

CHAPTER 2.64

PUBLIC RECORDS ACCESS AND MANAGEMENT

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2.64.010: **TITLE:** This chapter shall be known as the *CACHE COUNTY RECORDS ACCESS AND MANAGEMENT ORDINANCE*.

(Ord. 92-02)

2.64.020: **PROGRAM ESTABLISHED:**

- A. A county records management program is established for the correlation, preservation, retention and management of county records.

- B. The program shall be administered in cooperation with the Utah state archives and records service, department of administrative services, and in accordance with the guidelines set forth in the archives plans promulgated by that division, and in accordance with the guidelines of the Utah archives and records service and information practices act as set forth in Utah Code Annotated title 63, chapter 2, as amended. (Ord. 88-10)

2.64.030: **POLICY:** It shall be the policy of the county to:

- A. Correlate, preserve, classify, retain, manage and maintain all county records and to establish and implement information practices, including classification, designation, access, denials, segregation, appeals, management, retention and amendment of records in a manner consistent with the legislative intent set forth in Utah Code Annotated section 63-2-102, as amended, as part of the government records access and management act (the "act").
- B. Provide appropriate access to records which are defined by law as open to the public to requesting persons within a reasonable time and at a reasonable cost as set forth in this chapter.
- C. Provide for and assure that all county offices, officers, employees, agencies and authorities comply with the provisions of this chapter, the act and all other applicable federal and state laws, rules and regulations.
- D. Recognize and uphold the personal right of privacy retained by persons who may be the subject of government records and data.
- E. Establish and implement an appropriate, reasonable and effective county records management program. (Ord. 92-02)

2.64.040: **DEFINITIONS:** For the purposes of this chapter:

ACT: The government records access and management act as set forth in Utah Code Annotated title 63, chapter 2, as amended.

CERTIFIED: That a record bears the signature, initials or seal of the county, a county department, office or agency, or a county officer and a statement

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or wording which verifies that the instrument is a true and correct copy of a county record.

RESPONSIBLE
DEPARTMENT:

Each county office, department or agency which usually keeps or maintains a requested record or to whom the requested record is addressed. "Responsible department" includes the employees, agents and appointed or elected officers of that department, office or agency. A county department creating or forwarding a requested record shall not be deemed to be the responsible department for that requested record unless there is no other responsible department. (For example, if one department sends a memorandum to another department in response to that department's inquiry, the department receiving that memorandum shall be the responsible department.)

THIS CHAPTER:

The Cache County records access and management ordinance. (Ord. 92-02)

2.64.050: ACCESS:

- A. Every person shall have the right to inspect a public record to which access is not restricted pursuant to court rule, another state statute, federal statute, federal regulation, or a contractual or regulatory restriction as a condition of participation in a state or federal program or for receiving state or federal funds, and such rights to inspect shall be free of charge. Every person shall have the right to take copy of such records during normal working hours subject to the provisions of this chapter and the act.
- B. No record may be disclosed, inspected, or a copy thereof given to a requester if the record is classified as private, controlled or protected, except as provided in this chapter and the act.
- C. Access to records shall only be by and through the responsible department and all requests for access to records shall be directed to the responsible department.
- D. If a record is temporarily held by a county office, department or agency other than the responsible department, the record shall be

deemed to be a record of the responsible department and any request for access to that record shall be directed to the responsible department.

- E. If a copy of a requested record has been given by the responsible department to another county office, department or agency, that record remains a record of the responsible department and all requests for access to that record shall be directed to the responsible department. (Ord. 92-02)

2.64.060: CLASSES OF RECORDS:

- A. All records of the county shall be classified as public, private, controlled or protected.
- B. All records shall be deemed public unless expressly classified otherwise or made nonpublic by applicable statute, the act or this chapter.
- C. Public records shall include those county records as defined in the act in Utah Code Annotated section 63-2-201, as amended. Records that are private, controlled or protected under the act and this chapter and records to which access is restricted pursuant to court rule, and other state statute, federal statute, federal regulation, or by contract or regulation restricting access as a condition of participation in a state or federal program or for receiving state or federal funds are not public records.
- D. Private records shall include those county records classified by the county as "private"; those records defined and listed as private in the act in Utah Code Annotated section 63-2-302(1); and
1. Performance evaluations and personal status information such as race, religion or disabilities concerning a current or former employee of or applicant for employment with the county;
 2. Records describing an individual's finances, except:
 - a. Those records described in Utah Code Annotated section 63-2-301(1) of the act;
 - b. Information provided to the county for the purpose of complying with a financial assurance requirement; or

c. Records that must be disclosed in accordance with other statutes;

3. Other records containing data on individuals if the disclosure of those records constitutes a clearly unwarranted invasion of personal privacy;

4. Records provided by the United States or by another government entity that are given to the county with the requirement that the records be managed as private records; provided, however, that the providing entity state in writing that the record is not subject to public disclosure if retained by it.

- E. Controlled records shall include those county records classified by the county as "controlled" and those records defined and listed as controlled in the act in Utah Code Annotated section 63-2-303.
- F. Protected records shall include those county records classified by the county as "protected" and those records defined and listed as protected in the act in Utah Code Annotated section 63-2-304. (Ord. 92-02; amd. Ord. 97-01)

2.64.070: **CLASSIFICATION PROCEDURES:**

- A. All existing and future county records and record series shall be classified according to the provisions of the act and this chapter. The county may designate or redesignate or classify or reclassify records or data at any time and is not required to classify or designate a particular record or item of data until access thereto is requested.
- B. Records classification shall be conducted under the supervision of the county records manager assisted, as may be required, by a classification review committee consisting of the county records manager or his designee, a representative of the county attorney's office, and the department head of the responsible department or that department head's designee.
- C. The county records committee in cooperation with the county records manager shall prepare and promulgate classification forms, rules and guidelines.
- D. The county shall create a new record or new record series only as may be reasonably necessary and appropriate and shall have no obligation to create a new record or new record series in response to

a request from a member of the public if the record requested is not otherwise regularly kept or maintained.

- E. The county acknowledges and supports the personal right of privacy retained by persons who may be the subject of government records and therefore the sensitive nature of particular records which name or allow ready identification of individuals shall generally not be classified as public records, unless the classification review committee and the county records manager determine that the public's right of access clearly outweighs the individual's right of privacy in relation to any personal data or records. (Ord. 92-02; amd. Ord. 97-01)

2.64.080: **ACCESS TO PRIVATE, CONTROLLED AND PROTECTED RECORDS:** Subject to the provisions of this chapter and the act regarding access procedures, fees, response time, denials and appeals, access to private, controlled and protected county records shall be made available and allowed as follows:

- A. Upon request, private records shall be made available only to:
1. The subject of the record.
 2. The parent or legal guardian of an unemancipated minor who is the subject of the record.
 3. The legal guardian of a legally incapacitated individual who is the subject of the record.
 4. An individual having a lawful written power of attorney from the subject of the record; an individual who submits a notarized executed release from the subject of the record or the legal representative of that person; provided, that such release was executed and acknowledged not more than ninety (90) days before the date of the request.
 5. An individual designated by a court order issued by a court of competent jurisdiction and which order specifies the release of the requested private record to that person.
- B. Upon request, controlled records shall be made available only to:
1. A physician, psychologist or certified social worker who is designated in a notarized executed release from the subject of the

record; provided, that such a release is dated no more than ninety (90) days prior to the date the request is made and submitted to the county, together with a signed statement by such designated physician, psychologist or certified social worker stating that he may not under state law or this chapter disclose controlled information from that record to any person, including the subject of the record.

2. An individual who is designated by a court order issued by a court of competent jurisdiction if the order specifies the release of the requested controlled record to that designated person.

C. Upon request, protected records shall be made available only to:

1. The person who submitted the record;

2. Any other individual who has a lawfully executed and acknowledged power of attorney from all persons, governmental entities or political subdivisions whose interest were sought to be protected by the protected classification; or submits a properly notarized and executed release from all persons, governmental entities or political subdivisions whose interests were sought to be protected by the protected classification or from their legal representatives; provided, that such release shall be dated no later than ninety (90) days prior to the date the request is made;

3. An individual designated by a court order issued by a court of competent jurisdiction and which order specifies the release of the requested protected record to that designated person.

D. Under circumstances set out by the act, it may be appropriate to disclose nonpublic county records to persons other than those specified in this chapter. The determination to so release records shall be at the discretion of the department head of the responsible department and county records manager, and that determination shall be consistent with the act and upon the advise of the county attorney or his deputy.

E. Reasonable accommodations regarding access to county records shall be provided to persons with disabilities in accordance with policies developed under this or other applicable chapter. (Ord. 92-02)

2.64.090: REQUESTS:

- A. Subject to the provisions of this chapter and the act, requests shall be made and responded to in accordance with the procedures, rules and forms developed by the Cache County records committee.
- B. The county may, as determined appropriate by the department head of the responsible department responding to a request for a county record which is classified as public, notify the subject of the requested record or the legal representative of the subject of a requested record that a request for access to the subject's record has been made.
- C. If a request is made for a record which is classified as private, controlled or protected, the department head of the responsible department responding to a request for a record shall notify the subject of such record or the lawful guardian of such record that the request has been made.
- D. If a request is made for a record and either an appeal is taken by the requester regarding the propriety of the classification of the record or denial of access thereto, a controversy arises as to access to the requested record, or circumstances exist in which the requester claims that the public interest in access to the requested record outweighs the privacy interest of the subject of that record, the department head of the responsible department responding to the request shall notify the subject of the record, or the legal representative of the subject of the record, of the request.
- E. If a request for a record is or becomes contested, the department head of the responsible department responding to the request may require that the requester provide a written release from the subject of the records, or the legal representative of the subject of the records, before access to the requested records is provided.
- F. In circumstances where a records public or nonpublic status is not specifically established by the act or another statute, this chapter, or policies established or designations made under this chapter, the public's right to access and the record's subject's right of privacy must be compared. The county shall not release any records when to do so would constitute a clearly unwarranted invasion of personal privacy, in accordance with the act and the procedures established in this chapter. (Ord. 92-02)

2.64.100: FEES:

- A. Fees for copies of records and services shall be charged on a reasonable basis to reimburse the county for the actual costs of duplication and compilation of a record in a form other than that regularly maintained by the county. No fees shall be charged to inspect public records.
- B. Fee amounts specified by statute shall be imposed and collected by the responsible department. The responsible department may waive charges if the department head determines that:
1. Releasing the record primarily benefits the public rather than an individual person;
 2. The individual requesting the record is the subject of the record;
or
 3. The requester's rights are directly implicated by the information in the record and the requester is impecunious.
- C. The county shall charge a fee equivalent to the cost of services provided to an individual and any public or private agency for those individual's or agency's sole or personal use. Services or information provided to any individual or any agency for resale shall be charged at the fair market value of such services or information; provided, that such fee shall be never less than the full cost incurred by the county in the provision of such information or services.
- D. The county records committee, in cooperation with the county records manager, shall review the full cost of providing records services at least annually and make recommendations to the county council.
- E. The county council shall approve all fee schedules for use by all county departments.
- F. Fee schedules shall be uniform throughout the county.
- G. If a request for a record requires extraordinary services, the requester shall be given an estimate of approximate costs before such extraordinary costs are accrued.
- H. Payment of fees shall be required at the time records are made and delivered to the requesting party, except that if fees are anticipated

to exceed fifty dollars (\$50.00), the department from which the record is requested may require payment in advance in full or in part. (Ord. 92-02; amd. Ord. 97-01)

2.64.110: RESPONSES:

- A. It is the policy of the county that all records which may be made available to a requesting party shall be made available within a reasonable time after the request and at a reasonable cost as set forth in this chapter.
- B. Requests shall be made or forwarded to the responsible department and that department shall be responsible for responding to the request.
- C. If the responsible department is unable to immediately respond to a request for a record, the requester shall be required to complete and submit to that department a written request for a record on forms provided by the county. The date and time of the request shall be stated on the request form.
- D. The responsible department upon whom a request is made may respond to that request for a record by:
 - 1. Approving the request and providing the records;
 - 2. Denying the request;
 - 3. Notifying the requester that the county does not maintain the record;
 - 4. Notifying the requester that the county cannot immediately approve or deny the request; or
 - 5. Specifying that the request may not immediately be fulfilled but will be responded to on or before a specific date;
 - 6. Forward the request to the correct responsible department if it is not in fact the correct responsible department.
- E. It is the intent of the county that all written requests for a public record be fulfilled within five (5) business days after that request is submitted as may be reasonably possible.

- F. Extraordinary circumstances may exist which shall justify the responsible department's inability or failure to respond to a written request for a public record within five (5) business days. Such extraordinary circumstances shall extend the intended time for response to fifteen (15) business days from the date that the request is made and shall include the following circumstances:
1. The responsible department, another county department or agency, or another governmental entity is using the record requested;
 2. The record requested is either voluminous or requires the department, or any other department, to review a large number of records in order to locate the records requested;
 3. The responsible department is currently processing either a large number of requests for records or is engaged in extraordinary current work loads and under the constraints of statutory or contractual deadlines with respect to other services and work;
 4. The request involves the need for a legal opinion and the analysis of applicable statutes, rules, ordinances, regulations or case law;
 5. The request involves extensive editing to segregate public information in a record from that which is not public; or
 6. Providing the information in the format requested or separating information from that which is not public requires special services including, but not limited to, computer programming.
- G. If an extraordinary circumstance exists, either as listed in the foregoing subsection or which is determined at the time of the request to be extraordinary by the county records manager, response to the request shall be made as soon as reasonably possible and the requester shall be given an estimate of the amount of time necessary to fulfill the request.
- H. Subpoenas and any court pleadings served under the provisions of applicable state or federal statutes or rules of civil, criminal or administrative procedure are not deemed written requests under section 2.64.080 or 2.64.100 of this chapter.
- I. The county shall comply with civil, criminal and administrative discovery pleadings in accordance with the provisions of applicable statutes, rules of procedures and court orders.

- J. In the event of the service of a subpoena, discovery pleading or court order regarding the disclosure of records or making records available to designated parties, such subpoena, pleading or order shall be immediately forwarded to the Cache County attorney for legal analysis, opinion and advice. Such legal opinion and advice shall be submitted in written form by the county attorney to the county records manager and the department head of the responsible department for response.
- K. If the county receives a request for access to a record that contains both information to which the requestor is entitled and information to which the requestor is not entitled, the department head of the responsible department shall allow the requestor to inspect and obtain copies of those records to which the requestor is entitled but shall deny access to those records to which the requestor is not entitled.
- L. The responsible department upon which a request is made for a record shall maintain a request log and record of any extraordinary circumstances, written responses, denials and legal opinions with respect to such requests.
- M. The responsible department is not obligated to provide certified copies of that record unless obligated to do so by statute. (Ord. 92-02; amd. Ord. 97-01)

2.64.120: DENIAL:

- A. If the responsible department denies the request in whole or in part, the responsible department shall provide a written notice of denial to the requestor and state a description of the record requested, classification of that record, a statement that the requestor has the right to appeal the denial to the county executive, the time limits for filing an appeal, and the name and address of the county executive.
- B. The responsible department shall not destroy or give custody of any record to which access has been denied until the period for an appeal has expired and no appeal has been made or until the completion of the appeals process, including judicial appeal.
- C. Notwithstanding that a request for access to a record has been denied or that an appeal has been filed with respect to that denial, access may be allowed to that record and copies made thereof by

those requesters entitled to access to that record who have complied with the requirements of this chapter. (Ord. 92-02)

2.64.130: APPEALS:

- A. Appeals with respect to the classification of a record or to the county's response to a records request are administrative in nature and any person purportedly aggrieved by the county's classification of a record or response to a record request may request and be granted an initial administrative review of that grievance.
- B. The request for an initial administrative review shall be made within five (5) business days of the date of the action sought to be reviewed or of the date when the requester was notified of the classification of the requested record or of the county's response to the request. The request for the initial administrative review shall be made on forms provided by the county.
- C. The aggrieved requester shall file the request for the initial administrative review with the county records manager. The county records manager shall render a decision within five (5) business days of the receipt of the request for the initial administrative review. That decision shall be in writing and a copy thereof given to the requester and to the responsible department. The decision shall state the findings and reasons upon which the decision is based.
- D. If the requester is aggrieved by the decision of the county records manager on the initial administrative review, or if the requester chooses not to seek an initial administrative review by the county records manager, the requestor may file a notice of administrative appeal with the county executive.
- E. Notices of administrative appeals shall be submitted within thirty (30) days of the date of issuance of the decision by the county records manager on the initial administrative review, or within thirty (30) days of the access determination.
- F. Notices of administrative appeals shall be in writing, signed by the appellant, and on forms provided by the county. The appellant shall fully complete the form and provide the requested information, which shall include at least the following:
 - 1. The appellant's name, mailing address and daytime telephone number;

2. The relief sought; and
 3. A short statement of facts, reasons and the basis for the appeal.
- G. The county executive shall make a determination on the appeal within five (5) days after receipt of the notice of appeal. If he fails to make a determination within that time, the appeal shall be deemed denied. The county executive may, upon consideration of various interests and public policies pertinent to the classification and disclosure or nondisclosure, order the disclosure of information properly classified as private or protected if the interest favoring access outweigh the interest favoring restriction of access.
- H. The decision of the county executive shall be in writing and shall state the findings and reasons upon which the decision is based and include a statement that the appellant has the right to appeal the denial to either the county records committee or the district court, the time limits for filing such an appeal, and the business address of the county records committee.
- I. If the appellant desires to appeal the decision of the county executive, the appellant shall file a new notice of administrative appeal with the county records manager, within thirty (30) days of the decision of the county executive on the administrative appeal, and upon forms provided by the county:
1. The county records manager shall send a written notice by certified mail of the time, date and location of the hearing to the requester and shall also provide notice of the hearing to the department head of the responsible department and the members of the county records committee.
 2. A hearing shall be conducted by the county records committee upon the appeal and that hearing shall be conducted in accordance with policies adopted by the county and in compliance with the provisions of the Utah open and public meetings act.
 3. The hearing shall be conducted within twenty one (21) calendar days following the appeal request.
 4. Failure of the county records committee to issue a written decision within five (5) calendar days after the conclusion of the hearing grants to the requester the right to take the appeal to the district court.

5. Decisions of the county records committee shall include specific findings, reasons for its decision and its decision. Copies of that decision shall be submitted to the appellant, the county records manager and the department head of the responsible department. (Ord. 92-02; amd. Ord. 97-01)

2.64.140: **LIABILITY:** Neither the county nor any of its officers or employees shall be liable for damages resulting from the release of a record where the requester presented to the county appropriate evidence of authority to obtain the record even if it may be subsequently determined that the requester did not in fact have lawful authority to obtain the record. (Ord. 92-02)

2.64.150: **AMENDMENT OF RECORDS:**

- A. The county is not obligated to amend any record even though requested to do so.
- B. Any individual may request the responsible department to amend a record to make the record more accurate or complete. The request shall be in writing and contain the following information:
 - 1. The requester's name, mailing address and telephone number; and
 - 2. A statement explaining the reasons for amending the record.
- C. The department head of the responsible department shall issue a written response approving or denying the request to amend within ten (10) business days after the request for the amendment was received. The response shall include the recommendations of the department head.
- D. The department head shall submit the written response to the county records manager who shall review the response with the county records committee. The records manager shall then notify the department head and the requesting party of the review decision.
- E. If either the department head or the requester does not find the review decision acceptable, either may appeal that decision to the Cache County executive, who shall review the request, the department head's response and recommendations, and the review decision. The county executive shall then render a written decision

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notifying the requestor, department head and the county records manager of his decision.

- F. Requests to amend records shall not apply to records relating to title, real or personal property, medical records, assessed values, or other values utilized for tax purposes. (Ord. 92-02)

2.64.160: COUNTY RECORDS MANAGER:

- A. The office of "county records manager" for Cache County is established. The county records manager shall be appointed by the county executive with and upon the advice and consent of the Cache County council and with such duties and compensation as may be determined at that time.
- B. The duties of the county records manager shall include, but not be limited to, the following:
1. Review and make recommendations for the development of guidelines, regulations and administration of a county records management program.
 2. Supervise the county records management program.
 3. Assist in the preparation and maintenance of an inventory of county records.
 4. Provide assistance and training to county personnel for the handling, preservation, retention and management of county records.
 5. Act as the liaison and contact agent for the county with the Utah state archives and records service, department of administrative services and work with that agency in the care, maintenance, scheduling, designation, classification, disposal and preservation of records.
 6. Administer and assist with the performance of the county records management and custodial agreement with Utah state university of agricultural and applied sciences for special materials as defined in that agreement.
 7. Perform such other services and duties as may be requested by the county council or elected county officials regarding records. (Ord. 92-02)

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2.64.170: **COUNTY RECORDS COMMITTEE:**

- A. There is created the county records committee which shall be comprised of those members and be charged with those duties as specified in this section.
- B. The county records manager shall be the chairperson of the county records committee. Members of the committee shall include the department heads, or their designees, of each county department, the county executive, the county records manager, and any other person deemed necessary and appropriate by the county executive.
- C. The county records committee shall be responsible to:
 - 1. Establish, schedule and cause to be conducted regular training for each county department with respect to the act, this chapter and the classification, management, maintenance, designation and preservation of records.
 - 2. Develop records maintenance and access policies and procedures to govern and implement the provisions of the act and this chapter.
 - 3. Develop policies and guidelines pertaining to the retention and maintenance of county records to assure that due care is taken to maintain and preserve county records safely and accurately. (Ord. 92-02)

2.64.180: **RULES AND POLICIES:** Copies of all rules and policies developed, adopted and promulgated under this chapter shall be submitted to the Utah state division of archives and records service within thirty (30) days of the effective date of such rules and policies. (Ord. 92-02)

2.64.190: **PROPERTY:** Pursuant to Utah Code Annotated section 63-2-905, all records created or maintained by the county are the property of the state. (Ord. 92-02; amd. Ord. 97-01)

2.64.200: **COUNTY CLERK:** Nothing in this chapter shall be construed to alter or diminish the authority and duties of the county clerk as set forth in state law or other county ordinances and policies with respect to records custody and management. (Ord. 92-02)

2.64.210: COMPUTER DATA:

- A. The county has the right to store and maintain any and all county records on any type of computer, data processor or other electronic information storage system which it deems reasonable and appropriate unless otherwise prohibited by state law.
- B. All data and information contained on computers shall, if properly classified in accordance with the act and this chapter, as a public record be available to a requester within a reasonable time and at a reasonable cost.
- C. Access to computer information shall be allowed only in the manner determined by the department head of the responsible department, the county data processing officer and the county records manager and may include, but is not necessarily limited to, the following methods:
 - 1. Allowing the requester to use a county computer terminal to retrieve and inspect data on the terminal screen; provided, however, that sufficient precautions be exercised to ensure that any data which might be defined by the act or this chapter as not being public records shall not be retrieved or displayed on the screen nor able to be printed by the requester and that any data may not be altered or deleted by the requester.
 - 2. Providing copies of computer printouts or computer tapes, discs, or other means of transmitting information if so requested by the requestor; provided, however, that appropriate precautions be exercised to ensure that any data or files which may be defined by the act or this chapter as not being public records will not be retrievable by the requester and that appropriate safeguards are taken to avoid contamination of the county computers by the insertion of discs provided by a requester.
 - 3. Providing access to county computer, data processing or electronic information systems by remote terminals pursuant to a written executed contract allowing such access; provided, however, that appropriate precautions be exercised to ensure that any data or files which may be defined by the act or this chapter as not being public records will not be retrievable by the requester and that appropriate safeguards are taken to avoid contamination of the county computers by the insertion of discs provided by a requester.

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- D. Computer software, whether for word processing or data management, is not considered a public record nor data. Computer software shall not be subject to disclosure under this chapter or the act. Software shall include, but not be limited to, copyrighted software and other materials which have been purchased by or licensed to the county or which have been developed by the county.
- E. Department heads shall exercise due diligence to protect the security of the county computers, data processors and electronic information systems, including the software, data, files and other materials contained therein. (Ord. 92-02)

2.64.220: **SHARING:** In addition to the sharing of records authorized and specified by the act and unless contrary to federal or state law, the Cache County attorney's office is specifically authorized to share records with the Utah department of corrections, law enforcement agencies, and other prosecutors; the Cache County auditor is authorized to share records with contracted independent auditors; and the tax assessor is authorized to share records with the Utah state tax commission. (Ord. 92-02)