest threat to agricultural operations if necessary to assist in responding to the disease or threat
  - ▶ SHALL release payment information under a program of the state or any agency including names and addresses for recipients of payments
  - ▶ SHALL release information if transformed into a statistical or aggregate form w/o naming individual owner/operator or the specific gathering site.

# When must a custodian redact instead of withhold a record?

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

# Violation

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

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How should a district handle  
a public records request?

# Step 1

- ▶ Identify requested record(s)
  - ❖ If request is vague or confusing, ask for clarification
  - ❖ AKA do you know what they're requesting so you can properly respond

## Step 2

- ▶ Determine whether custodian
  - ❖ 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 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
- ▶ Allow inspection
- or -
- ▶ Withhold

# 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

- ▶ No
- ▶ Agency is only required to notify the requestor that it is not the custodian
- ▶ **BUT IT'S NICE!**

## 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