

The Wyoming Public Records Act:

How does it affect Employees?

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Wyoming Public Records Act

- **Wyoming Statutes 16-4-201 to 205**
 - All public records shall be open for inspection by any person at reasonable times
 - Official custodian (UW) may make rules and regulations for protection of the records and unnecessary interference with the regular discharge of the duties of the custodian (i.e., fees)
 - Generally, requests for public records should be in writing

What is a public record?

- **Definition of public record – WY ST § 16-4-201**
 - Any information
 - In a physical form
 - Created, accepted, or obtained by UW
 - In furtherance of its official function and transaction of public business
 - Which is not privileged or confidential by law

What is a public record?

- **Definition of public record**
 - Includes any:
 - Written communication
 - In paper, electronic, or other physical form
 - Received by UW

What is not a public record?

- **Not a public record:**
 - Electronic communications solely between students attending a school in Wyoming
 - Electronic communications solely between students attending a school in Wyoming and a sender or recipient using a non-school user address

Grounds for denial of inspection

- **WY ST § 16-4-203**
 - **Section (a)**
 - The inspection would be contrary to any state statute
 - The inspection would be contrary to any federal statute or regulation
 - The inspection is prohibited by a court order

Grounds for denial of inspection

- **Section (b): Disclosure would be contrary to the public interest**
 - Data related to examination for employment or academic examination
 - Bona fide research projects
 - Contents of real estate appraisals

Grounds for denial of inspection

- **Section (b): Disclosure would be contrary to the public interest**
 - Interagency or intraagency memoranda or letters not available by law to a party in litigation with the agency (i.e., deliberative process privilege)
 - Records that would jeopardize security, facilitate the planning of a terrorist attack or endanger the life or physical safety of an individual

Grounds for denial of inspection

- **Contrary to the public interest – balancing test**
 - Must weigh the competing interests involved
 - Determine whether harm to the public interest outweighs transparency
 - If we withhold, must state specific public-policy reasons for refusal and why harm is likely to result from disclosure

Grounds for denial of inspection

- **Section (d): No balancing test required – just outright denial**
- Medical, psychological and sociological data
 - Sociological data: personally identifiable information such as age, race, religious preference, disabilities, sexual orientation, marital status, education, work history, military service, medical information, financial information, receipt of government benefits, social security numbers, personal address, personal phone number, etc.

Grounds for denial of inspection

- **Section (d): No balancing test required – just outright denial**
 - Adoption records or welfare records
 - Personnel files
 - However, employment contracts of public officials and employees ARE public
 - Letters of reference

Grounds for denial of inspection

- **Section (d): No balancing test required – just outright denial**
 - Trade secrets, privileged information and confidential commercial, financial, geological or geophysical data furnished by or obtained from any person
 - Hospital records

Grounds for denial of inspection

- **Section (d): No balancing test required – just outright denial**
 - School district records containing sociological data
 - Library patron transaction and registration records
 - Information obtained through a 911 emergency telephone system

Grounds for denial of inspection

- **Section (d): No balancing test required – just outright denial**
 - Records of information compiled solely for purposes of investigating violations of, and enforcing, internal personnel rules or personnel policies the disclosure of which would constitute a clearly unwarranted invasion of personal privacy

Grounds for denial of inspection

- **Section (d): No balancing test required – just outright denial**
- Clearly unwarranted invasion of personal privacy
 - Defined as unwarranted publicity, unwarranted appropriation or exploitation of one's personality, or the publicizing of one's private affairs with which the public has no legitimate concern
 - Must balance an individual's right to privacy against the public's interest in disclosure

Grounds for denial of inspection

- **Section (d): No balancing test required – just outright denial**
 - Information regarding IT security systems and physical security systems
 - Records or information relating to individual diagnoses of contagious, infectious, communicable, toxic and genetic disease maintained by the Wyoming state veterinary laboratory

Grounds for denial of inspection

- **Section (d): No balancing test required – just outright denial**
 - Information concerning an agricultural operation, farming or conservation practice or the land itself
 - Income tax return information
 - Individual records involved in workers' compensation claims
 - Records of the consensus revenue estimating group
 - Records of the investment funds committee

Grounds for denial of inspection

- **Section (d): No balancing test required – just outright denial**
 - Information obtained through a peace officer recording (audio or video data), unless:
 - To the person of interest
 - If the information involves an incident of deadly force or serious bodily injury
 - In response to a complaint against law enforcement personnel
 - In the interest of public safety

Wyoming Public Records Act

- **District Court**
 - Any person denied the right to inspect any records may apply to the district court for an order directing UW to show cause why we should not disclose
 - UW may apply to the district court for an order restricting disclosure if disclosure would do substantial injury to the public interest

UW Process

- **UW Policies and Procedures for public records requests**
 - See: <http://www.uwyo.edu/generalcounsel/wyoming-public-records-act/>

NextRequest

- Link: <https://universityofwyoming.nextrequest.com/>
- The University uses NextRequest to process public records requests.

UW Process

- The University of Wyoming coordinates and reviews an average of 200 public records requests per year
- **Notification**
 - University will notify the requestor within seven (7) business days that it has received the request, unless good cause exists preventing a response within that time

UW Process

- **Time period for University to respond**
 - All public records must be released not later than 30 calendar days from the date of the acknowledgment of the request unless good cause exists preventing the release of the records in that time frame

UW Fees

- University of Wyoming Board of Trustees has adopted fees in its Fee Book for the reasonable costs of producing and constructing an electronic public record consistent with Wyoming law
- Fees will be charged only if they exceed \$180.00. The initial \$180.00 will be a credit and not charged to the applicant.

UW Fees

- Production and construction costs exceeding \$180.00 will be charged as follows:
 - \$15.50/hour for clerical staff time
 - \$30.00/hour for information technology staff time
 - \$40.00/hour for professional staff time
 - Actual cost of programming and computer services.

UW Fees

- If the University reaches the limit of payment for the request, we will provide the records available at that time and provide an additional cost estimate/invoice prior to continuing with the request for the remaining records
- If the payment exceeds the actual time and amount spent on the request, any applicable refunds will be sent at the same time the records become available for inspection or upon delivery of the records

UW Employees

- **How does this affect you and your UW communications?**
 - Generally, all emails sent and received by UW email addresses are public records
 - Be cognizant of what you put in writing
 - Should you really send that email containing **BOLD**
UNDERLINED *expletives* !?&*\$?
 - Use the Casper Star test

UW Employees

- **What if your emails are the subject of a request?**
 - We will reach out to you
 - You can either review your emails for responsive records or we can ask IT to perform a search of your emails

UW Employees

- **What if your unit is a custodian of records?**
 - For example:
 - A request for all UW vendor payee payments
 - Any preexisting and still in-effect written commitments, contracts, or understandings with the Saudi government or Saudi institutions, by any part of UWYO
 - Syllabi for all courses with participants in the Bachelor of Arts in Elementary Education

UW Employees

- **What if your unit is a custodian of records?**
 - For example:
 - Bid tabulations for UW roofing bid projects
 - Employee salaries
 - Number of Title IX reports
 - List of people banned from the UW Facebook page
 - Outstanding payments or checks

UW Employees

- **What if your unit is a custodian of records?**
 - For example:
 - Disciplinary records of Student X
 - Employment records of Employee Y
 - All emails with keywords: guns, firearms, etc.
 - Operating expenditures
 - Payments for commencement speakers

Questions?

- **Resources and Contact Information**

- Office of General Counsel Website:

<http://www.uwyo.edu/generalcounsel/wyoming-public-records-act/>

- Wyoming Statutes 16-4-201 through 16-4-205:

<http://legisweb.state.wy.us/LSOWEB/wyStatutes.aspx>

- Office of General Counsel: 307-766-4997

- Tara Evans, Vice President & General Counsel:

tevens15@uwyo.edu or 307-766-4019

- Andara Frasier, Public Records Officer: afrasier@uwyo.edu or 307-766-4981