EXECUTIVE

With the care and use of animals in research, should care about their state’s open records laws.

Personal information of researchers working with animals has been used to request baseless criminal charges.

State open records laws are state statutes that govern access to information. State open records laws vary by state and have various names including: Sunshine Laws, Freedom of Information Laws, Public Records Laws and Open Records Laws.

In your state...

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EXECUTIVE SUMMARY

The National Association for Biomedical Research (NABR) is pleased to announce its inaugural ranking of state open records laws. This publication summarizes and analyzes the open records laws of every state and the District of Columbia as they relate to biomedical research records. Using several key criteria, each state’s law is assigned a score of up to five stars to highlight those states with open records laws most protective of biomedical research records, as well as the states with the most room for improvement.

All those involved with the care and use of animals in biomedical research should care about their state’s open records law. Animal rights activists have increasingly turned to both the federal Freedom of Information Act (FOIA) and state open records laws to acquire information about biomedical research and the personal information of researchers working with animals. Such information has been used to request baseless investigations, seek criminal charges for alleged animal cruelty and ask for enforcement actions to be taken for alleged issues involving noncompliance. It has also been used to inaccurately label researchers as “animal abusers” and target individuals and families at their homes. It is often posted online to encourage harassment. While many states’ laws include exemptions intended to protect proprietary information, these exemptions have often proven insufficient to protect animal care and use program and research data, photographs and the personal information of faculty and staff.

Researchers as well as administrators at both public universities and private companies should be aware of the state open records laws in each jurisdiction, as any communications, data, photographs or other information sent to or obtained by an employee of a public university is potentially subject to disclosure. This understanding is critical in the case of public-private partnerships or joint research ventures where some information is collected by or transmitted to a researcher at a public university.

In addition to analyzing whether institutional records and personal information are exempt from disclosure, these rankings also consider what costs a research institution may recover if it is required to spend valuable staff time researching and disclosing information. Many broad and vaguely worded open records requests, such as “all information related to research with nonhuman primates,” result in significant response costs associated with compiling the records, legal review by the institution’s legal counsel of each page to determine what information is protected from disclosure, as well as copying and mailing expenses. An open records law that fails to permit an institution to recoup the full costs associated with responding, for example by only permitting photocopying costs to be charged, may encourage more broadly worded requests in the future.

State open records laws are state statutes that govern access to records in the possession of state and local governments and other state public bodies, such as public universities.

State open records laws vary by state and have various names including: Sunshine Laws, Freedom of Information Laws, Public Records Laws and Open Records laws. To avoid confusion we will refer to all of these laws as open records laws.
In recent years, a number of states have recognized the crucial importance of protecting both research records and the personal information of researchers by amending their state’s open records laws to exempt this sensitive information from disclosure. The need for these changes has often been highlighted by examples of sensitive information being disclosed to and misused by animal rights activists and extremists. Proactive changes to the state’s open records law may have prevented many of these unfortunate circumstances from occurring.

The primary purpose of these rankings is two-fold: (1) to make those involved with the care and use of animals in biomedical research aware of the open records laws in their state and assist in evaluating each law’s effectiveness in protecting research documents; and (2) to encourage research institutions in states with room for improvement to proactively seek exemptions in their open records laws before information is released that may lead to targeting by animal rights organizations.

While NABR does not lobby in the states, we work closely with many of our members in the development and strategy to improve protections in their state laws. Please don’t hesitate to contact NABR to discuss in more detail.

NABR also encourages researchers and administrators to download our Best Practices Guide, *Responding to FOIA Requests: Facts and Resources*, at www.nabr.org. This document includes information about the federal FOIA as well as several best practices and resources applicable to state open records requests.
OVERALL RANKINGS

5 Stars

Georgia
South Carolina
South Dakota
Kansas
Utah

4 Stars

Colorado
Indiana
New Jersey
Oklahoma
Oregon
Vermont
Wyoming
Rhode Island
Tennessee

3 Stars

Florida
Kentucky
Maine
Maryland
Mississippi
Nebraska
North Dakota
Ohio
Pennsylvania
Virginia
Delaware
Idaho
Louisiana

2 Stars

Arkansas
California
Connecticut
Hawaii
Illinois
Iowa
Missouri
Montana
New York
West Virginia
Wisconsin
Alabama
District of Columbia
Massachusetts
Michigan
Minnesota
New Hampshire
Texas
Washington

1 Star

Alaska
Arizona
New Mexico
North Carolina
Nevada
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Every state, and the District of Columbia, has an open records law which requires state institutions, including public universities, to release information to members of the public. However, all of these laws recognize that certain information should be protected, such as employee social security numbers and trade secrets. In addition to protecting trade secrets, some states have enacted specific exemptions to protect biomedical research information.

These rankings compare the differences between the 51 jurisdictions using a five star scale. States with stronger protections for research information received more stars and states with few protections received fewer stars. In comparing the various state laws, the following primary criteria was used:

1. Whether the statute exempts research data itself;
2. Whether the statute protects personal information, such as a researcher’s name, home address, and telephone number; and
3. Whether the law permits a research institution to recover the costs associated with providing the information.

If a statute exempts research, the overall strength of that exemption is considered, including whether it specifically protects biomedical research which relies upon animal models and whether it exempts data submitted by a third-party funder or collaborator.

If a statute exempts personal information, the extent of the information protected is considered.

Finally, if a statute allows an institution to recoup the costs of responding to the request, the extent of the recovery is evaluated, including whether the institution can charge for personnel time-expenditures, and whether it can require prepayment prior to processing the request.
**ALABAMA**

**Overall Rating**

![Rating](image)

*Every citizen has a right to inspect and take a copy of any public writing of this state.*

**Analysis**

Alabama’s Public Records Act contains no exemptions specifically designed to protect research information. The law does protect information that “could reasonably be expected to be detrimental to the public safety or welfare . . . [or] otherwise be detrimental to the best interests of the public.” While the law does not provide guidance on the fees that can be assessed, the state Attorney General determined that institutions can establish “a reasonable fee . . . for the actual cost of providing copies and for retrieving information.”

Areas for improvement:

1. Enactment of a specific exemption to protect research data;
2. Enactment of a specific exemption to protect personal information, such as a researcher’s name, home address, and telephone number; and
3. Amendment of the Alabama Public Records Act to allow a research institution to recover the full costs associated with providing the information to the public.

**ALABAMA PUBLIC RECORDS LAW**

**ALA. CODE §36-12-40. Rights of citizens to inspect and copy public writing; exceptions.**

Every citizen has a right to inspect and take a copy of any public writing of this state, except as otherwise expressly provided by statute. Provided however, registration and circulation records and information concerning the use of the public, public school or college and university libraries of this state shall be exempted from this section. Provided further, any parent of a minor child shall have the right to inspect the registration and circulation records of any school or public library that pertain to his or her child. Notwithstanding the foregoing, records concerning security plans, procedures, assessments, measures, or systems, and any other records relating to, or having an impact upon, the security or safety of persons, structures, facilities, or other infrastructures, including without limitation information concerning critical infrastructure (as defined at 42 U.S.C.S. § 5195c(e) as amended) and critical energy infrastructure information (as defined at 18 C.F.R. § 388.113(c)(1) as amended), the public disclosure of which could reasonably be expected to be detrimental to the public safety or welfare, and records the disclosure of which would otherwise be detrimental to the best interests of the public shall be exempted from this section. Any public officer who receives a request for records that may appear to relate to critical infrastructure or critical energy infrastructure information, shall notify the owner of such infrastructure in writing of the request and provide the owner an opportunity to comment on the request and on the threats to public safety or welfare that could reasonably be expected from public disclosure on the records.
Relevant Case Law

Stone v. Consolidated Pub. Co., 404 So. 2d 678 (1981) (Creates a balancing test for deciding what is public and subject to disclosure, and what is private and not subject to disclosure. Thus, “courts must balance the interest of the citizens in knowing what their public officers are doing . . . against the interest of the general public in having the business of government carried on efficiently and without undue interference.”).

Blankenship v. Hoover, 590 So. 2d 245 (1991) (Allowing record holders to require that a records requester show that they have an interest in the record requested and inspection is for a legitimate purpose).
ALASKA

Overall Rating

Unless specifically provided otherwise, the public records of all public agencies are open to inspection by the public. . . . The public officer having the custody of public records shall give on request and payment of the fee . . . a certified copy of the public record.

Analysis

Alaska’s Public Records Act contains no exemptions specifically designed to protect research information or personal information. The law does not permit an institution to recover the full costs of providing information to the public.

Areas for improvement:

1. Enactment of a specific exemption to protect research data;
2. Enactment of a specific exemption to protect personal information, such as a researcher’s name, home address, and telephone number; and
3. Amendment of the Alaska Public Records Act to allow a research institution to recover the full costs associated with providing the information to the public.

ALASKA PUBLIC RECORDS ACT

ALASKA STAT. §40.25.110. Public records open to inspection and copying; fees.

a. Unless specifically provided otherwise, the public records of all public agencies are open to inspection by the public under reasonable rules during regular office hours. The public officer having the custody of public records shall give on request and payment of the fee established under this section or AS 40.25.115 a certified copy of the public record.

b. Except as otherwise provided in this section, the fee for copying public records may not exceed the standard unit cost of duplication established by the public agency.

c. If the production of records for one requester in a calendar month exceeds five person-hours, the public agency shall require the requester to pay the personnel costs required during the month to complete the search and copying tasks. The personnel costs may not exceed the actual salary and benefit costs for the personnel time required to perform the search and copying tasks. The requester shall pay the fee before the records are disclosed, and the public agency may require payment in advance of the search.

f. Notwithstanding other provisions of this section to the contrary, the Board of Regents of the University of Alaska may establish reasonable fees for the inspection and copying of public records, including record searches.
ALASKA STAT. §40.25.120. Public records; exceptions; certified copies.

a. Every person has a right to inspect a public record in the state, including public records in recorders' offices, except . . .
   3. medical and related public health records;
   4. records required to be kept confidential by a federal law or regulation or by state law;
      . . .
   7. names, addresses, and other information identifying a person as a participant in the Alaska Higher Education Savings Trust under AS 14.40.802 or the advance college tuition savings program under AS 14.40.803 -- 14.40.817;
      . . .
   12. records that are
      A. proprietary, privileged, or a trade secret in accordance with AS 43.90.150 or 43.90.220(e);

   13. Information of the Alaska Gasline Development Corporation created under AS 31.25.010 or a subsidiary of the Alaska Gasline Development Corporation that is confidential by law or under a valid confidentiality agreement.

b. Every public officer having the custody of records not included in the exceptions shall permit the inspection, and give on demand and on payment of the fees under AS 40.25.110 -- 40.25.115 a certified copy of the record, and the copy shall in all cases be evidence of the original.
Arizona’s Public Records Law contains no exemptions specifically designed to protect research information or personal information. The courts have established a balancing test for determining what information should be protected.

Areas for improvement:

1. Enactment of a specific exemption to protect research data;
2. Enactment of a specific exemption to protect personal information, such as a researcher’s name, home address, and telephone number; and
3. Amendment of the Arizona Public Records Law to allow a research institution to recover the full costs associated with providing the information to the public.

**ARIZONA PUBLIC RECORDS LAW**

**ARIZ. REV. STAT. §139-121. Inspection of public records**

Public records and other matters in the custody of any officer shall be open to inspection by any person at all times during office hours.

**ARIZ. REV. STAT. §139-121.01. Definitions; maintenance of records; copies, printouts or photographs of public records; examination by mail; index**

D. Subject to section 39-121.03:

1. Any person may request to examine or be furnished copies, printouts or photographs of any public record. . . . The custodian may require any person requesting that the custodian mail a copy of any public record to pay in advance for any copying and postage charges. . . .

**Relevant Case Law**

*Carlson v. Pima County*, 141 Ariz. 487 (1984) (Creating a balancing test for distinguishing records subject to disclosure, and those not subject to disclosure).

*Scottsdale Unified Sch. Dist. No. 48 v. KPNX Broad. Co.*, 191 Ariz. 297 (1998) (Finding that an individual’s interest in privacy, is not overcome solely because the information is available from other public sources).
A.H. Belo Corp. v. Mesa Police Dep’t, 202 Ariz. 184 (Ariz. Ct. App. 2002) (The record holder has the burden of showing that the requested records should not be disclosed).
**ARKANSAS**

**Overall Rating**

All public records shall be open to inspection and copying by any citizen of the State of Arkansas during the regular business hours of the custodian of the records.

**Analysis**

Arkansas’s Freedom of Information Act does not contain specific protections for research information. However, the law does protect home or mobile telephone numbers, personal email addresses, and home addresses of nonelected state employees. In addition, the law permits research institutions to recover some costs associated with duplicating records; however, personnel time associated with locating and copying the records cannot be charged and prepayment cannot be required unless the estimated cost exceeds $25.

Areas for improvement:

1. Enactment of a specific exemption to protect research data; and
2. Amendment of the Arkansas Freedom of Information Act to allow a research institution to recover the full costs associated with providing the information to the public, including personnel time.

**ARKANSAS FREEDOM OF INFORMATION ACT of 1967**

**ARK. CODE. ANN. §25-19-105. Examination and copying of public records.**

(a)(1)(A) Except as otherwise specifically provided by this section or by laws specifically enacted to provide otherwise, all public records shall be open to inspection and copying by any citizen of the State of Arkansas during the regular business hours of the custodian of the records.

b. It is the specific intent of this section that the following shall not be deemed to be made open to the public under the provisions of this chapter:

   12. Personnel records to the extent that disclosure would constitute a clearly unwarranted invasion of personal privacy;

   13. Personal contact information, including without limitation home or mobile telephone numbers, personal email addresses, and home addresses of nonelected state employees, nonelected municipal employees, nonelected school employees, and nonelected county employees contained in employer records, except that the custodian of the records shall verify an employee's city or county of residence or address on record upon request;

(d)(3)(A)

i. Except as provided in § 25-19-109 or by law, any fee for copies shall not exceed the actual costs of reproduction, including the costs of the medium of reproduction, supplies, equipment,
and maintenance, but not including existing agency personnel time associated with searching for, retrieving, reviewing, or copying the records.

ii. The custodian may also charge the actual costs of mailing or transmitting the record by facsimile or other electronic means.

iii. If the estimated fee exceeds twenty-five dollars ($25.00), the custodian may require the requester to pay that fee in advance.

iv. Copies may be furnished without charge or at a reduced charge if the custodian determines that the records have been requested primarily for noncommercial purposes and that waiver or reduction of the fee is in the
Public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record.

Analysis

California’s Public Records Act contains no exemptions specifically designed to protect research information. The law does protect the home addresses and telephone numbers of state employees and some personal information if the disclosure “would constitute an unwarranted invasion of personal privacy.” The Public Records Act does allow a research institution to require prepayment for the cost of duplicating records.

Areas for improvement:

1. Enactment of a specific exemption to protect research data; and
2. Amendment of the California Public Records Act to allow a research institution to recover the full costs associated with providing the information to the public, including personnel time.

CALIFORNIA PUBLIC RECORDS ACT

CAL. GOV. CODE §6250. Legislative finding and declaration.

In enacting this chapter, the Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state.

CAL. GOV. CODE §6253. Time for inspection of public records; "Unusual circumstances"

a. Public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided. Any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law.

b. Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable. Upon request, an exact copy shall be provided unless impracticable to do so.
**CAL GOV. CODE §6254. Records exempt from disclosure requirements.**

Except as provided in Sections 6254.7 and 6254.13, nothing in this chapter shall be construed to require disclosure of records that are any of the following:

a. Preliminary drafts, notes, or interagency or intra-agency memoranda that are not retained by the public agency in the ordinary course of business, if the public interest in withholding those records clearly outweighs the public interest in disclosure.

   ... 

c. Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.

**Cal Gov. Code §6254.3. Confidentiality of state employee home addresses and telephone numbers**

a. The home addresses and home telephone numbers of state employees and employees of a school district or county office of education shall not be deemed to be public records and shall not be open to public inspection, except that disclosure of that information may be made as follows:

**Relevant Case Law**

Colorado Open Records Act protects “the specific details of bona fide research conducted by a state institution” and “veterinary medical data, information, and records on individual animals that are owned by private individuals or business entities, but are in the custody of a veterinary medical practice or hospital.” The law also allows institutions to recover the full cost associated with responding to records requests.

Areas for improvement:

1. Enactment of a specific exemption to protect personal information, such as a researcher’s name, home address, and telephone number.

Colorado Open Records Act

COLO. REV. STAT. §24-72-203. Public records open to inspection

1. All public records shall be open for inspection by any person at reasonable times, except as provided in this part 2 or as otherwise provided by law, but the official custodian of any public records may make such rules with reference to the inspection of such records as are reasonably necessary for the protection of such records and the prevention of unnecessary interference with the regular discharge of the duties of the custodian or the custodian's office.

4. Nothing in this article shall preclude the state or any of its agencies, institutions, or political subdivisions from obtaining and enforcing trademark or copyright protection for any public record, and the state and its agencies, institutions, and political subdivisions are hereby specifically authorized to obtain and enforce such protection in accordance with the applicable federal law; except that this authorization shall not restrict public access to or fair use of copyrighted materials and shall not apply to writings which are merely lists or other compilations.
COLO. REV. STAT. § 24-72-204. Allowance or denial of inspection - grounds - procedure - appeal – definitions

1. The custodian of any public records shall allow any person the right of inspection of such records or any portion thereof except . . . as provided in subsection (2) or (3) of this section.

2. 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. . . .
   
   iii. The specific details of bona fide research projects being conducted by a state institution, including, without limitation, research projects undertaken by staff or service agencies of the general assembly or the office of the governor in connection with pending or anticipated legislation;
   
   . . .

3. The custodian shall deny the right of inspection of the following records, unless otherwise provided by law; except that any of the following records, other than letters of reference concerning employment, licensing, or issuance of permits, shall be available to the person in interest under this subsection (3):
   
   . . .
   
   II. Personnel files; but such files shall be available to the person in interest and to the duly elected and appointed public officials who supervise such person's work.
   
   . . .

IV. Trade secrets, privileged information, and confidential commercial, financial, geological, or geophysical data, including a social security number unless disclosure of the number is required, permitted, or authorized by state or federal law, furnished by or obtained from any person;

. . .

XIV. Veterinary medical data, information, and records on individual animals that are owned by private individuals or business entities, but are in the custody of a veterinary medical practice or hospital, including the veterinary teaching hospital at Colorado state university, that provides veterinary medical care and treatment to animals. A veterinary-patient-client privilege exists with respect to such data, information, and records only when a person in interest and a veterinarian enter into a mutual agreement to provide medical treatment for an individual animal and such person in interest maintains an ownership interest in such animal undergoing treatment. For purposes of this subparagraph (XIV), "person in interest" means the owner of an animal undergoing veterinary medical treatment or such owner's designated representative.

COLO. REV. STAT. § 24-72-205. Copy, printout, or photograph of a public record

1. In all cases in which a person has the right to inspect a public record, the person may request a copy, printout, or photograph of the record. The custodian shall furnish a copy, printout, or photograph and may charge a fee determined in accordance with subsection (5) of this section.

. . .

5. A custodian may charge a fee not to exceed twenty-five cents per standard page for a copy of a public record or a fee not to exceed the actual cost of providing a copy, printout, or photograph of a public record in a format other than a standard page.
Relevant Case Law


*Pruitt v. Rockwell*, 886 P.2d 315 (Colo. App. 1994). (There is no obligation to investigate outside the department for the requested documents or to undertake a special search to locate requested documents. The agency needs only to notify the requesting party that it has no knowledge of the location of requested records or to refer such party to the agency it believes might maintain the records).
CONNECTICUT

Overall Rating

☆☆

All records maintained or kept on file by any public agency, whether or not such records are required by any law or by any rule or regulation, shall be public records.

Analysis

Connecticut’s Freedom of Information Act does not contain specific protections for research information. However, “preliminary drafts or notes” are exempt, as is information that may result in harm to any person or “constitute an invasion of personal privacy.”

Areas for improvement:

1. Enactment of a specific exemption to protect research data;
2. Enactment of a specific exemption to protect personal information, such as a researcher’s name, home address, and telephone number; and
3. Amendment of the Connecticut Freedom of Information Act to allow a research institution to recover the full costs associated with providing the information to the public.

CONNECTICUT FREEDOM OF INFORMATION ACT


a. Except as otherwise provided by any federal law or state statute, all records maintained or kept on file by any public agency, whether or not such records are required by any law or by any rule or regulation, shall be public records. . .

b. Nothing in the Freedom of Information Act shall be construed to require disclosure of:

1. Preliminary drafts or notes provided the public agency has determined that the public interest in withholding such documents clearly outweighs the public interest in disclosure;
2. Personnel or medical files and similar files the disclosure of which would constitute an invasion of personal privacy;

... 

5. (A) Trade secrets, which for purposes of the Freedom of Information Act, are defined as information, including formulas, patterns, compilations, programs, devices, methods, techniques, processes, drawings, cost data, customer lists, film or television scripts or detailed production budgets that
   i. derive independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from their disclosure or use, and
ii. are the subject of efforts that are reasonable under the circumstances to maintain secrecy; and

... 

19. Records when there are reasonable grounds to believe disclosure may result in a safety risk, including the risk of harm to any person, any government-owned or leased institution or facility or any fixture or appurtenance and equipment attached to, or contained in, such institution or facility. . . Such records include, but are not limited to:

... 

CONN. GEN. STAT. §1-212. Copies and scanning of public records. Fees.

a. . . The fee for any copy provided in accordance with the Freedom of Information Act:

A. By an executive, administrative or legislative office of the state, a state agency or a department, institution . . . shall not exceed twenty-five cents per page; and

B. By all other public agencies, as defined in section 1-200, shall not exceed fifty cents per page.

. . .

b. The fee for any copy provided in accordance with subsection (a) of section 1-211 (information contained on computers) shall not exceed the cost thereof to the public agency. In determining such costs for a copy, other than for a printout which exists at the time that the agency responds to the request for such copy, an agency may include only:

1. An amount equal to the hourly salary attributed to all agency employees engaged in providing the requested computer-stored public record, including their time performing the formatting or programming functions necessary to provide the copy as requested, but not including search or retrieval costs except as provided in subdivision (4) of this subsection;
2. An amount equal to the cost to the agency of engaging an outside professional electronic copying service to provide such copying services, if such service is necessary to provide the copying as requested;
3. The actual cost of the storage devices or media provided to the person making the request in complying with such request; and
4. The computer time charges incurred by the agency in providing the requested computer-stored public record where another agency or contractor provides the agency with computer storage and retrieval services. Notwithstanding any other provision of this section, the fee for any copy of the names of registered voters shall not exceed three cents per name delivered or the cost thereof to the public agency, as determined pursuant to this subsection, whichever is less.

c. A public agency may require the prepayment of any fee required or permitted under the Freedom of Information Act if such fee is estimated to be ten dollars or more.

... 

g. Any individual may copy a public record through the use of a hand-held scanner. A public agency may establish a fee structure not to exceed twenty dollars for an individual to pay each time the individual copies records at the agency with a hand-held scanner.

Relevant Case Law

Department of Pub. Safety, Div. of State Police v. Freedom of Info. Comm'n, 242 Conn. 79, 698 A.2d 803, 1997 Conn. LEXIS 236 (Conn. 1997) (Defining “invasion of personal privacy” as when the information sought by a request does not pertain to legitimate matters of public concern and is highly offensive to a reasonable person).
All public records shall be open to inspection and copying during regular business hours by the custodian of the records for the appropriate public body.

Analysis

Delaware’s Freedom of Information Act does not specifically protect research information from disclosure. However, the University of Delaware and Delaware State University’s records are generally not “public records,” unless the information relates to the expenditure of public funds. The law does protect personnel information if its disclosure would constitute an invasion of personal privacy.

Areas for improvement:

1. Enactment of a specific exemption to protect research data;
2. Enactment of a specific exemption to protect personal information, such as a researcher’s name, home address, and telephone number; and
3. Amendment of Delaware’s Freedom of Information Act to allow a research institution to recover the full costs associated with providing the information to the public.

DELAWARE FREEDOM OF INFORMATION ACT

DEL. CODE ANN. Tit. 29 §10002. Definitions

1. "Public record" is information of any kind, owned, made, used, retained, received, produced, composed, drafted or otherwise compiled or collected, by any public body, relating in any way to public business, or in any way of public interest, or in any way related to public purposes, regardless of the physical form or characteristic by which such information is stored, recorded or reproduced. For purposes of this chapter, the following records shall not be deemed public:

1. Any personnel, medical or pupil file, the disclosure of which would constitute an invasion of personal privacy, under this legislation or under any State or federal law as it relates to personal privacy;
2. Trade secrets and commercial or financial information obtained from a person which is of a privileged or confidential nature

12. Any records of a public library which contain the identity of a user and the books, documents, films, recordings or other property of the library which a patron has used;

i. "Public body," "public record" and "meeting" shall not include activities of the University of Delaware and Delaware State University, except that the Board of Trustees of the University and the Board of Trustees of the University shall be "public bodies," and University and University documents relating
to the expenditure of public funds shall be "public records," and each meeting of the full Board of Trustees of either institution shall be a "meeting."

k. "Public funds" are those funds derived from the State or any political subdivision of the State.

**DEL. CODE ANN. Tit. 29 §10003. Examination and copying of public records.**

a. All public records shall be open to inspection and copying during regular business hours by the custodian of the records for the appropriate public body. Reasonable access to and reasonable facilities for copying of these records shall not be denied to any citizen.

l. Fees. -- Unless otherwise set forth in the Delaware Code or any applicable code of a county or municipal public body, the following fees shall apply:

1. In instances in which paper records are provided to the requesting party, photocopying fees shall be as follows:
   - The first 20 pages of standard-sized, black and white copies material shall be provided free of charge. The charge for copying standard sized, black and white public records for copies over and above 20 shall be $0.10 per sheet ($0.20 for a double-sided sheet).
   - Oversized copies/printouts: The charge for copying oversized public records shall be as follows: 18” x 22”, $2.00 per sheet; 24” x 36”, $3.00 per sheet; documents larger than 24” x 36”, $1.00 per square foot.
   - An additional charge of $1.00 per sheet will be assessed for all color copies or printouts for standard-sized copies and $1.50 per sheet for larger copies.

2. Administrative fees shall be levied for requests requiring more than 1 hour of staff time to process. Charges for administrative fees may include staff time associated with processing FOIA requests, including, without limitation: identifying records; monitoring file reviews; and generating computer records (electronic or print-outs). Administrative fees shall not include any cost associated with the public body's legal review of whether any portion of the requested records is exempt from FOIA. ... Prior to fulfilling any request that would require a requesting party to incur administrative fees, the public body shall provide an itemized written cost estimate of such fees to the requesting party, listing all charges expected to be incurred in retrieving such records. ... Administrative fees will be billed to the requesting party per quarter hour. These charges will be billed at the current hourly pay grade (prorated for quarter hour increments) of the lowest-paid employee capable of performing the service. Administrative fees will be in addition to any other charges incurred under this section for copying fees.

3. The first 20 pages of standard-sized, black and white material copied from microfilm and/or microfiche shall be provided free of charge. The charge for microfilm and/or microfiche printouts over and above 20 shall be $0.15 per sheet.

4. Charges for copying records maintained in an electronic format will be calculated by the material costs involved in generating the copies (including but not limited to DVD, CD, or other electronic storage costs) and administrative costs.
5. The public body may require all or any portion of the fees due hereunder to be paid prior to any service being performed pursuant to this section.
Detailed analysis of the District of Columbia’s Freedom of Information Act and its implications on research data and personal information.

**Overall Rating**

🌟🌟

*Any person has a right to inspect, and at his or her discretion, to copy any public record of a public body... in accordance with reasonable rules that shall be issued by a public body after notice and comment, concerning the time and place of access.*

**Analysis**

The District of Columbia’s Freedom of Information Act does not specifically protect research information from disclosure. However, the law does protect personal information if its disclosure would constitute an unwanted invasion of privacy. The District’s Freedom of Information Act also allows research institutions to recover their actual cost for searching, reviewing, and copying records.

Areas for improvement:

1. Enactment of a specific exemption to protect research data; and
2. Enactment of a specific exemption to protect personal information, such as a researcher’s name, home address, and telephone number.

**District of Columbia Freedom of Information Act of 1976**

**D.C. Code Ann. §2-532. Right of access to public records; allowable costs; time limits.**

a. Any person has a right to inspect, and at his or her discretion, to copy any public record of a public body, except as otherwise expressly provided by § 2-534, in accordance with reasonable rules that shall be issued by a public body after notice and comment, concerning the time and place of access.

   a-1 In making any record available to a person pursuant to this section, a public body shall provide the record in any form or format requested by the person, provided that the person shall pay the costs of reproducing the record in that form or format.

b. A public body may establish and collect fees not to exceed the actual cost of searching for, reviewing, and making copies of records... . . .

   b-1 Any fee schedules adopted by the Mayor, an agency or a public body shall provide that:

   1. Fees shall be limited to reasonable standard charges for document search, duplication, and review when records are requested for commercial use;
   2. Fees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by an educational or non-commercial scientific institution for scholarly or scientific research, or a representative of the news media;
3. For any request for records not described in paragraphs (1) or (2) of this subsection, fees shall be limited to reasonable standard charges for document search and duplication; and
4. Only the direct costs of search, duplication, or review may be recovered.

b-3 No agency or public body may require advance payment of any fee unless the requester has previously failed to pay fees in a timely fashion, or the agency or public body has determined that the fee will exceed $ 250.

D.C. CODE ANN. §2-534. Exemptions from disclosure.

a. The following matters may be exempt from disclosure under the provisions of this subchapter:
   1. Trade secrets and commercial or financial information obtained from outside the government, to the extent that disclosure would result in substantial harm to the competitive position of the person from whom the information was obtained;
   2. Information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.

Relevant Case Law

*Maydak v. United States DOJ*, 254 F.Supp.2d 23, (2003) (All information that applies to a particular individual qualifies for consideration under the Freedom of Information Act (FOIA) exemption for information about individuals. Requested information is not protected if the requester establishes an overriding public interest in disclosure by showing that the information is necessary to shed any light on the unlawful conduct of any government agency or official).

Overall Rating

Every person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.

Analysis

Florida’s Public Records Law, commonly called its Sunshine Law, does not specifically protect research information. However, the law was recently amended to protect the personal information of individuals involved in research using animals. If a records request is “voluminous,” the research institution may charge a service fee, to include personnel time-expenditures.

Areas for improvement:

1. Enactment of a specific exemption to protect research data; and
2. Amendment of Florida’s Public Records Law to allow a research institution to recover the full costs associated with providing the information to the public.

FLORIDA PUBLIC RECORDS LAW


As used in this chapter, the term:

1. “Actual cost of duplication” means the cost of the material and supplies used to duplicate the public record, but does not include labor cost or overhead cost associated with such duplication.
2. “Agency” means any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

12. “Public records” means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.
FLA. STAT. ANN. § 119.07. Inspection and copying of records; photographing public records; fees; exemptions.

1. 
   a. Every person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.

   e. If the person who has custody of a public record contends that all or part of the record is exempt from inspection and copying, he or she shall state the basis of the exemption that he or she contends is applicable to the record, including the statutory citation to an exemption created or afforded by statute.

4. The custodian of public records shall furnish a copy or a certified copy of the record upon payment of the fee prescribed by law. If a fee is not prescribed by law, the following fees are authorized:
   a. 
      1. Up to 15 cents per one-sided copy for duplicated copies of not more than 14 inches by 8 1/2 inches;
      2. No more than an additional 5 cents for each two-sided copy; and
      3. For all other copies, the actual cost of duplication of the public record.
   c. An agency may charge up to $1 per copy for a certified copy of a public record.
   d. If the nature or volume of public records requested to be inspected or copied pursuant to this subsection is such as to require extensive use of information technology resources or extensive clerical or supervisory assistance by personnel of the agency involved, or both, the agency may charge, in addition to the actual cost of duplication, a special service charge, which shall be reasonable and shall be based on the cost incurred for such extensive use of information technology resources or the labor cost of the personnel providing the service that is actually incurred by the agency or attributable to the agency for the clerical and supervisory assistance required, or both.
   e. 
      1. Where provision of another room or place is necessary to photograph public records, the expense of providing the same shall be paid by the person desiring to photograph the public records.
      2. The custodian of public records may charge the person making the photographs for supervision services at a rate of compensation to be agreed upon by the person desiring to make the photographs and the custodian of public records. If they fail to agree as to the appropriate charge, the charge shall be determined by the custodian of public records.

FLA. STAT. ANN. § 119.071. General exemptions from inspection or copying of public records.

4. Agency personnel information.
   a. The social security numbers of all current and former agency employees which numbers are held by the employing agency are confidential and exempt from s. 119.07(1) and s. 24(a), Art.
b.  
1. Medical information pertaining to a prospective, current, or former officer or employee of an agency which, if disclosed, would identify that officer or employee is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. However, such information may be disclosed if the person to whom the information pertains or the person’s legal representative provides written permission or pursuant to court order.

2. 
   a. Personal identifying information of a dependent child of a current or former officer or employee of an agency, which dependent child is insured by an agency group insurance plan, is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. For purposes of this exemption, “dependent child” has the same meaning as in s. 409.2554.
   
   b. This exemption is remedial in nature and applies to personal identifying information held by an agency before, on, or after the effective date of this exemption.
   
   c. This subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2014, unless reviewed and saved from repeal through reenactment by the Legislature.

CS/HB 993 (Effective July 1, 2014)

An act relating to public records; providing an exemption from public records requirements for personal identifying information of certain animal researchers at public research facilities, including state universities; providing for retroactive applicability of the exemption; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing an effective date.

SECTION 1:

1. Personal identifying information of a person employed by, under contract with, or volunteering for a public research facility, including a state university, that conducts animal research or is engaged in activities related to animal research, is exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution, when such information is contained in the following records:

   a. Animal records, including animal care and treatment records.
   b. Research protocols and approvals.
   c. Purchasing, funding, and billing records related to animal research or activities.
   d. Animal care and use committee records.
   e. Facility and laboratory records related to animal research or activities.

2. This exemption applies to personal identifying information as described in subsection (1) held by a public research facility, including a state university, before, on, or after the effective date of this exemption.
3. This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15, Florida Statutes, and shall stand repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature.

SECTION 2:

The Legislature finds that it is a public necessity that personal identifying information of a person who is employed by, under contract with, or volunteering for a public research facility, including a state university, that conducts animal research or is engaged in activities related to animal research, be made exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The Legislature also finds that it is a public necessity that this exemption apply to such personal identifying information held by a public research facility, including a state university, before, on, or after the effective date of the exemption. The Legislature finds that the release of such personal identifying information will place such persons in danger of threats and harassment as well as physical and emotional harm from those who advocate against such research. University employees have been harassed and threatened after animal care records that included their personal identifying information were disclosed pursuant to public records requests. Thus, the Legislature finds that the harm and threat to such persons' safety that results from the release of personal identifying information in records about the animals or about the animal research outweighs any public benefit that may be derived from the disclosure of the information. The public research facilities, including state universities, remain responsible and accountable for the animal research conducted at their institutions.
**Georgia**

**Overall Rating**

All public records shall be open for personal inspection and copying, except those which by order of a court of this state or by law are specifically exempted from disclosure.

**Analysis**

Georgia’s Open Records Act specifically protects research information from disclosure including “data, records, or information . . . produced or collected by or for faculty or staff of state institutions of higher learning, or other governmental agencies . . . whether sponsored by the institution alone or in conjunction with a governmental body or private concern, where such data, records, or information has not been publicly released, published, copyrighted, or patented.” The law also protects personal information including home addresses and telephone numbers. Georgia’s Open Records Act allows institutions to recover their full cost of providing information to the public, including time spent searching for, retrieving, redacting, and producing the records.

**Georgia Open Records Act**

**GA. CODE ANN. §50-18-71. Right of access; timing; fees; denial of requests; impact of electronic records.**

a. All public records shall be open for personal inspection and copying, except those which by order of a court of this state or by law are specifically exempted from disclosure.

   . . .

   c. 1. An agency may impose a reasonable charge for the search, retrieval, redaction, and production or copying costs for the production of records pursuant to this article. An agency shall utilize the most economical means reasonably calculated to identify and produce responsive, nonexcluded documents. Where fees for certified copies or other copies or records are specifically authorized or otherwise prescribed by law, such specific fee shall apply when certified copies or other records to which a specific fee may apply are sought. In all other instances, the charge for the search, retrieval, or redaction of records shall not exceed the prorated hourly salary of the lowest paid full-time employee who, in the reasonable discretion of the custodian of the records, has the necessary skill and training to perform the request; provided, however, that no charge shall be made for the first quarter hour.

   2. In addition to a charge for the search, retrieval, or redaction of records, an agency may charge a fee for the copying of records or data, not to exceed 10 cent(s) per page for letter or legal size documents or, in the case of other documents, the actual cost of producing the copy. In the case of electronic records, the agency may charge the actual cost of the media on which the records or data are produced.
3. Whenever any person has requested to inspect or copy a public record and does not pay the cost for search, retrieval, redaction, or copying of such records when such charges have been lawfully estimated and agreed to pursuant to this article, and the agency has incurred the agreed-upon costs to make the records available, regardless of whether the requester inspects or accepts copies of the records, the agency shall be authorized to collect such charges in any manner authorized by law for the collection of taxes, fees, or assessments by such agency.

**GA. CODE ANN. §50-18-72. When public disclosure not required.**

a. Public disclosure shall not be required for records that are:
   1. Specifically required by federal statute or regulation to be kept confidential;
   2. Medical or veterinary records and similar files, the disclosure of which would be an invasion of personal privacy;

   ... 

21. Records concerning public employees that reveal the public employee's home address, home telephone number, day and month of birth, social security number, insurance or medical information, mother's birth name, credit card information, debit card information, bank account information, account number, utility account number, password used to access his or her account, financial data or information other than compensation by a government agency, unlisted telephone number if so designated in a public record, and the identity of the public employee's immediate family members or dependents. This paragraph shall not apply to public records that do not specifically identify public employees or their jobs, titles, or offices. For the purposes of this paragraph, the term "public employee" means any officer, employee, or former employee of:
   A. The State of Georgia or its agencies, departments, or commissions;
   B. Any county or municipality or its agencies, departments, or commissions;
   C. Other political subdivisions of this state;
   D. Teachers in public and charter schools and nonpublic schools; or
   E. Early care and education programs administered through the Department of Early Care and Learning;

35. Data, records, or information of a proprietary nature produced or collected by or for faculty or staff of state institutions of higher learning, or other governmental agencies, in the conduct of, or as a result of, study or research on commercial, scientific, technical, or scholarly issues, whether sponsored by the institution alone or in conjunction with a governmental body or private concern, where such data, records, or information has not been publicly released, published, copyrighted, or patented;

36. Any data, records, or information developed, collected, or received by or on behalf of faculty, staff, employees, or students of an institution of higher education or any public or private entity supporting or participating in the activities of an institution of higher education in the conduct of, or as a result of, study or research on medical, scientific, technical, scholarly, or artistic issues, whether sponsored by the institution alone or in conjunction with a governmental body or private entity, until such information is published, patented, otherwise publicly disseminated, or released to an agency whereupon the request must be made to the agency. This paragraph shall apply to, but shall not be limited to, information provided by participants
in research, research notes and data, discoveries, research projects, methodologies, protocols, and creative works;

39. Records disclosing the identity or personally identifiable information of any person participating in research on commercial, scientific, technical, medical, scholarly, or artistic issues conducted by the Department of Community Health, the Department of Public Health, the Department of Behavioral Health and Developmental Disabilities, or a state institution of higher education whether sponsored by the institution alone or in conjunction with a governmental body or private entity;

b. This Code section shall be interpreted narrowly so as to exclude from disclosure only that portion of a public record to which an exclusion is directly applicable. It shall be the duty of the agency having custody of a record to provide all other portions of a record for public inspection or copying.
Overall Rating

All government records are open to public inspection unless access is restricted or closed by law.

Analysis

Hawaii’s Uniform Information Practices Act does not contain specific protections for research information. The law does protect information that “would constitute a clearly unwarranted invasion of personal privacy” and allows institutions to recover the full cost of providing information to the public, including labor and electricity costs.

Areas for improvement:

1. Enactment of a specific exemption to protect research data; and
2. Enactment of a specific exemption to protect personal information, such as a researcher’s name, home address, and telephone number.

HAWAII UNIFORM INFORMATION PRACTICES ACT

HAW. REV. STAT. § 92F-11. Affirmative agency disclosure responsibilities.

a. All government records are open to public inspection unless access is restricted or closed by law.


This part shall not require disclosure of:

1. Government records which, if disclosed, would constitute a clearly unwarranted invasion of personal privacy;

HAW. REV. STAT. § 92-21. Copies of records; other costs and fees.

Except as otherwise provided by law, a copy of any government record . . . which is open to the inspection of the public, shall be furnished to any person . . . upon the payment of the reasonable cost of reproducing such copy. . . . [T]he cost of reproducing any government record . . . shall not be less than 5 cents per page, sheet, or fraction thereof. . . . Such reproduction cost shall include but shall not be limited to labor cost for search and actual time for reproducing, material cost, including electricity cost, equipment cost, including rental cost, cost for certification, and other related costs.
Relevant Case Law

*State Org. of Police Officers v. Society of Professional Journalists-University of Haw. Chapter,* 927 P.2d 386 (1996) (Hawaii’s Uniform Information Practices Act does not contain an exemption, express or implied, for request deemed by the agency as to burdensome).
Overall Rating

Every person has a right to examine and take a copy of any public record of this state and there is a presumption that all public records in Idaho are open at all reasonable times for inspection except as otherwise expressly provided by statute.

Analysis

Idaho specifically protects some research information; however, the protections only apply if releasing the records “could reasonably affect the conduct or outcome of the research” or the ability of the institution to patent the research findings. The Idaho Public Records Act also protects home addresses and telephone numbers of state employees. In addition, the law permits research institutions to charge for personnel time and material expenses, but the first 2 hours of time expended or the first 100 pages must be free of charge.

Areas for improvement:

1. Amendment of the research exemption to remove the requirement that the information is only protected if its release could reasonably affect the outcome of the research or the ability to patent the findings; and
2. Amendment of the Idaho Public Records Act to allow a research institution to recover the full costs associated with providing the information to the public without providing the first 2 hours or 100 pages free of charge.

IDAHO PUBLIC RECORDS ACT


1. Every person has a right to examine and take a copy of any public record of this state and there is a presumption that all public records in Idaho are open at all reasonable times for inspection except as otherwise expressly provided by statute.

10. a. Except for fees that are authorized or prescribed under other provisions of Idaho law, no fee shall be charged for the first two (2) hours of labor in responding to a request for public records, or for copying the first one hundred (100) pages of paper records that are requested.

b. A public agency or independent public body corporate and politic or public official may establish fees to recover the actual labor and copying costs associated with locating and copying documents if:
   i. The request is for more than one hundred (100) pages of paper records; or
ii. The request includes records from which nonpublic information must be deleted; or

iii. The actual labor associated with responding to requests for public records in compliance with the provisions of this chapter exceeds two (2) person hours.

c. A public agency or independent public body corporate and politic or public official may establish a copying fee schedule. The fee may not exceed the actual cost to the agency of copying the record if another fee is not otherwise provided by law.

d. For providing a duplicate of a computer tape, computer disc, microfilm or similar or analogous record system containing public record information, a public agency or independent public body corporate and politic or public official may charge a fee, uniform to all persons that does not exceed the sum of the following:
   i. The agency's direct cost of copying the information in that form;
   ii. The standard cost, if any, for selling the same information in the form of a publication;
   iii. The agency's cost of conversion, or the cost of conversion charged by a third party, if the existing electronic record is converted to another electronic form.

e. Fees shall not exceed reasonable labor costs necessarily incurred in responding to a public records request. Fees, if charged, shall reflect the personnel and quantity of time that are reasonably necessary to process a request. Fees for labor costs shall be charged at the per hour pay rate of the lowest paid administrative staff employee or public official of the public agency or independent public body corporate and politic who is necessary and qualified to process the request. If a request requires redactions to be made by an attorney who is employed by the public agency or independent public body corporate and politic, the rate charged shall be no more than the per hour rate of the lowest paid attorney within the public agency or independent public body corporate and politic who is necessary and qualified to process the request. If a request is submitted to a public agency or independent public body corporate and politic that does not have an attorney on staff, and requires redactions by an attorney, the rate shall be no more than the usual and customary rate of the attorney who is retained by the public agency or independent public body corporate and politic for that purpose.

f. The public agency or independent public body corporate and politic shall not charge any cost or fee for copies or labor when the requester demonstrates that the requester's examination and/or copying of public records:
   i. Is likely to contribute significantly to the public's understanding of the operations or activities of the government;
   ii. Is not primarily in the individual interest of the requester including, but not limited to, the requester's interest in litigation in which the requester is or may become a party; and
   iii. Will not occur if fees are charged because the requester has insufficient financial resources to pay such fees.

12. The custodian may require advance payment of fees authorized by this section. Any money received by the public agency or independent public body corporate and politic shall be credited to the account for which the expense being reimbursed was or will be charged, and such funds may be expended by the agency as part of its appropriation from that fund. Any portion of an advance payment in excess
of the actual costs of labor and copying incurred by the agency in responding to the request shall be returned to the requester.

**IDAHO CODE § 9-340C. Records exempt from disclosure -- Personnel records, personal information, health records, professional discipline**

1. Except as provided in this subsection, all personnel records of a current or former public official other than the public official's public service or employment history, classification, pay grade and step, longevity, gross salary and salary history, status, workplace and employing agency. All other personnel information relating to a public employee or applicant including, but not limited to, information regarding sex, race, marital status, birth date, home address and telephone number . . . shall not be disclosed to the public without the employee's or applicant's written consent.

**IDAHO CODE § 9-340D. Records exempt from disclosure -- Trade secrets, production records, appraisals, bids, proprietary information**

1. Trade secrets including those contained in response to public agency or independent public body corporate and politic requests for proposal, requests for clarification, requests for information and similar requests. "Trade secrets" as used in this section means information, including a formula, pattern, compilation, program, computer program, device, method, technique, process, or unpublished or in progress research that:

   a. Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; and

   b. Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

   . . .

20. Records, data, information and materials collected, developed, generated, ascertained or discovered during the course of academic research at public institutions of higher education if the disclosure of such could reasonably affect the conduct or outcome of the research, or the ability of the public institution of higher education to patent or copyright the research or protect intellectual property.

21. Records, data, information and materials collected or utilized during the course of academic research at public institutions of higher education provided by any person or entity other than the public institution of higher education or a public agency.

22. The exemptions from disclosure provided in subsections (20) and (21) of this section shall apply only until the academic research is publicly released, copyrighted or patented, or until the academic research is completed or terminated. At such time, the records, data, information, and materials shall be subject to public disclosure unless: (a) another exemption in this chapter applies; (b) such information was provided to the institution subject to a written agreement of confidentiality; or (c) public disclosure would pose a danger to persons or property.

23. The exemptions from disclosure provided in subsections (20) and (21) of this section do not include basic information about a particular research project that is otherwise subject to public disclosure, such as the nature of the academic research, the name of the researcher, and the amount and source of the funding provided for the project.
All records in the custody or possession of a public body are presumed to be open to inspection or copying. Any public body that asserts that a record is exempt from disclosure has the burden of proving by clear and convincing evidence that it is exempt.

Analysis

The Illinois Freedom of Information Act does not specifically protect research information from disclosure. The law does protect some personally identifiable information, if its disclosure would constitute an unwarranted invasion of personal privacy. The Illinois Freedom of Information Act does not allow institutions to recover their full costs associated with responding to records requests.

Areas for improvement:

1. Enactment of a specific exemption to protect research data;
2. Enactment of a specific exemption to protect personal information, such as a researcher’s name, home address, and telephone number; and
3. Amendment of the Illinois Freedom of Information Act to allow a research institution to recover the full costs associated with providing the information to the public.

5 ILL. COMP. STAT. 140/1.2. Presumptions

Sec. 1.2. Presumption. All records in the custody or possession of a public body are presumed to be open to inspection or copying. Any public body that asserts that a record is exempt from disclosure has the burden of proving by clear and convincing evidence that it is exempt.

5 ILL. COMP. STAT. 140/6. Authority to Charge Fees.

a. When a person requests a copy of a record maintained in an electronic format, the public body shall furnish it in the electronic format specified by the requester, if feasible. If it is not feasible to furnish the public records in the specified electronic format, then the public body shall furnish it in the format in which it is maintained by the public body, or in paper format at the option of the requester. A public body may charge the requester for the actual cost of purchasing the recording medium, whether disc, diskette, tape, or other medium. A public body may not charge the requester for the costs of any search for and review of the records or other personnel costs associated with reproducing the records, except for commercial requests as provided in subsection (f) of this Section. Except to the extent that the General Assembly expressly provides, statutory fees applicable to copies of public records when furnished in a paper format shall not be applicable to those records when furnished in an electronic format.
b. Except when a fee is otherwise fixed by statute, each public body may charge fees reasonably calculated to reimburse its actual cost for reproducing and certifying public records and for the use, by any person, of the equipment of the public body to copy records. No fees shall be charged for the first 50 pages of black and white, letter or legal sized copies requested by a requester. The fee for black and white, letter or legal sized copies shall not exceed 15 cents per page. If a public body provides copies in color or in a size other than letter or legal, the public body may not charge more than its actual cost for reproducing the records. In calculating its actual cost for reproducing records or for the use of the equipment of the public body to reproduce records, a public body shall not include the costs of any search for and review of the records or other personnel costs associated with reproducing the records, except for commercial requests as provided in subsection (f) of this Section. Such fees shall be imposed according to a standard scale of fees, established and made public by the body imposing them. The cost for certifying a record shall not exceed $1.

f. A public body may charge up to $10 for each hour spent by personnel in searching for and retrieving a requested record. No fees shall be charged for the first 8 hours spent by personnel in searching for or retrieving a requested record. A public body may charge the actual cost of retrieving and transporting public records from an off-site storage facility when the public records are maintained by a third-party storage company under contract with the public body. If a public body imposes a fee pursuant to this subsection (f), it must provide the requester with an accounting of all fees, costs, and personnel hours in connection with the request for public records. The provisions of this subsection (f) apply only to commercial requests.

5 ILL. COMP. STAT. 140/7. Exemptions.

1. When a request is made to inspect or copy a public record that contains information that is exempt from disclosure under this Section, but also contains information that is not exempt from disclosure, the public body may elect to redact the information that is exempt. The public body shall make the remaining information available for inspection and copying. Subject to this requirement, the following shall be exempt from inspection and copying:

a. Information specifically prohibited from disclosure by federal or State law or rules and regulations implementing federal or State law.

b. Private information, unless disclosure is required by another provision of this Act, a State or federal law or courts order.

c. Personal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, unless the disclosure is consented to in writing by the individual subjects of the information. "Unwarranted invasion of personal privacy" means the disclosure of information that is highly personal or objectionable to a reasonable person and in which the subject's right to privacy outweighs any legitimate public interest in obtaining the information. The disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy.

...
proprietary, privileged or confidential, and that disclosure of the trade secrets or commercial or financial information would cause competitive harm to the person or business, and only insofar as the claim directly applies to the records requested. The information included under this exemption includes all trade secrets and commercial or financial information obtained by a public body, including a public pension fund, from a private equity fund or a privately held company within the investment portfolio of a private equity fund as a result of either investing or evaluating a potential investment of public funds in a private equity fund. The exemption contained in this item does not apply to the aggregate financial performance information of a private equity fund, nor to the identity of the fund's managers or general partners. The exemption contained in this item does not apply to the identity of a privately held company within the investment portfolio of a private equity fund, unless the disclosure of the identity of a privately held company may cause competitive harm.

Relevant Case Law

(A public body seeking to protect information from disclosure, bears the burden of establishing that an exemption to disclosure under this Act applies to the requested information).
Any person may inspect and copy the public records of any public agency during the regular business hours of the agency.

Analysis

Indiana has a specific exemption to protect research information, which protects both research documents and information provided by another party involved in the research. The Indiana Public Records Act protects personnel files, but does not specifically protect a researcher’s personal information. In addition, while the law permits recovery of some expenses associated with responding to a records request, time spent searching for or reviewing records cannot be charged.

Areas for improvement:

1. Enactment of a specific exemption to protect personal information, such as a researcher’s name, home address, and telephone number; and
2. Amendment of the Indiana Public Records Act to allow a research institution to recover the full costs associated with providing information to the public, including all personnel time.

INDIANA PUBLIC RECORDS ACT

IND. CODE §5-14-3-3. Right of inspection of public records.

a. Any person may inspect and copy the public records of any public agency during the regular business hours of the agency, except as provided in section 4 [IC 5-14-3-4] of this chapter.

...  

IND. CODE §5-14-3-4. Exceptions to right to inspect public records -- Time limitation on confidentiality of records -- Destruction of public records.

a. The following public records are excepted from section 3 [IC 5-14-3-3] of this chapter and may not be disclosed by a public agency, unless access to the records is specifically required by a state or federal statute or is ordered by a court under the rules of discovery:

   1. Those declared confidential by state statute.

   2. Those declared confidential by rule adopted by a public agency under specific authority to classify public records as confidential granted to the public agency by statute.

   3. Those required to be kept confidential by federal law.

   4. Records containing trade secrets.
6. Information concerning research, including actual research documents, conducted under the auspices of a state educational institution, including information:

   A. concerning any negotiations made with respect to the research; and
   B. received from another party involved in the research.

8. Those declared confidential by or under rules adopted by the supreme court of Indiana.

b. Except as otherwise provided by subsection (a), the following public records shall be excepted from section 3 of this chapter at the discretion of a public agency:

8. Personnel files of public employees and files of applicants for public employment, except for:
   A. the name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, or dates of first and last employment of present or former officers or employees of the agency;
   B. information relating to the status of any formal charges against the employee; and
   C. the factual basis for a disciplinary action in which final action has been taken and that resulted in the employee being suspended, demoted, or discharged.

However, all personnel file information shall be made available to the affected employee or the employee's representative. This subdivision does not apply to disclosure of personnel information generally on all employees or for groups of employees without the request being particularized by employee name.

IND. CODE §5-14-3-8. Copying Fees.

b. Except as provided in this section, a public agency may not charge any fee under this chapter:
   1. to inspect a public record; or
   2. to search for, examine, or review a record to determine whether the record may be disclosed.

   d. This subsection applies to a public agency that is not a state agency. The fiscal body (as defined in IC 36-1-2-6) of the public agency, or the governing body, if there is no fiscal body, shall establish a fee schedule for the certification or copying of documents. The fee for certification of documents may not exceed five dollars ($5) per document. The fee for copying documents may not exceed the greater of:
      1. ten cents ($0.10) per page for copies that are not color copies or twenty-five cents ($0.25) per page for color copies; or
      2. the actual cost to the agency of copying the document.

As used in this subsection, "actual cost" means the cost of paper and the per-page cost for use of copying or facsimile equipment and does not include labor costs or overhead costs. A fee established under this subsection must be uniform throughout the public agency and uniform to all purchasers.

g. Except as provided by subsection (h), for providing a duplicate of a computer tape, computer disc, microfilm, or similar or analogous record system containing information owned by the public agency
or entrusted to it, a public agency may charge a fee, uniform to all purchasers, that does not exceed
the sum of the following:

1. The agency's direct cost of supplying the information in that form.

h. This subsection applies to the fee charged by a public agency for providing enhanced access to a public
record. A public agency may charge any reasonable fee agreed on in the contract under section 3.5 of
this chapter for providing enhanced access to public records.

Relevant Case Law

animal research, and holding that all exemptions should be narrowly construed).
IOWA

Overall Rating

Every person shall have the right to examine and copy a public record and to publish or otherwise disseminate a public record or the information contained in a public record. Unless otherwise provided for by law, the right to examine a public record shall include the right to examine a public record without charge while the public record is in the physical possession of the custodian of the public record.

Analysis

Iowa’s Open Records Law does not specifically protect research information from disclosure. It does protect some personal information, if the information is in a confidential personnel record; however, names and information including job title and education are not specifically protected. The law does not permit research institutions to recover the full costs of providing information to the public.

Areas for improvement:

1. Enactment of a specific exemption to protect research data;
2. Enactment of a specific exemption to protect personal information, such as a researcher’s name, home address, and telephone number; and
3. Amendment of the Iowa Open Records Law to allow a research institution to recover the full costs associated with providing the information to the public.

IOWA OPEN RECORDS LAW

IOWA CODE ANN. § 22.2. Right to examine public records -- exceptions.

1. Every person shall have the right to examine and copy a public record and to publish or otherwise disseminate a public record or the information contained in a public record. Unless otherwise provided for by law, the right to examine a public record shall include the right to examine a public record without charge while the public record is in the physical possession of the custodian of the public record. . . .

IOWA CODE ANN. §22.3. Supervision – Fees.

1. . . . Fulfillment of a request for a copy of a public record may be contingent upon receipt of payment of expenses to be incurred in fulfilling the request and such estimated expenses shall be communicated to the requester upon receipt of the request. The lawful custodian may adopt and enforce reasonable rules regarding the examination and copying of the records and the protection of the records against damage or disorganization. The lawful custodian shall provide a suitable place for the examination and copying of the records, but if it is impracticable to do the examination and copying of the records
in the office of the lawful custodian, the person desiring to examine or copy shall pay any necessary expenses of providing a place for the examination and copying.

2. All expenses of the examination and copying shall be paid by the person desiring to examine or copy. The lawful custodian may charge a reasonable fee for the services of the lawful custodian or the custodian's authorized designee in supervising the examination and copying of the records. If copy equipment is available at the office of the lawful custodian of any public records, the lawful custodian shall provide any person a reasonable number of copies of any public record in the custody of the office upon the payment of a fee. The fee for the copying service as determined by the lawful custodian shall not exceed the actual cost of providing the service. Actual costs shall include only those expenses directly attributable to supervising the examination of and making and providing copies of public records. Actual costs shall not include charges for ordinary expenses or costs such as employment benefits, depreciation, maintenance, electricity, or insurance associated with the administration of the office of the lawful custodian.

IOWA CODE ANN. §22.7. Confidential Records.

The following public records shall be kept confidential, unless otherwise ordered by a court, by the lawful custodian of the records, or by another person duly authorized to release such information:

3. Trade secrets which are recognized and protected as such by law.

11. Personal information in confidential personnel records of government bodies relating to identified or identifiable individuals who are officials, officers, or employees of the government bodies. However, the following information relating to such individuals contained in personnel records shall be public records:

1. The name and compensation of the individual including any written agreement establishing compensation or any other terms of employment excluding any information otherwise excludable from public information pursuant to this section or any other applicable provision of law. For purposes of this paragraph, "compensation" means payment of, or agreement to pay, any money, thing of value, or financial benefit conferred in return for labor or services rendered by an official, officer, or employee plus the value of benefits conferred including but not limited to casualty, disability, life, or health insurance, other health or wellness benefits, vacation, holiday, and sick leave, severance payments, retirement benefits, and deferred compensation.

2. The dates the individual was employed by the government body.

3. The positions the individual holds or has held with the government body.

4. The educational institutions attended by the individual, including any diplomas and degrees earned, and the names of the individual's previous employers, positions previously held, and dates of previous employment.

5. The fact that the individual was discharged as the result of a final disciplinary action upon the exhaustion of all applicable contractual, legal, and statutory remedies.
Personal information in confidential personnel records of government bodies relating to student employees shall only be released pursuant to 20 U.S.C. § 1232g.
Kansas

Overall Rating

All public records shall be open for inspection by any person, except as otherwise provided by this act and suitable facilities shall be made available by each public agency for this purpose.

Analysis

Kansas specifically protects research information from disclosure, including “research data in the process of analysis” and “video tapes or films, pictures, slides, graphics, illustrations or similar audio or visual items or devices, unless” shown or displayed at public meeting of the governing body. The Kansas Open Records Act protects personal information if its disclosure would constitute an “unwarranted invasion of personal privacy.” The law also allows a request to be denied if the institution has “reason to believe that repeated requests are intended to disrupt other essential functions of the public agency,” or if the request would place an unreasonable burden on the institution. Kansas allows institutions to recover their actual costs of providing information to the public, including staff time.

Areas for improvement:

1. Enactment of a specific exemption to protect personal information, such as a researcher’s name, home address, and telephone number.

Kansas Open Records Act


As used in the open records act, unless the context otherwise requires:

b. “Clearly unwarranted invasion of personal privacy” means revealing information that would be highly offensive to a reasonable person, including information that may pose a risk to a person or property and is not of legitimate concern to the public.

KAN. STAT. ANN. § 45-218. Inspection of records; request; response; refusal, when; fees.

a. All public records shall be open for inspection by any person, except as otherwise provided by this act and suitable facilities shall be made available by each public agency for this purpose.

... 

e. The custodian may refuse to provide access to a public record, or to permit inspection, if a request places an unreasonable burden in producing public records or if the custodian has reason to believe that repeated requests are intended to disrupt other essential functions of the public agency.

However, refusal under this subsection must be sustained by preponderance of the evidence.
f. A public agency may charge and require advance payment of a fee for providing access to or furnishing copies of public records, subject to K.S.A. 45-219.

**KAN. STAT. ANN. § 45-219. Abstracts or copies of records; fees.**

a. Any person may make abstracts or obtain copies of any public record to which such person has access under this act. If copies are requested, the public agency may require a written request and advance payment of the prescribed fee. A public agency shall not be required to provide copies of radio or recording tapes or discs, video tapes or films, pictures, slides, graphics, illustrations or similar audio or visual items or devices, unless such items or devices were shown or played to a public meeting of the governing body thereof, but the public agency shall not be required to provide such items or devices which are copyrighted by a person other than the public agency.

b. Copies of public records shall be made while the records are in the possession, custody and control of the custodian or a person designated by the custodian and shall be made under the supervision of such custodian or person. When practical, copies shall be made in the place where the records are kept. If it is impractical to do so, the custodian shall allow arrangements to be made for use of other facilities. If it is necessary to use other facilities for copying, the cost thereof shall be paid by the person desiring a copy of the records. In addition, the public agency may charge the same fee for the services rendered in supervising the copying as for furnishing copies under subsection (c) and may establish a reasonable schedule of times for making copies at other facilities.

c. Except as provided by subsection (f) or where fees for inspection or for copies of a public record are prescribed by statute, each public agency may prescribe reasonable fees for providing access to or furnishing copies of public records, subject to the following:
   1. In the case of fees for copies of records, the fees shall not exceed the actual cost of furnishing copies, including the cost of staff time required to make the information available.
   2. In the case of fees for providing access to records maintained on computer facilities, the fees shall include only the cost of any computer services, including staff time required.

**KAN. STAT. ANN. § 45-221. Certain records not required to be open; separation of open and closed information required; statistics and records over 70 years old open.**

a. Except to the extent disclosure is otherwise required by law, a public agency shall not be required to disclose:

20. Notes, preliminary drafts, research data in the process of analysis, unfunded grant proposals, memoranda, recommendations or other records in which opinions are expressed or policies or actions are proposed, except that this exemption shall not apply when such records are publicly cited or identified in an open meeting or in an agenda of an open meeting.

... 30. Public records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.

... 34. Records involved in the obtaining and processing of intellectual property rights that are expected to be, wholly or partially vested in or owned by a state educational institution, as...
defined in K.S.A. 76-711, and amendments thereto, or an assignee of the institution organized and existing for the benefit of the institution.
Kentucky’s Open Records Act does not contain a specific protection for research information. However, the law does allow institutions to deny a request if there is “reason to believe that repeated requests are intended to disrupt other essential functions of the public agency,” or if responding to the request would be unduly burdensome. Kentucky does protect personal information if the release would constitute an unwarranted invasion of personal privacy. The law does not allow research institutions to recover their actual costs of providing information to the public.

Areas for improvement:

1. Enactment of a specific exemption to protect research data;
2. Enactment of a specific exemption to protect personal information, such as a researcher’s name, home address, and telephone number; and
3. Amendment of the Kentucky Open Records Act to allow a research institution to recover the full costs associated with providing the information to the public.

Kentucky Open Records Act

KY. REV. STAT. ANN. §61.872. Right to inspection; limitations.

1. All public records shall be open for inspection by any person, except as otherwise provided . . .

6. If the application places an unreasonable burden in producing public records or if the custodian has reason to believe that repeated requests are intended to disrupt other essential functions of the public agency, the official custodian may refuse to permit inspection of the public records or mail copies thereof. However, refusal under this section shall be sustained by clear and convincing evidence.

KY. REV. STAT. ANN. § 61.874. Abstracts, memoranda, copies -- Agency may prescribe fee -- Use of nonexempt public records for commercial purposes -- Online access.

1. . . . When copies are requested, the custodian may require a written request and advance payment of the prescribed fee, including postage where appropriate. . . .

3. The public agency may prescribe a reasonable fee for making copies of nonexempt public records requested for use for noncommercial purposes which shall not exceed the actual cost of reproduction, including the costs of the media and any mechanical processing cost incurred by the public agency,
but not including the cost of staff required. If a public agency is asked to produce a record in a nonstandardized format, or to tailor the format to meet the request of an individual or a group, the public agency may at its discretion provide the requested format and recover staff costs as well as any actual costs incurred.

4. Unless an enactment of the General Assembly prohibits the disclosure of public records to persons who intend to use them for commercial purposes, if copies of nonexempt public records are requested for commercial purposes, the public agency may establish a reasonable fee.

b. The public agency from which copies of nonexempt public records are requested for a commercial purpose may require a certified statement from the requestor stating the commercial purpose for which they shall be used, and may require the requestor to enter into a contract with the agency. The contract shall permit use of the public records for the stated commercial purpose for a specified fee.

c. The fee provided for in subsection (a) of this section may be based on one or both of the following:

1. Cost to the public agency of media, mechanical processing, and staff required to produce a copy of the public record or records;
2. Cost to the public agency of the creation, purchase, or other acquisition of the public records.

6. Online access to public records in electronic form, as provided under this section, may be provided and made available at the discretion of the public agency. If a party wishes to access public records by electronic means and the public agency agrees to provide online access, a public agency may require that the party enter into a contract, license, or other agreement with the agency, and may charge fees for these agreements. Fees shall not exceed:

a. The cost of physical connection to the system and reasonable cost of computer time access charges; and
b. If the records are requested for a commercial purpose, a reasonable fee based on the factors set forth in subsection (4) of this section.

KY. REV. STAT. ANN. §61.878. Certain public records exempted from inspection except on order of court -- Restriction of state employees to inspect personnel files prohibited.

1. The following public records are excluded . . . and shall be subject to inspection only upon order of a court of competent jurisdiction . . . :

a. Public records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy;

b. Upon and after July 15, 1992, records confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records;
Relevant Case Law

Zink v. Department of Workers’ Claims, Labor Cabinet, 902 S.W.2d 825, 1994 Ky. App. LEXIS 141 (Ky. Ct. App. 1994) (In determining whether a request for certain public records constitutes “a clearly unwarranted invasion of personal privacy” a court must first determine whether the subject information is of a ‘personal nature’. If it finds that it is, it must then determine whether public disclosure "would constitute a clearly unwarranted invasion of personal privacy." This latter determination entails a "comparative weighing of antagonistic interests" in which the privacy interest in nondisclosure is balanced against the general rule of inspection and its underlying policy of openness for the public good).
Any person of the age of majority may inspect, copy, or reproduce, any public record.

Analysis

Louisiana’s Public Records Act does not specifically protect research information from disclosure. The law does protect some personal information including the home telephone number and address of public employees, if those employees request such information be kept confidential. Louisiana does not permit institutions to recover the full cost of providing information to the public.

Areas for improvement:

1. Enactment of a specific exemption to protect research data;
2. Enactment of a specific exemption to protect personal information, such as a researcher’s name, home address, and telephone number without the employee being required to request the information be protected; and
3. Amendment of the Louisiana Public Records Act to allow a research institution to recover the full costs associated with providing the information to the public.

Louisiana Public Records Act

LA. REV. STAT. ANN. § 44.31. Right to examine records.

A. Providing access to public records is a responsibility and duty of the appointive or elective office of a custodian and his employees.

B. Except as otherwise provided in this Chapter or as otherwise specifically provided by law, and in accordance with the provisions of this Chapter, any person of the age of majority may inspect, copy, or reproduce, any public record.

2. Except as otherwise provided in this Chapter or as otherwise specifically provided by law, and in accordance with the provisions of this Chapter, any person may obtain a copy or reproduction of any public record.

3. The burden of proving that a public record is not subject to inspection, copying, or reproduction shall rest with the custodian.

LA. REV. STAT. ANN. § 44.32. Duty to permit examination; prevention of alteration; payment for overtime; copies provided; fees

C.

1.
a. For all public records, except public records of state agencies, it shall be the duty of the custodian of such public records to provide copies to persons so requesting. The custodian may establish and collect reasonable fees for making copies of public records. Copies of records may be furnished without charge or at a reduced charge to indigent citizens of this state.

d. Any person, as provided for in R.S. 44:31, may request a copy or reproduction of any public record and it shall be the duty of the custodian to provide such copy or reproduction to the person so requesting.

2. For all public records of state agencies, it shall be the duty of the custodian of such records to provide copies to persons so requesting. Fees for such copies shall be charged according to the uniform fee schedule adopted by the commissioner of administration, as provided by R.S. 39:241. Copies shall be provided at fees according to the schedule, except for copies of public records the fees for the reproduction of which are otherwise fixed by law. Copies of records may be furnished without charge or at a reduced charge to indigent citizens of this state or the persons whose use of such copies, as determined by the custodian, will be limited to a public purpose, including but not limited to use in a hearing before any governmental regulatory commission.

3. No fee shall be charged to any person to examine or review any public records, except as provided in this Section, and no fee shall be charged for examination or review to determine if a record is subject to disclosure, except as may be determined by a court of competent jurisdiction.

LA. REV. STAT. ANN. § 44:3.2. Proprietary and trade secret information

A. Nothing in this Chapter shall be construed to require the disclosure of proprietary or trade secret information pertaining to any code, pattern, formula, design, device, method, or process which is proprietary or trade secret information which has been submitted to a public body by the developer, owner, or manufacturer of a code, pattern, formula, design, device, method, or process in order to obtain or retain approval of such code, pattern, formula, design, device, method, or process for sale or use in this state.

B. Nothing in this Chapter shall be construed to require the disclosure of proprietary or trade secret information pertaining to any code, pattern, formula, design, device, method, or process which has been submitted to a public body in order to facilitate the further research, development, or commercialization of such code, pattern, formula, design, device, method, or process.

LA. REV. STAT. ANN. § 44:4. Applicability

This Chapter shall not apply:

16. To the following records of a board or institution of higher learning, in accordance with rules and regulations promulgated by the Board of Supervisors for the University of Louisiana System, the Board of Supervisors of Louisiana State University and Agricultural and
Mechanical College, and the Board of Supervisors of Southern University and Agricultural and Mechanical College, or their successors, in conjunction with the Board of Regents, for programs and institutions under their supervision and management, unless access to the records is specifically required by state or federal statute or is ordered by a court under rules of discovery:

a. Trade secrets and commercial or financial . . . pertaining to research or to the commercialization of technology . . . but not including any such information relating to the identity of principals, officers, or individuals and entities directly or indirectly owning or controlling an entity other than a publicly held entity, or the identity of principals, officers, or individuals and entities directly owning or controlling five percent or more of a publicly held entity.

b. Data, records, or information produced or collected by or for faculty or staff of state institutions of higher learning in the conduct of or as a result of, study or research on commercial, scientific or technical subjects of a patentable or licensable nature . . . until such data, records, or information have been publicly released, published, or patented.

c. Those portions of research proposals, supporting documentation and information, submitted by an institution of higher learning to the Board of Regents' Louisiana Education Quality Support Fund Program, which have been certified by the institution as containing data, information, ideas, or plans of a potentially patentable or licensable nature, including any discussions or written comments concerning such information by reviewers of the proposals, but not including reviewer ratings, until such data, records, or information have been publicly released, published, or patented.


A. Notwithstanding anything contained in this Chapter or any other law to the contrary, the following items in the personnel records of a public employee of any public body shall be confidential:

1. The home telephone number of the public employee where such employee has chosen to have a private or unlisted home telephone number because of the nature of his occupation with such body.
2. The home telephone number of the public employee where such employee has requested that the number be confidential.
3. The home address of the public employee where such employee has requested that the address be confidential.
4. The name and account number of any financial institution to which the public employee's wages or salary are directly deposited by an electronic direct deposit payroll system or other direct deposit payroll system.
Except as otherwise provided by statute, a person has the right to inspect and copy any public record in accordance with this section within a reasonable time of making the request to inspect or copy the public record.

**Analysis**

Maine’s Freedom of Access Act protects some research information for disclosure, including “records, working papers, interoffice and intraoffice memoranda used by or prepared for faculty and administrative committees of . . . the Maine Community College System and the University of Maine System.” The law also protects some personal information, such as home addresses, home telephone numbers, home fax numbers, home emails, home cellular phones, home pagers, and social security numbers. Maine permits research institutions to recover some of the costs associating with making copies, mailing, searching for, retrieving, and compiling records to be copied, subject to the first hour being provided free of charge.

Areas for improvement:

1. Enactment of a specific exemption to protect research data; and
2. Amendment of the Maine Freedom of Access Act to allow a research institution to recover the full costs associated with providing the information to the public, without providing an hour free of charge.

**MAINE FREEDOM OF ACCESS ACT**

**ME. REV. STAT. ANN. TIT. 1 § 408-A. Public records available for inspection and copying.**

Except as otherwise provided by statute, a person has the right to inspect and copy any public record in accordance with this section within a reasonable time of making the request to inspect or copy the public record.

1. A person may inspect any public record during reasonable office hours. An agency or official may not charge a fee for inspection unless the public record cannot be inspected without being converted or compiled, in which case the agency or official may charge a fee as provided in subsection 8.

2. A person may copy a public record in the office of the agency or official having custody of the public record during reasonable office hours or may request that the agency or official having custody of the record provide a copy. The agency or official may charge a fee for copies as provided in subsection 8.

3. . . .

8. Except as otherwise specifically provided by law or court order, an agency or official having custody of a public record may charge fees for public records as follows.
A. The agency or official may charge a reasonable fee to cover the cost of copying.  
B. The agency or official may charge a fee to cover the actual cost of searching for, retrieving and compiling the requested public record of not more than $15 per hour after the first hour of staff time per request. Compiling the public record includes reviewing and redacting confidential information.  
C. The agency or official may charge for the actual cost to convert a public record into a form susceptible of visual or aural comprehension or into a usable format.  
D. An agency or official may not charge for inspection unless the public record cannot be inspected without being compiled or converted, in which case paragraph B or C applies.  
E. The agency or official may charge for the actual mailing costs to mail a copy of a record.

9. The agency or official having custody or control of a public record subject to a request under this section shall provide to the requester an estimate of the time necessary to complete the request and of the total cost as provided by subsection 8. If the estimate of the total cost is greater than $30, the agency or official shall inform the requester before proceeding. If the estimate of the total cost is greater than $100, subsection 10 applies.

10. The agency or official having custody or control of a public record subject to a request under this section may require a requester to pay all or a portion of the estimated costs to complete the request prior to the search, retrieval, compiling, conversion and copying of the public record if:
   A. The estimated total cost exceeds $100; or  
   B. The requester has previously failed to pay a properly assessed fee under this chapter in a timely manner.

ME. REV. STAT. ANN. TIT. 1 § 402. Definitions

3. The term "public records" means any written, printed or graphic matter or any mechanical or electronic data compilation from which information can be obtained . . . except:
   
   E. Records, working papers, interoffice and intraoffice memoranda used by or prepared for faculty and administrative committees of the Maine Maritime Academy, the Maine Community College System and the University of Maine System. The provisions of this paragraph do not apply to the boards of trustees and the committees and subcommittees of those boards, which are referred to in subsection 2, paragraph B;  
   
   N. Social security numbers;  
   
   O. Personal contact information concerning public employees, except when that information is public pursuant to other law. For the purposes of this paragraph:
1. "Personal contact information" means home address, home telephone number, home facsimile number, home e-mail address and personal cellular telephone number and personal pager number;

**Relevant Case Law**

*Blethen Maine Newspapers v. State of Maine*, 871 A.2d 523 (2005) (Finding that agencies should redact exempt information and disclose the nonexempt portions of the requested records).
All persons are entitled to have access to information about the affairs of government and the official acts of public officials and employees.

Analysis

Maryland’s Public Information Act protects some research information, including the “specific details of a research project” the state is conducting from disclosure. The law also permits research institutions to recover a reasonable fee for the actual cost of providing information to the public, including time spent searching for, and retrieving records; however, first 2 hours must be provided free of charge.

Areas for improvement:

1. Enactment of a specific exemption to protect research data even when the research is no longer being conducted;
2. Enactment of a specific exemption to protect personal information, such as a researcher’s name, home address, and telephone number; and
3. Amendment of the Maryland Public Information Act to allow a research institution to recover the full costs associated with providing the information to the public without providing 2 hours free of charge.

MARYLAND PUBLIC INFORMATION ACT

MD. CODE ANN., § 10-611. Definitions

1. Except as otherwise provided in this Part III, "personal information" means information that identifies an individual including an individual’s address, driver's license number or any other identification number, medical or disability information, name, photograph or computer generated image, Social Security number, or telephone number.

MD. CODE ANN., § 10-612. General Right to Information

a. All persons are entitled to have access to information about the affairs of government and the official acts of public officials and employees.

b. To carry out the right set forth in subsection (a) of this section, unless an unwarranted invasion of the privacy of a person in interest would result, this Part III of this subtitle shall be construed in favor of permitting inspection of a public record, with the least cost and least delay to the person or governmental unit that requests the inspection.
c. This Part III of this subtitle does not preclude a member of the General Assembly from acquiring the names and addresses of and statistical information about individuals who are licensed or, as required by a law of the State, registered.

**MD. CODE ANN., §10-613. Inspection of public records**

a. 1. Except as otherwise provided by law, a custodian shall permit a person or governmental unit to inspect any public record at any reasonable time.

**MD. CODE ANN., §10-618. Permissible denials**

a. Unless otherwise provided by law, if a custodian believes that inspection of a part of a public record by the applicant would be contrary to the public interest, the custodian may deny inspection by the applicant of that part, as provided in this section.

...  

d. Research projects.  
   1. Subject to paragraph (2) of this subsection, a custodian may deny inspection of a public record that contains the specific details of a research project that an institution of the State or of a political subdivision is conducting.  
   2. A custodian may not deny inspection of the part of a public record that gives only the name, title, expenditures, and date when the final project summary will be available.

**MD. CODE ANN., §10-621. Fees**

a. In this section, "reasonable fee" means a fee bearing a reasonable relationship to the recovery of actual costs incurred by a governmental unit.

b. Subject to the limitations in this section, the official custodian may charge an applicant a reasonable fee for the search for, preparation of, and reproduction of a public record.

c. The official custodian may not charge a fee for the first 2 hours that are needed to search for a public record and prepare it for inspection.

d. Limitation on reproduction fees. --

   1. If another law sets a fee for a copy, electronic copy, printout, or photograph of a public record, that law applies.
   2. The official custodian otherwise may charge any reasonable fee for making or supervising the making of a copy, electronic copy, printout, or photograph of a public record.
   3. The official custodian may charge for the cost of providing facilities for the reproduction of the public record if the custodian did not have the facilities.

**Relevant Case Law**

Overall Rating

Every person having custody of any public record . . . shall, at reasonable times and without unreasonable delay, permit it, or any segregable portion of a record which is an independent public record, to be inspected and examined by any person, under his supervision, and shall furnish one copy thereof upon payment of a reasonable fee.

Analysis

Massachusetts’s Public Records Law does not specifically protect research information from disclosure. The law does protect personal information if its “disclosure . . . may constitute an unwarranted invasion of personal privacy.” However, the law does not permit institutions to recover their actual costs of providing information to the public.

Areas for improvement:

1. Enactment of a specific exemption to protect research data;
2. Enactment of a specific exemption to protect personal information, such as a researcher’s name, home address, and telephone number; and
3. Amendment of the Massachusetts Public Records Act to allow a research institution to recover the full costs associated with providing the information to the public.

Massachusetts Public Records Act


a. Every person having custody of any public record . . . shall, at reasonable times and without unreasonable delay, permit it, or any segregable portion of a record which is an independent public record, to be inspected and examined by any person, under his supervision, and shall furnish one copy thereof upon payment of a reasonable fee. Every person for whom a search of public records is made shall, at the direction of the person having custody of such records, pay the actual expense of such search.

950 CMR §32.06: Fees for Copies of Public Records

1. Except where fees for copies of public records are prescribed by statute, a governmental entity shall charge no more than the following fees for copies of public records:
   a. for photocopies of a public record no more than .20 per page;
   b. for copies of public records maintained on microfilm or microfiche no more than .25 per page;
c. for requests for non-computerized public records a prorated fee based on the hourly rate of the lowest paid employee capable of performing the task may be assessed for search time and segregation time expenses, as defined by 950 CMR 32.03. In addition, a per page copying fee under 950 CMR 32.06(1)(a) and 950 CMR 32.06(1)(b) may be assessed;
d. for computer printout copies of public records no more than fifty cents per page;
e. for a search of computerized records the actual cost incurred from the use of the computer time may be assessed;
f. for copies of public records not susceptible to ordinary means of reproduction, the actual cost incurred in providing a copy may be assessed.

3. Postage. A custodian may assess the actual cost of postage.

4. Inspection of Public Records. A custodian may not assess a fee for the mere inspection of public records, unless compliance with such request for inspection involves "search time" in which case a fee under 950 CMR 32.06(1)(c) may be assessed.

ALM GL ch. 4, § 7 Definitions

c. personnel and medical files or information; also any other materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy;

u. Trade secrets or other proprietary information of the University of Massachusetts, including trade secrets or proprietary information provided to the University by research sponsors or private concerns.
Michigan’s Freedom of Information Act does not specifically protect research information from disclosure. However, Michigan law does allow institutions to create “reasonable rules necessary to protect its public records and to prevent excessive and unreasonable interference with the discharge of its functions.” The law does protect personal information, if releasing it would result in “a clearly unwarranted invasion of an individual’s privacy” and permits recovery of the actual costs of providing information to the public, including mailing costs, duplication costs, and labor.

Areas for improvement:

1. Enactment of a specific exemption to protect research data; and
2. Enactment of a specific exemption to protect personal information, such as a researcher’s name, home address, and telephone number.

**Michigan Freedom of Information Act**

Mich. Comp. Laws § 15.233. Public records; right to inspect, copy, or receive; subscriptions; forwarding requests; file; inspection and examination; memoranda or abstracts; rules; compilation, summary, or report of information; creation of new public record; certified copies.

1. Except as expressly provided in section 13 . . . a person has a right to inspect, copy, or receive copies of the requested public record of the public body.

   ... 

3. A public body shall furnish a requesting person a reasonable opportunity for inspection and examination of its public records, and shall furnish reasonable facilities for making memoranda or abstracts from its public records during the usual business hours. A public body may make. A public body shall protect public records from loss, unauthorized alteration, mutilation, or destruction.

Mich. Comp. Laws §15.234. Fee; waiver or reduction; affidavit; deposit; calculation of costs; limitation; provisions inapplicable to certain public records.

1. A public body may charge a fee for a public record search, the necessary copying of a public record for inspection, or for providing a copy of a public record. Subject to subsections (3) and (4), the fee shall be limited to actual mailing costs, and to the actual incremental cost of duplication or publication
including labor, the cost of search, examination, review, and the deletion and separation of exempt from nonexempt information as provided in section 14.

2. A public body may require at the time a request is made a good faith deposit from the person requesting the public record or series of public records, if the fee authorized under this section exceeds $50.00. The deposit shall not exceed 1/2 of the total fee.

3. In calculating the cost of labor incurred in duplication and mailing and the cost of examination, review, separation, and deletion under subsection (1), a public body may not charge more than the hourly wage of the lowest paid public body employee capable of retrieving the information necessary to comply with a request under this act. Fees shall be uniform and not dependent upon the identity of the requesting person. A public body shall utilize the most economical means available for making copies of public records. A fee shall not be charged for the cost of search, examination, review, and the deletion and separation of exempt from nonexempt information as provided in section 14 unless failure to charge a fee would result in unreasonably high costs to the public body because of the nature of the request in the particular instance, and the public body specifically identifies the nature of these unreasonably high costs.

**Mich. Comp. Laws §15.243. Exemptions from disclosure; public body as school district or public school academy; withholding of information required by law or in possession of executive office.**

1. A public body may exempt from disclosure as a public record under this act any of the following:
   
   a. Information of a personal nature if public disclosure of the information would constitute a clearly unwarranted invasion of an individual’s privacy.

**Relevant Case Law**

*Detroit News, Inc. v. Detroit*, 460 N.W.2d 312, (Mich. Ct. App. 1990) (The burden is on the defendant to show a viable defense once a request has been made under the act and has been denied by the defendant).

*State Defender Union Emples. v. Legal Aid & Defender Ass’n*, 584 N.W.2d 359 (Mich. Ct. App. 1998) (In order to be a “public body” that is subject to the requirements of the Michigan Freedom of Information Act (FOIA), the entity must be the recipient of a governmental grant or subsidy).

*Cashel v. Smith*, 324 N.W.2d 336, (Mich. Ct. App. 1982) (The section providing that public bodies may make reasonable rules necessary to protect their public records and prevent excessive and unreasonable interference with their public functions does not provide a statutory basis for an administrative rule creating new exemptions to the public’s access to information and records).

*Mich. Fed’n of Teachers & Sch. Related Pers., AFT, AFL-CIO v. Univ. of Mich.*, 753 N.W.2d 28, (Mich. 2008) (Because the home addresses and telephone numbers of university employees was of a personal nature and public disclosure of the information would have constituted a clearly unwarranted invasion of the employees’ privacy, the information was covered by the privacy exemption of the Michigan Freedom of Information Act).
Minnesota’s Government Data Practices Act does not specifically protect research information from disclosure. The law does permit a research institution to recover its actual costs of providing information to the public, including “the actual costs of searching for and retrieving government data, including the cost of employee time, and for making, certifying, and electronically transmitting the copies of the data or the data.” However, if the records requested total less than 100 pages of black and white copies, the institution may only charge $0.25 per page.

Areas for improvement:

1. Enactment of a specific exemption to protect research data;
2. Enactment of a specific exemption to protect personal information, such as a researcher’s name, home address, and telephone number; and
3. Amendment of the Minnesota Government Data Practices Act to allow a research institution to recover the full costs associated with providing the information to the public.

MINNESOTA GOVERNMENT DATA PRACTICES ACT

MINN. STAT. ANN. §13.03. Access to government data.

Subdivision 1. All government data collected, created, received, maintained or disseminated by a government entity shall be public unless classified by statute, or temporary classification pursuant to section 13.06, or federal law, as nonpublic or protected nonpublic, or with respect to data on individuals, as private or confidential.

Subd. 3. Request for access to data.

c. The responsible authority or designee shall provide copies of public data upon request. If a person requests copies or electronic transmittal of the data to the person, the responsible authority may require the requesting person to pay the actual costs of searching for and retrieving government data, including the cost of employee time, and for making, certifying, and electronically transmitting the copies of the data or the data, but may not charge for separating public from not public data. However, if 100 or fewer pages of black and white, letter or legal size paper copies are requested, actual costs shall not be used, and instead, the responsible authority may charge no more than 25 cents for each page copied. If the responsible
authority or designee is not able to provide copies at the time a request is made, copies shall be supplied as soon as reasonably possible.

Subd. 10. Money may be collected by a responsible authority in a state agency for the actual cost to the agency of providing copies or electronic transmittal of government data. When money collected for purposes of this section is of a magnitude sufficient to warrant a separate account in the state treasury, that money must be deposited in a fund other than the general fund and is appropriated to the agency.

**MINN. STAT. ANN. §13.06 TEMPORARY CLASSIFICATION**

**Subdivision 1. Application to commissioner.**

a. Notwithstanding the provisions of section 13.03, the responsible authority of a government entity may apply to the commissioner for permission to classify data or types of data on individuals as private or confidential, or data not on individuals as nonpublic or protected nonpublic, for its own use and for the use of other similar government entities on a temporary basis until a proposed statute can be acted upon by the legislature. The application for temporary classification is public.

b. Upon receipt by the commissioner of an application for temporary classification, the data which is the subject of the application shall be deemed to be classified as set forth in the application for a period of 45 days, or until the application is disapproved, rejected, or granted by the commissioner, whichever is earlier.

**Relevant Case Law**

*Wotzka v. Minn. Dep't of Agric.*, 2011 Minn. App. Unpub. LEXIS 1022 (Minn. Ct. App. 2011) (Person requesting documents was required to pay for copies even though he did not actually receive them, because an obligation to pay arose when the request for copies was made).
MISSISSIPPI

Overall Rating

.Exception as otherwise provided . . . all public records are hereby declared to be public property, and any person shall have the right to inspect, copy or mechanically reproduce or obtain a reproduction of any public record of a public body.

Analysis

Mississippi’s Public Records Act does not specifically protect research information from disclosure. However, the law does protect “[t]rade secrets and confidential commercial and financial information of a proprietary nature developed by a college or university under contract with a firm, business, partnership, association, corporation, individual or other like entity.” The law also protects some personal information and allows research institutions to recover the actual costs of providing information to the public, including the cost of searching, retrieving, and duplication, as well as postage fees.

Areas for improvement:

1. Enactment of a specific exemption to protect research data; and
2. Enactment of a specific exemption to protect personal information, such as a researcher’s name, home address, and telephone number.

MISSISSIPPI PUBLIC RECORDS ACT

MISS. CODE. ANN. § 25-61-5 Public access to records; written explanation required when records cannot be produced within specified time; form and retention of denials

1. 
a. Except as otherwise provided . . . all public records are hereby declared to be public property, and any person shall have the right to inspect, copy or mechanically reproduce or obtain a reproduction of any public record of a public body in accordance with reasonable written procedures adopted by the public body concerning the cost, time, place and method of access, and public notice of the procedures shall be given by the public body, or, if a public body has not adopted written procedures, the right to inspect, copy or mechanically reproduce or obtain a reproduction of a public record of the public body shall be provided within one (1) working day after a written request for a public record is made. No public body shall adopt procedures which will authorize the public body to produce or deny production of a public record later than seven (7) working days from the date of the receipt of the request for the production of the record.

2. If any public record contains material which is not exempted under this chapter, the public agency shall redact the exempted and make the nonexempted material available for examination. Such public
agency shall be entitled to charge a reasonable fee for the redaction of any exempted material, not to exceed the agency's actual cost.

MISS. CODE. ANN. § 25-61-7 Fees for costs incident to providing records

1. Except as provided in subsection (2) of this section, each public body may establish and collect fees reasonably calculated to reimburse it for, and in no case to exceed, the actual cost of searching, reviewing and/or duplicating and, if applicable, mailing copies of public records. Such fees shall be collected by the public body in advance of complying with the request.

2. A public body may establish a standard fee scale to reimburse it for the costs . . . [but] [s]uch fees must be reasonably related to the cost of creating, acquiring and maintaining the geographic information system, multipurpose cadastre or other electronically accessible data. . . . In determining the fees or charges under this subsection, the public body may consider the type of information requested, the purpose or purposes for which the information has been requested and the commercial value of the information.

MISS. CODE. ANN. § 25-61-9. Trade secrets and confidential commercial or financial information

1. Records furnished to public bodies by third parties which contain trade secrets or confidential commercial or financial information shall not be subject to inspection, examination, copying or reproduction under this chapter until notice to said third parties has been given, but such records shall be released within a reasonable period of time unless the said third parties shall have obtained a court order protecting such records as confidential.

3. Trade secrets and confidential commercial and financial information of a proprietary nature developed by a college or university under contract with a firm, business, partnership, association, corporation, individual or other like entity shall not be subject to inspection, examination, copying or reproduction under this chapter.

MISS. CODE. ANN. § 25-1-100 Certain personnel records exempt from public access requirements; exceptions

1. Personnel records and applications for employment in the possession of a public body, as defined by paragraph (a) of Section 25-61-3, except those which may be released to the person who made the application or with the prior written consent of the person who made the application, shall be exempt from the provisions of the Mississippi Public Records Act of 1983.
MISSOURI

Overall Rating

🌟 ⭐

Except as otherwise provided by law, all state, county and municipal records kept pursuant to statute or ordinance shall at all reasonable times be open for a personal inspection by any citizen of Missouri, and those in charge of the records shall not refuse the privilege to any citizen.

Analysis

Missouri’s Public Records Law does not specifically protect research information from disclosure. However, the law does protect “records relating to scientific and technological innovations [and] sponsored research” in certain situations. Missouri also protects some personal information and permits research institutions to recover a portion of the costs associated with providing records to the public, including copying and search time.

Areas for improvement:

1. Enactment of a specific exemption to protect research data;
2. Enactment of a specific exemption to protect personal information, such as a researcher’s name, home address, and telephone number; and
3. Amendment of the Missouri Public Records Law to allow a research institution to recover the full costs associated with providing the information to the public.

MISSOURI’S PUBLIC RECORDS LAW

MO. ANN. STAT. § 109.180. Public records open to inspection--refusal to permit inspection, penalty

Except as otherwise provided by law, all state, county and municipal records kept pursuant to statute or ordinance shall at all reasonable times be open for a personal inspection by any citizen of Missouri, and those in charge of the records shall not refuse the privilege to any citizen.

MO. ANN. STAT. § 109.190. Right of person to photograph public records—regulations

In all cases where the public or any person interested has a right to inspect or take extracts or make copies from any public records . . . the lawful custodian of the records may charge the person desiring to make the photographs a reasonable rate for his services or for the services of a deputy to supervise the work and for the use of the room or place where the work is done.

R.S.Mo. § 610.021. Closed meetings and closed records authorized when, exceptions, sunset dates for certain exceptions
12. Individually identifiable personnel records, performance ratings or records pertaining to employees or applicants for employment, except that this exemption shall not apply to the names, positions, salaries and lengths of service of officers and employees of public agencies once they are employed as such, and the names of private sources donating or contributing money to the salary of a chancellor or president at all public colleges and universities in the state of Missouri and the amount of money contributed by the source;

... 

15. Meetings and public records relating to scientific and technological innovations in which the owner has a proprietary interest;

... 

23. Records submitted by an individual, corporation, or other business entity to a public institution of higher education in connection with a proposal to license intellectual property or perform sponsored research and which contains sales projections or other business plan information the disclosure of which may endanger the competitiveness of a business.

**R.S.Mo § 610.026 Fees for copying public records, limitations . . .**

1. Except as otherwise provided by law, each public governmental body shall provide access to and, upon request, furnish copies of public records subject to the following:

1. Fees for copying public records, except those records restricted under section 32.091, shall not exceed ten cents per page for a paper copy not larger than nine by fourteen inches, with the hourly fee for duplicating time not to exceed the average hourly rate of pay for clerical staff of the public governmental body. Research time required for fulfilling records requests may be charged at the actual cost of research time. Based on the scope of the request, the public governmental body shall produce the copies using employees of the body that result in the lowest amount of charges for search, research, and duplication time. Prior to producing copies of the requested records, the person requesting the records may request the public governmental body to provide an estimate of the cost to the person requesting the records. . .

2. Fees for providing access to public records maintained on computer facilities, recording tapes or disks, videotapes or films, pictures, maps, slides, graphics, illustrations or similar audio or visual items or devices, and for paper copies larger than nine by fourteen inches shall include only the cost of copies, staff time, which shall not exceed the average hourly rate of pay for staff of the public governmental body required for making copies and programming, if necessary, and the cost of the disk, tape, or other medium used for the duplication. Fees for maps, blueprints, or plats that require special expertise to duplicate may include the actual rate of compensation for the trained personnel required to duplicate such maps, blueprints, or plats. If programming is required beyond the customary and usual level to comply with a request for records or information, the fees for compliance may include the actual costs of such programming.

2. Payment of such copying fees may be requested prior to the making of copies.
Every citizen has a right to inspect and take a copy of any public writings of this state, except as otherwise provided. 

Analysis

Montana’s Public Records Act does not specifically protect research information from disclosure. However, the law does protect some personal information if release of the information may jeopardize the safety of facility personnel, the public, or students.

Areas for improvement:

1. Enactment of a specific exemption to protect research data;
2. Enactment of a specific exemption to protect personal information, such as a researcher’s name, home address, and telephone number; and
3. Amendment of the Montana Public Records Act to allow a research institution to recover the full costs associated with providing the information to the public.

Montana’s Public Records Act

Mont. Code Ann. § 2-6-102 Citizens entitled to inspect and copy public writings.

1. Every citizen has a right to inspect and take a copy of any public writings of this state, except as provided in 22-1-1103, 22-3-807, or subsection (3) of this section and as otherwise expressly provided by statute.

2. Every public officer having the custody of a public writing that a citizen has a right to inspect is bound to give the citizen on demand a certified copy of it, on payment of the legal fees for the copy.

3. Records and materials that are constitutionally protected from disclosure are not subject to the provisions of this section. Information that is constitutionally protected from disclosure is information in which there is an individual privacy interest that clearly exceeds the merits of public disclosure, including legitimate trade secrets, as defined in 30-14-402, and matters related to individual or public safety.

4. A public officer may withhold from public scrutiny information relating to individual privacy or individual or public safety or security of public facilities, including public schools if release of the information may jeopardize the safety of facility personnel, the public, students in a public school, or inmates of a facility. A public officer may not withhold from public scrutiny any more information than is required to protect an individual privacy interest or safety or security interest.
MONT. CODE ANN. § 2-6-103 Filing and copying fees

4. Fees must be collected in advance and, when collected by the secretary of state, are not refundable.
**Overall Rating**

🌟🌟🌟

*Except as otherwise expressly provided by statute, all citizens of this state and all other persons interested in the examination of the public records as defined in section 84-712.01 are hereby fully empowered and authorized to examine such records . . . [or] obtain copies of public records.*

**Analysis**

Nebraska’s Public Records Law specifically protects “academic and scientific research work which is in progress and unpublished.” The law also protects some personal information in personnel files and allows institutions to recover their actual costs of providing information to the public, including fees for supplies such as toner and paper. However, personnel-time-expenditures cannot be charged, unless the request exceeds 4 hours of staff time.

Areas for improvement:

1. Enactment of a specific exemption to protect research data even when the information is no longer in progress or the results are published;
2. Enactment of a specific exemption to protect personal information, such as a researcher’s name, home address, and telephone number; and
3. Amendment of the Nebraska Public Records Law to allow a research institution to recover the full costs associated with providing the information to the public when the request does not exceed 4 hours of staff time.

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**NEBRASKA PUBLIC RECORDS LAW**

**NEB. REV. STAT. § 84-712. Public records; free examination; memorandum and abstracts; copies; fees.**

1. Except as otherwise expressly provided by statute, all citizens of this state and all other persons interested in the examination of the public records as defined in section 84-712.01 are hereby fully empowered and authorized to

   a. examine such records, and make memoranda, copies using their own copying or photocopier equipment in accordance with subsection (2) of this section, and abstracts therefrom, all free of charge, during the hours the respective offices may be kept open for the ordinary transaction of business and

   b. except if federal copyright law otherwise provides, obtain copies of public records in accordance with subsection (3) of this section during the hours the respective offices may be kept open for the ordinary transaction of business.
3. 

a. Copies may be obtained pursuant to subdivision (1)(b) of this section only if the custodian has copying equipment reasonably available. Such copies may be obtained in any form designated by the requester in which the public record is maintained or produced, including, but not limited to, printouts, electronic data, discs, tapes, and photocopies. This section shall not be construed to require a custodian to copy any public record that is available to the requester on the custodian's web site on the Internet. The custodian of the public record is required to provide the location of the public record on the Internet to the requester. If the requester does not have reasonable access to the Internet due to lack of computer, lack of Internet availability, or inability to use a computer or the Internet, the custodian shall produce copies for the requester.

b. Except as otherwise provided by statute, the public body, public entity, or public official which is the custodian of a public record may charge a fee for providing copies of such public record pursuant to subdivision (1)(b) of this section, which fee shall not exceed the actual added cost of making the copies available. For purposes of this subdivision,

   i. for photocopies, the actual added cost of making the copies available shall not exceed the amount of the reasonably calculated actual added cost of the photocopies, which may include a reasonably apportioned cost of the supplies, such as paper, toner, and equipment, used in preparing the copies, as well as any additional payment obligation of the custodian for time of contractors necessarily incurred to comply with the request for copies,

   ii. for printouts of computerized data on paper, the actual added cost of making the copies available shall include the reasonably calculated actual added cost of computer run time and the cost of materials for making the copy, and

   iii. for electronic data, the actual added cost of making the copies available shall include the reasonably calculated actual added cost of the computer run time, any necessary analysis and programming by the public body, public entity, public official, or third-party information technology services company contracted to provide computer services to the public body, public entity, or public official, and the production of the report in the form furnished to the requester.

c. The actual added cost used as the basis for the calculation of a fee for records shall not include any charge for the existing salary or pay obligation to the public officers or employees with respect to the first four cumulative hours of searching, identifying, physically redacting, or copying. A special service charge reflecting the calculated labor cost may be included in the fee for time required in excess of four cumulative hours, since that large a request may cause some delay or disruption of the other responsibilities of the custodian’s office, except that the fee for records shall not include any charge for the services of an attorney to review the requested public records seeking a legal basis to withhold the public records from the public.

   . . .
f. If copies requested in accordance with subdivision (1)(b) of this section are estimated by the custodian of such public records to cost more than fifty dollars, the custodian may require the requester to furnish a deposit prior to fulfilling such request.

**NEB. REV. STAT. § 84-712.05. Records which may be withheld from the public; enumerated.**

The following records, unless publicly disclosed in an open court, open administrative proceeding, or open meeting or disclosed by a public entity pursuant to its duties, may be withheld from the public by the lawful custodian of the records:

3. Trade secrets, academic and scientific research work which is in progress and unpublished, and other proprietary or commercial information which if released would give advantage to business competitors and serve no public purpose;

7. Personal information in records regarding personnel of public bodies other than salaries and routine directory information;
Nevada’s Open Records Act does not specifically protect research information or personal information from disclosure. The courts have established a balancing test, weighing the public’s need for the document against the confidentiality or privacy interests of the person seeking to prevent disclosure.

Areas for improvement:

1. Enactment of a specific exemption to protect research data;
2. Enactment of a specific exemption to protect personal information, such as a researcher’s name, home address, and telephone number; and
3. Amendment of the Nevada Open Record’s Act to allow a research institution to recover the full costs associated with providing the information to the public.

**NEVADA’S OPEN RECORDS ACT**

**NEV. REV. STAT. ANN. § 239.005. Definitions.**

As used in this chapter, unless the context otherwise requires:

1. “Actual cost” means the direct cost related to the reproduction of a public record. The term does not include a cost that a governmental entity incurs regardless of whether or not a person requests a copy of a particular public record.

**NEV. REV. STAT. ANN. § 239.010. Public books and public records open to inspection; confidential information in public books and records; copyrighted books and records; copies to be spread by governmental entity and provided in medium requested.**

1. Except as otherwise provided . . . all public books and public records of a governmental entity must be open at all times during office hours to inspection by any person, and may be fully copied or an abstract or memorandum may be prepared from those public books and public records. Any such copies, abstracts or memoranda may be used to supply the general public with copies, abstracts or memoranda of the records or may be used in any other way to the advantage of the governmental entity or of the general public.

**NEV. REV. STAT. ANN. § 239.030. Furnishing of certified copies of public records.**
Every officer having custody of public records, the contents of which are not declared by law to be confidential, shall furnish copies certified to be correct to any person who requests them and pays or tenders such fees as may be prescribed for the service of copying and certifying.

NEV. REV. STAT. ANN. § 239.052. Fees: Limitations; waiver; posting of sign or notice.

1. Except as otherwise provided in this subsection, a governmental entity may charge a fee for providing a copy of a public record. Such a fee must not exceed the actual cost to the governmental entity to provide the copy of the public record unless a specific statute or regulation sets a fee that the governmental entity must charge for the copy. A governmental entity shall not charge a fee for providing a copy of a public record if a specific statute or regulation requires the governmental entity to provide the copy without charge.

Relevant Case Law

Donrey of Nevada v. Bradshaw, 798 P.2d 144 (Nev. 1990). (The Nevada Supreme Court determined that there should be a balancing test, weighing the public’s need for the document against the confidentiality or privacy interests of the person seeking to prevent disclosure).
Every citizen . . . has the right to inspect all governmental records in the possession, custody, or control of such public bodies or agencies . . . and to copy and make memoranda or abstracts of the records or minutes so inspected.

Analysis

New Hampshire’s Right to Know Law does not specifically protect research information, but does protect “preliminary drafts, notes, and memoranda and other documents not in their final form” from disclosure. The law protects personal information if releasing the information “would constitute invasion of privacy.” New Hampshire also provides that institutions may charge the records requester for the actual cost of providing the copies; however, the law does not specify whether this includes searching and copying time.

Areas for improvement:

1. Enactment of a specific exemption to protect research data;
2. Enactment of a specific exemption to protect personal information, such as a researcher’s name, home address, and telephone number; and
3. Amendment of New Hampshire’s Right to Know Law to allow a research institution to recover the full costs associated with providing the information to the public.

New Hampshire Right to Know Law


I. Every citizen . . . has the right to inspect all governmental records in the possession, custody, or control of such public bodies or agencies . . . and to copy and make memoranda or abstracts of the records or minutes so inspected. . . . In this section, “to copy” means the reproduction of original records by whatever method, including but not limited to photography, Photostatic copy, printing, or electronic or tape recording.

IV. . . . If a computer, photocopying machine, or other device maintained for use by a public body or agency is used by the public body or agency to copy the governmental record requested, the person requesting the copy may be charged the actual cost of providing the copy, which cost may be collected by the public body or agency. Nothing in this section shall exempt any person from paying fees otherwise established by law for obtaining copies of governmental records or documents, but if such fee is established for the copy, no additional costs or fees shall be charged.

The following governmental records are exempted from the provisions of this chapter:

IV. Records pertaining to internal personnel practices; confidential, commercial, or financial information; test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examinations; and personnel, medical, welfare, library user, videotape sale or rental, and other files whose disclosure would constitute invasion of privacy. Without otherwise compromising the confidentiality of the files, nothing in this paragraph shall prohibit a public body or agency from releasing information relative to health or safety from investigative files on a limited basis to persons whose health or safety may be affected.

... 

IX. Preliminary drafts, notes, and memoranda and other documents not in their final form and not disclosed, circulated, or available to a quorum or a majority of the members of a public body.
Overall Rating

The custodian of a government record shall permit the record to be inspected, examined, and copied by any person.

Analysis

New Jersey’s Open Records Act specifically protects “medical or scientific education or research” and “[s]cholarly and/or academic research records and/or the specific details of any research project.” The law provides limited protections for personal information, but does not allow institutions to recover the full costs of providing information to the public, unless the request “involves an extraordinary expenditure of time and effort.”

Areas for improvement:

1. Enactment of a specific exemption to protect personal information, such as a researcher’s name, home address, and telephone number; and
2. Amendment of the New Jersey’s Open Records Act to allow a research institution to recover the full costs associated with providing the information to the public.

NEW JERSEY OPEN RECORDS ACT

N.J. STAT. ANN. § 47:1A-5. Times during which records may be inspected, examined, copied; access; copy fees.

a. The custodian of a government record shall permit the record to be inspected, examined, and copied by any person. . . . Prior to allowing access to any government record, the custodian thereof shall redact from that record any information which discloses the social security number, credit card number, unlisted telephone number, or driver license number of any person; except for use by any government agency. . . .

b. A copy or copies of a government record may be purchased by any person upon payment of the fee prescribed by law or regulation. Except as otherwise provided by law or regulation, the fee assessed for the duplication of a government record embodied in the form of printed matter shall be $0.05 per letter size page or smaller, and $0.07 per legal size page or larger. If a public agency can demonstrate that its actual costs for duplication of a government record exceed the foregoing rates, the public agency shall be permitted to charge the actual cost of duplicating the record. The actual cost of duplicating the record, upon which all copy fees are based, shall be the cost of materials and supplies used to make a copy of the record, but shall not include the cost of labor or other overhead expenses associated with making the copy except as provided for in subsection c. of this section. Access to electronic records and non-printed materials shall be provided free of charge, but the public agency may charge for the actual costs of any needed supplies such as computer discs.
c. Whenever the nature, format, manner of collation, or volume of a government record embodied in the form of printed matter to be inspected, examined, or copied pursuant to this section is such that the record cannot be reproduced by ordinary document copying equipment in ordinary business size or involves an extraordinary expenditure of time and effort to accommodate the request, the public agency may charge, in addition to the actual cost of duplicating the record, a special service charge that shall be reasonable and shall be based upon the actual direct cost of providing the copy or copies; provided, however, that in the case of a municipality, rates for the duplication of particular records when the actual cost of copying exceeds the foregoing rates shall be established in advance by ordinance. The requestor shall have the opportunity to review and object to the charge prior to it being incurred.

d. . . If the public agency does not maintain the record in the medium requested, the custodian shall either convert the record to the medium requested or provide a copy in some other meaningful medium. If a request is for a record: (1) in a medium not routinely used by the agency; (2) not routinely developed or maintained by an agency; or (3) requiring a substantial amount of manipulation or programming of information technology, the agency may charge, in addition to the actual cost of duplication, a special charge that shall be reasonable and shall be based on the cost for any extensive use of information technology, or for the labor cost of personnel providing the service, that is actually incurred by the agency or attributable to the agency for the programming, clerical, and supervisory assistance required, or both.

. . .

f. . . The custodian may require a deposit against costs for reproducing documents sought through an anonymous request whenever the custodian anticipates that the information thus requested will cost in excess of $5 to reproduce.


"Biotechnology" means any technique that uses living organisms, or parts of living organisms, to make or modify products, to improve plants or animals, or to develop micro-organisms for specific uses; including the industrial use of recombinant DNA, cell fusion, and novel bioprocessing techniques.

. . .

"Government record" or "record" means any paper, written or printed book, document, drawing, map, plan, photograph, microfilm, data processed or image processed document, information stored or maintained electronically or by sound-recording or in a similar device, or any copy thereof, that has been made, maintained or kept on file in the course of his or its official business by any officer, commission, agency or authority of the State or of any political subdivision thereof, including subordinate boards thereof, or that has been received in the course of his or its official business by any such officer, commission, agency, or authority of the State or of any political subdivision thereof, including subordinate boards thereof. The terms shall not include inter-agency or intra-agency advisory, consultative, or deliberative material.

A government record shall not include the following information which is deemed to be confidential for the purposes of P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and supplemented:

. . .
- For use in the field of forensic pathology or for use in medical or scientific education or research, or
  
  ...  
  
- Trade secrets and proprietary commercial or financial information obtained from any source. For the purposes of this paragraph, trade secrets shall include data processing software obtained by a public body under a licensing agreement which prohibits its disclosure;
  
  ...  

A government record shall not include, with regard to any public institution of higher education, the following information which is deemed to be privileged and confidential:

- pedagogical, scholarly and/or academic research records and/or the specific details of any research project conducted under the auspices of a public higher education institution in New Jersey, including, but not limited to research, development information, testing procedures, or information regarding test participants, related to the development or testing of any pharmaceutical or pharmaceutical delivery system, except that a custodian may not deny inspection of a government record or part thereof that gives the name, title, expenditures, source and amounts of funding and date when the final project summary of any research will be available;


a. When federal law or regulation requires the submission of biotechnology trade secrets and related confidential information, a public agency shall not have access to this information except as allowed by federal law.

b. A public agency shall not make any biotechnology trade secrets and related confidential information it has access to under this act available to any other public agency, or to the general public, except as allowed pursuant to federal law.


Notwithstanding the provisions of P.L. 1963, c. 73 (C. 47:1A-1 et seq.) or any other law to the contrary, the personnel or pension records of any individual in the possession of a public agency, including but not limited to records relating to any grievance filed by or against an individual, shall not be considered a government record and shall not be made available for public access, except that:

An individual's name, title, position, salary, payroll record, length of service, date of separation and the reason therefor, and the amount and type of any pension received shall be a government record;

personnel or pension records of any individual shall be accessible when required to be disclosed by another law, when disclosure is essential to the performance of official duties of a person duly authorized by this State or the United States, or when authorized by an individual in interest; and
Data contained in information which disclose conformity with specific experiential, educational or medical qualifications required for government employment or for receipt of a public pension, but not including any detailed medical or psychological information, shall be a government record.
New Mexico does not specifically protect research information from disclosure. However, the New Mexico Public Records Act protects records of an education value held by a college, university or other state institution if the “donor” of the records has placed restrictions on the release of such information. The law also protects some personal information including names, home addresses, and telephone numbers, but does not specifically allow recovery of the actual costs of providing information to the public.

Areas for improvement:

1. Enactment of a specific exemption to protect research data;
2. Amendment of the New Mexico Public Records Act to allow a research institution to recover the full costs associated with providing the information to the public.

New Mexico Inspection of Public Records Act


a. Every person has a right to inspect public records of this state except:

   5. as provided by the Confidential Materials Act [14-3A-1 NMSA 1978];
   6. trade secrets, attorney-client privileged information and long-range or strategic business plans of public hospitals discussed in a properly closed meeting;

b. Protected personal identifier information contained in public records may be redacted by a public body before inspection or copying of a record. The presence of protected personal identifier information on a record does not exempt the record from inspection. Unredacted records that contain protected personal identifier information shall not be made available on publicly accessible web sites operated by or managed on behalf of a public body.


Each public body shall designate at least one custodian of public records who shall:
E. post in a conspicuous location at the administrative office and on the publicly accessible web site, if any, of each public body a notice describing:

... 

4. reasonable fees for copying public records;


As used in the Inspection of Public Records Act [14-2-1 NMSA 1978]:

E. “protected personal identifier information” means:
   1. all but the last four digits of a:
      a. taxpayer identification number;
      b. financial account number; or
      c. driver’s license number;
   2. all but the year of a person’s date of birth; and
   3. a social security number;

NEW MEXICO PUBLIC RECORDS ACT

N.M. STAT. ANN. § 14-3-2. Definitions

As used in the Public Records Act [14-3-1 NMSA 1978]:

F. “personal identification information” means the name, social security number, military identification number, home address, telephone number, email address, fingerprint, photograph, identifying biometric data, genetic identification, personal financial account number, state identification number, including driver’s license number, alien registration number, government passport number, personal taxpayer identification number, or government benefit account number of a natural person;

N.M. STAT. ANN. § 14-3-7.1. Access to confidential records

A. Notwithstanding any other provision of law, any public record deemed by law to be confidential and required by a records retention and disposition schedule to be maintained longer than twenty-five years shall not, after twenty-five years from the date of creation, be confidential and shall be accessible to the public, except:

1. personal identification information deemed confidential by law, which shall remain confidential for one hundred years after the date of creation, unless a shorter duration is otherwise required by law;

NEW MEXICO CONFIDENTIAL MATERIAL ACT

N.M. STAT. ANN. § 14-3A-2. Donation of confidential material.
A. Any library, college, university, museum or institution of the state or any of its political subdivisions may hold in confidence materials of a historical or educational value upon which the donor or seller has imposed restrictions with respect to access to and inspection of the materials for a definite period of time as specified by the donor or seller.

B. Access to and inspection of such materials may be restricted during the period specified by the donor or seller in the manner specified by the donor or seller.

C. The provisions of Subsections A and B of this section do not apply to materials which were public records of New Mexico as defined in Section 14-2-1 NMSA 1978 while in the possession of the donor or seller at the time of the donation or sale.

**Relevant Case Law**

*Republican Party v. N.M. Taxation & Revenue Dep’t*, 283 P.3d 853 (N.M. 2012) (Although the two statutes share the common purpose of providing public access to government documents, the Freedom of Information Act (FOIA) jurisprudence is of limited persuasion when interpreting the New Mexico Inspection of Public Records Act (IRPA) because the IPRA ensures greater access to government records than does FOIA).
Each agency shall . . . make available for public inspection and copying all records.

Analysis

New York’s Freedom of Information Law does not specifically protect research information from disclosure. The law does protect information if its disclosure may constitute an unwarranted invasion of privacy, as well as records which if released may endanger the life or safety of any person. New York’s Freedom of Information Law does not allow a research institution to recover the full costs of providing information to the public.

Areas for improvement:

1. Enactment of a specific exemption to protect research data;
2. Enactment of a specific exemption to protect personal information, such as a researcher’s name, home address, and telephone number; and
3. Amendment of the New York Freedom of Information Law to allow a research institution to recover the full costs associated with providing the information to the public.

NEW YORK FREEDOM OF INFORMATION LAW

N.Y. PUB. OFF. LAW § 87. Access to agency records

1.

b. Each agency shall promulgate rules and regulations . . . pertaining to the availability of records and procedures to be followed, including, but not limited to:

   iii. the fees for copies of records which shall not exceed twenty-five cents per photocopy not in excess of nine inches by fourteen inches, or the actual cost of reproducing any other record in accordance with the provisions of paragraph [c] of this subdivision, except when a different fee is otherwise prescribed by statute.

   i. An amount equal to the hourly salary attributed to the lowest paid agency employee who has the necessary skill required to prepare a copy of the requested record;

   ii. The actual cost of the storage devices or media provided to the person making the request in complying with such request;
iii. The actual cost to the agency of engaging an outside professional service to prepare a copy of a record, but only when an agency's information technology equipment is inadequate to prepare a copy, if such service is used to prepare the copy; and

iv. Preparing a copy shall not include search time or administrative costs, and no fee shall be charged unless at least two hours of agency employee time is needed to prepare a copy of the record requested. A person requesting a record shall be informed of the estimated cost of preparing a copy of the record if more than two hours of an agency employee's time is needed, or if an outside professional service would be retained to prepare a copy of the record.

2. Each agency shall . . . make available for public inspection and copying all records, except that such agency may deny access to records or portions thereof that:

a. are specifically exempted from disclosure by state or federal statute;

b. if disclosed would constitute an unwarranted invasion of personal privacy under the provisions of subdivision two of section eighty-nine of this article;

   . . .

d. are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise;

   . . .

f. if disclosed could endanger the life or safety of any person;

** The New York legislature proposed an amendment which if adopted would exempt biomedical research records from disclosure. **

An agency . . . may deny access to records or portions thereof concerning biomedical research or biomedical teaching conducted at an institution of higher education authorized by the state education department or at an institution within the state that receives state or federal funding to conduct such biomedical research or such biomedical teaching that, if disclosed, could endanger the life or safety of any person or would be reasonably likely to endanger the security of such biomedical research laboratory.

Relevant Case Law

ASPCA v. Board of Trustees of State University of New York, 184 A.D.2d 508 (N.Y. App. Div. 2d Dep't 1992) (Holding that Laboratory Animal Users' Committee of the State University of New York at Stony Brook was not a "public body" within the meaning of the Open Meetings Law since it is not performing a governmental function for the State of New York).

Overall Rating

The public records and public information compiled by the agencies of North Carolina government or its subdivisions are the property of the people. Therefore, it is the policy of this State that the people may obtain copies of their public records and public information free or at minimal cost unless otherwise specifically provided by law.

Analysis

North Carolina’s Public Records Law does not contain specific protections for research information or personal information. North Carolina allows institutions to recover the costs of “reproducing the public record or public information.” However, for “extensive” requests, institutions may charge a special service fee, provided the fee is reasonable and equivalent to the actual costs.

Areas for improvement:

1. Enactment of a specific exemption to protect research data;
2. Enactment of a specific exemption to protect personal information, such as a researcher’s name, home address, and telephone number; and
3. Amendment of North Carolina’s Public Records Law to allow a research institution to recover the full costs associated with providing the information to the public.

NORTH CAROLINA PUBLIC RECORDS LAW

N.C. GEN. STAT. § 132-1. "Public records" defined.

a. "Public record" or "public records" shall mean all documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material, regardless of physical form or characteristics, made or received pursuant to law or ordinance in connection with the transaction of public business by any agency of North Carolina government or its subdivisions. Agency of North Carolina government or its subdivisions shall mean and include every public office, public officer or official (State or local, elected or appointed), institution, board, commission, bureau, council, department, authority or other unit of government of the State or of any county, unit, special district or other political subdivision of government.

b. The public records and public information compiled by the agencies of North Carolina government or its subdivisions are the property of the people. Therefore, it is the policy of this State that the people may obtain copies of their public records and public information free or at minimal cost unless
otherwise specifically provided by law. As used herein, "minimal cost" shall mean the actual cost of reproducing the public record or public information.

**N.C. GEN. STAT. § 132-1. 2. Confidential information**

Nothing in this Chapter shall be construed to require or authorize a public agency or its subdivision to disclose any information that:

1. Meets all of the following conditions:
   a. Constitutes a "trade secret" as defined in G.S. 66-152(3).
   b. Is the property of a private "person" as defined in G.S. 66-152(2).
   c. Is disclosed or furnished to the public agency in connection with the owner's performance of a public contract or in connection with a bid, application, proposal, industrial development project, or in compliance with laws, regulations, rules, or ordinances of the United States, the State, or political subdivisions of the State.
   d. Is designated or indicated as "confidential" or as a "trade secret" at the time of its initial disclosure to the public agency.

**N.C. GEN. STAT. § 132-6.2. Provisions for copies of public records; fees**

a. Persons requesting copies of public records may elect to obtain them in any and all media in which the public agency is capable of providing them. No request for copies of public records in a particular medium shall be denied on the grounds that the custodian has made or prefers to make the public records available in another medium. The public agency may assess different fees for different media as prescribed by law.

b. Persons requesting copies of public records may request that the copies be certified or uncertified. The fees for certifying copies of public records shall be as provided by law. Except as otherwise provided by law, no public agency shall charge a fee for an uncertified copy of a public record that exceeds the actual cost to the public agency of making the copy. For purposes of this subsection, "actual cost" is limited to direct, chargeable costs related to the reproduction of a public record as determined by generally accepted accounting principles and does not include costs that would have been incurred by the public agency if a request to reproduce a public record had not been made. Notwithstanding the provisions of this subsection, if the request is such as to require extensive use of information technology resources or extensive clerical or supervisory assistance by personnel of the agency involved, or if producing the record in the medium requested results in a greater use of information technology resources than that established by the agency for reproduction of the volume of information requested, then the agency may charge, in addition to the actual cost of duplication, a special service charge, which shall be reasonable and shall be based on the actual cost incurred for such extensive use of information technology resources or the labor costs of the personnel providing the services, or for a greater use of information technology resources that is actually incurred by the agency or attributable to the agency. If anyone requesting public information from any public agency is charged a fee that the requester believes to be unfair or
unreasonable, the requester may ask the State Chief Information Officer or his designee to mediate the dispute.

**Relevant Case Law**

*News & Observer Publishing Co. v. Poole*, 330 N.C. 465, 412 S.E.2d 7 (1992) (In the absence of clear statutory exemption or exception, documents falling within the definition of "public records" in the Public Records Act must be made available for public inspection).

*S.E.T.A. UNC-CH, Inc. v. Huffines*, 101 N.C. App. 292 (N.C. Ct. App. 1991) (The Students for the Ethical Treatment of Animals (S.E.T.A.) requested that IACUC application for approval forms be released. The Court of Appeals held that public policy requires that any information contained in the applications relating to the names of the researcher and staff members, their telephone numbers, addresses, their experience and the department name be redacted, and all other information be released).
All records of a public entity are public records, open and accessible for inspection during reasonable office hours.

Analysis

North Dakota’s Open Records Law does not contain a specific protection for research information. However, some research information may fall within the definition of propriety information which includes any “information shared between a sponsor of research or a potential sponsor of research and a public entity conducting or negotiating an agreement for the research.” Personal information, including home addresses, home telephone numbers or personal cell phone numbers, and photographs, is generally exempt if it is contained in a personnel file. North Dakota allows institutions to recover most of the costs associated with providing information to the public, provided that the first hour of such must be provided free of charge.

Areas for improvement:

1. Enactment of a specific exemption to protect research data;
2. Amendment of North Dakota’s Open Records Law to allow a research institution to recover the full costs associated with providing the information to the public, without providing the first hour free of charge.


1. Except as otherwise specifically provided by law, all records of a public entity are public records, open and accessible for inspection during reasonable office hours. . .

2. Upon request for a copy of specific public records, any entity subject to subsection 1 shall furnish the requester one copy of the public records requested. . . A public entity may charge up to twenty-five cents per impression of a paper copy. As used in this section, "paper copy" means a one-sided or two-sided duplicated copy of a size not more than eight and one-half by fourteen inches [19.05 by 35.56 centimeters]. For any copy of a record that is not a paper copy as defined in this section, the public entity may charge a reasonable fee for making the copy. As used in this section, "reasonable fee" means the actual cost to the public entity of making the copy, including labor, materials, and equipment. The entity may charge for the actual cost of postage to mail a copy of a record. An entity may require payment before locating, redacting, making, or mailing the copy. An entity may impose a fee not exceeding twenty-five dollars per hour per request, excluding the initial hour, for locating
records, including electronic records, if locating the records requires more than one hour. An entity may impose a fee not exceeding twenty-five dollars per hour per request, excluding the initial hour, for excising confidential or closed material under section 44-04-18.10 from the records, including electronic records. If the entity is not authorized to use the fees to cover the cost of providing or mailing the copy, or both, or if a copy machine is not readily available, the entity may make arrangements for the copy to be provided or mailed, or both, by another entity, public or private, and the requester shall pay the fee to that other entity. This subsection does not apply to copies of public records for which a different fee is specifically provided by law.


2. Except as otherwise specifically provided by law, personal information regarding a public employee contained in an employee's personnel record or given to the state or a political subdivision by the employee in the course of employment is exempt. As used in this section, "personal information" means a person's home address; home telephone number or personal cell phone number; photograph; medical information; motor vehicle operator's identification number; public employee identification number; payroll deduction information; the name, address, telephone number, and date of birth of any dependent or emergency contact; any credit, debit, or electronic fund transfer card number; and any account number at a bank or other financial institution.


1. Trade secret, proprietary, commercial, and financial information is confidential if it is of a privileged nature and it has not been previously publicly disclosed.

2. Under this section, unless the context otherwise requires:

   c. "Proprietary information" includes:

      1. Information shared between a sponsor of research or a potential sponsor of research and a public entity conducting or negotiating an agreement for the research.

      2. Information received from a private business that has entered or is negotiating an agreement with a public entity to conduct research or manufacture or create a product for potential commercialization.

      3. A discovery or innovation generated by the research information, technical information, financial information, or marketing information acquired under activities described under paragraph 1 or 2.

      4. A document specifically and directly related to the licensing or commercialization resulting from activities described under paragraph 1, 2, or 6.

      5. Technical, financial, or marketing records that are received by a public entity, which are owned or controlled by the submitting person, are intended to be and are treated by
the submitting person as private, and the disclosure of which would cause harm to the submitting person’s business.

6. A discovery or innovation produced by the public entity that an employee or the entity intends to commercialize.

7. A computer software program and components of a computer software program that are subject to a copyright or a patent and any formula, pattern, compilation, program, device, method, technique, or process supplied to a public entity that is the subject of efforts by the supplying person to maintain its secrecy and that may derive independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons that might obtain economic value from its disclosure or use.

8. A discovery or innovation that is subject to a patent or a copyright, and any formula, pattern, compilation, program, device, combination of devices, method, technique, technical know-how or process that is for use, or is used, in the operation of a business and is supplied to or prepared by a public entity that is the subject of efforts by the supplying or preparing person to maintain its secrecy and provides the preparing person an advantage or an opportunity to obtain an advantage over those who do not know or use it or that may derive independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, a person that might obtain economic value from its disclosure or use.

d. “Trade secret” means information, including a formula, pattern, compilation, program, device, method, technique, technical know-how, or process, that:

1. Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons that can obtain economic value from its disclosure or use; and

2. Is the subject of efforts that are reasonable under the circumstances to maintain the secrecy of the information.
Upon request . . . all public records responsive to the request shall be promptly prepared and made available for inspection to any person.

Analysis

Ohio’s Public Records Act protects any record “that is produced or collected by or for faculty or staff of a state institution of higher learning in the conduct of or as a result of study or research on a . . . scientific, artistic, technical, or scholarly issue.” However, the law does not specifically protect personal information, such as home addresses and phone numbers, or for the recovery of the costs associated with providing information to the public.

Areas for improvement:

1. Enactment of a specific exemption to protect personal information, such as a researcher’s name, home address, and telephone number; and
2. Amendment of Ohio’s Public Records Act to allow a research institution to recover the full costs associated with providing the information to the public.

Ohio Public Records Act


A. As used in this section:
   1. "Public record" means records kept by any public office, including, but not limited to, state, county, city, village, township, and school district units . . . "Public record" does not mean any of the following:

   m. Intellectual Property records

   5. "Intellectual property record" means a record, other than a financial or administrative record, that is produced or collected by or for faculty or staff of a state institution of higher learning in the conduct of or as a result of study or research on an educational, commercial, scientific, artistic, technical, or scholarly issue, regardless of whether the study or research was sponsored by the institution alone or in conjunction with a governmental body or private concern, and that has not been publicly released, published, or patented.
B.  
1. Upon request . . . a public office or person responsible for public records shall make copies of the requested public record available at cost and within a reasonable period of time.  
   
6. If any person chooses to obtain a copy of a public record in accordance with division (B) of this section, the public office or person responsible for the public record may require that person to pay in advance the cost involved in providing the copy of the public record in accordance with the choice made by the person seeking the copy under this division.

**OHIO REV. CODE ANN. § 149.434. Database or list of names and birth dates of persons elected to or employed by that public office**

A. Each public office or person responsible for public records shall maintain a database or a list that includes the name and date of birth of all public officials and employees elected to or employed by that public office. The database or list is a public record and shall be made available upon a request made pursuant to section 149.43 of the Revised Code.

**OHIO REV. CODE ANN. § 149.45. Redacting, encrypting, or truncating personal information; request by protected individual**

A. As used in this section:
   1. "Personal information" means any of the following:
      a. An individual's social security number;
      b. An individual's federal tax identification number;
      c. An individual's driver's license number or state identification number;
      d. An individual's checking account number, savings account number, or credit card number.
**OKLAHOMA**

**Overall Rating**

*All records of public bodies and public officials shall be open to any person for inspection, copying, or mechanical reproduction during regular business hours.*

**Analysis**

Oklahoma’s Open Records Act specifically protects “any information related to research, the disclosure of which could affect the conduct or outcome of the research” including “research protocols . . . notes, data, results, or other writings about the research.” The law also protects personal information if the release would constitute an unwarranted invasion of personal privacy. Oklahoma does not permit the actual costs of providing information to the public to be recovered, unless the request “would clearly cause excessive disruption of the essential functions of the public body.”

Areas for improvement:

1. Enactment of a specific exemption to protect personal information, such as a researcher’s name, home address, and telephone number; and
2. Amendment of Oklahoma’s Open Records Act to allow a research institution to recover the full costs associated with providing the information to the public.

**OKLAHOMA OPEN RECORDS ACT**

51 OKL. STAT. ANN. § 24A.5. Inspection, copying and/or mechanical reproduction of records—Exemptions

All records of public bodies and public officials shall be open to any person for inspection, copying, or mechanical reproduction during regular business hours; provided:

* * *

3. Any request for a record which contains individual records of persons, and the cost of copying, reproducing or certifying each individual record is otherwise prescribed by state law, the cost may be assessed for each individual record, or portion thereof requested as prescribed by state law. Otherwise, a public body may charge a fee only for recovery of the reasonable, direct costs of record copying, or mechanical reproduction. Notwithstanding any state or local provision to the contrary, in no instance shall the record copying fee exceed twenty-five cents ($ 0.25) per page for records having the dimensions of eight and one-half (8 1/2) by fourteen (14) inches or smaller, or a maximum of One Dollar ($ 1.00) per copied page for a certified copy. However, if the request:

a. is solely for commercial purpose, or
b. would clearly cause excessive disruption of the essential functions of the public body, then the public body may charge a reasonable fee to recover the direct cost of record search and copying; however, publication in a newspaper or broadcast by news media for news purposes shall not constitute a resale or use of a record for trade or commercial purpose and charges for providing copies of electronic data to the news media for a news purpose shall not exceed the direct cost of making the copy. The fee charged by the Department of Public Safety for a copy in a computerized format of a record of the Department shall not exceed the direct cost of making the copy unless the fee for the record is otherwise set by law.

Any public body establishing fees under this act shall post a written schedule of the fees at its principal office and with the county clerk.

In no case shall a search fee be charged when the release of records is in the public interest, including, but not limited to, release to the news media, scholars, authors and taxpayers seeking to determine whether those entrusted with the affairs of the government are honestly, faithfully, and competently performing their duties as public servants.

The fees shall not be used for the purpose of discouraging requests for information or as obstacles to disclosure of requested information.

5. A public body must provide prompt, reasonable access to its records but may establish reasonable procedures which protect the integrity and organization of its records and to prevent excessive disruptions of its essential functions.

51 OKL. STAT. ANN. § 24A.7. Personnel records—Confidentiality—Inspection and copying

A. A public body may keep personnel records confidential:

2. Where disclosure would constitute a clearly unwarranted invasion of personal privacy such as employee evaluations, payroll deductions, employment applications submitted by persons not hired by the public body, and transcripts from institutions of higher education maintained in the personnel files of certified public school employees; provided, however, that nothing in this subsection shall be construed to exempt from disclosure the degree obtained and the curriculum on the transcripts of certified public school employees.

D. Public bodies shall keep confidential the home address, telephone numbers and social security numbers of any person employed or formerly employed by the public body.

51 OKL. STAT. ANN. § 24A.19. Research records—Confidentiality

In addition to other records that a public body may keep confidential pursuant to the provisions of the Oklahoma Open Records Act, a public body may keep confidential:

1. Any information related to research, the disclosure of which could affect the conduct or outcome of the research, the ability to patent or copyright the research, or any other proprietary rights any entity may have in the research or the results of the research including, but not
limited to, trade secrets and commercial or financial information obtained from an entity financing or cooperating in the research, research protocols, and research notes, data, results, or other writings about the research; and

2. The specific terms and conditions of any license or other commercialization agreement relating to state owned or controlled technology or the development, transfer, or commercialization of the technology. Any other information relating to state owned or controlled technology or the development, transfer, or commercialization of the technology, which, if disclosed, will adversely affect or give other persons or entities an advantage over public bodies in negotiating terms and conditions for the development, transfer, or commercialization of the technology.
Every person has a right to inspect any public record of a public body in this state, except as otherwise expressly provided.

Analysis

Oregon’s Public Records Law specifically protects writings prepared “by or under the direction of faculty of public educational institutions in connection with research.” The law also protects “the name, home address, professional address or location of a person that is engaged in, or that provides goods or services for, medical research at Oregon Health and Science University that is conducted using animals other than rodents” and personal information if its disclosure would constitute an unreasonable invasion of personal privacy. Oregon allows institutions to recover most costs associated with providing information to the public, including a reasonable fee for the cost of making copies, as well as, costs for summarizing, compiling, or tailoring the records and costs incurred from consulting an attorney regarding the request.

Areas for improvement:

1. Amending the specific exemption protecting personal information to include all persons associated with research at any institution of higher learning using animals.

OREGON PUBLIC RECORDS LAW

OR. REV. STAT. § 192.420. Right to inspect public records; notice to public body attorney.

1. Every person has a right to inspect any public record of a public body in this state, except as otherwise expressly provided by ORS 192.501 to 192.505.

OR. REV. STAT. § 192.440 Copies or inspection of public records; written response by public body; fees; waiver or reduction; procedure for records requests.

4.

   a. The public body may establish fees reasonably calculated to reimburse the public body for the public body's actual cost of making public records available, including costs for summarizing, compiling or tailoring the public records, either in organization or media, to meet the person's request.

   b. The public body may include in a fee established under paragraph (a) of this subsection the cost of time spent by an attorney for the public body in reviewing the public records, redacting material from the public records or segregating the public records into exempt and nonexempt
records. The public body may not include in a fee established under paragraph (a) of this subsection the cost of time spent by an attorney for the public body in determining the application of the provisions of ORS 192.410 to 192.505.

c. The public body may not establish a fee greater than $25 under this section unless the public body first provides the requestor with a written notification of the estimated amount of the fee and the requestor confirms that the requestor wants the public body to proceed with making the public record available.

**OR. REV. STAT. § 192.501 Public records conditionally exempt from disclosure.**

The following public records are exempt from disclosure under ORS 192.410 to 192.505 unless the public interest requires disclosure in the particular instance:

2. Trade secrets. "Trade secrets," as used in this section, may include, but are not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to certain individuals within an organization and which is used in a business it conducts, having actual or potential commercial value, and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it.

14. Writings prepared by or under the direction of faculty of public educational institutions, in connection with research, until publicly released, copyrighted or patented.

30. The name, home address, professional address or location of a person that is engaged in, or that provides goods or services for, medical research at Oregon Health and Science University that is conducted using animals other than rodents. This subsection does not apply to Oregon Health and Science University press releases, websites or other publications circulated to the general public.

**OR. REV. STAT. § 192.502 Other public records exempt from disclosure.**

The following public records are exempt from disclosure under ORS 192.410 to 192.505:

2. Information of a personal nature such as but not limited to that kept in a personal, medical or similar file, if public disclosure would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance. The party seeking disclosure shall have the burden of showing that public disclosure would not constitute an unreasonable invasion of privacy.

3. Public body employee or volunteer addresses, Social Security numbers, dates of birth and telephone numbers contained in personnel records maintained by the public body that is the employer or the recipient of volunteer services.

**OR. REV. STAT. §192.445 Nondisclosure on request of home address, home telephone number and electronic mail address; rules of procedure; duration of effect of request; liability; when not applicable.**
1. An individual may submit a written request to a public body not to disclose a specified public record indicating the home address, personal telephone number or electronic mail address of the individual. A public body may not disclose the specified public record if the individual demonstrates to the satisfaction of the public body that the personal safety of the individual or the personal safety of a family member residing with the individual is in danger if the home address, personal telephone number or electronic mail address remains available for public inspection.

2. The Attorney General shall adopt rules describing:

   b. The evidence an individual shall provide to the public body to establish that disclosure of the home address, telephone number or electronic mail address of the individual would constitute a danger to personal safety. The evidence may include but is not limited to evidence that the individual or a family member residing with the individual has:

   A. Been a victim of domestic violence;
   B. Obtained an order issued under ORS 133.055;
   C. Contacted a law enforcement officer involving domestic violence or other physical abuse;
   D. Obtained a temporary restraining order or other no contact order to protect the individual from future physical abuse; or
   E. Filed other criminal or civil legal proceedings regarding physical protection.
Pennsylvania’s Right-to-Know-Law specifically protects “research-related material . . . of a community college or an institution of the State System of Higher Education.” The law also protects personal information “the disclosure of which would be reasonably likely to result in a substantial and demonstrable risk of physical harm to or the personal security of an individual,” as well as home cellular and personal telephone numbers, personal email addresses, and dependent information. The law does not allow research institutions to recover the full costs of providing information to the public.

Areas for improvement:

1. Enactment of a specific exemption to protect personal information, such as a researcher’s name, home address, and telephone number; and
2. Amendment of Pennsylvania’s Right-to-Know-Law to allow a research institution to recover the full costs associated with providing the information to the public.

Pennsylvania Right-To-Know-Law


a. **GENERAL RULE.** -- Unless otherwise provided by law, a public record, legislative record or financial record shall be accessible for inspection and duplication in accordance with this act. . . .

b. **CONSTRUCTION.** -- Nothing in this act shall be construed to require access to any computer either of an agency or individual employee of an agency.


... 

b. **EXCEPTIONS.**-- Except as provided in subsections (c) and (d), the following are exempt from access by a requester under this act:

1. A record, the disclosure of which:

   ... 

   ii. Would be reasonably likely to result in a substantial and demonstrable risk of physical harm to or the personal security of an individual.

   ...
The following personal identification information:

A. A record containing all or part of a person's Social Security number, driver's license number, personal financial information, home, cellular or personal telephone numbers, personal e-mail addresses employee number or other confidential personal identification number.

B. A spouse's name, marital status or beneficiary or dependent information.

A record that constitutes or reveals a trade secret or confidential proprietary information.

Unpublished lecture notes, unpublished manuscripts, unpublished articles, creative works in progress, research-related material and scholarly correspondence of a community college or an institution of the State System of Higher Education or a faculty member, staff employee, guest speaker or student thereof.

65 PA. STAT. ANN. § 67.1307. Fee limitations

a. POSTAGE. -- Fees for postage may not exceed the actual cost of mailing.

b. DUPLICATION. --

1. Fees for duplication by photocopying, printing from electronic media or microfilm, copying onto electronic media, transmission by facsimile or other electronic means and other means of duplication shall be established:
   i. by the Office of Open Records, for Commonwealth agencies and local agencies;
   ii. by each judicial agency; and
   iii. by each legislative agency.

2. The fees must be reasonable and based on prevailing fees for comparable duplication services provided by local business entities.

3. Fees for local agencies may reflect regional price differences.

4. The following apply to complex and extensive data sets, including geographic information systems or integrated property assessment lists.

   i. Fees for copying may be based on the reasonable market value of the same or closely related data sets.
   ii. Subparagraph (i) shall not apply to:

   B. A request by a nonprofit organization for the conduct of educational research.

   iii. Information obtained under subparagraph (ii) shall be subject to paragraphs (1), (2) and (3).

   c. CERTIFICATION. -- An agency may impose reasonable fees for official certification of copies if the certification is at the behest of the requester and for the purpose of legally verifying the public record.
d. **CONVERSION TO PAPER.** -- If a record is only maintained electronically or in other nonpaper media, duplication fees shall be limited to the lesser of the fee for duplication on paper or the fee for duplication in the original media as provided by subsection (b) unless the requester specifically requests for the record to be duplicated in the more expensive medium.

e. **ENHANCED ELECTRONIC ACCESS.** -- If an agency offers enhanced electronic access to records in addition to making the records accessible for inspection and duplication by a requester as required by this act, the agency may establish user fees specifically for the provision of the enhanced electronic access, but only to the extent that the enhanced electronic access is in addition to making the records accessible for inspection and duplication by a requester as required by this act. The user fees for enhanced electronic access may be a flat rate, a subscription fee for a period of time, a per-transaction fee, a fee based on the cumulative time of system access or any other reasonable method and any combination thereof. The user fees for enhanced electronic access must be reasonable, must be approved by the Office of Open Records and may not be established with the intent or effect of excluding persons from access to records or duplicates thereof or of creating profit for the agency.

... 

g. **LIMITATIONS.** -- Except as otherwise provided by statute, no other fees may be imposed unless the agency necessarily incurs costs for complying with the request, and such fees must be reasonable. No fee may be imposed for an agency's review of a record to determine whether the record is a public record, legislative record or financial record subject to access in accordance with this act.

h. **PREPAYMENT.** -- Prior to granting a request for access in accordance with this act, an agency may require a requester to prepay an estimate of the fees authorized under this section if the fees required to fulfill the request are expected to exceed $100.
All records maintained or kept on file by any public body . . . shall be public records and every person or entity shall have the right to inspect and/or copy those records.

Analysis

Rhode Island’s Access to Public Records Act specifically protects “preliminary drafts, notes, impressions, memoranda, working papers, and work products,” as well as “scientific and technological secrets” in some situations. The Statement of Purpose to the law states that “it is . . . the intent of this chapter to protect from disclosure information about particular individuals” and the law itself provides that personal information is protected if its disclosure would constitute an unwarranted invasion of personal privacy. Rhode Island allows some fees associated with duplicating and searching for records, subject to the first hour of such being provided free of charge.

Areas for improvement:

1. Enactment of a specific exemption to protect personal information, such as a researcher’s name, home address, and telephone number; and
2. Amendment of Rhode Island’s Access to Public Records Act to allow a research institution to recover the full costs associated with providing the information to the public.

a. Subject to the provisions of § 38-2-3, a public body must allow copies to be made or provide copies of public records. The cost per copied page of written documents provided to the public shall not exceed fifteen cents ($0.15) per page for documents copyable on common business or legal size paper. A public body may not charge more than the reasonable actual cost for providing electronic records or retrieving records from storage where the public body is assessed a retrieval fee.

b. A reasonable charge may be made for the search or retrieval of documents. Hourly costs for a search and retrieval shall not exceed fifteen dollars ($15.00) per hour and no costs shall be charged for the first hour of a search or retrieval. For the purposes of this subsection, multiple requests from any person or entity to the same public body within a thirty (30) day time period shall be considered one request.

c. Copies of documents shall be provided and the search and retrieval of documents accomplished within a reasonable time after a request. A public body upon request, shall provide an estimate of the costs of a request for documents prior to providing copies.

d. Upon request, the public body shall provide a detailed itemization of the costs charged for search and retrieval.

e. A court may reduce or waive the fees for costs charged for search or retrieval if it determines that the information requested is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.


As used in this chapter:

1. "Agency" or "public body" means any . . . but not limited to . . . any school . . .

4. "Public record" or "public records" shall mean all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, magnetic or other tapes, electronic data processing records, computer stored data . . . or other material regardless of physical form or characteristics made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency. **For the purposes of this chapter, the following records shall not be deemed public:**

   A.

   I.

   . . .
b. Personnel and other personal individually-identifiable records otherwise deemed confidential . . . or the disclosure of which would constitute a clearly unwarranted invasion of personal privacy . . .

B. Trade secrets and commercial or financial information obtained from a person, firm, or corporation which is of a privileged or confidential nature.

* * *

F. Scientific and technological secrets and the security plans of military and law enforcement agencies, the disclosure of which would endanger the public welfare and security.

* * *

K. Preliminary drafts, notes, impressions, memoranda, working papers, and work products; provided, however, any documents submitted at a public meeting of a public body shall be deemed public.
**Overall Rating**

Any person has a right to inspect or copy any public record of a public body.

**Analysis**

South Carolina’s Freedom of Information Act specifically protects research information, including “any data, records, or information developed, collected, or received by or on behalf of faculty, staff, employees, or students of a state institution of higher education…until the information is published, patented, otherwise publicly disseminated, or released to an agency.” The law also protects personal information which if released would constitute unreasonable invasion of personal privacy. South Carolina allows research institutions to recover their actual cost incurred for searching for and duplicating records.

Areas for improvement:

1. Amendment of South Carolina’s Freedom of Information Act to protect research data after the research findings have been published.

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**SOUTH CAROLINA’S FREEDOM OF INFORMATION ACT**

**S.C. CODE ANN. § 30-4-30. Right to inspect or copy public records; fees;**

a. Any person has a right to inspect or copy any public record of a public body, except as otherwise provided by § 30-4-40, in accordance with reasonable rules concerning time and place of access.

b. The public body may establish and collect fees not to exceed the actual cost of searching for or making copies of records. . . . Fees may not be charged for examination and review to determine if the documents are subject to disclosure. Nothing in this chapter prevents the custodian of the public records from charging a reasonable hourly rate for making records available to the public nor requiring a reasonable deposit of these costs before searching for or making copies of the records.

**S.C. CODE ANN. § 30-4-40. Matters exempt from disclosure.**

a. A public body may but is not required to exempt from disclosure the following information:

1. Trade secrets, which are defined as unpatented, secret, commercially valuable plans, appliances, formulas, or processes, which are used for the making, preparing, compounding, treating, or processing of articles or materials which are trade commodities obtained from a person and which are generally recognized as confidential and work products, in whole or in part collected or produced for sale or resale, and paid subscriber information. . . .
2. Information of a personal nature where the public disclosure thereof would constitute unreasonable invasion of personal privacy. . . . This provision must not be interpreted to restrict access by the public and press to information contained in public records.

. . .

14.

- Data, records, or information of a proprietary nature, produced or collected by or for faculty or staff of state institutions of higher education in the conduct of or as a result of study or research on commercial, scientific, technical, or scholarly issues, whether sponsored by the institution alone or in conjunction with a governmental body or private concern, where the data, records, or information has not been publicly released, published, copyrighted, or patented.

- Any data, records, or information developed, collected, or received by or on behalf of faculty, staff, employees, or students of a state institution of higher education or any public or private entity supporting or participating in the activities of a state institution of higher education in the conduct of or as a result of study or research on medical, scientific, technical, scholarly, or artistic issues, whether sponsored by the institution alone or in conjunction with a governmental body or private entity until the information is published, patented, otherwise publicly disseminated, or released to an agency whereupon the request must be made to the agency. This item applies to, but is not limited to, information provided by participants in research, research notes and data, discoveries, research projects, proposals, methodologies, protocols, and creative works.

- The exemptions in this item do not extend to the institution's financial or administrative records.
South Dakota

Overall Rating

Except as otherwise expressly provided by statute, all citizens of this state, and all other persons interested in the examination of the public records . . . are hereby fully empowered and authorized to examine such public record.

Analysis

South Dakota has a specific exemption for research information, including the “specific details of bona fide research,” and “applied research.” South Dakota’s Sunshine Law protects personal information if its disclosure “would constitute an unreasonable release of personal information,” as well as information which, if disclosed, would endanger the life or safety of any person. The law does not specifically permit a research institution to recover the full costs of providing information to the public.

Areas for improvement:

1. Enactment of a specific exemption to protect personal information, such as a researcher’s name, home address, and telephone number; and
2. Amendment of the South Dakota Sunshine Law to specifically allow a research institution to recover the full costs associated with providing information to the public, including all personnel time.

South Dakota’s Sunshine Law

S.D. Codified Laws § 1-27-1. Records open to inspection -- Inspection and Copying.

Except as otherwise expressly provided by statute, all citizens of this state, and all other persons interested in the examination of the public records . . . are hereby fully empowered and authorized to examine such public record, and make memoranda and abstracts therefrom . . . unless federal copyright law otherwise provides, obtain copies of public records in accordance with this chapter. . . .

S.D. Codified Laws § 1-27-1.2. Electronic transfer of public record -- Fee permitted.

If a custodian of a public record . . . provides to a member of the public, upon request, a copy of the public record, a reasonable fee may be charged for any specialized service. Such fee may include a reasonable amount representing a portion of the amortization of the cost of computer equipment, including software, necessarily added in order to provide such specialized service. . . .

S.D. Codified Laws § 1-27-1.5. Records exempt from disclosure -- Personal data.

The following records are not subject to §§ 1-27-1, 1-27-1.1, and 1-27-1.3:
3. Trade secrets, the specific details of bona fide research, applied research, or scholarly or creative artistic projects being conducted at a school, postsecondary institution or laboratory funded in whole or in part by the state, and other proprietary or commercial information which if released would infringe intellectual property rights, give advantage to business competitors, or serve no material public purpose;

12. Correspondence, memoranda, calendars or logs of appointments, working papers, and records of telephone calls of public officials or employees;

22. Records which, if disclosed, would constitute an unreasonable release of personal information;

23. Records which, if released, could endanger the life or safety of any person;

S.D. CODIFIED LAWS § 1-27-1.6. Additional records exempt from disclosure.

The following . . . is specifically exempt from disclosure pursuant to §§ 1-27-1.1 to 1-27-1.15:

1. Valuable formulae, designs, drawings, computer source code or object code, and research data invented, discovered, authored, developed, or obtained by any agency if disclosure would produce private gain or public loss;

2. Financial, commercial, and proprietary information supplied in conjunction with applications or proposals for funded scientific research, for participation in joint scientific research projects, for projects to commercialize scientific research results, or for use in conjunction with commercial or government testing;

S.D. CODIFIED LAWS § 1-27-30. Proprietary or trade secret information.

All proprietary or trade secret information obtained by a state agency from or concerning a private entity is confidential, except as provided by § 1-27-31.

S.D. CODIFIED LAWS § 1-27-36. Cost estimate required in certain cases -- Waiver or reduction in custodian's discretion.

For any informal request reasonably likely to involve a fee in excess of fifty dollars, the custodian shall provide an estimate of cost to the requestor prior to assembling the documents or records and the requestor shall confirm in writing his or her acceptance of the cost estimate and agreement to pay. The custodian may exercise discretion to waive or reduce any fee required under this section if the waiver or reduction of the fee would be in the public interest.
TENNESSEE

Overall Rating

Public . . . records . . . mean[] all documents . . . made or received . . . in connection with the transaction of official business by any governmental agency.

Analysis

Tennessee’s Public Records Act protects any “information that reasonably could affect the conduct or outcome of the sponsored research or service . . . including, but not limited to, protocols, notes, data, results or other unpublished writing about the research or service.” Tennessee also specifically protects home telephone and cellular phone numbers, home addresses, personal email addresses, and social security numbers. The law does not allow research institutions to recover the full costs of providing information to the public.

Areas for improvement:

1. Enactment of a specific exemption to protect researcher’s names; and
2. Amendment of the Tennessee Public Records Act to specifically allow a research institution to recover the full costs associated with providing information to the public, including all personnel time.

TENNESSEE’S PUBLIC RECORDS ACT

TENN. CODE ANN. § 10-7-503. Records open to public inspection -- Schedule of reasonable charges -- Costs.

a.

1. A. As used in this part and title 8, chapter 4, part 6, "public record or records" or "state record or records" means all documents, papers, letters, maps, books, photographs, microfilms, electronic data processing files and output, films, sound recordings or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental agency.

2. A. All state, county and municipal records shall, at all times during business hours, which for public hospitals shall be during the business hours of their administrative offices, be open for personal inspection by any citizen of this state, and those in charge of the records shall not refuse such right of inspection to any citizen, unless otherwise provided by state law.
7. A records custodian may not require a written request or assess a charge to view a public record unless otherwise required by law; however, a records custodian may require a request for copies of public records to be in writing or that the request be made on a form developed by the office of open records counsel. The records custodian may also require any citizen making a request to view a public record or to make a copy of a public record to present a photo identification, if the person possesses a photo identification, issued by a governmental entity, that includes the person's address. If a person does not possess a photo identification, the records custodian may require other forms of identification acceptable to the records custodian.

C.

i. A records custodian may require a requestor to pay the custodian's reasonable costs incurred in producing the requested material and to assess the reasonable costs in the manner established by the office of open records counsel pursuant to § 8-4-604.

ii. The records custodian shall provide a requestor an estimate of the reasonable costs to provide copies of the requested material

**TENN. CODE ANN. § 10-7-504. Confidential records -- Exceptions.**

f.

a. The following records or information . . . shall be treated as confidential and shall not be open for inspection by members of the public:

   A. Home telephone and personal cell phone numbers;

   C. Social security number;

   D. Residential information, including the street address, city, state and zip code, for any state employee; and

   ii. Residential street address for any county, municipal or other public employee;

   E. Driver license information except where driving or operating a vehicle is part of the employee's job description or job duties or incidental to the performance of the employee's job;

   F. The information listed in subdivisions (f)(1)(A)-(E) of immediate family members, whether or not the immediate family member resides with the employee, or household members;

   G. Emergency contact information, except for that information open to public inspection in accordance with subdivision (f)(1)(D)(ii); and

   H. Personal, nongovernment issued, email address.

**TENN. CODE ANN. § 49-7-120. Confidentiality of research records and materials.**

a. As used in this section, unless the context otherwise requires:
1. "Patentable materials" means inventions, processes, discoveries or other subject matter that the public higher education institution or the sponsor reasonably believes to be patentable under 35 U.S.C.;

2. "Proprietary information" means:
   A. Any information used directly or indirectly in the business of any person or entity that gives the person or entity an advantage or an opportunity to obtain an advantage over competitors who do not know or use the information and that is disclosed by the person or entity to the public higher education institution; or
   B. Any information received, developed, generated, ascertained or discovered by the public higher education institution under terms of a contract for the development thereof that recognizes the proprietary interest of the person or entity in the information;

3. "Sponsored research or service" means any research, analysis, or service conducted pursuant to grants or contracts between the public higher education institution and a person or entity. "Sponsored research or service" does not include research, analysis or service conducted under an agreement with other agencies of the state, unless the research, analysis or service is a subcontract to a sponsored research or service contract with a person or entity; and

4. "Trade secrets" means any information, knowledge, items or processes used directly or indirectly in the business of a person or entity that give the person or entity an advantage or an opportunity to obtain an advantage over competitors who do not know or use them.

b. The following records or materials, regardless of physical form or characteristics, received, developed, generated, ascertained or discovered during the course of sponsored research or service conducted by a public higher education institution and the Tennessee department of economic and community development, shall not be open for public inspection:

   1. Patentable material or potentially patentable material;
   2. Proprietary information;
   3. Trade secrets or potential trade secrets, including, but not limited to, manufacturing and production methods, processes, materials and associated costs;
   4. Business transactions, commercial or financial information about or belonging to research subjects or sponsors;
   5. Summaries or descriptions of sponsored research or service, unless released by the sponsor;
   6. Personally identifiable information; and
   7. Any other information that reasonably could affect the conduct or outcome of the sponsored research or service, the ability to patent or copyright the sponsored research or any other proprietary rights any person or entity might have in the research or the results of the research, including, but not limited to, protocols, notes, data, results or other unpublished writing about the research or service.

c. Nothing in this section shall prohibit voluntary disclosure of the records or materials by the sponsor or by the public higher education institution with the consent of the sponsor.
d. The public higher education institution shall make available, upon request by a citizen of this state, the titles of sponsored research or service projects, names of the researchers and the amounts and sources of funding for the projects.

e. All records or materials, regardless of physical form or characteristics, received, developed, generated, ascertained or discovered during the course of research or service that is not sponsored research or service, as defined in subdivision (a)(3), shall not be open for public inspection if the disclosure of the information reasonably could affect the conduct or outcome of the research or service, the ability of the public higher education institution to patent or copyright the research or any other proprietary rights any person or entity might have in the research or the results of the research, including, but not limited to, proprietary information and trade secrets received from a person or entity cooperating in the research, protocols, notes, data, results or other unpublished writing about the research or service.
TEXAS

Overall Rating

Public information is available to the public at a minimum during the normal business hours of the governmental body.

Analysis

The Texas Public Information Act does not specifically protect research information from disclosure. Personal information contained in a personnel file is protected, including home addresses, telephone numbers, emergency contact information, or social security numbers. Texas allows institutions to charge a fee that “reasonably includes all costs related to reproducing the public information, including costs of materials, labor and overhead.” However, if the request is less than 50 pages only the actual costs of providing the copies may be charged, unless the records are contained in separate buildings or a remote storage facility.

Areas for improvement:

1. Enactment of a specific exemption to protect research data; and
2. Amendment of the Texas Public Information Act to allow a research institution to recover the full costs associated with providing the information to the public when the request is for less than 50 pages.

TEXAS PUBLIC INFORMATION ACT

TEX. GOV. CODE ANN. § 552.021. Availability of Public Information.

Public information is available to the public at a minimum during the normal business hours of the governmental body.

TEX. GOV. CODE ANN. § 552.102. Exception: Confidentiality of Certain Personnel Information.

a. Information is excepted from the requirements of Section 552.021 if it is information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, except that all information in the personnel file of an employee of a governmental body is to be made available to that employee or the employee's designated representative as public information is made available under this chapter. . . .

TEX. GOV. CODE ANN. § 552.110. Exception: Confidentiality of Trade Secrets; Confidentiality of Certain Commercial or Financial Information.

a. A trade secret obtained from a person and privileged or confidential by statute or judicial decision is excepted from the requirements of Section 552.021.
b. Commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained is excepted from the requirements of Section 552.021.

**TEX. GOV. CODE ANN. § 552.117. Exception: Confidentiality of Certain Addresses, Telephone Numbers, Social Security Numbers, and Personal Family Information.**

a. Information is excepted from the requirements of Section 552.021 if it is information that relates to the home address, home telephone number, emergency contact information, or social security number of the following person or that reveals whether the person has family members:

1. a current or former official or employee of a governmental body, except as otherwise provided by Section 552.024;

**TEX. GOV. CODE ANN. § 552.261. Charge for Providing Copies of Public Information.**

a. The charge for providing a copy of public information shall be an amount that reasonably includes all costs related to reproducing the public information, including costs of materials, labor, and overhead. If a request is for 50 or fewer pages of paper records, the charge for providing the copy of the public information may not include costs of materials, labor, or overhead, but shall be limited to the charge for each page of the paper record that is photocopied, unless the pages to be photocopied are located in:

1. two or more separate buildings that are not physically connected with each other; or
2. a remote storage facility.

b. If the charge for providing a copy of public information includes costs of labor, the requestor may require the governmental body's officer for public information or the officer's agent to provide the requestor with a written statement as to the amount of time that was required to produce and provide the copy. The statement must be signed by the officer for public information or the officer's agent and the officer's or the agent's name must be typed or legibly printed below the signature. A charge may not be imposed for providing the written statement to the requestor.

c. For purposes of Subsection (a), a connection of two buildings by a covered or open sidewalk, an elevated or underground passageway, or a similar facility is insufficient to cause the buildings to be considered separate buildings.

d. Charges for providing copies of public information are considered to accrue at the time the governmental body advises the requestor that the copy is available on payment of the applicable charges.

**TEX. GOV. CODE ANN. § 552.2615. Required Itemized Estimate of Charges.**

a. If a request for a copy of public information will result in the imposition of a charge . . . that exceeds $ 40, or a request to inspect a paper record will result in the imposition of a . . . that exceeds $ 40, the governmental body shall provide the requestor with a written itemized statement that details all estimated charges that will be imposed, including any allowable charges for labor or personnel costs.
If an alternative less costly method of viewing the records is available, the statement must include a notice that the requestor may contact the governmental body regarding the alternative method. The governmental body must inform the requestor of the responsibilities imposed on the requestor by this section and of the rights granted by this entire section and give the requestor the information needed to respond, including:

1. that the requestor must provide the governmental body with a mailing, facsimile transmission, or electronic mail address to receive the itemized statement and that it is the requestor's choice which type of address to provide;
2. that the request is considered automatically withdrawn if the requestor does not respond in writing to the itemized statement and any updated itemized statement in the time and manner required by this section; and
3. That the requestor may respond to the statement by delivering the written response to the governmental body by mail, in person, by facsimile transmission if the governmental body is capable of receiving documents transmitted in that manner or by electronic mail if the governmental body has an electronic mail address.

b. A request described by Subsection (a) is considered to have been withdrawn by the requestor if the requestor does not respond in writing to the itemized statement by informing the governmental body within 10 business days after the date the statement is sent to the requestor that:

1. the requestor will accept the estimated charges;
2. the requestor is modifying the request in response to the itemized statement; or
3. The requestor has sent to the attorney general a complaint alleging that the requestor has been overcharged for being provided with a copy of the public information.

c. If the governmental body later determines, but before it makes the copy or the paper record available, that the estimated charges will exceed the charges detailed in the written itemized statement by 20 percent or more, the governmental body shall send to the requestor a written updated itemized statement that details all estimated charges that will be imposed, including any allowable charges for labor or personnel costs. If the requestor does not respond in writing to the updated estimate in the time and manner described by Subsection (b), the request is considered to have been withdrawn by the requestor.

d. If the actual charges that a governmental body imposes for a copy of public information, or for inspecting a paper record under Section 552.271, exceeds $ 40, the charges may not exceed:

1. the amount estimated in the updated itemized statement; or
2. if an updated itemized statement is not sent to the requestor, an amount that exceeds by 20 percent or more the amount estimated in the itemized statement.

e. An itemized statement or updated itemized statement is considered to have been sent by the governmental body to the requestor on the date that:

1. the statement is delivered to the requestor in person;
2. the governmental body deposits the properly addressed statement in the United States mail; or
3. the governmental body transmits the properly addressed statement by electronic mail or facsimile transmission, if the requestor agrees to receive the statement by electronic mail or facsimile transmission, as applicable.

f. A requestor is considered to have responded to the itemized statement or the updated itemized statement on the date that:

1. the response is delivered to the governmental body in person;
2. the requestor deposits the properly addressed response in the United States mail; or
3. the requestor transmits the properly addressed response to the governmental body by electronic mail or facsimile transmission.

g. The time deadlines imposed by this section do not affect the application of a time deadline imposed on a governmental body under Subchapter G.
Every person has the right to inspect a public record free of charge, and the right to take a copy of a public record during normal working hours.

Analysis
Utah’s Government Records Access and Management Act specifically protects “unpublished notes, data, and information relating to research” of an “institution within the state system of higher education.” The law also protects the “names, home addresses, home telephone numbers and work addresses of those engaged in medical or scientific research utilizing animals,” as well as any records that “would jeopardize the life or safety of an individual.” Utah allows research institutions to recover the full costs of providing information to the public, including “staff time expended searching for, retrieving, compiling and other direct administrative tasks required to respond to the request.” However, the first 15 minutes must be provided free of charge.

**Utah Code Ann. § 63G-2-201. Right to inspect records and receive copies of records.**

1. Every person has the right to inspect a public record free of charge, and the right to take a copy of a public record during normal working hours, subject to Sections 63G-2-203 and 63G-2-204.

2. A record is public unless otherwise expressly provided by statute.

**Utah Code Ann. § 63G-2-203. Fees.**

1. A governmental entity may charge a reasonable fee to cover the governmental entity's actual cost of providing a record. This fee shall be approved by the governmental entity's executive officer.

2. a. When a governmental entity compiles a record in a form other than that normally maintained by the governmental entity, the actual costs under this section may include the following:
   i. the cost of staff time for compiling, formatting, manipulating, packaging, summarizing, or tailoring the record either into an organization or media to meet the person's request;
   ii. the cost of staff time for search, retrieval, and other direct administrative costs for complying with a request; and
   iii. in the case of fees for a record that is the result of computer output other than word processing, the actual incremental cost of providing the electronic services and products together with a reasonable portion of the costs associated with formatting or interfacing the information for particular users, and the administrative costs as set forth in Subsections (2)(a)(i) and (ii).
b. An hourly charge under Subsection (2)(a) may not exceed the salary of the lowest paid employee who, in the discretion of the custodian of records, has the necessary skill and training to perform the request.

c. Notwithstanding Subsections (2)(a) and (b), no charge may be made for the first quarter hour of staff time.

3. 
   a. Fees shall be established as provided in this Subsection (3).
   b. A governmental entity with fees established by the Legislature:
      i. shall establish the fees defined in Subsection (2), or other actual costs associated with this section through the budget process; and
      ii. may use the procedures of Section 63J-1-504 to set fees until the Legislature establishes fees through the budget process.
   c. Political subdivisions shall establish fees by ordinance or written formal policy adopted by the governing body.
   d. The judiciary shall establish fees by rules of the judicial council.

4. A governmental entity may fulfill a record request without charge and is encouraged to do so when it determines that:
   a. releasing the record primarily benefits the public rather than a person;
   b. the individual requesting the record is the subject of the record, or an individual specified in Subsection 63G-2-202(1) or (2); or
   c. the requester's legal rights are directly implicated by the information in the record, and the requester is impecunious.

5. A governmental entity may not charge a fee for:
   a. reviewing a record to determine whether it is subject to disclosure, except as permitted by Subsection (2)(a)(ii); or
   b. inspecting a record.

7. 
   a. All fees received under this section by a governmental entity subject to Subsection (3)(b) shall be retained by the governmental entity as a dedicated credit.
   b. Those funds shall be used to recover the actual cost and expenses incurred by the governmental entity in providing the requested record or record series.

8. 
   a. A governmental entity may require payment of past fees and future estimated fees before beginning to process a request if:
      i. fees are expected to exceed $ 50; or
ii. the requester has not paid fees from previous requests.

b. Any prepaid amount in excess of fees due shall be returned to the requester.

**Utah Code Ann. § 63G-2-305. Protected records.**

The following records are protected if properly classified by a governmental entity:

1. trade secrets as defined in Section 13-24-2 if the person submitting the trade secret has provided the governmental entity with the information specified in Section 63G-2-309;
2. commercial information or nonindividual financial information obtained from a person if:

   a. disclosure of the information could reasonably be expected to result in unfair competitive injury to the person submitting the information or would impair the ability of the governmental entity to obtain necessary information in the future;
   b. the person submitting the information has a greater interest in prohibiting access than the public in obtaining access; and
   c. the person submitting the information has provided the governmental entity with the information specified in Section 63G-2-309;

   . . .

8. records the disclosure of which would jeopardize the life or safety of an individual;

   . . .

39. the following records of an institution within the state system of higher education defined in Section 53B-1-102, which have been developed, discovered, disclosed to, or received by or on behalf of faculty, staff, employees, or students of the institution:

   a. unpublished lecture notes;
   ii. unpublished notes, data, and information:
      A. relating to research; and
      B. of:
         I. the institution within the state system of higher education defined in Section 53B-1-102; or
         II. a sponsor of sponsored research;

   . . .

52. the name, home address, work addresses, and telephone numbers of an individual that is engaged in, or that provides goods or services for, medical or scientific research that is:

   a. conducted within the state system of higher education, as defined in Section 53B-1-102; and
   b. conducted using animals;
**U T A H  C O D E A N N . § 13-24-2. Definitions**

As used in this chapter, unless the context requires otherwise:

4. "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that:
   a. derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and
   b. is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

**U T A H  C O D E A N N . § 63G-2-309. Confidentiality claims**

(1) (a) (i) Any person who provides to a governmental entity a record that the person believes should be protected under Subsection 63G-2-305(1) or (2) or both Subsections 63G-2-305(1) and (2) shall provide with the record:

   (A) a written claim of business confidentiality; and
   (B) a concise statement of reasons supporting the claim of business confidentiality.

   (ii) Any of the following who provides to an institution within the state system of higher education defined in Section 53B-1-102 a record that the person or governmental entity believes should be protected under Subsection 63G-2-305(40)(a)(ii) or (vi) or both Subsections 63G-2-305(40)(a)(ii) and (vi) shall provide the institution within the state system of higher education a written claim of business confidentiality in accordance with Section 53B-16-304:

   (A) a person;
   (B) a federal governmental entity;
   (C) a state governmental entity; or
   (D) a local governmental entity.

   (b) A person or governmental entity who complies with this Subsection (1) shall be notified by the governmental entity to whom the request for a record is made if:

   (i) a record claimed to be protected under one of the following is classified public:

   (A) Subsection 63G-2-305(1);
   (B) Subsection 63G-2-305(2);
(C) Subsection 63G-2-305(40)(a)(ii);
(D) Subsection 63G-2-305(40)(a)(vi); or
(E) a combination of the provisions described in Subsections (1)(b)(i)(A) through (D); or
Any person may inspect or copy any public record of a public agency.

Analysis

Vermont’s Public Records Law specifically protects “[r]esearch notes and laboratory notebooks, lecture notes, manuscripts, creative works, correspondence, research proposals and agreements, methodologies, protocols, and the identities of or any personally identifiable information about participants in research.” Vermont allows institutions to recover their actual costs in providing copies, mailing or transmittal costs, and staff time. However, the charging of staff time is restricted, and may only be charged if the time expended exceeds 30 minutes.

Areas for improvement:

1. Enactment of a specific exemption to protect personal information, such as a researcher’s name, home address, and telephone number.

Vermont Public Records Law

VT. STAT. ANN. TIT. 1, § 316. Access to public records and documents.

a. Any person may inspect or copy any public record of a public agency.

b. If copying equipment maintained for use by a public agency is used by the agency to copy the public record or document requested, the agency may charge and collect from the person requesting the copy the actual cost of providing the copy. The agency may also charge and collect from the person making the request, the costs associated with mailing or transmitting the record by facsimile or other electronic means. Nothing in this section shall exempt any person from paying fees otherwise established by law for obtaining copies of public records or documents, but if such fee is established for the copy, no additional costs or fees shall be charged.

c. Unless otherwise provided by law, in the following instances an agency may also charge and collect the cost of staff time associated with complying with a request for a copy of a public record: (1) the time directly involved in complying with the request exceeds 30 minutes; (2) the agency agrees to create a public record; or (3) the agency agrees to provide the public record in a nonstandard format and the time directly involved in complying with the request exceeds 30 minutes. The agency may require that requests subject to staff time charges under this subsection be made in writing and that all charges be paid, in whole or in part, prior to delivery of the copies. Upon request, the agency shall provide an estimate of the charge.
e. After public hearing, the legislative body of a political subdivision shall establish actual cost charges for copies of public records. The legislative body shall also establish the amount that may be charged for staff time, when such a charge is authorized under this section. To determine actual cost charges, the legislative body shall use the same factors used by the Secretary of State. If a legislative body fails to establish a uniform schedule of charges, the charges for that political subdivision shall be the uniform schedule of charges established by the Secretary of State until the local legislative body establishes such a schedule. A schedule of public records charges shall be posted in prominent locations in the town offices.

VT. STAT. ANN. Tit. 1, § 317. Definitions; public agency; public records and documents.

c. The following public records are exempt from public inspection and copying:

9. trade secrets, including any formulae, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to certain individuals within a commercial concern, and which gives its user or owner an opportunity to obtain business advantage over competitors who do not know it or use it, except that the disclosures required by 18 V.S.A. § 4632 shall not be included in this subdivision;

23. any data, records, or information developed, discovered, collected, or received by or on behalf of faculty, staff, employees, or students of the University of Vermont or the Vermont State Colleges in the conduct of study, research, or creative efforts on medical, scientific, technical, scholarly, or artistic matters, whether such activities are sponsored alone by the institution or in conjunction with a governmental body or private entity, until such data, records, or information are published, disclosed in an issued patent, or publicly released by the institution or its authorized agents. This subdivision applies to research notes and laboratory notebooks, lecture notes, manuscripts, creative works, correspondence, research proposals and agreements, methodologies, protocols, and the identities of or any personally identifiable information about participants in research;

Relevant Case Law

Sawyer v. Spaulding, 955 A.2d 532, (2008) (The exceptions to disclosure are construed strictly against a custodian of the records, and courts resolve any doubt in favor of disclosure. In addition, the burden of demonstrating that an exception applies is on an agency seeking to avoid disclosure).
Overall Rating

All public records shall be open to inspection and copying by any citizens of the Commonwealth.

**Analysis**

Virginia’s Freedom of Information Act protects “data, records or information of a proprietary nature produced or collected . . . [for an] institutions of higher education . . . in the conduct of or as a result of study or research on medical, scientific, technical or scholarly issues.” The law also protects personal information contained in personnel files. Virginia allows institutions to recover their actual costs of providing information to the public, which include fees for duplication, and supplying of and searching for records.

Areas for improvement:

1. Enactment of a specific exemption for research data not of a proprietary nature; and
2. Enactment of a specific exemption to protect personal information, such as a researcher’s name, home address, and telephone number.

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**VIRGINIA’S FREEDOM OF INFORMATION ACT**

**VA. CODE ANN. § 2.2-3704. Public records to be open to inspection; procedure for requesting records and responding to request; charges; transfer of records for storage, etc.**

A. Except as otherwise specifically provided by law, all public records shall be open to inspection and copying by any citizens of the Commonwealth. . . . The custodian may require the requester to provide his name and legal address. The custodian of such records shall take all necessary precautions for their preservation and safekeeping.

. . .

F. A public body may make reasonable charges not to exceed its actual cost incurred in accessing, duplicating, supplying, or searching for the requested records. No public body shall impose any extraneous, intermediary or surplus fees or expenses to recoup the general costs associated with creating or maintaining records or transacting the general business of the public body. Any duplicating fee charged by a public body shall not exceed the actual cost of duplication. . . . All charges for the supplying of requested records shall be estimated in advance at the request of the citizen.

G. Public records maintained by a public body in an electronic data processing system, computer database, or any other structured collection of data shall be made available to a requester at a reasonable cost, not to exceed the actual cost in accordance with subsection F. When electronic or other databases are combined or contain exempt and nonexempt records, the public body may provide
access to the exempt records if not otherwise prohibited by law, but shall provide access to the nonexempt records as provided by this chapter.

Public bodies shall produce nonexempt records maintained in an electronic database in any tangible medium identified by the requester, including, where the public body has the capability, the option of posting the records on a website or delivering the records through an electronic mail address provided by the requester, if that medium is used by the public body in the regular course of business. No public body shall be required to produce records from an electronic database in a format not regularly used by the public body. However, the public body shall make reasonable efforts to provide records in any format under such terms and conditions as agreed between the requester and public body, including the payment of reasonable costs. The excision of exempt fields of information from a database or the conversion of data from one available format to another shall not be deemed the creation, preparation or compilation of a new public record.

H. In any case where a public body determines in advance that charges for producing the requested records are likely to exceed $200, the public body may, before continuing to process the request, require the requester to agree to payment of a deposit not to exceed the amount of the advance determination. The deposit shall be credited toward the final cost of supplying the requested records. The period within which the public body shall respond under this section shall be tolled for the amount of time that elapses between notice of the advance determination and the response of the requester.

I. Before processing a request for records, a public body may require the requester to pay any amounts owed to the public body for previous requests for records that remain unpaid 30 days or more after billing.

VA. CODE ANN. § 2.2-3705.1. Exclusions to application of chapter; exclusions of general application to public bodies.

The following records are excluded from the provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law:

1. Personnel records containing information concerning identifiable individuals, except that access shall not be denied to the person who is the subject thereof. Any person who is the subject of any personnel record and who is 18 years of age or older may waive, in writing, the protections afforded by this subdivision. If the protections are so waived, the public body shall open such records for inspection and copying.

VA. CODE ANN. § 2.2-3705.4. Exclusions to application of chapter; educational records and certain records of educational institutions.

The following records are excluded from the provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law:

   4. Data, records or information of a proprietary nature produced or collected by or for faculty or staff of public institutions of higher education, other than the institutions' financial or administrative records, in the conduct of or as a result of study or research on medical, scientific, technical or scholarly issues, whether sponsored by the institution alone or in
conjunction with a governmental body or a private concern, where such data, records or information has not been publicly released, published, copyrighted or patented.

Relevant Case Law


*Am. Tradition Inst. v. Rector & Visitors of the Univ. of Va.*, 756 S.E.2d 435, (2014) (Reasonable fee may be charged by a public body for the search or review process required to exclude information that would be unlawful to disclose; therefore, the University of Virginia could seek reimbursement for review of the records of a climate scientist and former professor).
Each agency . . . shall make available for public inspection and copying all public records.

Analysis

Washington’s Public Records Act does not specifically protect research information from disclosure. The law does protect personal information, which has been interpreted to include names, home addresses and telephone numbers. Washington allows institutions to recover some costs, including supplies, mailing or transmittal costs, and staff time spent making the copies. However, staff time expended locating or compiling the requested records cannot be charged.

Areas for improvement:

1. Enactment of a specific exemption to protect research data; and
2. Amendment of Washington’s Public Records Act to allow a research institution to recover the full costs associated with providing the information to the public.

WASHINGTON PUBLIC RECORDS ACT

WASH. REV. CODE § 42.56.070. Documents and indexes to be made public.

1. Each agency, in accordance with published rules, shall make available for public inspection and copying all public records, unless the record falls within the specific exemptions of *subsection (6) of this section, this chapter, or other statute which exempts or prohibits disclosure of specific information or records. To the extent required to prevent an unreasonable invasion of personal privacy interests protected by this chapter, an agency shall delete identifying details in a manner consistent with this chapter when it makes available or publishes any public record; however, in each case, the justification for the deletion shall be explained fully in writing.

7. Each agency shall establish, maintain, and make available for public inspection and copying a statement of the actual per page cost or other costs, if any, that it charges for providing photocopies of public records and a statement of the factors and manner used to determine the actual per page cost or other costs, if any.

   a. In determining the actual per page cost for providing photocopies of public records, an agency may include all costs directly incident to copying such public records including the actual cost of the paper and the per page cost for use of agency copying equipment. In determining other actual costs for providing photocopies of public records, an agency may include all costs directly incident to shipping such public records, including the cost of postage or delivery charges and the cost of any container or envelope used.
b. In determining the actual per page cost or other costs for providing copies of public records, an agency may not include staff salaries, benefits, or other general administrative or overhead charges, unless those costs are directly related to the actual cost of copying the public records. Staff time to copy and mail the requested public records may be included in an agency's costs.

8. An agency need not calculate the actual per page cost or other costs it charges for providing photocopies of public records if to do so would be unduly burdensome, but in that event: The agency may not charge in excess of fifteen cents per page for photocopies of public records or for the use of agency equipment to photocopy public records and the actual postage or delivery charge and the cost of any container or envelope used to mail the public records to the requestor.

**WASH. REV. CODE § 42.56.120. Charges for copying.**

No fee shall be charged for the inspection of public records. No fee shall be charged for locating public documents and making them available for copying. . . . Agency charges for photocopies shall be imposed in accordance with the actual per page cost or other costs established and published by the agency. In no event may an agency charge a per page cost greater than the actual per page cost as established and published by the agency. To the extent the agency has not determined the actual per page cost for photocopies of public records, the agency may not charge in excess of fifteen cents per page. An agency may require a deposit in an amount not to exceed ten percent of the estimated cost of providing copies for a request. If an agency makes a request available on a partial or installment basis, the agency may charge for each part of the request as it is provided. If an installment of a records request is not claimed or reviewed, the agency is not obligated to fulfill the balance of the request.

**WASH. REV. CODE § 42.56.230. Personal information.**

3. Personal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy;

**WASH. REV. CODE § 42.56.050. Invasion of privacy, when**

A person’s “right to privacy,” “right of privacy,” “privacy,” or “personal privacy,” as these terms are used in this chapter, is invaded or violated only if disclosure of information about the person: (1) Would be highly offensive to a reasonable person, and (2) is not of legitimate concern to the public. The provisions of this chapter dealing with the right to privacy in certain public records do not create any right of privacy beyond those rights that are specified in this chapter as express exemptions from the public’s right to inspect, examine, or copy public records.

**WASH. REV. CODE § 42.56.070. Documents and indexes to be made public**

3. Each local agency shall maintain and make available for public inspection and copying a current index providing identifying information as to the following records issued, adopted, or promulgated after January 1, 1973:

- Factual staff reports and studies, factual consultant’s reports and studies, scientific reports and studies, and any other factual information derived from tests, studies, reports, or surveys, whether conducted by public employees or others;
Relevant Case Law

*Delong v. Parmalee*, 236 P.3d 936, (2010) (Unlike the Wisconsin statute, the Public Record Act’s privacy exemption specifically exempts home addresses and telephone numbers from disclosure under RCW 42.56.050).
West Virginia’s Freedom of Information Act does not specifically protect research information from disclosure. The law protects personal information, if its release would constitute an unreasonable invasion of privacy. West Virginia allows institutions to “establish reasonable fees reasonably calculated to reimburse it for its actual cost in making reproduction of such records.”

Areas for improvement:

1. Enactment of a specific exemption for research data; and
2. Enactment of a specific exemption to protect personal information, such as a researcher’s name, home address, and telephone number.

West Virginia Freedom of Information Act


1. Every person has a right to inspect or copy any public record of a public body in this State, except as otherwise expressly provided by section four [§ 29B-1-4] of this article.

   . . .

3. . . . The custodian of the records may make reasonable rules and regulations necessary for the protection of the records and to prevent interference with the regular discharge of his or her duties. . .

   . . .

5. The public body may establish fees reasonably calculated to reimburse it for its actual cost in making reproductions of such records.


a. The following categories of information are specifically exempt from disclosure under the provisions of this article:

   1. Trade secrets, as used in this section, which may include, but are not limited to, any formula, plan pattern, process, tool, mechanism, compound, procedure, production data or compilation a commercial concern who are using it to fabricate, produce or compound an of information which is not patented which is known only to certain individuals within article or trade or a service or to locate minerals or other substances, having commercial value, and which gives its users an opportunity to obtain business advantage over competitors;
2. Information of a personal nature such as that kept in a personal, medical or similar file, if the public disclosure thereof would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance: Provided, That nothing in this article shall be construed as precluding an individual from inspecting or copying his or her own personal, medical or similar file;

**Relevant Case Law**

*Hechler v. Casey*, 175 W. Va. 434 (W. Va. 1985) (The invasion of privacy exemption does not normally exempt from disclosure an individual's name and residential address because they are not personal or private facts but are public in nature in that they constitute information normally shared with strangers and are ascertainable by reference to many publicly obtainable books and records; thus, disclosure of an individual's name and residential address would not result in an unreasonable invasion of privacy).

*Robinson v. Merritt*, 180 W. Va. 26 (W. Va. 1988) (Denying an attorney access to Worker Compensation records which, among other things, include individuals names, addresses, and social security numbers).

*Manns v. City of Charleston Police Dep't*, 209 W. Va. 620, (W. Va. 2001) (The primary purpose of the invasion of privacy exemption to the Freedom of Information Act is to protect individuals from the injury and embarrassment that can result from the unnecessary disclosure of personal information).


*Child Protection Group v. Cline*, 177 W. Va. 29, (W. Va. 1986) (In deciding whether the public disclosure of information of a personal nature under subdivision (2) would constitute an unreasonable invasion of privacy, a court will look to five factors: (1) Whether disclosure would result in a substantial invasion of privacy and, if so, how serious; (2) the extent or value of the public interest, and the purpose or object of the individuals seeking disclosure; (3) whether the information is available from other sources; (4) whether the information was given with an expectation of confidentiality; and (5) whether it is possible to mold relief so as to limit the invasion of individual privacy).
Overall Rating

Except as otherwise provided by law, any requester has a right to inspect any record. Substantive common law principles construing the right to inspect, copy or receive copies of records shall remain in effect.

Analysis

Wisconsin’s Public Records Law does not contain a specific protection for research information. The law does protect “home address, home electronic mail address, home telephone number, or social security number[s].” However, Wisconsin does not allow institutions to charge for time spent searching for or compiling the requested records, unless the cost is greater than $50.

Areas for improvement:

1. Enactment of a specific exemption to protect research data; and
2. Amendment of Wisconsin’s Public Records Law to allow a research institution to recover the full costs associated with providing the information to the public.

Wisconsin Public Records Law

Wis. Stat. § 19.35 Access to records; fees

1. RIGHT TO INSPECTION
   a. Except as otherwise provided by law, any requester has a right to inspect any record. Substantive common law principles construing the right to inspect, copy or receive copies of records shall remain in effect.

3. FEES
   a. An authority may impose a fee upon the requester of a copy of a record which may not exceed the actual, necessary and direct cost of reproduction and transcription of the record, unless a fee is otherwise specifically established or authorized to be established by law.
   b. Except as otherwise provided by law or as authorized to be prescribed by law an authority may impose a fee upon the requester of a copy of a record that does not exceed the actual, necessary and direct cost of photographing and photographic processing if the authority provides a photograph of a record, the form of which does not permit copying.
   c. Except as otherwise provided by law or as authorized to be prescribed by law, an authority may impose a fee upon a requester for locating a record, not exceeding the actual, necessary and direct cost of location, if the cost is 50 or more.
d. An authority may impose a fee upon a requester for the actual, necessary and direct cost of mailing or shipping of any copy or photograph of a record which is mailed or shipped to the requester.

e. An authority may provide copies of a record without charge or at a reduced charge where the authority determines that waiver or reduction of the fee is in the public interest.

f. An authority may require prepayment by a requester of any fee or fees imposed under this subsection if the total amount exceeds $5. If the requester is a prisoner, as defined ins. 301.01 (2), or is a person confined in a federal correctional institution located in this state, and he or she has failed to pay any fee that was imposed by the authority for a request made previously by that requester, the authority may require prepayment both of the amount owed for the previous request and the amount owed for the current request.

Wis. Stat. § 19.36 Limitations upon access and withholding

5. An authority may withhold access to any record or portion of a record containing information qualifying as a trade secret as defined in s. 134.90 (1) (c).

10. Unless access is specifically authorized or required by statute, an authority shall not provide access under s. 19.35 (1) to records containing the following information:

   a. Information maintained, prepared, or provided by an employer concerning the home address, home electronic mail address, home telephone number, or social security number of an employee, unless the employee authorizes the authority to provide access to such information.

Wis. Stat § 134.90 Uniform trade secrets act

1. In this section:

   c. “Trade secret” means information, including a formula, pattern, compilation, program, device, method, technique or process to which all of the following apply:

       1. The information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.

       2. The information is the subject of efforts to maintain its secrecy that are reasonable under the circumstances.

Relevant Case Law

Milwaukee Journal Sentinel v. City of Milwaukee, 815 N.W.2d 367, (Wis. 2012) (City could not charge the newspaper for the costs, including staff time, of redacting certain information from the records requested because such costs did not fit within the fees set forth in Wis. Stat. § 19.35(3)(a)-(d)).
Wyoming

Overall Rating

All public records shall be open for inspection by any person at reasonable times . . . 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.

Analysis

Wyoming’s Sunshine Law protects “the specific details of bona fide research” from disclosure. The law also allows institutions to “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 [institution].” Wyoming does not specifically permit an institution to recover the full costs of providing information to the public.

Areas for improvement:

1. Enactment of a specific exemption to protect personal information, such as a researcher’s name, home address, and telephone number; and
2. Amendment of the Wyoming Sunshine Law to allow a research institution to recover the full costs associated with providing the information to the public.

Wyoming Sunshine Law

Wyo. Stat. § 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, during business hours of the state entity or political subdivision, except as provided in this act or as otherwise provided by law, but the official custodian of any public records may make rules and regulations with reference to the inspection of the records as is reasonably necessary for the protection of the records and the prevention of unnecessary interference with the regular discharge of the duties of the custodian or his office.

   . . .

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;

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

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

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

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

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

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. . . .

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

viii. 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);

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.

**Wyo. Stat. § 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.

**Relevant Case Law**

*Sheridan Newspapers, Inc. v. City of Sheridan*, 660 P.2d 785, (Wyo. 1983) (When a custodian withdraws records, reasons therefore must be given so that these reasons may provide grounds for review should court action result. If the custodian gives either no reasons or inadequate reasons for withdrawal, appropriate legal action is available to force an automatic disclosure of the records)
DISCLAIMER

These statutes and their corresponding rankings are presented for reference and informational purposes only. Every effort has been made to ensure the accuracy of the statutes; however, they represent only a portion of each state's open records laws, and are current only through the publication of this document. Nothing in this document should be construed as legal advice. Any legal questions should be submitted to a licensed attorney in the respective state. The National Association for Biomedical Research makes no warranty, express or implied, regarding the accuracy of these statutes or this document.