## DRAFT ONLY NOT APPROVED FOR INTRODUCTION

HOUSE BILL NO. [BILL NUMBER]

Public records.

Sponsored by: Joint Corporations, Elections & Political Subdivisions Interim Committee

## A BILL

for

1 AN ACT relating to public records; requiring the release of 2 public records within a specified time; requiring the designation of a public records custodian of each agency, 3 4 institution and political subdivision of the state; requiring 5 notice to public records applicants; providing remedies for 6 violations of the public records act; and providing for an 7 effective date.

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

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- 11 **Section 1.** W.S. 16-4-202(b), (c) and by creating a new
- subsection (e) and 16-4-205 are amended to read: 12

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2 16-4-202. Right of inspection; rules and regulations; 3 unavailability; designation of public records officer.

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5 If the public records requested are not in the (b) custody or control of the person to whom application is made, 6 7 the custodian or authorized person having personal custody 8 and control of the public records shall notify the applicant 9 within seven (7) business days from the date of acknowledged 10 receipt of the request of the unavailability of the records sought, unless good cause exists preventing a response within 11 12 such time period. The custodian or authorized person having 13 personal custody and control of the public records shall make the public records requested available to the applicant 14 within ten (10) business days from the date of acknowledged 15 16 receipt of the request, unless good cause exists preventing release within such time period. In the event the applicant 17 is not satisfied that good cause exists, the applicant may 18 petition the district court for a determination as to whether 19 20 the custodian has demonstrated good cause existed.

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## STAFF COMMENT

The existing language in subsection (b) above is potentially unclear and could be made more confusing by the addition of the new language. Subsection (b) seems to describe two different persons: (1) the "person to whom application is made" who does not have

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custody or control of the records and (2) the "custodian or authorized person having personal custody and control" of the records. If the subsection is meant to apply to these two different persons, then with the addition of the new language is the person who receives the request, who does not have personal custody and control of the records, required to notify the "custodian or authorized person having actual custody and control of the records" and then that person is required within 7 days to notify the applicant of the "unavailability" of the records and within 10 days to make those records available? If the subsection is meant to apply to only one person, how can the person who receives the request, who does not have personal custody and control of the records, make those records available within 10 days, only 3 days after the last day from which the person is required to notify the applicant that the public records are "unavailable"?

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

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1	(i) Released immediately to the applicant so long
2	as the release does not impair or impede the agency's ability
3	to discharge its other duties:
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5	(ii) Released immediately but in all cases no later
6	than ten (10) business days from the date of acknowledged
7	receipt of the request.
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9	(e) Each state agency, institution or political
10	subdivision thereof shall designate a person to serve as the
11	custodian for the agency, institution or political
12	subdivision. The custodian shall serve as a point of contact
13	between the agency, institution or political subdivision and
14	applicants seeking public records.
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1	(a) Any person who knowingly or intentionally violates
2	the provisions of this act is liable for a penalty not to
3	exceed seven hundred fifty dollars (\$750.00). The penalty may
4	be recovered in a civil action and damages shall be assessed
5	by the court. Any action pursuant to this section subsection
6	shall be initiated by the attorney general or the appropriate
7	county district attorney.
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15	determine whether a custodian has demonstrated that good
16	cause existed for failing to provide notice or for failing to
17	release records as specified in W.S. 16-4-202(b) and (c), the
18	court may award attorney fees and may order a waiver or refund
19	of any fees assessed by a custodian if the court finds that
20	the agency, institution or political subdivision negligently
21	failed to provide notice or release the records.
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1	(c) Any applicant who has not received requested public
2	records or notice from the agency, institution or political
3	subdivision within thirty (30) days of submitting the request
4	may file a complaint with the attorney general or, for a
5	request concerning a political subdivision, the appropriate
б	district attorney. Upon receipt of a complaint, the attorney
7	general or appropriate district attorney shall review the
8	complaint and the records request and consider whether a civil
9	action under subsection (a) of this section is appropriate.
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11	(d) Violation of any provision of this act constitutes
12	sufficient cause for termination of a public employee's
13	<pre>employment.</pre>
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24	(END)