

# OPEN GOVERNMENT GUIDE

Access to Public Records  
and Meetings in

WYOMING

**REPORTERS  
COMMITTEE**  
FOR FREEDOM OF THE PRESS

Sixth Edition  
2011



# OPEN GOVERNMENT GUIDE

## OPEN RECORDS AND MEETINGS LAWS IN

# WYOMING

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**SIXTH EDITION  
2011**

Previously Titled  
Tapping Officials' Secrets

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## Introductory Note

The OPEN GOVERNMENT GUIDE is a comprehensive guide to open government law and practice in each of the 50 states and the District of Columbia. Fifty-one outlines detail the rights of reporters and other citizens to see information and attend meetings of state and local governments.

The OPEN GOVERNMENT GUIDE — previously published as *Tapping Officials' Secrets* — is the sole reference on open government laws in many states.

Written to follow a standard outline to allow easy comparisons between state laws, the compendium has enabled open government advocates in one state to use arguments successful in other states to enhance access rights at home. Press associations and lobbyists have been able to invoke other sunshine laws as they seek reforms in their own.

Volunteer attorneys, expert in open government laws in each state and in Washington, D.C., generously donated their time to prepare the initial outlines for the first incarnation of this project in 1989. In most states these same attorneys or their close associates updated and rewrote the outlines for the 1993, 1997, 2001 and 2006 editions as well this current 2011 edition.

Attorneys who are new to the compendium in this edition are also experts in open government and access issues, and we are grateful to them for their willingness to share in this ongoing project to create the first and only detailed treatise on state open government law. The rich knowledge and experience all the participating attorneys bring to this project make it a success.

While most of the initial users of this compendium were journalists, we know that lawyers and citizens have discovered it and find it to be indispensable as well.

At its core, participatory democracy decries locked files and closed doors. Good citizens study their governors, challenge the decisions they make and petition or vote for change when change is needed. But no citizen can carry out these responsibilities when government is secret.

Assurances of open government exist in the common law, in the first state laws after colonization, in territorial laws in the west and even in state constitutions. All states

have passed laws requiring openness, often in direct response to the scandals spawned by government secrecy. The U.S. Congress strengthened the federal Freedom of Information Act after Watergate, and many states followed suit.

States with traditionally strong access laws include Vermont, which provides virtually unfettered access on many levels; Florida, which was one of the first states to enact a sunshine law; and Ohio, whose courts have issued several access-friendly rulings. Other jurisdictions, such as Pennsylvania and the District of Columbia, have made significant changes to their respective open government laws since the fifth edition was published designed to foster greater public access to information. Historically, Pennsylvania had a reputation as being relatively non-transparent while the District of Columbia was known to have a very restrictive open meetings law.

Some public officials in state and local governments work hard to achieve and enforce open government laws. The movement toward state freedom of information compliance officers reflects a growing activism for access to information in the states.

But such official disposition toward openness is exceptional. Hardly a day goes by when we don't hear that a state or local government is trying to restrict access to records that have traditionally been public — usually because it is feared release of the records will violate someone's "privacy" or threaten our nation's security.

It is in this climate of tension between broad democratic mandates for openness and official preference for secrecy that reporters and good citizens need to garner their resources to ensure the passage and success of open government laws.

The Reporters Committee genuinely hopes that the OPEN GOVERNMENT GUIDE will help a vigorous press and citizenry to shape and achieve demands for openness, and that it will serve as a primer for those who battle in government offices and in the courts for access to records and meetings. When challenges to secrecy are successful, the news is better and so is the government.

## User's Guide

Whether you are using a guide from one state to find a specific answer to an access issue, or the complete compendium encompassing all states to survey approaches to a particular aspect of open government law around the country, knowing a few basics on how the OPEN GOVERNMENT GUIDE is set up will help you to get the most out of it.

*Following the outline.* Every state section is based on the same standard outline. The outline is divided into two parts: access to records and access to meetings.

Start by reviewing the table of contents for each state. It includes the first two tiers of that state's outline. Once you are familiar with the structure of the outline, finding specific information is simple. Typically, the outline begins by describing the general structure of the state law, then provides detailed topical listings explaining access policies for specific kinds of records or meetings.

Every state outline follows the standard outline, but there will be some variations. Some contributors added items within the outline, or omitted subpoints found in the complete outline which were not relevant to that state's law. Each change was made to fit the needs of a particular state's laws and practices.

In general, outline points that appear in boldface type are part of the standard outline, while additional topics will appear in italicized type.

Whether you are using one state outline or any number of outlines, we think you will find the outline form helpful in finding specific information quickly without having to read an entire statute or search through many court cases. But when you do need to consult statutes, you will find the complete text of the relevant portions at the end of each outline.

Additional copies of individual state booklets, or of the compendium covering the 50 states and the District of Columbia, can be ordered from The Reporters Committee for Freedom of the Press, 1101 Wilson Blvd., Suite 1100, Arlington, Virginia 22209, or by calling (703) 807-2100. The compendium is available in electronic format on CD.

The state outlines also are available on our World-Wide Web site, [www.rcfp.org/ogg](http://www.rcfp.org/ogg). The Internet version of the outlines allows you to search the database and compare the law in different states.

*Updates:* The Reporters Committee published new editions of THE OPEN GOVERNMENT GUIDE in 1989, 1993, 1997, 2001, 2006, and now in 2011. We expect future updates to follow on approximately the same schedule. If we become aware of mistakes or material omissions in this work, we will post notices on this project's page on our World-Wide Web site, at [www.rcfp.org/ogg](http://www.rcfp.org/ogg). This does not mean that the outlines will constantly be updated on the site — it simply means known errors will be corrected there.

For our many readers who are not lawyers: This book is designed to help journalists, lawyers, and citizens understand and use state open records and meetings law. Although the guides were written by lawyers, they are designed to be useful to and readable by nonlawyers as well. However, some of the elements of legal writing may be unfamiliar to lay readers. A quick overview of some of these customs should suffice to help you over any hurdles.

Lawyers are trained to give a "legal citation" for most statements of law. The name of a court case or number of a statute may therefore be tacked on to the end of a sentence. This may look like a sentence fragment, or may leave you wondering if some information about that case was omitted. Nothing was left out; inclusion of a legal citation provides a reference to the case or statute supporting the statement and provides a shorthand method of identifying that authority, should you need to locate it.

Legal citation form also indicates where the law can be found in official reporters or other legal digests. Typically, a cite to a court case will be followed by the volume and page numbers of a legal reporter. Most state cases will be found in the state reporter, a larger regional reporter, or both. A case cite reading 123 A.2d 456 means the case could be found in the Atlantic (regional) reporter, second series, volume 123, starting at page 456.

Note that the complete citation for a case is often given only once. We have tried to eliminate as many cryptic second-reference cites as possible, but you may encounter cites like "Jackson at 321." This means that the author is referring you to page 321 of a case cited earlier that includes the name Jackson. Authors may also use the words *supra* or *infra* to refer to a discussion of a case appearing earlier or later in the outline, respectively.

Except for these legal citation forms, most "legalese" has been avoided. We hope this will make this guide more accessible to everyone.



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**FOREWORD**

The public of policy of the State of Wyoming as expressed in its Open Meetings Act and Public Records Act is disclosure — not secrecy. *Sheridan Newspapers v. City of Sheridan*, 660 P.2d 785, 792, 796 n.14 (Wyo. 1983). The Wyoming Supreme Court in announcing its decision in *Sheridan Newspapers* said:

This holding is but another pronouncement from this court having to do with making the public's business available to the public whenever that is possible. The courts, legislature, administrative agencies, and the state, county and municipal governments should be ever mindful that theirs is public business and the public has a right to know how its servants are conducting its business. Furthermore, it is for government to remember that the written, viewing and broadcasting press are the eyes and ears of the people. The citizenry must be permitted to hear and see what public officers and their employees say and do whenever the imparting of this knowledge does not run contrary to the rights of those otherwise protected in a way that would result in disclosure having the effect of inflicting such irreparable harm as is recognized at law.

The Wyoming Supreme Court has found a constitutional right of access to government information under the applicable freedom-of-the-press and due-process provisions of the federal and state constitutions. *Id.* at 794. The Legislature does have the authority to promulgate restraints upon the news-gathering business as will best serve the "public good." These restraints may not, however, unlawfully deny the people's right to be informed. Otherwise, the restrictions would run the risk of violating the First or Fourteenth Amendments to the U.S. Constitution. *Id.* at 795.

The Court has not yet had the occasion to determine whether a specific provision setting forth an exception to public disclosure in either the Open Meetings Act, the Public Records Act or other statute runs afoul of the public's constitutional right of access.

There have been only a few cases where the Wyoming Supreme Court has interpreted the Wyoming Open Meeting Law (Wyo. Stat. § § 16-4-401 to 16-4-407). An amendment to the Act overturned a ruling by the Court that a meeting in which no action (i.e. a vote, a decision or a commitment to make a decision) was taken did not fall under the notice and other provisions of the Act. Pursuant to the amendments, a meeting is now defined as a gathering of a quorum of the members of a governing body of an agency for the "purpose of discussion, deliberation, presentation of information" regarding public business, regardless of whether action is taken or not.

The amendment made it clear that Wyoming residents not only have a right to know the actions taken by their representatives, but also the basis for those decisions.

Amendments adopted by the Wyoming Legislature in 2005 added a penalty provision to the Act, making it a misdemeanor to "willfully and knowingly" violate its provision. The amendments require the governing body to make a motion to go into executive session. A member of the governing body who objects to an executive session at any point may stay in the meeting and avoid liability if he makes his objection public. Minutes must be made of executive sessions. The minutes are confidential except for the portion where a member objects to the executive session, which shall be made public. The objecting member may also make his objection known publically at the next meeting of the governing body and avoid liability under the penalty provision.

The Wyoming Supreme Court in a 2010 cases rejected the argument by a city building board that it could hold its deliberations behind closed doors because it was acting in a "quasi-judicial" capacity. *Cheyenne Newspapers v. City of Cheyenne Building Code Board of Appeals*, 2010 WY 2, 222 P.3d 158. The Court also rejected the argument by the board that it was not a "governing body of an agency" because it was not the ultimate decision-making body of the agency, such as the city council or county commission. The ruling also affirmed the standing of the public, and the media as its representative, to contest violations of the open meetings and open records acts.

In 2011, the Wyoming Supreme Court explained the process by which a governmental entity may cure a violation of the Open Meetings Act. *Gronberg v. Teton County Housing Authority*, 247 P.3d 35, 2011 WY 13. Any action taken at a meeting not in compliance with the act is null and void. The Court ruled that the "Act would permit ratification of a prior "void" action, if the ratification is done in compliance with the Act. We hold that an agency may "cure" a "void" action made in violation of the Public Meetings Act by conducting a new and substantial reconsideration of the action in a manner which complies with the Act." The reconsideration must be one "in which the public is afforded ample opportunity to know the facts and to be heard with reference to the matters at issue."

The Wyoming Public Records Act (Wyo. Stat. § § 16-4-201 to 16-4-205) sets up a general rule of access to public records by persons in interest (the persons whom the records are about) and the public generally. Public records are defined as any record, in any form, made by the State of Wyoming or any political subdivision of the state, including special districts.

The language of the act "imposes a legislative presumption which says that, where public records are involved, the denial of inspection is contrary to the public policy, the public interest and the competing interests of those involved." *Sheridan Newspapers*, 660 P.2d at 796. The Federal and Wyoming constitutions "guarantee a person's right to access public records." *Houghton v. Franscell*, 870 P.2d 1050, 1052-53 (Wyo. 1994).

Wyoming Supreme Court precedents require that the Public Records Act "be read in the light of the legislative presumption of openness and keeping with the constitutional right of access to public records." *Wyoming Department of Transportation v. International Union of Operating Engineers Local Union 800*, 908 P.2d 970, 973 (Wyo. 1995). The Public Records Act must be construed liberally in favor of disclosure and all exemptions interpreted narrowly. *Id.* The remedial purpose of the act is "to permit access to public records unless disclosure would inflict irreparable harm contrary to protected rights." *Id.*

The Act does include both discretionary and quasi-mandatory exemptions to disclosure of records.

A. *General exemptions.* The substantive exceptions to the general rule of access to information under the Public Records Act are as follows:

- (1) Materials otherwise not public under state law (for instance, certain reports);
- (2) Materials which are not public under federal law (for instance, where the conditions of a federal grant to the State requires confidentiality);
- (3) Materials which are not public under court rules or an order of a court (for instance, records of juvenile hearings).

One must assume that if a specific statute exempts a record from disclosure, the exemption must not violate the public's constitutional right of access. No Wyoming Supreme Court decisions have addressed this issue.

B. *Access to records discretionary based on "public interest."* A public official has discretion to allow or not allow access to the following records "on the ground that disclosure to the applicant would be contrary to the public interest." The public official's discretionary closure of re-

ords is more subject to review by the court than the other categories of records which may be closed for other reasons. The custodian has the burden to show that the harm to the public interest caused by disclosure is based in fact and not merely conjecture or speculation. *Allsop v. Cheyenne Newspapers*, 2002 Wyo. 22, 39 P.3d 1092 (2002). The harm must also outweigh the public's interest in disclosure. *Sheridan Newspapers v. City of Sheridan*, 660 P.2d 785 (Wyo. 1983). The records in this category are as follows:

- (1) Records of certain law enforcement authorities (police, sheriff, prosecutors, the state auditor, the attorney general) kept for investigation, "intelligence," or prosecution purposes;
- (2) Test questions, scoring keys and "examination data" regarding licensing and academic examinations. Scores of promotional exams are available to the person taking the exam;
- (3) Details of research projects conducted at state institutions;
- (4) Appraisals of real estate or relating to acquiring property;
- (5) Interagency and intraagency memoranda which would not be available by law to a private party in litigation with the agency.

*C. Access only when provided for by other law.* A third category of materials is not available for inspection unless the right to inspection is otherwise provided for by law. In a case involving hospital records, one of the classifications covered by this section of the Act, the Wyoming Supreme Court found that the "common thread running through" the ten classifications of records included in this section "is personal information instinct with a privacy interest." *Houghton v. Franscell*, 870 P.2d 1050, 1055 (Wyo. 1994). The Court held that in order for a record to fall within the exemptions in this section there must be a "publicizing of one's private affairs with which the public [has] no legitimate concern."

The Court noted that the Legislature recognized that records that might fall under the classifications in this section could still be disclosed despite the apparent mandatory language of the statute — "the custodian shall deny the right of inspection" — because of the phrase that follows the mandatory language — "unless otherwise provided by law." The Court found that this language indicated that the legislature did not intend to create blanket exemptions or those exemptions which would violate the public's constitutional right of access. *Id.* at 1056-57.

The classifications covered by this section include:

- (1) Medical, psychological and sociological data on individuals, except coroner's reports;
- (2) Adoption and welfare records on individuals;
- (3) Personnel files (but these are available to elected officials, and to the person described in the file);
- (4) Letters of reference;
- (5) Trade secrets, privileged information, and confidential commercial, financial, geological or geophysical data;
- (6) Library and archive materials in accordance with the conditions required by the contributor of the materials;
- (7) Hospital records;
- (8) School district records regarding students (but the student and school board members can have access to these within certain parameters);
- (9) Library circulation and registration records, except as requested by parents or as needed for administration of the library;
- (10) Information obtained via 911 emergency systems except to the person in interest, law enforcement, or public agencies for official business purposes.

*D. Equal access to all media representatives.* The Public Records Act specifically provides that if the right to inspect a record is allowed to any employee of a newspaper, radio or television station, or other employee of the "media," access must be allowed to all news media employees. In other words, a public official who is the custodian of records may not give copies of the requested records to one reporter, but refuse to give the same records to another.

*E. Copies.* When there is a right of access to public records the person requesting the records may request that copies, printouts, or photographs of the records be provided to him, and the custodian of those records should provide the copies for a reasonable fee set by the custodian. If the custodian does not have the equipment or facilities for copying the records the person who requests them is entitled to access for the purpose of copying. This must be done while the records are still in the custody and possession of the custodian of the records and at his direction. The custodian of the records may establish a reasonable schedule for copying, and "may charge a reasonable fee" for the copies. No Wyoming Supreme Court case interprets what is meant by a "reasonable fee."

The Act makes it clear that custodians may not charge a fee for making a record available for inspection.

*F. Jurisdiction of the district courts.* The Act grants jurisdiction over disputed questions of access and copying to the district court of the county in which "the record is found." Should a reporter, or other member of the public, seek access, he may apply to the court for an order to the custodian of the record to show cause why the custodian is not allowing access. The custodian of the records may also apply to the court for an order prohibiting access when the custodian of the records believes that "disclosure of the contents of the records would do substantial injury to the public interest," even if access to the records is otherwise allowed under the Act. In order to obtain a court's order having the effect of "sealing" or "closing" such a record, however, the custodian must give notice to the person seeking access to the records, and the court would have to allow him an opportunity to be heard.

*G. Wyoming Supreme Court decisions.* The Wyoming Supreme Court has decided eight cases in which the Public Records Act played a significant role. They will be explained chronologically.

In *Laramie River Conservation Council v. Dinger*, 567 P.2d 731 (Wyo. 1977) the Laramie River Conservation Council (LRCC) sought access to a transcript of proceedings before the Industrial Siting Council, a state agency. The District Court denied LRCC's request, holding that the transcript was an intraagency or interagency memorandum, and therefore specifically exempted from disclosure by the Public Records Act. *Id.* The Supreme Court reversed, reasoning that the hearing was public, and a transcript of a public hearing is a public record not exempted by the Public Records Act. *Id.* In short, the Wyoming Supreme Court refused to allow the Siting Council to engage in the subterfuge of calling the transcript a "memorandum," which would have allowed the Council to hide behind an inapplicable Public Records Act exception.

In *Sheridan Newspapers Inc. v. City of Sheridan*, 660 P.2d 785 (Wyo. 1983), the Sheridan Police Chief denied to reporters from the *Sheridan Press* and others access to "rolling logs," a chronological index of complaints and reports to the police dispatcher, "case reports" (reports of the activities of officers), "jail logs" or rosters, and traffic reports and citations. The police chief, contrary to the Public Records Act, gave no reason for closing these records, despite a request for an explanation from the newspaper. *Id.*

The district court decided that the public (and therefore the press) had a right to inspect jail logs, traffic accident reports, and complaints and citations issued, but had no constitutional or statutory right to inspect the case reports and rolling logs. *Id.* Both the city and the newspaper appealed.

Citing its earlier decision in *Laramie River Conservation Council*, the Wyoming Supreme Court first declared that the objects of the Public

Records Act are disclosure, an open and accountable government, and the prevention of secrecy. *Id.* The Public Records Act would therefore be construed in light of this policy, with an emphasis on accountability, “unless the custodian of such records can show a legal prohibition to disclosure.” *Id.*

The Court held that the *Sheridan Press* had a constitutional right to the disputed materials, subject to the exceptions and limitations set forth in the Public Records Act. *Id.* It noted that the police chief’s closure of entire categories of records was inappropriate, as the closure of records must be on a selective basis. *Id.* The requested materials should therefore have been examined and segregated by the police chief on a document-by-document basis. *Id.*

Based on these principles and the Public Records Act, the Court held that the *Sheridan Press* was entitled to all the requested records, and noted that any particular records falling within an exception to the general rule of disclosure could be taken up on a case-by-case basis. *Id.*

In the next case, *Houghton v. Franscell*, 870 P.2d 1050 (Wyo. 1994), the Supreme Court attempted to give a more complete exposition of the law surrounding the Wyoming Public Records Act. In *Houghton the Gillette (Wyo.) News-Record* requested access from the Campbell County Hospital District to any and all records concerning guarantees of income made to physicians locating in Gillette. *Id.* The hospital cited the hospital records exemption outlined at Wyoming Statute 16-4-203(d)(vii), which includes an exemption for hospital records regarding medical personnel and staff. The newspaper argued that the records were the property of the hospital district as opposed to the hospital itself, and that the exemption did not apply to the district. *Id.* The newspaper also alleged that the exemption only applied to medical information concerning specific patients. *Id.*

The Court relied on the holding of *Sheridan Newspapers Inc.*, 660 P.2d 785, that the object of the Public Records Act is disclosure, not secrecy, and that the Act should be interpreted liberally in favor of disclosure. The Court held this is especially true regarding records relating to expenditures of public funds. *Id.* at 1052. The Court noted that there is a constitutional right of access to public records. The Court held that the State may not exclude an entire class of records for public inspection absent a compelling state interest. *Id.* at 1053. The Court stated that the language of the exception was plain and unambiguous and that the language exempting hospital records relating to medical staff and personnel did not include the contract requested by the newspaper. *Id.* In interpreting the statute, the Court indicated that any review of what an exemption means under the Wyoming Public Records Act must include a balancing of privacy interests against the public’s right to know. *Id.* The Court held that an unwarranted invasion of privacy is:

“Unwarranted publicity, unwarranted appropriation or exploitation of one’s personality, or the publicizing of one’s private affairs with which the public had no legitimate concern.” *Id.* at 1055.

After the *Houghton* case, the Court decided *Wyoming Department of Transportation v. International Union of Operating Engineers Local Union 800*, 908 P.2d 970 (Wyo. 1995). In that case, the Operating Engineers requested payroll information forms submitted to the Wyoming Department of Transportation by its contractors. *Id.* The forms were required to be submitted to the Wyoming Department of Transportation under the federal Davis-Bacon Act, which is the federal prevailing wage act. *Id.* On any state highway project using federal funds, the federal prevailing wage had to be used, and any contractors on the job had to present payroll information to the Department of Transportation. *Id.* The Department of Transportation agreed to submit the materials to the Operating Engineers, but wanted to remove the names and addresses. *Id.* The Department of Transportation argued that including the names and addresses on the records would serve no purpose and would be an unwarranted invasion of privacy. *Id.* The Operating Engineers, on the other hand, alleged that the payroll records could determine whether or not the Department of Transportation and the contractors were complying with the prevailing wage. *Id.* The

Operating Engineers also asserted that confirming information with individual workers was essential to that process. *Id.*

The Wyoming Supreme Court ruled in favor of the Operating Engineers, stating that the concerns regarding Operating Engineers reviewing the names and addresses of workers did not rise to the level of the public’s right to have the information released. *Id.* The Court noted that the workers had already released their names and addresses to the contractor, who had released them to the state, who had in turn released them to the federal government. *Id.* The Court ruled that even if the Engineers contacted the workers at their homes, such contact would not be significantly disruptive of their privacy. *Id.* It is of interest that the Court was willing to consider the balance of interests even though it had already rejected any specific exemptions cited by the Wyoming Department of Transportation. One could argue that the Court is willing to use the balancing test for any issue that comes under the Wyoming Public Records Act. The Court may, however, have simply been indicating that the Court’s analysis of the exceptions on their face was supported by the balancing test as used in *Houghton*.

Interestingly, the Court gave no deference to the Department of Transportation regulations on the subject, stating that the agency did not have “distinctive expertise to construe this special statute . . . thus, we will not accord any deference to its construction of the statute or its parallel regulations.” *Id.* at 973. Presumably, the Court will make such a statement when considering any agency regulations that infringe on the Public Records Act.

In addition, in *Sublette County Rural Health Care District v. Miley*, 942 P.2d 1101 (Wyo. 1997), the court considered a suit against a county rural health care district in which the plaintiff sought disclosure of financial reports that physicians submitted to the district. The physicians were required to make the reports pursuant to contracts that governed the operation of their clinic, which was in a building owned by the district. *Id.* The district contended that the reports fell under the confidential commercial data exception to the disclosure requirements of the Public Records Act, Wyo. Stat. § 16-4-203(d)(v). *Id.* The court agreed, reasoning that such disclosure was likely to impair the district’s ability to acquire necessary information because physicians could not be expected to divulge sensitive financial information if the district was required to disseminate it to the public. *Id.* The court also noted that mandatory disclosure of the financial statements was likely to cause substantial harm to the physicians’ competitive positions. *Id.*

In *University of Wyoming v. Gressley*, 978 P.2d 1146 (Wyo. 1999), the Supreme Court held that the University of Wyoming was subject to the Public Records Act.

In 2000, the Court in *Allsop v. Cheyenne Newspapers*, 2002 Wyo. 22, 39 P.3d 1092 (2002), found that a report compiled by a nationally known expert analyzing the jail after a rash of suicides and suicide attempts was not exempt from public disclosure, despite claims by the Sheriff that the report would provide a road map to suicide and escape at the jail. The District Court had ordered the report released except for one redaction which might compromise the safety of the jail. The Supreme Court reaffirmed that exempt material should be redacted from public records and non-exempt material released to the public. The Court further found that conclusory affidavits from custodians and their agents regarding potential harm to the public interest from disclosure were insufficient to support withdrawal of the records from public scrutiny. Custodians must present a factual basis to support their opinions that a harm to the public interest will occur.

In 2006, a state district court agreed with the University of Wyoming that surreptitious tape recording of a university committee meeting was not a public record under Wyoming Public Records Act, as the university had not created the document. The Wyoming Supreme Court reversed, ruling that the tape was received by the university in the course of its public business, as it was used in an investigation of whether a former employee had engaged in misconduct. *Sheaffer v. State ex. rel. University of Wyoming*, 2006 WY 99 139 P.3d 468. The Court further ruled that that provision in the Public Records Act that

exempts from disclosure records and information that were compiled solely for purposes of investigating violations or enforcing internal personnel rules or policies, the disclosure of which would clearly constitute unwarranted invasion of privacy, did not apply to surreptitious tape recording, as it was not compiled “solely” or “exclusively” for purposes of university’s internal investigation of manager since tape pre-existed investigation. W.S. 16-4-203(d)(xi).

In 2010, the Wyoming Supreme Court ordered the release of budget reduction recommendations made to the governor by state department heads. *Freudenthal v. Cheyenne Newspapers* 2010 WY 80,233 P.3d 933. The governor refused to release the recommendations, claiming a “deliberative process” privilege. The district court’s ruling recognized the “deliberative process” privilege, but ordered the documents released because they did not provide the kind of close, personal advice required by the privilege. The Supreme Court overturned the district court’s recognition of the privilege. The Court left open the possibility it might recognize it in the proper circumstances, but cautioned that the privilege, if adopted, should be narrow in scope. The Court found that even if the privilege existed, the documents did not fit the privilege.

In a 2011 case, a school district declined to release the salaries earned by teachers. The Supreme Court ruled that salaries must be released pursuant to a provision in the Public Records Act that expressly states that documents containing the “terms and conditions” of employment, including employment contracts, are open to public inspection. *Laramie County School*

*Dist. No. 1 v. Cheyenne Newspapers*, — P.3d —, 2011 WL 1124107 (Wyo.), 2011 WY 55. The Court rejected the argument by the school district that a state statute requiring the publication of the legal notice of the salaries paid by district only required the publication of salary by category and not by individual expressed an intent by the Legislature that the salaries of individuals were confidential.

H. *Otherwise provided by law.* The Public Records Act frequently refers to the fact that other laws may require that certain information be either available or denied to the public. A comprehensive list of these other laws and their contents is not included in this overview. Reference to the statutes governing particular subject matter will often be necessary to determine what is “otherwise provided for by law.”

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## Open Records

### I. STATUTE -- BASIC APPLICATION

#### A. Who can request records?

##### 1. Status of requestor.

Any person has the right of inspection, subject to limitations. Wyo. Stat. § 16-4-203(a) (1977 & Cum. Supp. 1987).

##### 2. Purpose of request.

The requester’s purpose cannot affect his right to receive records. “A showing of need is unnecessary to obtain access to public records and a criminal penalty is provided for those custodians who deny access.” *Laramie River Conservation Council v. Dinger*, 577 P.2d 731, 773 (Wyo. 1977).

##### 3. Use of records.

The law makes no restrictions on subsequent use of information provided.

#### B. Whose records are and are not subject to the act?

##### 1. Executive branch.

All public records of the executive should be subject to the Act. Wyo. Stat. § 16-4-202(a) (1977, Rev. 1982).

##### 2. Legislative bodies.

All public records of the legislature should be subject to the Act. Wyo. Stat. § 16-4-202(a) (1977, Rev. 1982).

##### 3. Courts.

Public records of the Courts should be subject to the Act. Wyo. Stat. § 16-4-202(a) (1977, Rev. 1982). *See generally Williams v. Stafford*, 589 P.2d 322, 325 (Wyo. 1979) (access to court proceedings should be limited only under exceptional circumstances). In juvenile court proceedings, however, all information, reports or records made are confidential. Wyo. Stat. § 14-6-203 (1977, Rev. 1997).

##### 4. Nongovernmental bodies.

Records of nongovernmental bodies are not “public records.” Wyo. Stat. § 16-4-201(a)(v) (1977, Rev. 1982); § 9-2-405 (1977, Rev. 1987). The Wyoming Supreme Court has yet to be faced with a case that involves the issue of access to records of a private entity performing a governmental function.

##### 5. Multi-state or regional bodies.

Public records of the Wyoming representatives on these bodies should be subject to the Act. Wyo. Stat. § 16-4-202(a) (1977, Rev. 1982).

##### 6. Advisory boards and commissions, quasi-governmental entities.

The Wyoming Supreme Court has said that the Public Records Act will receive a liberal construction in favor of disclosure and against withholding, so it is likely that the language in Wyo. Stat. § 16-4-201(a)(v) will be interpreted to include advisory boards. *Sheridan Newspapers Inc. v. City of Sheridan*, 660 P.2d 785, (Wyo. 1983); *but cf.* Wyo. Attorney General Op. 73-17 (1973).

##### 7. Others.

Any records determined to be official public records or office files and memoranda will be subject to the Act. Wyo. Stat. § 16-4-201(a)(vi) (1977, Rev. 1982); Wyo. Stat. § 9-2-405 (1977, Rev. 1987).

#### C. What records are and are not subject to the act?

##### 1. What kind of records are covered?

Any record made by a governmental body covered by the Act or any record received by them in connection with the transaction of public

business, except those privileged or confidential by law. Wyo. Stat. § 16-4-201(a)(v) (1977, Rev. 1982).

## 2. What physical form of records are covered?

Wyo. Stat. § 16-4-201(a)(v) (1977, Rev. 1982) states: “Public records’ when not otherwise specified, includes the original and copies of any paper, correspondence, form, book, photograph, photostat, film, micro-film, sound recording, map drawing or other document, regardless of physical form.” This includes electronic records.

## 3. Are certain records available for inspection but not copying?

Examinations may be inspected but not copied. (Wyo. Stat. § 16-4-203(b)(ii) (1977, & Cum. Supp. 1996). Any other record that can be inspected can be copied. Wyo. Stat. § 16-4-204(a) (1977, Rev. 1982).

### D. Fee provisions or practices.

#### 1. Levels or limitations on fees.

The official custodian may charge a reasonable fee for the services rendered by him or his deputy in supervising the copying, printing or photographing when such copying, printing or photographing is performed by the requester. Reasonable fees may also be charged for the copies. Wyo. Stat. § 16-4-204(b) (1977, Rev. 1982). The fee schedule must be established by rule, regulation, ordinance or law.

#### 2. Particular fee specifications or provisions.

##### a. Search.

No fee may be charged for inspection of records. A person requesting a copy of the records should first ask to inspect the record in order to avoid an attempt to include a search fee in the cost of copying the records. What constitutes the reasonable cost of producing a copy has not been presented to the Wyoming Supreme Court as of the date of this publication.

##### b. Duplication.

Duplication is controlled by the reasonable fee provision.

##### c. Other.

*Computer access, printouts.* Records that primarily or solely exist in electronic form are specifically governed by Wyo. Stat. § 16-4-202(d). If the requester requests a compilation or extraction of specific information from a computer database, the custodian may charge for the cost of constructing the record, including the cost of programming and computer services, as well as the cost of producing the actual copy. If producing the new electronic record would impair the duties of the office, then the custodian may decline to produce a new record.

*Microfiche.* Microfiche copies and use should be covered by the general provision allowing for reasonable fees. *Id.*

*Non-print audio or audio-visual records.* There is no specific reference to fees for this type of media, but presumably this would be within the scope of the general provision. *Id.*

## 3. Provisions for fee waivers.

There are no provisions for fee waivers, but it appears to be within the discretion of the custodian to waive fees.

## 4. Requirements or prohibitions regarding advance payment.

There are no provisions regarding advance payments.

## 5. Have agencies imposed prohibitive fees to discourage requesters?

The Wyoming Supreme Court has not addressed this issue. It is, however, not unlikely that some agencies utilize this approach, since the custodian has great discretion in setting fees. Anecdotal reports of

excess fees have been reported, including one case where an agency attempted to charge for the organization and pagination of the requested records.

### E. Who enforces the act?

The District Court where the records are found.

#### 1. Attorney General’s role.

No role, other than to advise state agencies.

#### 2. Availability of an ombudsman.

Wyoming does not have an ombudsman.

#### 3. Commission or agency enforcement.

None.

### F. Are there sanctions for noncompliance?

It is a misdemeanor to willfully and knowingly violate the Act.

## II. EXEMPTIONS AND OTHER LEGAL LIMITATIONS

### A. Exemptions in the open records statute.

#### 1. Character of exemptions.

The official custodian of public records has a degree of discretion when determining whether to release records that fall within the discretionary exemptions in the Act. The Wyoming Supreme Court has directed the official custodian to apply a balancing test in weighing the public’s right to access against an individual’s privacy interests. The reasons for non-disclosure must outweigh the state’s public policy of openness. See Foreword.

##### a. General or specific?

The Public Records Law provides both specific exemptions and a general exemption where the custodian finds that disclosure would be contrary to the public interest. Wyo. Stat. § 16-4-203(b) (1977 & Cum. Supp. 1996). A custodian must petition the district court if he wishes to withhold a record pursuant to the general exemption.

In *Houghton v. Franscell*, 870 P.2d 1050, the Wyoming Supreme Court balanced the public’s right to disclosure against an unwarranted invasion of privacy. The court defined such an invasion as:

Unwarranted publicity, unwarranted appropriation or exploitation of one’s personality, or the publicizing of one’s private affairs with which the public had no legitimate concern.

*Id.* at 1055.

In *Sheridan Newspapers Inc. v. City of Sheridan*, the Wyoming Supreme Court said, “the custodian of the records must weigh the competing interests involved and determine whether permitting inspection would result in harm to the public interest which outweighs the legislative policy recognizing the public interest in allowing inspection.” 660 P.2d at 798. This balancing test will be utilized in weighing the public interest.

##### b. Mandatory or discretionary?

The Wyoming Public Records Law has both mandatory and discretionary exemptions. The public interest exceptions are discretionary, and all others are mandatory, unless otherwise provided by law. The Wyoming Supreme Court has found the “unless otherwise provided by law” phrase to allow the courts to release records that might fall within the so-called mandatory exemption classifications. This phrase indicates the Legislature did not mean to create broad, blanket exemptions to disclosure. See *Houghton v. Franscell*, 870 P.2d 1050, which makes it clear that the balancing test of public disclosure versus unwarranted invasion of privacy will be applied to interpreting mandatory exemptions.

### c. Patterned after federal Freedom of Information Act?

There are Wyoming exemptions that are similar to the federal statute. The Wyoming Supreme Court has used the federal statute and case law when interpreting the Public Records Law. *Sheridan Newspapers Inc. v. City of Sheridan*, 660 P.2d at 791-97; Stephen Jouard, Note, *A Constitutional Right To Access To State-Held Information*, 19 Land & Water L. Rev. 719, 723 (1984).

## 2. Discussion of each exemption.

a. The first group of exemptions apply where inspection would be contrary to state or federal law, supreme court rule or court order. This section is mandatory. Wyo. Stat. § 16-4-203(a) (1977 & Cum. Supp. 1996); E.G. Rudolph, *Wyoming Local Government Law* § 3.3 at 108 (1985).

b. The second group includes cases where the official custodian determines that permitting the inspection would be contrary to the public interest. Wyo. Stat. § 16-4-203(b) (1977 & Cum. Supp. 1996). “The list bears a strong resemblance to the list of subjects which can be considered in executive sessions under the Public Meeting Law.” E.G. Rudolph, *supra* § 3.3 at 108. The first exception has to do with the investigation records and files of law enforcement agencies, including prosecutors, as well as intelligence information and information relating to security procedures. Wyo. Stat. § 16-4-203(b)(i) (1977 & Cum. Supp. 1996). It was this exception that was at issue in the *Sheridan Newspapers* case, 660 P.2d 785 (Wyo. 1983). In that case, the police department had a policy of denying access to its “rolling log” and case reports. The court held that the blanket denial of access to these records was improper. *Id.* Access could be denied only on a case-by-case basis when the custodian determined that a particular record included sensitive investigatory material or material compiled for the purpose of prosecution. *Id.* This holding requires that the public interest balancing test be applied before denying access. *Id.*

c. Also in the second group are exceptions for inter- and intra-agency memoranda and letters that would not be available to a party in litigation with the agency. Wyo. Stat. § 16-4-203(b)(v) (1977 & Cum. Supp. 1996). This exception was the subject of *Laramie River Conservation Council v. Dinger*, 567 P.2d 731 (Wyo. 1977). In that case, the state plant siting council held a public meeting, but denied the plaintiff a copy of the transcript of the meeting. *Id.* The council relied upon a number of federal cases that held various types of reports prepared to assist an agency in its deliberative processes exempt as intra-agency memoranda. *Id.* The Court held that the transcript was an extension of the earlier proceeding and merely labeling the transcript a “memorandum” did not make it exempt. *Id.* The court noted that information cannot be withheld merely because it will embarrass some members of an agency. *Id.* at 734. The Court said that “common sense” must be used in interpreting this exception.

d. Other exceptions in this group include examinations for professional licensing, employment and academic purposes, with an exception giving the subject of the record or his representative the right to inspect, but not copy his examination after it has been graded, and details of research projects and real estate appraisals of property the governmental entity plans to acquire (except the property owner involved has the right to inspect). Wyo. Stat. § 16-4-203(b) (1977 & Cum. Supp. 1996).

e. The third group of exceptions includes records that are mandatorily closed, unless otherwise provided by law, as discussed above. It includes: medical, psychological and sociological data on individuals; adoption and welfare records of individuals; personnel files, including applications, performance ratings and scholastic achievement data; letters of reference; trade secrets, privileged information and confidential commercial, financial, geological or geophysical data obtained from any person; material contributed by private persons to libraries, archives and museums if limitations are made on the contributions; any hospital records; school district records containing information relat-

ing to the biography, family physiology, religion, academic achievement and physical or mental ability of any student; library circulation and registration records (a minor’s records may be inspected by his custodial parent or guardian); and information obtained through 911 telephone information systems. Wyo. Stat. § 16-4-203(d) (1977 & Cum. Supp. 1996). A new exemption at 16-4-203(d)(xi) provides that records or information compiled *solely* for the purposes of investigating of internal personnel rules or personnel policies may be withheld if disclosure would constitute a “clearly unwarranted invasion of personal privacy.”

None of these provisions have been discussed by the Wyoming Supreme Court, except for “records” in *Houghton v. Franscell*, 870 P.2d 1050 and “sociological data” in *Department of Transportation v. International Union of Operating Engineers Local 800*, 908 P.2d 970.

f. An exception at 16-4-203(h) allows limited access to the Wyoming natural diversity database housed at the University of Wyoming.

g. There are other exemptions designed to protect against terrorist attacks by prohibiting release of floor plans for public facilities and buildings and other documents that might aid such an attack.

h. In addition to the listed exceptions, the Act authorizes a custodian to apply to the district court for an order permitting him to restrict disclosure of a particular record if such disclosure would cause substantial injury to the public interest. Wyo. Stat. § 16-4-203(g) (1977, Cum. Supp. 1996); E.G. Rudolph, *supra*, § 3.3.

## B. Other statutory exclusions.

There are other laws specifically exempting certain materials from public inspection, and the Public Records Act recognizes the primacy of those statutes. Wyo. Stat. § 16-4-203(a)(i) (1977, & Cum. Supp. 1996). The Wyoming Supreme Court has, however, said that the Act will receive a liberal construction in favor of disclosure and against withholding, and exemptions will be construed narrowly. *Sheridan Newspapers Inc. v. City of Sheridan*, 660 P.2d at 794.

## C. Court-derived exclusions, common law prohibitions, recognized privileges against disclosure.

There is no Wyoming case law in this area. The Wyoming Supreme Court has rejected recognition of the so-called deliberative process privilege for now, but left open the possibility that the privilege of narrow scope might be recognized under appropriate circumstances. See *Cheyenne Newspapers v. Freudenthal* discussed in the Foreword.

## D. Are segregable portions of records containing exempt material available?

Exempt material may be segregated or the records may be structured to provide the information the public is entitled to have. *Sheridan Newspapers Inc. v. City of Sheridan*, 660 P.2d at 797; *Allsop v. Cheyenne Newspapers*, 2002 Wyo. 22, 39 P.3d 1092 (2002).

## E. Homeland Security Measures.

The Act contains exemptions designed to avoid providing information that might assist an attack by terrorists. Wyo. Stat. § 16-4-203(b) (vi). A custodian may withhold information that is covered by specific categories set forth in the Act if inspection “would jeopardize” the security of any government structure, facilitate the planning of a terrorist attack or endanger the life or physical safety of an individual. The record categories covered are vulnerability assessments, security and surveillance systems and procedures, certain building plans, evacuation plans and records prepared to prevent or respond to terrorist attacks.

## III. STATE LAW ON ELECTRONIC RECORDS

As previously mentioned, the statute attempts to enumerate a broad spectrum of records that are covered by the Act, “regardless of physical form.” Wyo. Stat. § 16-4-201(a)(v). A subsection of the Act, Wyo. Stat. § 16-4-402(d), specifically addresses records which are kept sole-

ly or primarily in an electronic format. The section requires an agency to extract information, or create a new record or document from a computer database upon request unless the creation of the new record or the compilation of the information would impair the agency's ability to fulfill its duties. The custodian may charge for the cost of creating the new record, as well as the cost of producing a copy of the information.

**A. Can the requester choose a format for receiving records?**

Yes, unless doing so is impractical or impossible.

**B. Can the requester obtain a customized search of computer databases to fit particular needs?**

Yes, unless it would impair the agency's ability to carry out its duties. The requester may be required to pay the cost of the search.

**C. Does the existence of information in electronic format affect its openness?**

Generally no.

**D. How is e-mail treated?**

While it is generally accepted that emails are public records, there is no direct reference to e-mail records and no Wyoming case has discussed the issue.

**1. Does e-mail constitute a record?**

See above.

**2. Public matter on government e-mail or government hardware**

No Wyoming cases have yet addressed this issue.

**3. Private matter on government e-mail or government hardware**

No Wyoming cases have yet addressed this issue.

**4. Public matter on private e-mail**

No Wyoming cases have yet addressed this issue.

**E. How are text messages and instant messages treated?**

No Wyoming cases have yet addressed this issue, but the broad definition of a record would seem to include text or instant messages.

**F. How are social media postings and messages treated?**

No Wyoming cases have yet addressed this issue, but the broad definition of a record would seem to include these postings.

**G. How are online discussion board posts treated?**

No Wyoming cases have yet addressed this issue, but the broad definition of a record would seem to include these postings.

**H. Computer software**

An agency may decline access to records if it would compromise the security or integrity of "any propriety software." Wyo. Stat. 16-4-202(d)(iv).

**1. Is software public?**

Yes, unless propriety or if it would divulge trade secrets.

**2. Is software and/or file metadata public?**

No Wyoming cases have addressed this issue.

**I. How are fees for electronic records assessed?**

The cost of compiling a new record from a database or compilation of other records, including the cost of programming and computer services, may be charged to the person requesting the records.

**J. Money-making schemes.**

Such schemes are not directly addressed.

**K. On-line dissemination.**

The convicted sex offender registry, in which offenders are entered if the likelihood of a re-offense is high, must be accessible online. Wyo. Stat. § 7-19-303(c)(iii) (1977) (current through 2005 legislative session). The statute also lists the type of information about the offender which is included in the database.

Also, the state is in process of developing a website with financial information from executive branch agencies.

**IV. RECORD CATEGORIES -- OPEN OR CLOSED**

**A. Autopsy reports.**

Pursuant to amendments adopted in 2011, only the coroner's verdict is open. The verdict must contain any relevant toxicology information. Wyo. Stat. § 16-4-203(d)(i) (1977, Cum. Supp. 1996).

**B. Administrative enforcement records (e.g., worker safety and health inspections, or accident investigations)**

These records are open, unless they fit an exemption in the Act. Worker Compensation cases are expressly confidential.

**1. Rules for active investigations.**

Records of active investigations may be withheld if release would impair the investigation.

**2. Rules for closed investigations.**

Records of closed investigations should be open as obviously there is little chance the release would impede the investigation. No Wyoming cases have discussed under what other circumstances records of closed investigations might be closed.

**C. Bank records.**

Subject to public interest classification by the state examiner's rules. Wyo. Stat. § 13-3-505 (1977).

**D. Budgets.**

Budgets are open to inspection. The Wyoming Supreme Court has ruled that the public interest in access is never greater than it is in records related to the expenditure of public funds and exceptions in the statutes to public access must be "expressly textual." *Houghton v. Franscell*, 870 P.2d 1050 (Wyo. 1994).

**E. Business records, financial data, trade secrets.**

Open unless the custodian can show that the disclosure would hinder the ability of government to collect such information in the future or if the competitive position of the person or business providing the information. See *Sublette County Rural Health Care District v. Miley*, 942 P.2d 1101 (Wyo. 1997); Wyo. Stat. § 16-4-203(d)(v) (1977 & Cum. Supp. 1996).

**F. Contracts, proposals and bids.**

Should be open.

### G. Collective bargaining records.

May be covered by the intra-agency memorandum provision, but there are no specific provisions covering this situation. As intra-agency memoranda that would not be available to a party in litigation, the custodian has discretion whether to release this information.

### H. Coroners reports.

Coroner verdicts are open. Wyo. Stat. § 16-4-203(d)(i) (1977 & Cum. Supp. 1996).

### I. Economic development records.

Economic development records either created or received by a public agency are generally open to the public. Wyoming has no case law pertaining to the availability of records held by public/private non-profit entities dedicated to economic development.

### J. Election records.

#### 1. Voter registration records.

All election records of a county are public unless specifically exempted. Registration lists are available for political purposes only and are not available for commercial purposes. Personally identifiable information, such as Social Security Numbers, driver's license numbers, birth dates and telephone numbers, are confidential. Names, gender and addresses are not confidential.

#### 2. Voting results.

All election records of a county are public unless specifically exempted. Registration lists are available for political purposes only and are not available for commercial purposes. Personally identifiable information, such as Social Security Numbers, driver's license numbers, birth dates and telephone numbers, are confidential. Names, gender and addresses are not confidential.

### K. Gun permits.

The Wyoming Legislature enacted a law in 2011 that all Wyoming citizens may carry concealed weapons. Previously, concealed carry permits were confidential.

### L. Hospital reports.

There is an exemption for hospital records, including those relating to medical administration and "other medical information . . . whether of a general or specific classification." This exemption has been limited by the Wyoming Supreme Court. See *Houghton v. Franscell*, 870 P.2d 1050.

### M. Personnel records.

Generally, personnel records are confidential.

#### 1. Salary.

The salary, along with any other documents containing the terms and conditions of employment, are open to public inspection.

#### 2. Disciplinary records.

Generally confidential, unless they are also generated for another purpose, such as an investigation in potential criminal conduct.

#### 3. Applications.

Confidential.

#### 4. Personally identifying information.

Social security numbers, financial account numbers, and month and day of birth are to be redacted from court records.

#### 5. Expense reports.

These reports should be open to public inspection, as no exemption applies. There has been no court cases examining this issue directly.

The Wyoming Supreme Court said any exemption forbidding the disclosure of records related to the expenditure of public funds must be expressly textual.

### N. Police records.

Generally, police records are open for inspection unless the disclosure would impair the investigation or prosecution of criminal activity. Any reason supporting withdrawal must outweigh the public's interest in disclosure.

#### 1. Accident reports.

Generally, open.

#### 2. Police blotter.

Open to the extent the blotter does not include information that results from an investigation and the release would impair the investigation. See *Sheridan v. Sheridan Newspapers* in Foreword.

#### 3. 911 tapes.

Exempt from disclosure. Wyo. Stat. 16-4-203(d)(x).

#### 4. Investigatory records.

Only closed where release would impair the investigation. See *Sheridan v. Sheridan Newspapers* in Foreword.

#### 5. Arrest records.

Open to the public.

#### 6. Compilations of criminal histories.

Criminal histories maintained by the Department of Criminal Investigation for the purpose of identifying suspects in crimes are confidential. Wyo. Stat. 7-19-106 & 109.

#### 7. Victims.

No exemption is included in the law.

#### 8. Confessions.

No exemption is included in the law.

#### 9. Confidential informants.

No Wyoming cases have discussed this issue.

#### 10. Police techniques.

No Wyoming cases have discussed this issue.

#### 11. Mug shots.

Mug shots are expressly open to public inspection. Wyo. Stat. 7-19-106(m)(ii).

#### 12. Sex offender records.

Generally open. The name of the accused, the victim and information reasonably likely to identify the victim may not be released until the defendant has been bound over to district court.

#### 13. Emergency medical services records.

Open except to the extent they include medical data on an individual.

### O. Prison, parole and probation reports.

A record must be made of probation, parole and conditional release revocation hearings under Wyo. Stat. § 7-13-408 (1977, Rev. 1992); Wyo. Stat. § 7-13-402(d) (1977 & Cum. Supp. 1996). Such records would then be subject to the Public Records Law.

### P. Public utility records.

Open except as otherwise provided in Title 37, Public Utilities. Wyo. Stat. § 37-2-124(1977).

**Q. Real estate appraisals, negotiations.****1. Appraisals.**

Open in regard to public entities. The sale price of a private home contained in public records are exempt from disclosure.

**2. Negotiations.**

Open unless disclosure would reasonably increase the price to be paid by the public entity.

**3. Transactions.**

Open in regard to public entities.

**4. Deeds, liens, foreclosures, title history.**

Open.

**5. Zoning records.**

Open.

**R. School and university records.**

These records are generally open unless they are expressly made confidential by state or federal law.

**1. Athletic records.**

Open unless they would constitute an education record on a student.

**2. Trustee records.**

Open to inspection.

**3. Student records.**

Not subject to disclosure.

**S. Vital statistics.****1. Birth certificates.**

Closed.

**2. Marriage & divorce.**

Open except for financial affidavits filed with a court.

**3. Death certificates.**

Open

**4. Infectious disease and health epidemics.**

Closed to the extent they reveal personally identifiable medical data on individuals.

**V. PROCEDURE FOR OBTAINING RECORDS****A. How to start.**

The Public Records Act is silent as to the procedure for obtaining records. One need not file a written request for access to records. Written requests are only necessary when the requester has been denied access to the records. A custodian must cite the reasons and the legal authority for denying access to records or information if requested to do so in writing. The official custodian of any public record may make rules and regulations regarding the inspection of the records. If the custodian feels that substantial injury to the public interest would result from disclosure of the record, he may apply to the district court where the record is located for an order permitting him to restrict disclosure. Wyo. Stat. § 16-4-203(g) (1977, Rev. 1991 & Cum. Supp. 1996). *See* Foreword; *Sheridan Newspapers, supra*, at 798.

**1. Who receives a request?**

The custodian of any public record. Wyo. Stat. § § 16-4-202, 203(1977).

**2. Does the law cover oral requests?**

Yes.

**a. Arrangements to inspect & copy.**

All public records are open for inspection at "reasonable times." The requester need not make arrangements beforehand. Wyo. Stat. § 16-4-202(a) (1977, Rev. 1982).

**b. If an oral request is denied:**

The party denied access may request a written statement of the grounds for the denial. The statement must cite the relevant law or regulation under which access is denied. Wyo. Stat. § 16-4-203(e) (1977, Rev. 1991)

**3. Contents of a written request.**

The party denied access may request a written statement of the grounds for the denial. The statement must cite the relevant law or regulation under which access is denied. Wyo. Stat. § 16-4-203(e) (1977, Rev. 1991). The law requires a response within a reasonable time, but no case has addressed how a reasonable time is to be calculated.

**B. How long to wait.**

There are no provisions dealing with statutory, regulatory or court-set time limits for agency response to request to obtain records. Under Wyo. Stat. § 16-4-202(a) (1977, Rev. 1982), the official custodian has the authority to make rules and regulations regarding the inspection of the records so that inspection will not interfere with the regular discharge of the custodian's duties. The response must be within a reasonable time.

The requester must have notice of the hearing denying review. Wyo. Stat. § 16-4-203(g) (1977, Rev. 1991).

**C. Administrative appeal.**

This is not applicable in Wyoming.

**2. To whom is an appeal directed?****4. Contents of appeal letter.****D. Court action.**

A person denied access to records may file an action in the state district court where the records are located requesting an order directing the custodian of the record to show cause why he should not permit inspection of the record. *See* Wyo. Stat. § 16-4-203(f) (1977, Rev. 1991).

**1. Who may sue?**

The person who is denied access to the record. *See, e.g.*, Wyo. R. Civ. P. 17.

**2. Priority.**

The Wyoming Rules of Civil Procedure are silent on the issue.

**3. Pro se.**

Any person may appear before a court, with or without representation. *See, e.g.*, Wyo. Stat. § 16-3-107(j) & (k) (1977, Rev. 1993). A corporation may not be represented pro se.

**4. Issues the court will address:**

The court will address all issues relating to the Public Records Act. *See, e.g.*, Wyo. Stat. § 16-4-204 (1977, Rev. 1982).

**5. Pleading format.**

The court has directed that the format should follow the Wyoming Rules of Civil Procedure. Wyo. Stat. § 16-4-203(g) (1977, Rev. 1991); *See, e.g.*, Wyo. R. Civ. P. Section III ("Pleadings and Motions").

**6. Time limit for filing suit.**

The filing requirements are governed by the Wyoming Rules of Civil Procedure. *See, e.g.*, Wyo. R. Civ. P. 3 & 6.

## 7. What court.

A person denied access to a record may apply to the district court of the district in which the record is located. Wyo. Stat. § 16-4-203(f) & (g) (1977, Rev. 1991 & Cum. Supp. 1996).

## 8. Judicial remedies available.

The exclusive remedy provided for in the Public Records Act is to apply to the district court of the district wherein the record is found for any order directing the custodian of the record to show cause why he should not permit the inspection of the record. Wyo. Stat. § 16-4-203(f).

## 9. Litigation expenses.

Look to specific provisions in the Wyoming Rules of Civil Procedures. Generally, courts have wide discretion in determining costs and attorneys fees. The Supreme Court has held that the court has authority to modify attorneys' fees. *State ex. rel. Wyo. Workers' Comp. Div. v. Brown*, 805 P.2d 830 (Wyo. 1991). The Public Records Act has no provision for the award of attorney fees.

## 10. Fines.

Violation of any provision of the Public Record Act is a misdemeanor, punishable by a fine not to exceed \$750.00. Wyo. Stat. § 16-4-205 (1977, Rev. 1995).

## 11. Other penalties.

None are stated in the Public Records Act.

## 12. Settlement, pros and cons.

Not addressed.

## E. Appealing initial court decisions.

### 1. Appeal routes.

A party appealing a decision from the district court may appeal to the Wyoming Supreme Court. A party who chooses to appeal a court decision should follow the Wyoming Rules of Appellate Procedure.

### 2. Time limits for filing appeals.

A party must file a notice of appeal within 30 days from the entry of the appealable order. Wyo. R. Civ. P. 2.01.

### 3. Contact of interested amici.

Interested *amici* must first file a motion for leave with the appellate court identifying the applicant's interest and setting forth reasons why an *amicus curiae* brief is appropriate under the circumstances. Wyo. R. App. P. 7.12.

The Reporters Committee for Freedom of the Press often files *amicus* briefs in cases involving significant media law issues before a state's highest court.

## F. Addressing government suits against disclosure.

As stated above, a governmental entity may seek an order from the district court authorizing the custodian to withhold a record that should otherwise be open because disclosure would cause "substantial harm" to the public interest.

# Open Meetings

## I. STATUTE -- BASIC APPLICATION.

### A. Who may attend?

The Public Meeting Law generally requires that meetings of "governing bodies" be open to "the public." Wyo. Stat. § 16-4-403(a) (1977, Rev. 1995); E.G. Rudolph, *Wyoming Local Government Law*, § 3.1, at 103 (1985). A person or group of persons who willfully disrupt a meeting to the point orderly conduct of the meeting is unfeasible can be removed, or the meeting can be moved. Wyo. Stat. § 16-4-406 (1977, Rev. 1982). The governing body shall establish procedures for readmitting "individuals not responsible for disturbing the conduct of a meeting." *Id.* Section 16-4-406 also states that "duly accredited members of the press or other news media except those who participated in a disturbance shall be allowed to attend any meeting permitted by this section." *Id.* "Duly accredited press member" is not defined. Finally, the statute states that all meetings of the governing body of an agency are open to the public at all times, "except where otherwise provided." Wyo. Stat. § 16-4-403(a) (1977, Rev. 1995). Accordingly, one must check the by-laws, rules and regulations of a particular governing body to ensure access to meetings.

### B. What governments are subject to the law?

#### 1. State.

Any "governing body" of a state agency is covered. Wyo. Stat. § 16-4-403 - 16-4-406 (1977, Rev. 1982); Wyo. Att'y Gen. Op. 73-17 (1973). "Governing body" means a "multimember" board, commission, committee, council or other policy or rulemaking body of an agency. Wyo. Att'y Gen. Op. 73-17 (1973). The legislature and the courts are expressly exempt.

#### 2. County.

Like state government, any governing body of a county agency is covered. Wyo. Att'y Gen. Op. 73-17 (1973). However, county meetings are also subject to a pre-statehood law; to the extent it is not inconsistent with the Public Meetings Law. Wyo. Stat. § 18-3-506 (1977); Wyo. Stat. § 16-4-407 (1977, Rev. 1982); E.G. Rudolph, *supra*, at 100, 103. The older provision requires the board of county commissioners to "sit with open doors and all persons conducting themselves in an orderly manner may attend their meetings." Wyo. Stat. § 18-3-506 (1977).

#### 3. Local or municipal.

Any governing body of a city agency is subject to the Public Meeting Law. Wyo. Att'y Gen. Op. 73-17 (1973). School boards are specifically required to comply by Wyo. Stat. § 21-3-110(a)(xvi)(C) (1977, Rev. 1986).

## C. What bodies are covered by the law?

### 1. Executive branch agencies.

Any commission, board or other entity that acts as a governing body. Governing body is not defined by the Act, but the Wyoming Supreme Court has indicated that it is any body with decision-making authority. See *Cheyenne Newspapers v. City of Cheyenne Building Code Board of Appeals* in Foreword.

#### a. What officials are covered?

No officials are covered unless acting as part of a "governing body." Wyo. Att'y Gen. Op. 73-17 (1973).

#### b. Are certain executive functions covered?

Any action taken as part of a "governing body" is covered. *Id.*

### c. Are only certain agencies subject to the act?

The Act applies to any state agency with a multimember board or commission, including committees as specifically mentioned in the definition of an agency in the Act. If the law governing a particular agency vests the full responsibility and authority for the agency's decisions in a single individual, the Act does not apply, since such an individual is not a governing body. *Id.* However, some agencies headed by a single officer have "subagencies," and these agencies may have a multimember governing body, for example the State Board of Control in the State Engineer's Office. In that case, the subagency would be subject to the Public Meetings Law even though the principal agency would not. *Id.*

#### 2. Legislative bodies.

The definition of agency includes all legislative bodies except the state legislature. Wyo. Stat. § 16-4-402(a)(ii) (1977, Rev. 1995) This exclusion does not extend to committees composed of legislators and nonlegislators. Wyo. Att'y Gen. Op. 7317 (1973).

#### 3. Courts.

The definition of "agency" expressly excludes the judiciary from this act. Wyo. Stat. § 16-4-402(a)(ii) (1977, Rev. 1995).

#### 4. Nongovernmental bodies receiving public funds or benefits.

The definition of "agency" is limited to organizations "created by or pursuant to the Wyoming constitution, statute or ordinance," so nongovernmental agencies would not be included. *Id.*; Wyo. Att'y Gen. Op. 73-17 (1973). However, no cases has been presented to the Wyoming Supreme Court in which a private entity is the "alter ego" of a governmental entity.

#### 5. Nongovernmental groups whose members include governmental officials.

No Wyoming case has addressed this issue.

#### 6. Multi-state or regional bodies.

If the body was created by the Wyoming constitution, statute or ordinance, and is a multimember body, the Public Meeting Law should apply. *Id.*

#### 7. Advisory boards and commissions, quasi-governmental entities.

It has been noted that the Act applies to only those agencies created by the Wyoming constitution, statute or ordinance. The attorney general has read this to mean only committees actually created by a statute or ordinance, or created pursuant to authority granted by the legislature. Wyo. Att'y Gen. Op. 73-17 (1973). Therefore, the attorney general excluded ad hoc advisory committees and groups, along with the boards of non-profit corporations from the Act. There is a question whether an advisory committee meets the statutory definition of agency if it does not possess some policy or rulemaking authority. The Act does include "committee" in the section defining the term "agency." The Wyoming Supreme Court has never addressed this issue.

#### 8. Other bodies to which governmental or public functions are delegated.

The only "other" bodies addressed are subcommittees of an agency, discussed in an attorney general's opinion. *Id.* According to this opinion, if the subcommittee is multimember and created by statute or ordinance, it will be subject to the Act provided it is multimember in composition. If the subcommittee membership comprises a majority of the governing body, then the subcommittee will be considered the same as the governing body, and therefore subject to the Act. If the subcommittee does not meet either of the above, it will not be subject to the Public Meeting Law. *Id.*

### 9. Appointed as well as elected bodies.

Any "governing body" of an agency is subject to the act, including appointed as well as elected bodies. Wyo. Stat. § 16-4-402 to 16-4-406 (1977, Rev. 1982); Wyo. Att'y Gen. Op. 73-17 (1973).

#### D. What constitutes a meeting subject to the law.

##### 1. Number that must be present.

A quorum of the governing body.

##### a. Must a minimum number be present to constitute a "meeting"?

In 1995, the Wyoming Legislature clarified what constituted a meeting by writing a new definition under 16-4-402(a)(iii), which states:

"Meeting" means an assembly of at least a quorum of the governing body of an agency which has been called by proper authority of the agency for the purpose of discussion, deliberation, presentation of information or taking action regarding public business. *Id.*

##### b. What effect does absence of a quorum have?

No "meeting" would exist under the Act. "Meeting" is defined as an assembly where "action is taken." Wyo. Stat. § 16-4-402(a)(iii). "Action" means the transaction of official business. Wyo. Stat. § 16-4-402(a)(I). Official business generally cannot be carried on without a quorum, so no meeting takes place without a quorum.

##### 2. Nature of business subject to the law.

In response to questions raised regarding whether information gathering sessions fell under the public meetings law in addition to sessions where decisions were made, the Legislature in 1995 redefined "meetings" as outlined above. The amendments make it clear that virtually any gathering of a quorum of a public body where business is discussed falls under the Public Meeting Law.

##### a. "Information gathering" and "fact-finding" sessions.

Covered.

##### b. Deliberations toward decisions.

Covered.

##### 3. Electronic meetings.

The Public Meetings Law does not specifically address meetings conducted by conference calls, e-mail or other electronic devices. The Wyoming Supreme Court has not ruled on whether a "gathering" by electronic means would meet the definition of a meeting as set forth in the 1995 Amendments.

#### E. Categories of meetings subject to the law.

##### 1. Regular meetings.

##### a. Definition.

Regular meetings may be defined by specific statutes relating to each governing body. If there is no statute, the governing body shall provide by ordinance, resolution, bylaws or rule for holding meetings. Wyo. Stat. § 16-4-404(a) (1977, Rev. 1995). If the agency's normal business does not require regular meetings, the agency need only provide notice of its next meeting to any person who requests notice. *Id.* Under *Deering v. Board of Directors, Fremont County Library*, 954 P.2d 1359, 1363 (Wyo. 1998), the Court defined regular and special meetings as follows:

"The term *regular meeting* (or *stated meeting*) refers to the periodic business meeting of a permanent . . . board, held at weekly, monthly, quarterly, or similar intervals, for which the day (as, "the first Tuesday of each month") should be prescribed by the bylaws

....

Any business that falls within the objects of the society as defined in its bylaws (or, in the case of a board, any business within the authority of the board) can be transacted at any regular meeting.” The Scott, Foresman Robert’s Rules of Order Newly Revised § 9 at 90-91 (1990 ed); *and see* Sturgis Standard Code of Parliamentary Procedure, Ch. 12 at 110 (2d ed. 1996).

In contrast,

[a] *special meeting* (or *called meeting*) is a separate session of a society held at a time different from that of any regular meeting, and convened only to consider one or more items of business specified in the call of the meeting. . . . The reason for special meetings is to deal with important matters that may arise between regular meetings and that urgently require action by the society before the next regular meeting. . . .

Robert’s Rules, *supra*, at 91-92; Sturgis, *supra*, at 110.

The Court made clear that postponing a regular meeting to a time when regular meetings are not normally scheduled does not make it a special meeting.

#### b. Notice.

As previously noted, the governing body may provide for holding regular meetings by ordinance or resolution if no statutory provision controls. The ordinance or regulation will establish the time and place of the meetings. The ordinance or resolution must be published at the time of its adoption, but no further notice of regular meetings is required by the Public Meetings Law, except to persons who have previously requested such notice. Wyo. Stat. § 16-4-404(a); E.G. Rudolph, *supra* at 100-101. This ambiguity is remedied by some of the statutes relating to specific agencies. *See, e.g.*, Wyo. Stat. § 21-3-110(a) (ii) (1977, Rev. 1986) (school districts required to publish notice of times and place of regular meetings twice a year).

##### (1). Time limit for giving notice.

None in Public Meetings Law. There may be provisions in specific statutes relating to the governing body or in the governing body’s ordinances or resolutions. E.G. Rudolph, *supra*, at 101. The Act only requires “reasonable” notice.

##### (2). To whom notice is given.

Notice is given to persons who have previously requested such notice, or as provided in specific statutes relating to the governing body or in the governing body’s ordinances or resolutions. Wyo. Stat. § 16-4-404(a); E.G. Rudolph, *supra*, at 101. Notice of special meetings must be given to media outlets requesting such notice.

##### (3). Where posted.

There is no posting requirement for regular meetings, unless provided in specific statutes relating to the governing body or in the governing body’s ordinances or resolutions. If a meeting is recessed, a copy of the recess order must be conspicuously posted on or near the door where the meeting was held. Wyo. Stat. § 16-4-404(c) (1977, Rev. 1982).

##### (4). Public agenda items required.

There is no explicit agenda requirement for regularly scheduled meetings. If, however, a meeting is recessed to another location, only agenda items may be discussed. Wyo. Stat. § 16-4-406 (1977, Rev. 1982). This implies an agenda requirement, but there are no specific items required for the agenda, unless provided in statutes relating to the governing body or in the governing body’s ordinances or resolutions.

Agendas must be posted for special meetings, and must be included in the notice to media outlets. The governing body may not vary from the agenda posted for a special meeting.

#### (5). Other information required in notice.

Other than that for special meetings, the Public Meetings Law has no additional requirements; refer to specific statutes relating to the governing body or in the governing body’s ordinances or resolutions.

#### (6). Penalties and remedies for failure to give adequate notice.

In *State, ex rel Van Patten v. Ellis*, 37 Wyo. 124, 259 P. 812 (1927), a school district did not follow statutory requirements for a meeting in which the board decided to pay parents for the expense of having their children attend school in another district closer to their home. The money was never paid, and the parents attempted to collect from the district. The Wyoming Supreme Court held that the district’s decision was void because the meeting was not called properly. The court’s holding was not based upon any specific statute, but upon the generally recognized principle that boards and similar bodies can act only at a meeting called with proper notice. E. G. Rudolph, *supra*, § 3.1 at 101-102. This proposition was furthered in *Twichell v. Bowman*, 440 P.2d 513 (Wyo. 1968). Once again, two members of a three-member school board, acting without notice to the third, made arrangements to buy out the school superintendent’s contract. Notwithstanding subsequent ratification of the action at a regular meeting, the court held that the payment might be recovered by the district if it was a “willful evasion of the law, fraud, collusion, concealment, or elements which disclose violations of principles of public policy.” 440 P.2d at 516, quoting from *Tobin v. Town Council of Town of City of Sundance*, 45 Wyo. 219, 17 P.2d 666, 678 (1933); *but cf. George W. Condon Co. v. Board of County Commissioners*, 56 Wyo. 38, 103 P.2d 401 (1940) (even though the contract was illegal and void, the plaintiff might be able to recover quasi-contractually for the benefit conferred). All of these cases pre-date the passage of the Public Meetings Law. They demonstrate, however, that where there is a legal obligation to provide notice, the court will take a hard look at the legality of the resulting decision.

The 2005 amendments adopted by the Legislature make it a misdemeanor to willfully and knowingly violate the Public Meetings Act.

#### c. Minutes.

The Legislature in 1995 added Wyo. Stat. § 16-4-403(c) to outline the requirements for taking minutes at meetings. The 2005 amendments require minutes of executive sessions, but they are confidential unless a court orders them disclosed to the public.

##### (1). Information required.

Minutes from meetings where no action is taken by the governing body are required to be recorded but not published. Minutes are not required to be recorded or published for day-to-day administrative activities of an agency. Wyo. Stat. § 16-4-403(c)(i) & (ii). (1977, Rev. 1995).

##### (2). Are minutes public record?

Wyo. Stat. § 16-4-404(c) is silent as to whether minutes constitute a “public record.” Generally, unless otherwise specified as privileged or confidential by law under Wyo. Stat. § 16-4-201(a)(v), minutes of a meeting would be considered public record. Refer to the Preface of this overview. *See, e.g.*, Wyo. Stat. § 9-2-401(a)(v) (1977, Rev. 1991). However, the 1995 amendment requiring minutes of executive sessions and making them confidential indicates that minutes of non-executive sessions are public records.

## 2. Special or emergency meetings.

### a. Definition.

Special meetings may be called by the presiding officer of the governing body at any time. No other business other than that included in the notice of a special meeting shall be considered at a special meeting. *See, e.g.*, Wyo. Stat. § 16-4-404(b) (1977, Rev. 1995).

Emergency meetings have no notice requirement and deal with matters of serious immediate concern. All action taken at an emergency

meeting is considered temporary. For an action to become permanent, it must be reconsidered and acted upon at an open public meeting within forty-eight hours, thus fulfilling the notice requirements. *See, e.g.,* Wyo. Stat. § 16-4-404(d) (1977, Rev. 1995).

**b. Notice requirements.**

Notice requirements generally apply to special meetings. Because of the unusual or untimely nature of a special meeting, notice requirements are critical to ensure compliance with procedural requirements. Under the statutes governing counties and school districts, notice of special meetings must be given either by publication or posting in three public places unless each trustee signs a waiver of notice either before or after the meeting. *See, e.g.,* Wyo. Stat. § 21-3-120 (1977, Rev. 1979).

Emergency meetings may be held without notice. The presiding officer of the governing body is only required to use “reasonable effort” to offer public notice. Also, there are no notice requirements for day-to-day administrative activities of an agency. *See, e.g.,* Wyo. Stat. § 16-4-404(e) (1977, Rev. 1995); E.G. Rudolph, *Wyoming Local Government Law* § 3.1 at 101 (1985). If the agency’s normal business does not require regular meetings, the agency must provide notice of its next meeting to any person who requests notice. A person may request notice for all future meetings of an agency. In the absence of a statutory requirement, the governing body of an agency shall provide by ordinance, resolution, bylaws or rule for holding regular meetings. *See, e.g.,* Wyo. Stat. § 16-4-404(a) (1977, Rev. 1995). The Wyoming Supreme Court has interpreted notice requirements for special meetings fairly rigidly. *Palmer v. Crook County School Dist. 1*, 785 P.2d 1160 (Wyo. 1990) (if the agency has met the requisite record and notice requirements set forth by law and the purpose of the meeting is clear, procedural due process rights will be considered adequate).

**(1). Time limit for giving notice.**

The statute is silent as to timing requirements for notice except for emergency meetings. As stated above, for an emergency action to become permanent, the action must be reconsidered and acted upon at an open public meeting within forty-eight hours, thus fulfilling the notice requirements. *See, e.g.,* Wyo. Stat. § 16-4-404(d) (1977, Rev. 1995).

**(2). To whom notice is given.**

When a special meeting is called, notice must be given to each member of the governing body and to each newspaper of general circulation, radio or television station requesting notice. *See, e.g.,* Wyo. Stat. § 16-4-404(b) (1977, Rev. 1995).

**(3). Where posted.**

As noted, there is no posting requirement for regular meetings, unless provided in specific statutes relating to the governing body or in the governing body’s ordinances or resolutions. If a meeting is recessed, a copy of the recess order must be conspicuously posted on or near the door where the meeting was held. Wyo. Stat. § 16-4-404(c) (1977, Rev. 1995).

**(4). Public agenda items required.**

When a special meeting is called, the notice shall specify the time and place of the meeting and the business to be transacted. *See, e.g.,* Wyo. Stat. § 16-4-404(b) (1977, Rev. 1995).

**(5). Other information required in notice.**

The Public Meetings Law imposes no additional requirements. Refer to specific statutes relating to the governing body or in the governing body’s ordinances or resolutions.

**(6). Penalties and remedies for failure to give adequate notice.**

The statute is silent as to penalties and remedies. Action taken at a meeting not in conformity with the Public Meetings Act is null and void and not merely voidable. *See, e.g.,* Wyo. Stat. § 16-4-403(a) (1977,

Rev. 1995); E.G. Rudolph, *Wyoming Local Government Law* § 3.1 at 103 (1985); *Ward v. Gosben County School Dist. 1*, 865 P.2d 618, 621-22 (Wyo. 1993).

**c. Minutes.**

**(1). Information required.**

There is no variation in the statutory requirements for minutes of special or emergency meetings.

**(2). Are minutes a public record?**

*See* Wyo. Stat. § 16-4-403(c).

**3. Closed meetings or executive sessions.**

**a. Definition.**

Wyo. Stat. 16-4-405(a) exempts a governing body from open public meeting requirements under certain circumstances, notwithstanding the Public Meetings Law requirement that all meetings be open to the public. *See, e.g.,* Wyo. Stat. § 16-4-405(a) (1977, Rev. 1982).

**b. Notice requirements.**

There are no specific notice requirements for executive sessions. The governing body may provide for holding executive sessions by ordinance or resolution if no statutory provision controls. The ordinance or regulation will establish procedures for executive sessions. The governing body must vote to go into executive session.

**(1). Time limit for giving notice.**

There is no time limit in the Public Meetings Law. Specific statutes relating to the governing body, or in the governing body’s ordinances or resolutions may provide time limits. *See e.g.,* Rudolph, *supra*, at 101.

**(2). To whom notice is given.**

The Act does not specify to whom notice must be given.

**(3). Where posted.**

As noted, there is no posting requirement for regular meetings, unless provided in specific statutes relating to the governing body or the governing body’s ordinances or resolutions.

**(4). Public agenda items required.**

There is no explicit agenda requirement. *See, e.g.,* Wyo. Stat. § 16-4-406(c) (1977, Rev. 1995).

**(5). Other information required in notice.**

The Public Meetings Law imposes no additional notice requirements for executive sessions. Refer to specific statutes relating to the governing body or the governing body’s ordinances or resolutions.

**(6). Penalties and remedies for failure to give adequate notice.**

The Public Meetings Law imposes no additional requirements for executive sessions. Refer to specific statutes relating to the governing body or the governing body’s ordinances or resolutions. Knowingly and willfully violating the Act by holding an illegal executive session is punishable as a misdemeanor. An illegal executive session may render any action by the governing body “null and void.”

**c. Minutes.**

**(1). Information required.**

No specifications as to the content of the minutes are set forth in the Act.

**(2). Are minutes a public record?**

No unless ordered by a court, or to publicize a member’s objection to an executive session as not being authorized by the statute. *See* Wyo. Stat. § 16-4-405(b).

**d. Requirement to meet in public before closing meeting.**

The Public Meetings Act requires a majority vote to go into executive session. Wyo. Stat. § 16-4-405(c). All actions must be taken in open, public session. A separate statute requires city and town councils to approve an executive session by a two-thirds vote.

**e. Requirement to state statutory authority for closing meetings before closure.**

The Public Meetings Law does not specify a reference to statutory authority, but the members of a governing body would have to know the purpose of the session in order to know how to vote on whether to go into executive session.

**f. Tape recording requirements.**

No statute specifically addresses tape recording at closed meetings or executive sessions.

**F. Recording/broadcast of meetings.**

**1. Sound recordings allowed.**

The requirement that minutes be taken at a meeting merely states that minutes must be “recorded”; the statute is silent as to the method of recording. Wyo. Stat. § 16-4-403(c). In the absence of any contradicting law or holding Wyo. Stat. § 16-4-201(a)(v) includes a sound recording in the definition of “public record.” A state district court judge has allowed a videotape recording of a school board meeting as long as the meeting was not disrupted.

**2. Photographic recordings allowed.**

A district judge allowed videotaping of a school board meeting, but the Supreme Court has not considered the issue. Videotaping of public meeting is generally allowed in the state.

**G. Are there sanctions for noncompliance?**

A willful and knowing violation of the Act is a misdemeanor.

**II. EXEMPTIONS AND OTHER LEGAL LIMITATIONS**

**A. Exemptions in the open meetings statute.**

**1. Character of exemptions.**

A governing body of an agency may hold executive sessions not open to the public under certain circumstances set forth below.

**2. Description of each exemption.**

Wyo. Stat. § 16-4-405 sets forth eleven instances where a governing body may close a meeting. At this point, there is no case law on this provision, so the statute must speak for itself.

**B. Any other statutory requirements for closed or open meetings.**

None.

**C. Court mandated opening, closing.**

The Public Meetings Law does not address this issue.

**III. MEETING CATEGORIES -- OPEN OR CLOSED.**

**A. Adjudications by administrative bodies.**

The Wyoming Supreme Court in *Cheyenne Newspapers v. City of Cheyenne Building Code Board of Appeals*, see Foreword, ruled that agencies acting a quasi-judicial capacity must adhere to the Public Meetings Act. These agencies must conduct their deliberations in public.

**1. Deliberations closed, but not fact-finding.**

Deliberations are open unless they would meet one of the exemptions allowing for executive sessions.

**B. Budget sessions.**

A municipality must give notice by publishing a summary of the tentative budget at least one week before the hearing date in a newspaper of general circulation in the municipality, or otherwise post the notice in three conspicuous places within the municipality. Wyo. Stat. § 16-4-109 (1977, Rev. 1995 & Cum. Supp. 1996). Financial statements and reports of financial position, operating results and other pertinent information must be available for public inspection during regular business hours. Wyo. Stat. § 16-4-119 (1977, Rev. 1982).

**C. Business and industry relations.**

There is no provision that deals directly with this. Refer to specific statutes relating to the governing body or the governing body's ordinances or resolutions.

**D. Federal programs.**

Check the pertinent federal and state statutory requirements for specific programs.

**E. Financial data of public bodies.**

There is no statute that deals directly with financial data of public bodies at public meetings. The 1989 legislature amended the Public Records Act to make employment contracts of public officials and employees available for public inspection and to remove them from the exception provided for personnel files. Wyo. Stat. § 16-4-203(d)(iii), as amended by Session Laws, 1989, Chapter 10 (1977 & Cum. Supp. 1996).

**F. Financial data, trade secrets or proprietary data of private corporations and individuals.**

There is no provision that deals directly with financial data of public bodies at public meetings. *See* Preface. Regarding public records, the custodian may deny inspection records containing trade secrets unless otherwise provided by law. Wyo. Stat. § 16-4-203(d)(v) (1977, Rev. 1991).

**G. Gifts, trusts and honorary degrees.**

A governing body may meet in executive sessions to accept an anonymous gift.

**H. Grand jury testimony by public employees.**

There is no statute specifically addressing the testimony of public employees in a grand jury proceeding. The Wyoming Rules of Criminal Procedure provide that, in a county grand jury proceeding, only the Attorney for the State may disclose matters occurring before the grand jury. Wyo. R. Crim. P. 6(a)(14). In a state grand jury proceeding, no obligation of secrecy may be imposed upon any person except the Attorney General, District Attorney, law enforcement agencies, a juror, attorney, interpreter, stenographer, operator of a recording device or transcribing typist. Wyo. R. Crim. P. 6(b)(8)(D).

**I. Licensing examinations.**

When the agency is a licensing agency, the governing body may close sessions while preparing, administering or grading examinations. Wyo. Stat. § 16-4-405(a)(v) (1977, Rev. 1982); *See also*, Wyo. Stat. § 16-3-113 (1977, Rev. 1993 & Cum. Supp. 1996).

**J. Litigation; pending litigation or other attorney-client privileges.**

A governing body of an agency may hold closed executive sessions on “matters concerning litigation to which the governing body is a party or proposed litigation to which the governing body may be a party.” Wyo. Stat. § 16-4-405(a)(iii) (1977, Rev. 1982).

## **K. Negotiations and collective bargaining of public employees.**

### **1. Any sessions regarding collective bargaining.**

A governing body of an agency may hold closed executive sessions to consider accepting or tendering offers concerning wages, salaries, benefits and terms of employment during all negotiations. The statute otherwise does not directly address collective bargaining. Wyo. Stat. § 16-4-405(a)(x) (1977, Rev. 1982).

## **L. Parole board meetings, or meetings involving parole board decisions.**

A governing body of an agency may hold closed executive session when considering and acting upon the term, parole, or release of an individual from a correctional or penal institution. Wyo. Stat. § 16-4-405(a)(vi) (1977, Rev. 1982).

## **M. Patients; discussions on individual patients.**

A custodian may deny access to an individual's hospital or medical records. Wyo. Stat. § 16-4-203(d)(vii) (1977, Rev. 1991). *Houghton v. Franscell*, 870 P.2d 1050 (Wyo. 1994). It is also a misdemeanor to disclose the contents of an individual's application as a qualified recipient of medical assistance unless the information is released related to medical assistance payment. The applicant or recipient may sign a waiver authorizing the release of such information. Wyo. Stat. § 42-4-112 (1977, Rev. 1995).

## **N. Personnel matters.**

### **1. Interviews for public employment.**

A governing body of an agency may hold closed executive sessions when considering charges against or the employment of a public officer or employee, or their right to employment or to practice their profession. The public employee or officer may request that the meeting be open to the public. Wyo. Stat. § 16-4-405(a)(ii) (1977, Rev. 1982).

### **2. Disciplinary matters, performance or ethics of public employees.**

There is no provision other than the general exemption for discussing the employment of a public officer or employee. As noted, the 1989 legislature amended the statute to make employment contracts of public officials and employees available for public inspection and to remove them from the exception provided for personnel files. Wyo. Stat. § 16-4-203(d)(iii), as amended by Session Laws, 1989, Chapter 10. *See, e.g.*, Wyo. Stat. § 16-4-405(a)(ii) (1977, Rev. 1982).

### **3. Dismissal; considering dismissal of public employees.**

*See, e.g.*, Wyo. Stat. § 16-4-405(a)(ii) (1977, Rev. 1982).

## **O. Real estate negotiations.**

A governing body of an agency may hold closed executive sessions regarding real estate purchases if the governing body determines that publicity might cause a price increase of the real estate in question. Wyo. Stat. § 16-4-405(a)(vii) (1977, Rev. 1982).

## **P. Security, national and/or state, of buildings, personnel or other.**

A governing body of an agency may hold closed executive sessions on matters of national security, or issues threatening the security of public or private property. Wyo. Stat. § 16-4-405(a)(I) & (iv) (1977, Rev. 1982).

## **Q. Students; discussions on individual students.**

A governing body of an agency may hold closed executive sessions on issues of student conduct. Wyo. Stat. § 16-4-405(a)(xi) (1977, Rev. 1982).

## **IV. PROCEDURE FOR ASSERTING RIGHT OF ACCESS**

### **A. When to challenge.**

There is no procedure set forth in the Public Meetings Act for asserting a right of access. Refer to the Wyoming Rules of Civil Procedure. However, Wyoming courts have accepted petitions from citizens and media outlets for declaratory judgments regarding violations of the Public Meetings Act and whether actions at meetings in violation of the Act are null and void.

#### **1. Does the law provide expedited procedure for reviewing request to attend upcoming meetings?**

No.

#### **2. When barred from attending.**

It is not clear that a citizen must have been personally barred from attending to have standing to challenge an illegally closed or unnoticed meeting.

#### **3. To set aside decision.**

The Act states that decisions made at meetings not in conformity with the Act are null and void.

#### **4. For ruling on future meetings.**

There is no provision that directly addresses this issue, but it is assume that injunctive relief is appropriate to bar further violations of the Act.

### **B. How to start.**

#### **1. Where to ask for ruling.**

The Public Meetings Act does not set forth procedural requirements for right of access. Venue calls for the court in the county in which the meeting took place is the proper place to seek relief from the courts.

##### **a. Administrative forum.**

Not applicable in Wyoming.

##### **b. State attorney general.**

Certain public officials and entities may seek opinions from the Attorney General, but not members of the general public.

##### **c. Court.**

Wyo. Stat. § 16-4-203 directs a person denied access to records to apply to the district court of the district where the record is found. Presumably, one seeking access would apply to the district court of the district where the meeting took place.

#### **2. Applicable time limits.**

None stated.

#### **3. Contents of request for ruling.**

The Public Meetings Act has no procedural requirements for right of access.

#### **4. How long should you wait for a response?**

The Public Meetings Act does not impose a response time.

#### **5. Are subsequent or concurrent measures (formal or informal) available?**

None stated.

### **C. Court review of administrative decision.**

Wyo. Stat. § 16-3-114(b) gives the Supreme Court the authority to determine the content of the record upon review, the pleadings to be filed, the time and manner for filing pleadings, records and other

documents and the extent to which supplemental testimony and evidence may be taken or considered by the district court. Such rules would supersede existing statutory provisions.

### 1. Who may sue?

“Any aggrieved or adversely affected in fact by a final decision of any agency.” One must exhaust all administrative remedies before seeking judicial review. Wyo. Stat. § 16-3-114(a) (1977, Rev. 1982). In *Cheyenne Newspapers v. City of Cheyenne Building Code Board of Appeals*, see Foreword, the Court affirmed the right of the public and the media as its representative as having standing to contest violations of the Act.

### 2. Will the court give priority to the pleading?

The statute is silent on the issue. Courts have, however, always been quite liberal regarding the matter of pleadings in proceedings before administrative agencies. *Glenn v. Board of County Comm’rs*, 440 P.2d 1 (Wyo. 1968). *But see* Wyo. Stat. § 16-3-114(b). The Supreme Court has the authority to determine the content of the record upon review, pleadings to be filed, the time and manner for filing pleadings, records and other documents and the extent to which supplemental testimony and evidence may be taken or considered by the district court. Such rules would supersede existing statutory provisions.

### 3. Pro se possibility, advisability.

Individuals may appear pro se, but not corporations. Experiences of those contesting violations of the Act pro se has not been positive.

### 4. What issues will the court address?

Declaration actions as to requirements of the Act and whether any action should be found to be null and void.

#### a. Open the meeting.

Citizens may seek injunctive relief to prevent a body from meeting in secret. See concurrence of Justice Marilyn Kite in *Cheyenne Newspapers v. City of Cheyenne Building Code Board of Appeals*, see Foreword.

#### b. Invalidate the decision.

A possible remedy is an order finding any decision linked to the illegal closed session to be null and void. The agency may cure the violation by providing a new and substantial reconsideration of the action in open session.

#### c. Order future meetings open.

Citizens may seek injunctive relief to prevent a body from meeting in secret. See concurrence of Justice Marilyn Kite in *Cheyenne Newspapers v. City of Cheyenne Building Code Board of Appeals*, see Foreword.

### 5. Pleading format.

Pleading follows the Wyoming Rules of Civil Procedure. Wyo. Stat. § 16-3-114(a) (1977, Rev. 1982). *But see* Wyo. Stat. § 16-3-114(b). The Supreme Court has the authority to determine the content of the record upon review, pleadings to be filed, the time and manner for filing pleadings, records and other documents and the extent to which supplemental testimony and evidence may be taken or considered by the district court. Such rules would supersede existing statutory provisions.

### 6. Time limit for filing suit.

None cited in the Act or by case law.

### 7. What court.

The person seeking judicial review must sue in the district court for the county in which administrative action or inaction was taken. Wyo. Stat. § 16-3-114(a) (1977, Rev. 1982).

### 8. Judicial remedies available.

Decisions can be declared “null and void” under Wyo. Stat. § 16-4-403.

### 9. Availability of court costs and attorneys’ fees.

There are no provision for the award of attorney fees and costs.

### 10. Fines.

A willful and knowing violation of the Act is a misdemeanor punishable by a fine of not more than \$750.

### 11. Other penalties.

None stated.

## D. Appealing initial court decisions.

### 1. Appeal routes.

A party who chooses to appeal a court decision should follow the Wyoming Rules of Appellate Procedure.

### 2. Time limits for filing appeals.

A party must file a notice of appeal within 30 days from the entry of the appealable order. Wyo. R. Civ. P. 2.01.

### 3. Contact of interested amici.

Interest *amici* must first file a motion for leave with the appellate court identifying the applicant’s interest and setting forth reasons why an *amicus curiae* brief is appropriate under the circumstances. Wyo. R. App. P. 7.12.

The Reporters Committee for Freedom of the Press often files *amicus* briefs in cases involving significant media law issues before a state’s highest court.

## V. ASSERTING A RIGHT TO COMMENT.

The Wyoming Public Meetings Act does not touch on a right to comment at a public meeting except at Wyo. Stat. § 16-4-406. That statute allows a governing body to prevent willful disruption of a meeting that prevents the orderly conduct of the meeting by removal of the offending parties or recess of the meeting.

While there is no law governing this issue, most if not all entities provide for public comment during their meetings.

### A. Is there a right to participate in public meetings?

The Public Meetings Act is silent as to this issue. Wyoming has no case law regarding whether public meetings are public forums in which the right to speak may not be abridged based upon the content of the speech or the viewpoint of the speaker.

## Statute

### Open Records

*Wyoming Statutes 1977*

*Title 16. City, County, State and Local Powers.*

*Chapter 4. Uniform Municipal Fiscal Procedures; Public Records, Documents and Meetings.*

*Article 2. Public Records.*

§ 16-4-201. Definitions.

(a) As used in this act:

(i) "Custodian" means the official custodian or any authorized person having personal custody and control of the public records in question;

(ii) "Official custodian" means any officer or employee of the state or any agency, institution or political subdivision thereof, 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;

(iii) "Person in interest" means the person who is the subject of a record or any representative designated by the person, except if the subject of the record is under legal disability or is the dependent high school student of his parents; "person in interest" means the parent or duly appointed legal representative;

(iv) "Political subdivision" means every county, city and county, city, incorporated and unincorporated town, school district and special district within the state;

(v) "Public records" when not otherwise specified includes the original and copies of any paper, correspondence, form, book, photograph, photostat, film, microfilm, sound recording, map drawing or other document, regardless of physical form or characteristics that have been made by the state of Wyoming and any counties, municipalities and political subdivisions thereof and by any agencies of the state, counties, municipalities and political subdivisions thereof, or received by them in connection with the transaction of public business, except those privileged or confidential by law;

(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 is a party; all fidelity, surety and performance bonds; all claims filed against the state or any agency or subdivision thereof; all records or documents required by law to be filed with or kept by any agency or the state 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; 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.

(vii) "Writings" means all books, papers, maps, photographs, cards, tapes, recordings or other documentary materials, regardless of physical form or characteristics;

(viii) "This act" means W.S. 16-4-201 through 16-4-205.

16-4-202. Right of inspection; rules and regulations; unavailability.

(a) All public records shall be open for inspection by any person at reasonable times, 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.

(b) If the public records requested are not in the custody or control of the person to whom application is made, the person shall forthwith notify the applicant of this fact.

(c) If the public records requested are in the custody and control of the per-

son to whom application is made but are in active use or in storage, and therefore not available at the time an applicant asks to examine them, the custodian shall notify the applicant of this situation.

(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:

(i) The reasonable costs of producing a copy of the public record shall be borne by the party making the request. The costs may include the cost of producing a copy of the public record and the cost of constructing the record, including the cost of programming and computer services;

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

(iii) An agency 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 ability to discharge its duties;

(iv) An agency 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;

(v) Nothing in this section shall prohibit the state chief information officer from enacting any rules pursuant to his authority under W.S. 9-2-2501.

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

(a) The custodian of any public records shall allow any person the right of inspection of the records or any portion thereof except on one (1) or more of the following grounds or as provided in subsection (b) or (d) of this section:

(i) The inspection would be contrary to any state statute;

(ii) The inspection would be contrary to any federal statute or regulation issued thereunder having the force and effect of law; or

(iii) The inspection is prohibited by rules promulgated by the supreme court or by the order of any court of record.

(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:

(i) Records of investigations conducted by, or of intelligence information or security procedures of, any sheriff, county attorney, city attorney, the attorney general, the state auditor, police department or any investigatory files compiled for any other law enforcement or prosecution purposes;

(ii) Test questions, scoring keys and other examination data pertaining to administration of a licensing examination and examination for employment or academic examination. Written promotional examinations and the scores or results thereof shall be available for inspection, but not copying or reproduction, by the person in interest after the examination has been conducted and graded;

(iii) The specific details of bona fide research projects being conducted by a state institution;

(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, 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. The contents of the appraisal shall be available to the owner of the property or property interest at any time;

(v) Interagency or intraagency memoranda or letters which would not be available by law to a private party in litigation with the agency;

(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, facilitate the planning of a terrorist attack or endanger the life or physical safety of an individual, including:

(A) Vulnerability assessments, specific tactics, emergency procedures or security procedures contained in plans or procedures designed to prevent or respond to terrorist attacks or other security threats;

(B) Building plans, blueprints, schematic drawings, diagrams, operational manuals or other records that reveal the building's or structure's internal layout, specific location, life and safety and support systems, structural elements, surveillance techniques, alarms, security systems or technologies, operational and transportation plans or protocols, personnel deployments for airports and

other mass transit facilities, bridges, tunnels, emergency response facilities or structures, buildings where hazardous materials are stored, arenas, stadiums and waste and water systems;

(C) Records of any other building or structure owned, leased or operated by the state or any of its political subdivisions 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.

(c) If the right of inspection of any record falling within any of the classifications listed in this section is allowed to any officer or employee of any newspaper, radio station, television station or other person or agency in the business of public dissemination of news or current events, it may be allowed to all news media.

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

(i) Medical, psychological and sociological data on individual persons, exclusive of coroners' verdicts and written dockets as provided in W.S. 7-4-105(a);

(ii) Adoption records or welfare records on individual persons;

(iii) Personnel files except those files shall be available to the duly elected and appointed officials who supervise the work of the person in interest. Applications, performance ratings and scholastic achievement data shall be available only to the person in interest and to the duly elected and appointed officials who supervise his work. Employment contracts, working agreements or other documents setting forth the terms and conditions of employment of public officials and employees are not considered part of a personnel file and shall be available for public inspection;

(iv) Letters of reference;

(v) Trade secrets, privileged information and confidential commercial, financial, geological or geophysical data furnished by or obtained from any person;

(vi) Library, archives and museum material contributed by private persons, to the extent of any limitations placed thereon as conditions of the contributions;

(vii) Hospital records relating to medical administration, medical staff, personnel, medical care and other medical information, whether on individual persons or groups, or whether of a general or specific classification;

(viii) School district records containing information relating to the biography, family, physiology, religion, academic achievement and physical or mental ability of any student except to the person in interest or to the officials duly elected and appointed to supervise him;

(ix) Library patron transaction and registration records except as required for administration of the library or except as requested by a custodial parent or guardian to inspect the records of his minor child;

(x) Information obtained through a 911 emergency telephone system or through a verification system for motor vehicle insurance or bond as provided under W.S. 31-4-103(e) except to law enforcement personnel or public agencies for the purpose of conducting official business, to the person in interest, or pursuant to a court order;

(xi) Records or 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;

(xii) Information regarding the design, elements and components, and location of state information technology security systems and physical security systems; and

(xiii) Records or information relating to individual diagnoses of contagious, infectious, communicable, toxic and genetic diseases maintained or collected by the Wyoming state veterinary laboratory as provided in W.S. 21-17-308(e).

(e) If the custodian denies access to any public record, the applicant may request a written statement of the grounds for the denial. The statement shall cite the law or regulation under which access is denied and shall be furnished to the applicant.

(f) Any person denied the right to inspect any record covered by this act may

apply to the district court of the district wherein the record is found for any order directing the custodian of the record to show cause why he should not permit the inspection of the record.

(g) If, in the opinion of the official custodian of any public record, disclosure of the contents of the record would do substantial injury to the public interest, notwithstanding the fact that the record might otherwise be available to public inspection, he may apply to the district court of the district in which the record is located for an order permitting him to restrict disclosure. After hearing, the court may issue an order upon a finding that disclosure would cause substantial injury to the public interest. The person seeking permission to examine the record shall have notice of the hearing served upon him in the manner provided for service of process by the Wyoming Rules of Civil Procedure and has the right to appear and be heard.

(h) Notwithstanding any other provision of this section, the following applies to the Wyoming natural diversity database located at the University of Wyoming and any report prepared by the custodian from that database:

(i) The custodian may charge a reasonable fee for searching the database and preparing a report from that database information. The interpretation of the database in a report shall not contain recommendations for restrictions on any public or private land use;

(ii) The custodian shall allow the inspection of all records in the database at a level of spatial precision equal to the township, but at no more precise level;

(iii) Research reports prepared by the custodian funded completely from nonstate sources are subject to paragraph (b)(iii) of this section;

(iv) Any record contained in the database pertaining to private land shall not be released by the University of Wyoming without the prior written consent of the landowner. Nothing in this paragraph prohibits the release of any information which would otherwise be available from any other information source available to the public if the original source is cited.

16-4-204. Right of inspection; copies, printouts or photographs; fees.

(a) In all cases in which a person has the right to inspect and copy any public records he may request that he be furnished copies, printouts or photographs for a reasonable fee to be set by the official custodian. Where fees for certified copies or other copies, printouts or photographs of the record are specifically prescribed by law, the specific fees shall apply. Nothing in this section shall be construed as authorizing a fee to be charged as a condition of making a public record available for inspection.

(b) If the custodian does not have the facilities for making copies, printouts or photographs of records which the applicant has the right to inspect, then the applicant shall be granted access to the records for the purpose of making copies, printouts or photographs. The copies, printouts or photographs shall be made while the records are in the possession, custody and control of the custodian thereof and are subject to the supervision of the custodian. When practical the copy work shall be made in the place where the records are kept, but if it is impractical to do so, the custodian may allow arrangements to be made for this purpose. If other facilities are necessary the cost of providing them shall be paid by the person desiring a copy, printout or photograph of the records. The official custodian may establish a reasonable schedule of time for making copies, printouts or photographs and may charge a reasonable fee for the services rendered by him or his deputy in supervising the copying, printing out or photographing as he may charge for furnishing copies under this section.

(c) After July 1, 2003, any fees or charges assessed by a custodian of a public record shall first be authorized by duly enacted or adopted statute, rule, resolution, ordinance, executive order or other like authority.

(d) All state agencies may adopt rules and regulations pursuant to the Wyoming Administrative Procedure Act establishing reasonable fees and charges that may be assessed for the costs and services set forth in this section.

16-4-205. Penalty.

Any person who willfully and knowingly violates the provisions of this act is guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine not to exceed seven hundred fifty dollars (\$750.00).

### Open Meetings

*Title 16. City, County, State and Local Powers.*

*Chapter 4. Uniform Municipal Fiscal Procedures; Public Records, Documents and Meetings.*

*Article 4. Public Meetings.*

§ 16-4-401. Statement of purpose.

The agencies of Wyoming exist to conduct public business. Certain deliberations and actions shall be taken openly as provided in this act.

## 16-4-402. Definitions.

## (a) As used in this act:

(i) "Action" means the transaction of official business of an agency including a collective decision of a governing body, a collective commitment or promise by a governing body to make a positive or negative decision, or an actual vote by a governing body upon a motion, proposal, resolution, regulation, rule, order or ordinance;

(ii) "Agency" means any authority, bureau, board, commission, committee, or subagency of the state, a county, a municipality or other political subdivision which is created by or pursuant to the Wyoming constitution, statute or ordinance, other than the state legislature and the judiciary;

(iii) "Meeting" means an assembly of at least a quorum of the governing body of an agency which has been called by proper authority of the agency for the purpose of discussion, deliberation, presentation of information or taking action regarding public business;

(iv) "This act" means W.S. 16-4-401 through 16-4-408.

## 16-4-403. Meetings to be open; participation by public; minutes.

(a) All meetings of the governing body of an agency are public meetings, open to the public at all times, except as otherwise provided. No action of a governing body of an agency shall be taken except during a public meeting following notice of the meeting in accordance with this act. Action taken at a meeting not in conformity with this act is null and void and not merely voidable.

(b) A member of the public is not required as a condition of attendance at any meeting to register his name, to supply information, to complete a questionnaire, or fulfill any other condition precedent to his attendance. A person seeking recognition at the meeting may be required to give his name and affiliation.

## (c) Minutes of a meeting:

(i) Are required to be recorded but not published from meetings when no action is taken by the governing body;

(ii) Are not required to be recorded or published for day-to-day administrative activities of an agency.

## 16-4-404. Types of meetings; notice; recess.

(a) In the absence of a statutory requirement, the governing body of an agency shall provide by ordinance, resolution, bylaws or rule for holding regular meetings unless the agency's normal business does not require regular meetings in which case the agency shall provide notice of its next meeting to any person who requests notice. A request for notice may be made for all future meetings of an agency.

(b) Special meetings may be called by the presiding officer of a governing body by giving notice of the meeting to each member of the governing body and to each newspaper of general circulation, radio or television station requesting the notice. The notice shall specify the time and place of the special meeting and the business to be transacted. No other business shall be considered at a special meeting.

(c) The governing body of an agency may recess any regular, special, or recessed regular or special meeting to a place and at a time specified in an order of recess. A copy of the order of recess shall be conspicuously posted on or near the door of the place where the meeting or recessed meeting was held.

(d) The governing body of an agency may hold an emergency meeting on matters of serious immediate concern to take temporary action without notice. Reasonable effort shall be made to offer public notice. All action taken at an emergency meeting is of a temporary nature and in order to become permanent shall be reconsidered and acted upon at an open public meeting within forty-eight (48) hours.

(e) Day-to-day administrative activities of an agency shall not be subject to the notice requirements of this section.

## 16-4-405. Executive sessions.

(a) A governing body of an agency may hold executive sessions not open to the public:

(i) With the attorney general, county attorney, district attorney, city attorney, sheriff, chief of police or their respective deputies, or other officers of the law, on matters posing a threat to the security of public or private property, or a threat to the public's right of access;

(ii) To consider the appointment, employment, right to practice or dismissal of a public officer, professional person or employee, or to hear complaints or charges brought against an employee, professional person or officer, unless the employee, professional person or officer requests a public hearing. The governing body may exclude from any public or private hearing during the examination of a witness, any or all other witnesses in the matter being investigated. Following the hearing or executive session, the governing body may deliberate on its decision in executive sessions;

(iii) On matters concerning litigation to which the governing body is a party or proposed litigation to which the governing body may be a party;

(iv) On matters of national security;

(v) When the agency is a licensing agency while preparing, administering or grading examinations;

(vi) When considering and acting upon the determination of the term, parole or release of an individual from a correctional or penal institution;

(vii) To consider the selection of a site or the purchase of real estate when the publicity regarding the consideration would cause a likelihood of an increase in price;

(viii) To consider acceptance of gifts, donations and bequests which the donor has requested in writing be kept confidential;

(ix) To consider or receive any information classified as confidential by law;

(x) To consider accepting or tendering offers concerning wages, salaries, benefits and terms of employment during all negotiations;

(xi) To consider suspensions, expulsions or other disciplinary action in connection with any student as provided by law.

(b) Minutes shall be maintained of any executive session. Except for those parts of minutes of an executive session reflecting a members' objection to the executive session as being in violation of this act, minutes and proceedings of executive sessions shall be confidential and produced only in response to a valid court order.

(c) Unless a different procedure or vote is otherwise specified by law, an executive session may be held only pursuant to a motion that is duly seconded and carried by majority vote of the members of the governing body in attendance when the motion is made.

## 16-4-406. Disruption of public meetings.

If any public meeting is willfully disrupted by a person or group of persons so as to render the orderly conduct of the meeting unfeasible, and order cannot be restored by the removal of the person or persons who are willfully interrupting the meeting, the governing body of an agency may order the removal of the person or group from the meeting room and continue in session, or may recess the meeting and reconvene at another location. Only matters appearing on the agenda may be acted upon in a meeting recessed to another location. A governing body of an agency shall establish procedures for readmitting an individual or individuals not responsible for disturbing the conduct of a meeting. Duly accredited members of the press or other news media except those who participated in a disturbance shall be allowed to attend any meeting permitted by this section.

## 16-4-407. Conflict of law.

If the provisions of this act conflict with any other statute, the provisions of this act shall control.

## 16-4-408. Penalty.

(a) Any member or members of an agency who knowingly and willfully takes an action in violation of or conspires to take an action in violation of this act shall be guilty of a misdemeanor. Any member of the governing body of an agency who attends or remains at a meeting where an action is taken knowing that the action is in violation of this act shall be guilty of a misdemeanor unless minutes were taken during the meeting and the parts thereof recording the member's objections are made public or at the next regular public meeting the member objects to the meeting where the violation occurred and asks that the objection be recorded in the minutes. Either misdemeanor violation under this subsection is punishable upon conviction by a fine of not more than seven hundred fifty dollars (\$750.00).

(b) If any action is prohibited both by this act and any provision of title 6, the provisions of this act shall not apply and the provisions of title 6 shall apply.

