



## **Public Spending and Open Records – Wyoming**

**June 13, 2018**

Frequently Asked Questions (FAQ) document regarding our two OpenTheBooks.com public records requests:

### **1. Public Employee Compensation – Public Records Request**

Pursuant to the Open Records Act, this is a request for a copy of the following records: An electronic copy of any and all employees for the year 2016, (fiscal or calendar year). Each employee record should contain the employer name, employer zip code, year of compensation, first name, middle initial, last name, hire date (mm-dd-yyyy), base salary amount, bonus amount, overtime amount, gross annual wages and position title. This data should be broken down by employer, employee, and year.

### **2. Vendor Checkbook – Public Records Request**

Pursuant to the Open Records Act, this is a request for a copy of the following records: an electronic copy of 'any' and 'all' vendor (transfer of property or services) payee payments for the year 2016. Production shall include the vendor name, vendor address, vendor city, vendor state name, vendor zip code, check date/ACH date, check number/ACH code; check amount/ACH amount; department; agency; type of payment (i.e. contract, grant, etc.) and description of products or services/purpose of payment.

### **Background – Our Founders Knew the Power of Transparency**

In 1778, General George Washington appointed America's first auditor at Valley Forge, Pennsylvania. Washington installed the auditor because he feared corruption was forestalling the revolutionary war effort. Squeezing out waste and corruption was critical. Using all men and materials as effectively as possible helped the Continental Army turn the war effort against the vastly superior forces of the Crown.

Our founders recognized We The People as sovereign with inalienable rights – rights not granted by government, but by God. A government was instituted to secure these rights. Today, our concept of 'public service' derives from this hierarchical order. In other words, the government works for us. We The People get to inspect *their* work.

Like the federal constitution, the Wyoming state constitution is clear regarding inalienable and infeasible rights of the people:

***Article I, Section I reads: "All power is inherent in the people, and all free governments are founded on their authority, and instituted for their peace, safety and happiness; for the advancement of these ends they have at all times an inalienable and infeasible***

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*right to alter, reform or abolish the government in such manner as they may think proper.”*

Furthermore, our founders knew the power of transparency and wrote it into Article I, Section 9 of the United States Constitution, “... *a Regular Statement and Account of Receipts and Expenditures of All public money shall be published from time to time.*”

### **The Power of Transparency Today**

Now, in the internet age, the interpretation is clear: “*Every Dime, Online, In Real Time.*”

Citizens have a constitutional duty to engage in the oversight of their government. Today, the confluence of the power of open records laws, the internet, and big data is empowering the people with the tools to hold the political class accountable for tax and spent decisions.

Therefore, when citizens, media, watchdogs, and good government organizations file an open records request to gather public expenditures of our tax dollars, it’s important to note:

- A. The importance of our rights. There is no higher principal in America than the prima facie recognition of citizen sovereignty granted by God. In America, the people are sovereign.
- B. We The People already own these public records, we have paid for them, and we have a constitutional right to request copies. We are simply following an orderly process (open records law) to take possession of the public expenditure record – a record that we already own.
- C. Therefore, when a public official or governmental body slow walks, refuses to answer, ignores or rejects our lawful open records request, their actions strike at the very core of representative government and foundational first freedoms.
- D. The importance of the records: there is no set of public records more important than where government spends our tax dollars. We cannot redress or hold government accountable if government limits access to the record or even limits the means of record display. Maintaining an organized set of books which transfers possession of public records swiftly and easily to citizens – regardless of individual motive or purpose – is of paramount importance to our first freedoms.



## **Seven Ways Government Resists Transparency**

### **1. Ignoring the public records request.**

#### **Our Answer:**

- a. Is the law only for the private sector? If a citizen breaks a civil or criminal statute, the full weight of the law is rightly applied. But government gets to belligerently flaunt the law, refusing to acknowledge lawful requests for public records?
- b. Not only are these public officials ignoring law – a de facto way of saying that the law doesn’t apply to them – but they are inverting the entire concept of public service. They are supposed to work for us. We are supposed to be able to hold them accountable for tax and spend decisions.
- c. This is a test of our will and wallet. In effect, the public body is saying “sue me.”

### **2. Blaming outdated accounting systems.**

#### **Our Answer:**

- a. Our request is for the basic financials: employee compensation and checkbook vendor spending. (Annually, a public body publishes and distributes W2’s to employees and is required to keep a line-by-line checkbook of expenditures.)
- b. Is the public body really going to argue incompetence? Are they so disorganized that they cannot produce a copy of minimal, basic records? These governments tax the citizens but cannot produce a responsive record on where they spent taxpayer money?
- c. Nearly every government body uses an electronic system to capture and organize their revenues and expenditures. All accounting software has a data export feature. Sometimes our public records request forces a public body to learn how to use their accounting software. Furthermore, if the public body isn’t reviewing their spending, then this fact should trouble all constituents of this public body.
- d. All public bodies must produce annually audited financial statements. Therefore, the public auditor reviews or creates documents that are responsive to our request.
- e. The public body has a statutory responsibility to comply with public records law. Instituting an accounting system that cannot comply with the law doesn’t absolve the government from its responsibilities.



### 3. Claiming it's just too much work or it's an undue burden on the office.

#### Our Answer:

- a. The most important government record is tracking where the money flowed. Before doing anything else, government must report to the people what they did with tax dollars.
- b. Keeping a clean set of books should be an easy task for any public body. Arguing that producing basic financials is 'an undue burden' is a bright red flag that a public body has something to hide.
- c. Arguing 'undue burden' is patently ridiculous. Even Wyoming State Auditor Cynthia Cloud tried to argue burden.  
On one hand: the homepage of the Wyoming State Auditors website, Cynthia Cloud states: "*Promoting transparency and accountability are the Auditor's top priorities.*" On the other hand: The auditor's office rejected our request for the state's checkbook, arguing that "... *it would clearly impair the State Auditor's Office's ability to discharge its duties to the citizens of Wyoming.*"  
It's the fiduciary duty of the auditor to organize a clean set of financial transactions to squeeze out waste, fraud, corruption, and taxpayer abuse.
- d. All non-burdensome records subject to the request, must be produced. For example, Wyoming state auditor's office even refused to release a list of state vendors or a copy of the 90-day official record of state expenditures – before it is 'purged' from the state website.
- e. Level the playing field: federal and state auditors have extraordinary access to private sector records for tax auditing. Citizens need to have the same access to public records to audit their public officials.  
For example, when the Internal Revenue Service (IRS) audits a small business, one of the first steps is to [demand](#) electronic records using Form 4564, *Information Document Request (IDR)*, early in the examination. IRS will also request the administrator's username and password, as they are needed to read most data files.

### 4. Claiming there are millions of records.

#### Our Answer:

- a. We are in the electronic age and, therefore, the age of easy redaction. Records of a confidential nature are easily grouped together and electronically redacted. The time that this process takes can be measured in minutes or hours – not days, weeks, or months.
- b. After a public body gets their books properly in order for citizen inspection, it's easy to produce the records every year thereafter.  
For example, the Illinois Republican Comptroller Judy Baar-Topinka argued 'undue burden' in 2013 in response to our state checkbook request. After our lawsuit, however, she was able to quickly produce ten-years of line-by-line

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payments: 500,000 vendors; 500 million individual transactions; and a total of \$500 billion in Illinois state payments.

## 5. Arguing they don't have to create records, just copy records already in evidence.

### Our Answer:

- a. It is patently absurd for a public body to argue that it never created basic compensation reports or vendor checkbook databases. Using this argument to skirt constitutional and statutory duties to make records of the obligation, receipt and use of public funds available for inspection by the public – we hold – to be ‘public service malpractice.’
- b. An agency, under Wyoming law, shall not be required to compile data, extract data or create a new document “...if doing so would impair the agency’s ability to discharge its duties.” [Wyo. Stat. Ann. § 16-4-202(d)(iii)]  
Therefore, it’s very reasonable to assume the converse would also hold true... the agency shall be required to compile and extract data or create a new document if doing so does not impair the agency’s ability to discharge its duties. We argue the primary duty of all public bodies is to simply show taxpayers where their money was spent. Therefore, Wyoming law imposes a very significant obligation of transparency in public spending.

## 6. Transparency Tax

- a. This is a test of will and wallet. They say, “Yes. We have the records, but you can’t have a copy unless you pay \$3,100!”
- b. Citizens already own the records and are following a public records statute to take possession of the records. Establishing a fee bar on constitutional and statutory rights to review expenditures guts the spirit and practicable execution of the open records laws.
- c. Reviewing government expenditures is only available for wealthy citizens?
- d. There are 800 public bodies in Wyoming and if they each charged \$100 to comply with our two requests (public employee compensation and vendor checkbook expenditures), then total fees would amount to \$160,000 per year.
- e. Charging fees on open records requests is akin to accessing a *tax* requirement as a qualification for voting. Charging transparency taxes is a direct assault on the First Amendment. Without government spending data and information, citizen’s ability to redress government is severely limited.
- f. Citizens already own the public records and follow a freedom of information process to take possession of them. Taxpayers already paid for the creation of those records. Establishing a fee bar on the citizen's right to review expenditures, guts open records laws and harms our ability to hold the political class accountable for tax and spend decisions.



Charging fees on open records requests is akin to taxing free speech. Establishing a fee bar to get into the public square only cements the power of the political class. They already have the information, citizens don't. Without easy access to government spending data, the citizen's ability to hold government accountable is severely weakened.

**7. Requiring citizens to retrieve the physical records**

- a. This imposes an undue burden on citizens to travel hundreds of miles to retrieve government spending records.
- b. Next time the IRS audits you, imagine telling them to come and get the records – no electronic delivery.

**UPDATE:**

In February 2018, we learned that WY State Auditor Cynthia Cloud contracted with a nationally leading vendor, CGI, for \$63.9 million for accounting software. This contract extension was announced in November 2016 and encompasses the next twelve years. We are completely confident that the auditor can use this system and produce a responsive record for the state checkbook. [Read more.](#)

Furthermore, the auditor has admitted that her office possesses the archived record since 2013 of the state checkbook as displayed in 90-day intervals on her website. In previous correspondence, the auditor claimed the record was 'purged.'

Additionally, the auditor has admitted that her office can produce a state checkbook over the span of 18 hours and not the claimed 'years and years' answer in her office open records denial to our organization in summers 2015 and 2017.

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