

On February 27, 2020, American Transparency (D/B/A OpenTheBooks.com); Adam Andrzejewski, CEO OpenTheBooks.com; Equality State Taxpayers Association; Bill Doenz, Chairman Equality State Taxpayers Association; the Honorable Senator Tom James, State Senator (District 13); and the Honorable Garry Piiparinen, State Representative (District 49) made the following request for records from the Wyoming Retirement System (Agency 072)..

Pursuant to the Open Records Act/Freedom of Information Act, this is a request for a copy of the following records: a document which lists any and all retired employees (members) which were paid a monthly pension annuity in the year 2019. Each member record should include the following data items: first name, middle initial, last name, hire date (or pension start date), retirement date, last employer name, last employer zip code and monthly annuity amount in 2019.

The request was made in accordance with the Public Records Act Wyo. Stat. § 16-4-201 to 205, for records from the Wyoming Retirement System specifically defined by Wyo. Stat. § 16-4-201(a)(vi)(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 a governmental entity is a party; all fidelity, surety and performance bonds; all claims filed against a governmental entity; all records or documents required by law to be filed with or kept by a governmental entity of Wyoming; and all other documents or records determined by the records committee to be official public records;

The request was rejected, in part, by the Senior Assistant Attorney General, Rebecca Zisch citing Wyo. Stat. § 16-4-203(d)(v).

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

Ms. Zisch made clear that the only portion of the request that would not be honored was the names of retirees. Clearly the names of retirees are not trade secrets nor confidential. In fact, names of employees of the State of Wyoming are

specifically public record. Many agencies publish directories of employees. The Secretary of State is statutorily required to publish a directory. The Department of Administration and information is required to provide a roster of all state employees in accordance with Wyo. Stat. § 9-2-1022(a)(iv), which has been provided to all of us regularly in our public records requests.

Maintain an information roster on each employee of the state specifying employee name, employing agency, position classification, rate of compensation, job title, position description and service tenure. The information shall be available for inspection only as provided by the Public Records Act;

Grounds for Denial of inspection of public records are specifically addressed in Wyo. Stat. § 16-4-203 (a), (b) and (d). Wyo. Stat. § 16-4-203 (a) clearly state the statutes and rules that are grounds for denial of inspection:

(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.

Inspection of the requested records is not contrary to any state or federal statute or regulation nor prohibited by the supreme court or by order of any court of record. Other grounds for denial in Wyo. Stat. § 16-4-203 include part (b) which would deny records that would be contrary to the public interest. States such as Illinois and California have provided these records to OpenTheBooks.com because it is absolutely in the public interest to be able to view these records.

Part (d) lists exemptions to the public records act. The Wyoming legislature strictly scrutinizes and debates exemptions. Clearly the legislature's intent of the is to make public records "public", and the legislature will control the exemptions to the requirements of the public records act.

Wyo. Stat. § 16-4-202 provides for a right of inspection of the records except as provided by the public records act or as otherwise provided by law. Agency rules are not grounds for denial of the right of inspection of public records. Agency rules designed to deny inspection of public records are contrary to state law and cannot supersede Wyoming statutes.

The Governor and the Auditor have actively engaged in providing a higher level of transparency. The issue of public records has been a public discussion in Wyoming for quite some time and will be present in the public discourse, legislative debate, and executive action to provide more public transparency.

The Wyoming Retirement System rule cited by the Attorney General's office was written in 1994 when the system was fully funded. Administrative rules rarely receive public scrutiny. Often there is limited announcement of a rule being created or changed. In, 1994, how well was this rule discussed? Was it advertised? Were there public meetings? Or was this rule passed quickly without much input? In any event, the Attorney General's office did not argue that the rule supersedes law, instead they argued that names are trade secrets or confidential in a rule that is obsolete and contrary to public records law.

Case law in Wyoming also supports releasing names. In *Wyoming Department of Transportation v. International Union of Operating Engineers Local Union 800*, 908 P.2d 970 (Wyo. 1995), the Wyoming Supreme Court held that the Wyoming Transportation Department (WTD) was required to produce wage report information including names and addresses of workers which were provided to WTD for the purposes of prevailing wage statutes. The Wyoming Supreme Court took note that WTD had to guide the department in responding to public records requests. However, the court stated the following:

Our precedents require the public records act be read in light of the legislative presumption of openness and in keeping with the constitutional right of access to public records. In addition, we construe the act liberally in favor of disclosure, interpreting all exemptions narrowly. The remedial purpose of the public records act is to permit access to public records unless disclosure would inflict irreparable harm contrary to protected rights. Houghton, 870 P.2d at 1052-53.

Today, the Wyoming Retirement System is now part of a structural deficit and a financial concern for legislators, elected members of the executive branch, public

employees, taxpayers and retirees. It is a major concern for the state of Wyoming with one out of every six Wyomingites receiving a monthly check from the system. The Legislature specifically raised concerns in statute about the state of the retirement system where the legislature took the unusual step of stating their very clear intent for the system in Laws 2012, ch. 107, § 1, codified as Wyo. Stat. § 9-3-453. In that statute, the history of the funded ratio of each of the retirement plans was reviewed followed by a statement of intent. An excerpt is below:

(vii) The public employee plan administered under Wyo. Stat. § 9-3-401 through 9-3-430 has by far the largest membership as it contains eighty-eight and six-tenths percent (88.6%) of the membership of all public employee retirement plans administered by the Wyoming retirement board. **The actuarial funded ratio for this plan has dropped from one hundred thirteen and seventy-seven hundredths percent (113.77%) in 2001 to eighty-four and fifty-nine hundredths percent (84.59%) in 2011**, even though the actuarial accrued liability in 2001 was calculated using the maximum cost-of-living adjustment authorized by statute and the 2011 liability was calculated using no cost-of-living liability. In light of the lower funded ratio, the Wyoming retirement board recommended and the Legislature enacted in 2010 a combined employer and employee contribution increase from eleven and twenty-five hundredths percent (11.25%) to fourteen and twelve hundredths percent (14.12%) effective September 1, 2010;

(xiv) It is the **intent** of the legislature that cost-of-living increases and changes to multipliers be allowed only in the event that the actuarial funded level for the affected plan remains above one hundred percent (100%), plus the additional percentage the retirement board determines is reasonably necessary to withstand market fluctuations. This determination is to be made for the entire amortization period affected by the change using then current actuarial assumptions.

Today, according to the 2019 Summary of all plans report obtained from the Wyoming Retirement System, the actuarial funded ratio is now 74.15%. This is a drop of over 10 percentage points since the legislature stated the intent for the system was to grow the funding ratio above 100% in 2012. At this rate cost of living increases cannot occur by statute.

Public oversight of pension systems is enhanced with our public records request. Citizens would be able to see that the system is operating properly without

fraud, waste, and abuse. Knowing how payments flow from the system would help citizens know the strength of the system and enhance the ability of policy makers to protect the system. The pension system will be stronger with the release of public records of payments from the system. The public will be able to know that the system can or cannot sustain the payment flow from the fund to ensure that retirees will continue to enjoy the pension promised by the State of Wyoming.

Disclosure of pension system payments to OpenTheBooks.com from other states have provided insights into potential waste, fraud and abuse that endangers those systems. Policy makers in those states now have the information to adjust these systems to prevent loopholes that drain the pension funds contrary to the public interest.

The Chairman of the Wyoming Retirement System, Laura Ladd, has repeatedly stated that she would like retirees to see cost of living increases. The problems in the Wyoming Retirement plans will not be addressed by hiding the public records of the system. Wyoming is in a much better position than California or Illinois with our retirement system. But for how long? It is in the public interest that the system be transparent about the operation of the plan investments and of the plan payments.

The Public Records Act and the public interest of the citizens of Wyoming requires the production of records that are clearly “official public records.”