

Bruce T. Moats, Esq.
Law Offices of Bruce T. Moats, P.C.
2515 Pioneer Ave
Cheyenne, Wyoming 82001
(307) 778-8844
fax: (307) 638-1227
bmoats@hackerlaw.net

STATE OF WYOMING)
) ss. IN THE DISTRICT COURT FOR THE
COUNTY OF LARAMIE) FIRST JUDICIAL DISTRICT

ROGER W. HURLBERT,
d/b/a Sage Information Services,

Plaintiff,

vs.

Docket No. 178526

WYOMING DEPARTMENT OF REVENUE
and EDMUND J. SCHMIDT, Director
of the Wyoming Department of Revenue,
as Custodian of the Records,

Defendants.

To the above named Defendants:

Edmund J. Schmidt, Director
Wyoming Department of Revenue
Herschler Building, 2nd FL W
122 East 25th Street
Cheyenne, WY 82002-0110
(307) 777-7961

YOU ARE HEREBY SUMMONED and required to appear before the Court upon the scheduling of a hearing on the attached Petition for Access to Records and for Order to Show Cause.

DATED this _____ day of July, 2011.

(Seal of District Court)

Sandy hamdero

Clerk of Court

By: *Bard May*
Deputy Clerk

Attorney for Plaintiff:

Bruce T. Moats
2515 Pioneer Avenue
Cheyenne, WY 82001
(307) 778-8844
fax: (307) 638-1227

RETURN

STATE OF WYOMING)
COUNTY OF NATRONA)

To be used by Wyoming Sheriff
Under Sheriff or Deputy

I, _____, Sheriff in and for said County of Natrona in the State
aforesaid, do hereby certify that I received the within Summons, together with a copy of the Petition
filed in the above-entitled matter, and that I served the same in the County aforesaid on the ____
day of _____, 2011, by delivering a copy of the same, together with a copy of the
Complaint, to _____

_____ Sheriff
By: _____ Deputy Sheriff

SHERIFF'S FEES

Service \$ _____
Mileage \$ _____
Return \$ _____
Total \$ _____

APPOINTMENT TO SERVE SUMMONS

At the request of the Plaintiff and in compliance with Rule 4(c)(1) of the Wyoming Rules of
Civil Procedure, I hereby appoint a representative of Rick Sargent of Civil Service, a entity duly
qualified, to serve the foregoing Summons and Petition.

Sandy hamdeno

Clerk of Court

By: _____ Deputy Clerk

(SEAL)

AFFIDAVIT OF SERVICE

STATE OF WYOMING)
COUNTY OF LARAMIE)

To be used by a person other than Wyoming
Sheriff, Under Sheriff or Deputy

_____, being first duly sworn, on oath deposes and says that he is
the identical person appointed by the Clerk of Court as above shown to make service of Summons
issued in the foregoing action; that he is over the age of 21 years and is not a party to the foregoing
action or interested therein, and that he made service of said Summons in the County aforesaid on
the ____ day of _____, 2011, by delivering a copy of the same, together with a copy of
the Petition, to _____

Civil Service

Subscribed and sworn to before me this ____ day of _____, 2011.

Notary Public

My Commission expires:

RETURN

STATE OF WYOMING)
COUNTY OF NATRONA)

To be used by Wyoming Sheriff
Under Sheriff or Deputy

I, _____, Sheriff in and for said County of Natrona in the State
aforesaid, do hereby certify that I received the within Summons, together with a copy of the Petition
filed in the above-entitled matter, and that I served the same in the County aforesaid on the _____
day of _____, 2011, by delivering a copy of the same, together with a copy of the
Complaint, to _____

_____ Sheriff

By: _____ Deputy Sheriff

SHERIFF'S FEES

Service \$ _____
Mileage \$ _____
Return \$ _____
Total \$ _____

APPOINTMENT TO SERVE SUMMONS

At the request of the Plaintiff and in compliance with Rule 4(c)(1) of the Wyoming Rules of
Civil Procedure, I hereby appoint a representative of Rick Sargent of Civil Service, a entity duly
qualified, to serve the foregoing Summons and Petition.

Sandy hamden

Clerk of Court

By: _____
Deputy Clerk

(SEAL)

AFFIDAVIT OF SERVICE

STATE OF WYOMING)
COUNTY OF LARAMIE)

To be used by a person other than Wyoming
Sheriff, Under Sheriff or Deputy

_____, being first duly sworn, on oath deposes and says that he is
the identical person appointed by the Clerk of Court as above shown to make service of Summons
issued in the foregoing action; that he is over the age of 21 years and is not a party to the foregoing
action or interested therein, and that he made service of said Summons in the County aforesaid on
the _____ day of _____, 2011, by delivering a copy of the same, together with a copy of
the Petition, to _____

Civil Service

Subscribed and sworn to before me this _____ day of _____, 2011.

Notary Public

My Commission expires:

Bruce T. Moats, Esq.
 Law Offices of Bruce T. Moats, P.C.
 2515 Pioneer Ave
 Cheyenne, Wyoming 82001
 (307) 778-8844
 fax: (307) 638-1227
 bmoats@hackerlaw.net

STATE OF WYOMING)
) ss. IN THE DISTRICT COURT FOR THE
 COUNTY OF LARAMIE) FIRST JUDICIAL DISTRICT

ROGER W. HURLBERT,)
 d/b/a Sage Information Services,)
)
 Plaintiff,)

vs.)

Docket No. 178-526

WYOMING DEPARTMENT OF REVENUE)
 and EDMUND J. SCHMIDT, Director)
 of the Wyoming Department of Revenue,)
 as Custodian of the Records,)
)
 Defendants.)

FILED
 JUL 25 2011
 SANDY LANDERS
 CLERK OF THE DISTRICT COURT

**PETITION FOR ACCESS TO RECORDS AND MOTION FOR ORDER
 TO SHOW CAUSE WHY THE RECORDS SHOULD NOT BE RELEASED**

Plaintiff Roger W. Hurlbert, doing business as Sage Information Services, acting by and through his attorney, petitions the Court, pursuant to Wyoming Public Records Act, specifically W.S. §16-4-203(f), for public access to non-confidential property assessment records maintained in the Department's Computer-Assisted Mass Appraisal (CAMA) system.

In support of its Petition, Plaintiff states as follows:

PARTIES AND JURISDICTION

1. Plaintiff is a resident of the State of California and is the owner of Sage Information Services, a California sole proprietorship.
2. Defendant Edmund Schmidt is the director of the Wyoming Department of Revenue. Schmidt is the custodian of the records sought in this matter pursuant to W.S. §16-4-201(a)(i)&(ii). A "custodian" of public records is defined as "the official custodian or any authorized person having personal custody and control of the public records in question." W.S. §16-4-201(a)(I). The "official custodian" is defined as "any officer or employee of the state or any agency, institution or political subdivision thereof, who is responsible for the maintenance, care and keeping of public records, regardless of whether the records are in his actual personal custody or control." A governmental

entity or official is the custodian if the entity or the official has either created the record or received it as part of its official business. *Shaeffer v. University of Wyoming*, 2006 WY 99.

3. Defendant Department of Revenue is authorized to have custody and control of the information as part of its duties as outlined in W.S. §39-11-102(c), particularly subsections (xv), (xvi) and xxv. Subsection (xv) directs the department to prescribe a system of establishing “fair market value of all property valued for property taxation to ensure that all property within a class is uniformly valued.” Subsection (xvi) requires the Department to maintain oversight of the assessors’ “duties under the laws of the state,” and compliance with the assessment laws. Subsection (xxv) authorizes the Department to prescribe rules and regulations to be followed by all assessors “to ensure the statistical quality and fairness of assessed values. . . .”

The information in the CAMA system is downloaded nightly from local county assessors.

Director Schmidt has the responsibility for the maintenance, care and keeping of the records in the CAMA system.

4. The records in the CAMA system are public records as defined by W.S. §16-4-201(v) of the Wyoming Public Records Act. Property assessment records, except for Statements of Consideration, are not exempt from disclosure pursuant to the Act.

5. W.S. §126-4-203(a) requires that the “custodian of any public records shall allow any person the right of inspection of the records or any portion thereof” unless the records fall within the exemptions set forth in the Act.

6. Any person denied access to public records may apply, pursuant to W.S. §16-4-203(f), to the district court of the district wherein the records are found for an order directing the custodians to show cause why they should not permit inspection of the records. While a petition for an order to show cause is not normally used to begin a legal proceeding, it may be so used when authorized by statute, such as the Wyoming Public Records Act. The Court is authorized by the Act to issue the order to show cause *ex parte* and it is then served in the same manner as service of a summons. No answer is required. 56 Am. Jur. 2d Motions, Rules and Orders § 46 citing *State Dept. of Revenue v. Succession of Pope*, 579 So. 2d 1152 (La. App.2d Cir. 1991); *Flaherty v. Burke*, 515 A.2d 365 (Pa. 1986); *Freedom Colorado Information, Inc. v. El Paso County Sheriff's Department*, 196 P.3d 892, 895-96 (Colo. 2008)(citing C.R.S. 24-72-305(7), which has nearly identical language to W.S. § 16-4-203(f)).

Therefore, Plaintiff requests that the Court issue the Order to Show Cause attached to this Petition.

FACTS

7. Plaintiff requested access to the CAMA records through his counsel on May 20, 2011. Plaintiff particularly sought a computer-readable copy of the real property assessment database for the counties maintained in the CAMA system.

8. The Department of Revenue cited its rule requiring the department to poll the assessors in each of Wyoming's counties and seek their approval to release any information from the CAMA system to Plaintiff.

9. Plaintiff agreed to a \$400 fee for providing a copy of the data requested by the Department pending approval by the assessors.

10. A total of 21 of the 23 assessors responded to the internet poll (two were out of the office during the polling) and all 21 voted to deny access by Plaintiff to the CAMA records.

11. CAMA records have been released in the past with the assessors' approval, including to the Nature Conservancy and to the U.S. Department of Agriculture.

THE LAW

12. For more than 25 years, the Wyoming Supreme Court has consistently and repeatedly pronounced that the public's business must be "available to the public whenever that is possible." *Sheridan Newspapers v. City of Sheridan*, 660 P.2d 785, 790 (1983). The object of the Public Records Act is disclosure, not secrecy, and courts are to interpret the act liberally in favor of disclosure, construing all exemptions narrowly. *Houghton v. Franscell*, 870 P.2d 1050, 1052 (1994). "Where the public interest is affected, an interpretation is preferred which favors the public." *Id.* The federal and Wyoming constitutions "guarantee a person's right to access public records." *Id.* at 1053. That right cannot be abridged absent a compelling state interest. *Id.* Therefore, the Public Records Act must "be read in the light of the legislative presumption of openness and in keeping with the constitutional right of access to public records." *Wyoming Department of Transportation v. International Union of Operating Engineers Local Union 800*, 908 P.2d 970, 973 (1995).

13. The Public Records Act, as set forth above, requires that public records not exempt from disclosure shall be available to "any person" requesting access. W.S. §16-4-203(a). "Under the WPA, a public record is either open to inspection by the public or it is exempt." *Schaffer* at ¶11.

14. The reason why one seeks access to public information is irrelevant to whether it is a public record. *Laramie River Conservation Council v. Dinger*, 567 P.2d 731, 733 (Wyo. 1977) (“A showing of need is unnecessary to obtain access to public records . . .”).

15. Selective disclosure as practiced by the Department pursuant to its rules is contrary to the Public Records Act. “[V]oluntary disclosure in one situation can preclude later claims that records are exempt from release to someone else.” *Lieber v. So. Illinois University Bd.*, 680 N.E. 2d 374, 379 (Ill. 1997); *See, also, Cooper v. United States Department of the Navy*, 594 F.2d 484, 485-86 (5th Cir. 1979). Selective disclosure “is offensive to the purposes underlying the FOIA and intolerable as a matter of policy. Preferential treatment of persons or interest groups foster precisely the distrust of government the FOIA was intended to obviate.” *State of North Dakota ex rel. Olson v. Andrus*, 581 F.2d 177, 182 (8th Cir. 1978). The Department regulation allowing the assessors to approve release to one requester but not another exceeds its statutory authority and contravenes the mandates of the Public Records Act. *See State Dept. Of Revenue v. Pacificorp*, 1994 WY 41 ¶¶9, 35 & 36, 872 P.2d 1163; *Jackson v. Wyo. Workers’ Comp.*, 786 P.2d 874, 878-79 (Wyo. 1990); *Dept. Of Transportation v. International Union of Operating Engineers*, 1995 WY 211 ¶10 (disregarding the department’s rule governing release of information as department had no distinctive expertise to construe the Public Records Act).

16. The plain language of the Public Records Act, especially when read in the light favorable to public disclosure, bars selective disclosure of public records and requires the release of the information sought by the Plaintiff in this matter.

WHEREFORE, Plaintiffs requests the following relief:

1. An order directing custodians to appear before the Court to show cause why they should not permit inspection of the records sought in this matter.
2. After a hearing on the order to show cause, an order requiring Defendants to turn over the CAMA records requested by the Plaintiff.
3. Other such relief as the Court deems just and proper.

Dated this 25th day of July, 2011.

ROGER W. HURLBERT, doing business as
SAGE INFORMATION SERVICES, Plaintiff

By: 
Bruce T. Moats (WY Bar No. 6-3077)
Attorney for Plaintiff