

Wyoming Public Records Act

Disclaimer

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- ▶ 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.
- ▶ Recent WY Supreme Court decision: *Wyoming Jet Center, LLC v. Jackson Hole Airport Board*, 2019 WY 6 (2019) - Special District Act imposes **additional requirements**; does not exempt special districts from Public Records Act.

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?

▶ Short version:

EVERYTHING

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?

- ▶ State agencies and “political subdivisions”
 - ❖ Political subdivisions = “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

What is sufficient for a request?

- ▶ Request should be made in writing
- ▶ Verbal requests can be accepted
 - ❖ Tip: If accepting a verbal request, write it down yourself and have the requester confirm it; reduces miscommunication
- ▶ Magic words not required
 - ❖ Request should reasonably describe the information or record sought
 - ❖ You do not have to guess what records the requestor is seeking; seek clarification

What is required if you have the records requested?

- ▶ 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 agency 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 agency.
- ▶ The agency *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 requestor must be notified of this fact
- ▶ 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. Agency must 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...
- ▶ No discrimination between media outlets

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 record be redacted rather than withheld?

- ▶ Agency 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.