

Wyoming Public Records Act

Hot off the press!

SEA 72

Disclaimer

- ▶ **This isn't a law yet!**
- ▶ If the Governor vetoes it, much of the following **does not apply.**

New Terminology

- ▶ “Governmental Entity”
 - ❖ Just incorporates old definition; no actual change
- ▶ “Designated public records person”
 - ❖ The person who will receive all public records requests for a particular governmental entity
 - ❖ Each entity must designate a person and send contact info to A&I
- ▶ “Ombudsman”
 - ❖ Basically a government-backed arbitrator

New (& Some Old) Requirements

- ▶ 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
- ▶ **AND** provide the name and contact information of the appropriate designated public records person if known
- ▶ Only the last bit is new, but there is **no flexibility** for “good cause” anymore

New Requirements

- ▶ Release all responsive and disclosable records within 30 days
- ▶ If “good cause” exists: releases can come later “on a specified date mutually agreed to”

New (& Some Old) Legal Liabilities

- ▶ Ombudsman complaint (new)
- ▶ Petition district court (old)
- ▶ They can do both! Anytime they want! (new)
- ▶ Court can prescribe releases (old)
- ▶ So can ombudsman (new)
- ▶ **AND** either one can waive any fees (new)
- ▶ \$750 fine and damages for “knowing” or “intentional” violations
 - ❖ This is old, but now **anyone can bring a lawsuit** for this purpose

The background features abstract, overlapping geometric shapes in various shades of blue, ranging from light sky blue to deep navy blue. These shapes are primarily located on the right side of the frame, creating a modern, layered effect. The rest of the background is plain white.

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
 - ❖ When in doubt, get it in writing

Step 2

- ▶ Determine whether you have the records
 - ❖ Responsible for the maintenance and keeping of the records?
 - ❖ Have custody and control of the records?

Step 3

▶ Send 7 day letter

- ❖ Records are not in custody or control - **MUST** let them know who is the custodian if you know **and give contact info**
- ❖ Records are in active use or storage and not immediately 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 7

- ▶ Release records
- ▶ Allow inspection
- or -
- ▶ Withhold
- ▶ You have to get all the way to this step within 30 days unless there is “good cause”

Step 8

- ▶ If you are withholding records
 - ❖ Tell them that you have done so
- ▶ If they ask why you withheld records
 - ❖ You must cite the provision that gives you authority to do so
- ▶ You can just collapse these steps and tell them why you withheld the records up front

Step 9

- ▶ If you cannot finish the request within 30 days
 - ❖ Solicit agreement as to deadline for release/inspection
- ▶ **Give them your “good cause” in writing**
- ▶ Don't say:
 - ❖ “Pretty please, pick a date you would agree to”
- ▶ Do say:
 - ❖ “We will release the records by X date, please contact us immediately if this date is not agreeable to you and we can discuss the matter further”

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

- ▶ Yes, if you know who would have the records.
- ▶ If you don't know, but have an educated guess, give them that (but make it clear that you're guessing)
- ▶ Contact info for the designated public records person for each agency will be posted on an A&I website, so you can't claim you don't know that information

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