

ENROLLED ACT NO. 72, SENATE

SIXTY-FIFTH LEGISLATURE OF THE STATE OF WYOMING
2019 GENERAL SESSION

AN ACT relating to public records; requiring the release of public records within a specified time; requiring the designation of a public records person for each governmental entity; requiring applications for public records to be made to the designated public records person; requiring the department of administration and information to post contact information of designated public records persons; requiring the governor to designate an ombudsman to receive complaints for violations of the public records act as specified; modifying penalties and providing remedies for violations of the public records act; authorizing a position; providing an appropriation; and providing for an effective date.

Be It Enacted by the Legislature of the State of Wyoming:

Section 1. W.S. 16-4-201(a)(ii), (v), (vi)(A), (B), (ix), by creating new paragraphs (xii) and (xiii) and by creating a new subsection (b), 16-4-202(a) through (c), (d)(ii) through (iv) and by creating a new subsection (e), 16-4-203(b)(iii), (iv), (vi)(intro), (C), (D), (d)(xiv)(intro), (B), (xv) and (f) and 16-4-205 are amended to read:

16-4-201. Definitions; short title.

(a) As used in this act:

(ii) "Official custodian" means any officer or employee of ~~the state or any agency, institution or political subdivision thereof~~ a governmental entity, who is responsible for the maintenance, care and keeping of public records, regardless of whether the records are in his actual personal custody and control;

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(v) "Public records" when not otherwise specified includes any information in a physical form created, accepted, or obtained by ~~the state or any agency, institution or political subdivision of the state~~ a governmental entity in furtherance of its official function and transaction of public business which is not privileged or confidential by law. Without limiting the foregoing, the term "public records" includes any written communication or other information, whether in paper, electronic, or other physical form, received by ~~the state or any agency, institution or political subdivision of the state~~ a governmental entity in furtherance of the transaction of public business of the ~~state or agency, institution or political subdivision of the state~~ governmental entity, whether at a meeting or outside a meeting. Electronic communications solely between students attending a school in Wyoming and electronic communications solely between students attending a school in Wyoming and a sender or recipient using a nonschool user address are not a public record of that school. As used in this paragraph, a "school in Wyoming" means the University of Wyoming, any community college and any public school within a school district in the state;

(vi) Public records shall be classified as follows:

(A) "Official public records" includes all original vouchers, receipts and other documents necessary to isolate and prove the validity of every transaction relating to the receipt, use and disposition of all public property and public income from all sources whatsoever; all agreements and contracts to which ~~the state or any agency or subdivision thereof~~ a governmental entity is a party; all fidelity, surety and performance bonds; all claims filed against ~~the state or any agency or subdivision thereof~~ a governmental entity; all

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records or documents required by law to be filed with or kept by ~~any agency or the state~~ a governmental entity of Wyoming; and all other documents or records determined by the records committee to be official public records;

(B) "Office files and memoranda" includes all records, correspondence, exhibits, books, booklets, drawings, maps, blank forms, or documents not defined and classified in subparagraph (A) of this subsection as official public records; all duplicate copies of official public records filed with any ~~agency of the state or subdivision thereof~~ governmental entity; all documents and reports made for the internal administration of the office to which they pertain but not required by law to be filed or kept with the office; and all other documents or records, determined by the records committee to be office files and memoranda.

(ix) "Application" means a written request for a public record. However, a ~~eustodian~~ designated public records person may in his discretion deem a verbal request to be an application;

(xii) "Designated public records person" means the person designated as required by W.S. 16-4-202(e) or that person's designee;

(xiii) "Governmental entity" means the state of Wyoming, an agency, political subdivision or state institution of Wyoming.

(b) This act shall be known and may be cited as the "Public Records Act."

16-4-202. Right of inspection; rules and regulations; unavailability; designation of public records person.

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(a) All public records shall be open for inspection by any person at reasonable times, during business hours of the ~~state-governmental~~ entity, ~~or political subdivision~~, except as provided in this act or as otherwise provided by law, but the official custodian of any public records may make rules and regulations with reference to the inspection of the records as is reasonably necessary for the protection of the records and the prevention of unnecessary interference with the regular discharge of the duties of the custodian or his office. All applications for public records shall be made to the designated public records person.

(b) If the public records requested are not in the custody or control of the ~~person-governmental entity~~ to whom application is made, the ~~custodian or authorized person having personal custody and control of the public records~~ designated public records person shall notify the applicant within seven (7) business days from the date of acknowledged receipt of the request of the unavailability of the records sought, ~~unless good cause exists preventing a response within such time period. In the event the applicant is not satisfied that good cause exists, the applicant may petition the district court for a determination as to whether the custodian has demonstrated good cause existed and provide the name and contact information of the appropriate designated public records person if known.~~

(c) If the public records requested are in the custody and control of the ~~person-governmental entity~~ to whom application is made, but the following shall apply:

(i) If the records are in active use or in storage, and therefore not available at the time an applicant asks to examine them, the designated public records person shall

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immediately forward the request to the custodian or authorized person having personal custody and control of the public records and shall notify the applicant of this situation within seven (7) business days from the date of acknowledged receipt of the request; ~~unless good cause exists preventing a response within such time period. In the event the applicant is not satisfied that good cause exists, the applicant may petition the district court for a determination as to whether the custodian has demonstrated good cause existed.~~

(ii) If a public record is readily available, it shall be released immediately to the applicant so long as the release does not impair or impede the agency's governmental entity's ability to discharge its other duties; ~~:-~~

(iii) All public records shall be released not later than thirty (30) calendar days from the date of acknowledged receipt of the request unless good cause exists preventing release as authorized by paragraph (iv) of this subsection;

(iv) If good cause exists preventing release within the time period specified in paragraph (iii) of this subsection, the public 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 as provided by paragraph (v) of this subsection;

(v) The applicant may at any time file a complaint with an ombudsman designated by the governor or may petition the district court for a determination as to whether the custodian has demonstrated good cause. In determining whether good cause existed, the ombudsman or district court

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may consider 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 or the district court shall review the records in camera and determine whether redaction of privileged or confidential information would permit release of the records.

(d) If a public record exists primarily or solely in an electronic format, the custodian of the record shall so inform the requester. Electronic record inspection and copying shall be subject to the following:

(ii) ~~An agency~~ A governmental entity shall provide an electronic record in alternative formats unless doing so is impractical or impossible;

(iii) ~~An agency~~ A governmental entity shall not be required to compile data, extract data or create a new document to comply with an electronic record request if doing so would impair the ~~agency's~~ governmental entity's ability to discharge its duties;

(iv) ~~An agency~~ A governmental entity shall not be required to allow inspection or copying of a record in its electronic format if doing so would jeopardize or compromise the security or integrity of the original record or of any proprietary software in which it is maintained;

(e) Each governmental entity shall designate a person to receive all applications for public records. The governmental entity shall submit the name, business email address and business mailing address of the designated public records person to the department of administration and information for publication on the department of

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administration and information official website. The designated public records person shall serve as a point of contact between the governmental entity and applicants seeking public records.

16-4-203. Right of inspection; grounds for denial; access of news media; order permitting or restricting disclosure; exceptions.

(b) The custodian may deny the right of inspection of the following records, unless otherwise provided by law, on the ground that disclosure to the applicant would be contrary to the public interest:

(iii) The specific details of bona fide research projects being conducted by a ~~state institution, agency~~ governmental entity or any other person;

(iv) Except as otherwise provided by Wyoming statutes or for the owner of the property, the contents of real estate appraisals made for the ~~state or a political subdivision thereof~~ governmental entity, relative to the acquisition of property or any interest in property for public use, until such time as title of the property or property interest has passed to the ~~state or political subdivision~~ governmental entity. The contents of the appraisal shall be available to the owner of the property or property interest at any time;

(vi) To the extent that the inspection would jeopardize the security of any structure owned, leased or operated by ~~the state or any of its political subdivisions a~~ governmental entity, facilitate the planning of a terrorist attack or endanger the life or physical safety of an individual, including:

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(C) Records of any other building or structure owned, leased or operated by ~~the state or any of its political subdivisions~~ a governmental entity that reveal the building's or structure's life and safety systems, surveillance techniques, alarm or security systems or technologies, operational and evacuation plans or protocols or personnel deployments; and

(D) Records prepared to prevent or respond to terrorist attacks or other security threats identifying or describing the name, location, pharmaceutical cache, contents, capacity, equipment, physical features, or capabilities of individual medical facilities, storage facilities or laboratories established, maintained, or regulated by ~~the state or any of its political subdivisions~~ a governmental entity.

(d) The custodian shall deny the right of inspection of the following records, unless otherwise provided by law:

(xiv) 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 or any agency, institution or political subdivision of the state~~ a governmental entity. The custodian shall also deny the right of inspection to geospatial information maintained about the agricultural land or operations. Provided, however, that if otherwise permitted by law, the inspection of the information described in this paragraph shall be allowed in accordance with the following:

(B) The custodian shall allow the right of inspection of payment information under a program of ~~the state~~

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~~or of any agency, institution or political subdivision of the state~~ a governmental entity, including the names and addresses of recipients of payments;

(xv) Within any record held by ~~an agency~~ a governmental entity, any income tax return or any individual information derived by the ~~agency~~ governmental entity from an income tax return, however information derived from these documents may be released if sufficiently aggregated or redacted so that the persons or entities involved cannot be identified individually;

(f) Any person ~~denied the right to inspect any record covered by this act~~ aggrieved by the failure of a governmental entity to release records on the specified date mutually agreed upon pursuant to W.S. 16-4-202(c)(iv) or by the failure of a governmental entity to comply with an order of the ombudsman pursuant to W.S. 16-4-202(c)(v) may:

(i) Apply to the district court of the district wherein the record is found for an order ~~directing to direct~~ the custodian of the record to show cause why he should not permit the inspection of the record and to compel production of the record if applicable. An order issued by the district court under this paragraph may waive any fees charged by the state governmental entity;

(ii) File a complaint with the ombudsman who may:

(A) Mediate disputes between the governmental entity and the person;

(B) Prescribe timelines for release of the records;

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(C) Waive any fees charged by the governmental entity.

16-4-205. Penalties; remedies.

Any person who knowingly or intentionally violates the provisions of this act is liable for a penalty not to exceed seven hundred fifty dollars (\$750.00). The penalty may be recovered in a civil action and damages ~~shall~~may be assessed by the court. ~~Any action pursuant to this section shall be initiated by the attorney general or the appropriate county attorney.~~

Section 2. The office of the governor is authorized one (1) additional full-time permanent position for designation of an ombudsman as required by this act. There is appropriated one hundred twenty-five thousand dollars (\$125,000.00) from the general fund to the office of the governor. This appropriation shall only be expended to fund the position authorized in this section. Notwithstanding any other provision of law, this appropriation shall not be transferred or expended for any other purpose and any unexpended, unobligated funds remaining from this appropriation shall revert as provided by law on June 30, 2020.

ORIGINAL SENATE
FILE NO. SF0057

ENGROSSED

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Section 3. This act is effective July 1, 2019.

(END)

Speaker of the House

President of the Senate

Governor

TIME APPROVED: _____

DATE APPROVED: _____

I hereby certify that this act originated in the Senate.

Chief Clerk