

**GARFIELD COUNTY ORDINANCE NO. 1995-1**

**AN ORDINANCE ESTABLISHING COUNTY POLICIES REGARDING THE MAINTENANCE AND PRESERVATION OF ACCURATE PUBLIC RECORDS; PROVIDING FOR ACCESS TO RECORDS BY MEMBERS OF THE PUBLIC AND IN ACCORDANCE WITH STATE STATUTE; SETTING OUT RESPONSE TIME REQUIREMENTS AND FEES FOR PUBLIC RECORD ACCESS REQUESTS; AND ESTABLISHING OTHER PROCEDURES REGARDING THE STORAGE OF AND ACCESS TO GOVERNMENTAL RECORDS HELD BY THE COUNTY.**

The Board of County Commissioners of the County of Garfield, State of Utah, hereby Ordains as follows:

**SECTION 1. FINDINGS:** The Board of County Commissioners of Garfield County, State of Utah, hereby finds the following:

A. It is in the best interests of Garfield County and the citizens thereof, and essential for the administration of County government, to maintain and preserve accurate governmental records; to provide ready access to records which are defined by law as open to the public; to maintain the security of records which are defined by law as non -public; and to ensure the preservation of vital and historically valuable records.

B. The records of Garfield County government agencies are a resource containing information which (1) allows government programs to function; (2) provides officials with a basis for making decisions and ensuring continuity with past operations; and (3) permits citizens to research and document matters of personal and community importance; this resource must be systematically and efficiently managed.

C. It is the policy of the county that all governmental records, which are defined by applicable Utah Statute and case law as public records, shall be made available to citizens within a reasonable time after request and at a reasonable cost as set forth in this ordinance.

D. The County recognizes public policy interest in allowing the government to restrict access to certain records, as specified in the Government Records Access and Management Act and this Chapter, for the public good.

**SECTION 2. PURPOSE:** In enacting this chapter, it is the purpose and intent of the Board of County Commissioners of Garfield County, State of Utah, to provide, in accordance with the Government Records Access and Management Act (hereinafter referred to as "the Act"), Chapter 2 of Title 63 of the Utah Code Annotated

(1953, as amended), an Ordinance acknowledging and complying with the Act and providing for its application in the County. County agencies shall comply with the provisions of this Ordinance and with the Act and shall also comply with other federal and state statutory and regulatory record-keeping requirements.

**DEFINITIONS:** As used in this ordinance, the following definitions shall be applicable:

A. "Act" shall refer to the Government Records Access and Management Act, Section 63-2-1, et seq., Utah code Annotated, (1953, as amended).

B. "Agency" shall refer to any office, department, division, section, staff office, board, committee or other division of Garfield County government, any public or private entity or person which contracts with the County to provide goods or services directly to the County, or any private, non-profit entity that receives funds from the County.

C. "Computer Software Program" means the series of instructions or statements that permit the functioning of a computer system in a manner designed to provide storage, retrieval, and manipulation of data from the computer system, and any associated documentation, manuals, or other source material explaining how to operate the software program. "Software" does not include the original data or record which is manipulated by the software.

D. "Controlled Records" shall be those defined as controlled under the provisions of this Ordinance and in accordance with the provisions of the Act.

E. "Data" shall refer to individual entries (for example, birth date, address, etc.) in records.

F. "Designate" or "Designation" means to give an initial or primary classification to a record or record series indicating the likely classification that a majority of such records or record series would be given if classified.

G. "Dispose" means to destroy, or render irretrievable or illegible, a record or the information contained in it by any physical, electronic, or other means including unauthorized deletion or erasure of electronically recorded audio, visual, non-written formats, data processing, or other records.

H. "Non-public Records" shall refer to those records defined as private, controlled, or protected under the provisions of this Ordinance and of the Act.

I. "Private Records" shall refer to those records classified as private under the provisions of this Ordinance and of the Act.

J. "Protected Records" shall refer to those records classified as protected under the provision of this Ordinance and the Act.

K. "Public Records" shall refer to those records which have not been classified as non-public in accordance with the provisions of this Ordinance and the Act.

L. 1. "Record" means all books, letters, documents, papers, maps, plans, photographs, films, cards, tapes, recordings, or other documentary materials, and electronic data regardless of physical form or characteristics, prepared, owned, used, received, or retained by the County where all the information in the original is reproducible by some mechanical, electronic, photographic or other means.

2. "Record" does not mean:

(a) Temporary drafts or similar materials prepared for the originator's personal use or prepared by the originator for the personal use of a person for whom he is working;

(b) Materials that are legally owned by an individual in his private capacity;

(c) materials to which access is limited by the laws of copyright or patent, unless owned by the County;

(d) Junk mail or commercial publications received by the County or by an officer or employee of the County;

(e) Books and other materials that are catalogued, indexed, or inventoried and contained in the collections of County libraries open to the public, regardless of physical form or characteristics of the material;

(f) Personal notes or daily calendars prepared by any County employee for personal use or the personal use of a supervisor, or such notes, calendars or internal memoranda prepared for the use of an officer or agency acting in a quasi-judicial or deliberative process or pursuant to matters discussed in a meeting closed pursuant to Utah Open Meetings Act; or

(g) Proprietary computer software programs as defined in Subsection C, above, that are developed or purchased by or for the County for its own use.

### SECTION 3. PUBLIC RIGHT OF ACCESS:

A. Members of the public shall have the right to see, review, examine and take copies, in any format maintained by the County, and subject to Section 17 hereof, of all County governmental records designated as "public" under the provisions of this Ordinance and of the Act and any policies and procedures

developed hereunder.

B. The County has no obligation to create a record or record series in response to a request from a member of the public, if the record requested is not otherwise regularly maintained or kept.

C. When a record is temporarily held by a custodial County agency, pursuant to that custodial agency's statutory and ordinance functions, such as records storage, investigation, litigation or audit, the record shall not be considered a record of the custodial agency for the purposes of this Chapter. The record shall be considered a record of the agency or agencies which usually keeps or maintains that record and any requests for access to such records shall be directed to that agency or agencies, rather than the custodial agency, pursuant to procedures established by the County.

#### SECTION 4. PUBLIC RECORDS:

A. Public records shall be those County records as defined in the Act, Section 63-2-201 Utah Code Annotated (1953, as amended) as public. Public records shall be made available to any person. All County records are considered public unless they are expressly classified otherwise in accordance with policies and procedures established by this Ordinance and the Act or are made non-public by the Act or other applicable law.

B. Private records shall be those County records classified as "private", as defined in the Act, Section 63-2-302 Utah Code Annotated (1953, as amended) and as classified and defined in procedures established pursuant to this Ordinance and in accordance with the Act. Private records shall be made available to the following persons: The subject of the record, the parent or legal guardian of a unemancipated minor who is the subject of a record, the legal guardian of an incapacitated individual who is the subject of the record, any person who has a power of attorney or a notarized release dated not more than ninety (90) days prior to the request from the subject of the record or his legal representative, or any person in possession of a legislative subpoena or a court order issued by a court of competent jurisdiction.

C. Controlled records shall be those County records classified as "controlled", as defined in the Act, Section 63-2-303, Utah Code Annotated (1953, as amended) and as classified and defined in procedures established in this Ordinance and in accordance with the Act. Controlled records shall be made available to a physician, psychologist, or licensed social worker who submits a notarized release dated not more than ninety (90)

days prior to the request, from the subject of the record or any person presenting a legislative subpoena or a court order signed by a judge of a court of competent jurisdiction.

D. Protected records shall be those County records classified as "protected", as defined in the Act, Section 63-2-304 Utah Code Annotated (1953, as amended) and as classified and defined in procedures established in this Ordinance and in accordance with the Act. Protected records shall be made available to the person who submitted the record, to a person who has power of attorney or notarized release dated not more than ninety (90) days prior to the request from any persons or governmental entities whose interests are protected by the classification of the record or to any person presenting a legislative subpoena or a court order regarding the release of the information and signed by a judge of a court of competent jurisdiction.

E. Under circumstances set out by the Act, it may be appropriate to disclose non-public county records to persons other than those set out in this section. The determination to so release records shall be at the discretion of the Department Director or elected official or designee, consistent with the Act, and upon the advice of the Attorney.

#### **SECTION 5. PRIVACY RIGHTS:**

A. Garfield County recognizes and upholds the personal right of privacy retained by persons who may be the subject of governmental records. The County also recognizes that the Act and Utah case law establish a presumption that governmental records will generally be considered open and public, with certain specific exceptions. In circumstances where a record's public or non-public status is not specifically established by the Act or another statute, by this Ordinance or by policies established or designations made under this Ordinance, the public's right to access and the record 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 procedures established by this Ordinance. Under certain circumstances and procedures established by this Ordinance, certain items of data may be rendered non-public, although other items of data in the record, or the record itself, may be classified as public.

B. The County may, in the discretion of the head of the department of the agency responding to a request for records, notify the subject of a record that a request for access to the subject's record has been made.

**SECTION 6. CLASSIFICATION OF RECORDS:**

All County records and record series, of any format, shall be evaluated, designated, classified and scheduled for retention according to the provisions of the Act and this Ordinance. The County may designate or redesignate or clarify or reclarify records or data at any time and is not required to classify a particular record or item of data until access thereto is requested. Any records or record series generated in the future shall also be so designated, classified and scheduled for retention. Records designation, classification and scheduling for retention shall be conducted under the supervision of and proposed schedules submitted to the County Records Officer who shall be assisted by a Records Classification and Retention Review Committee consisting of the Records Officer or designee and the head of the County department in charge of the record in question, or his/her designee. Assistance may be requested from the County Attorney as needed. Designation, classification and retention scheduling forms and guidelines shall be prepared and promulgated by the Records Officer.

**SECTION 7. WRITTEN REQUESTS FOR RECORDS:**

A. Under circumstances in which a department is not able to immediately respond to a records request, the requester shall fill out and present to the department a written request on forms provided by the County. The date and time of the request shall be noted on the written request form and all time frames provided under this Ordinance shall commence from that time and date. Requesters of non-public records shall adequately identify themselves and if applicable, their status when requesting access to non-public records.

B. A department may respond to a request for a record by approving the request and providing the records, denying the request, or such other appropriate response as may be established by policies and procedures. If a written request is denied in whole or in part, the agency should provide a notice of denial to the requester. The denial notice shall include the reasons for the denial and information regarding the appeals process and such other information as may be required by this Ordinance and the Act.

C. 1. An agency shall respond to a written request for a record as soon as reasonably possible, but no later than ten (10) business days after receiving the request or five (5) business days after receiving a request if the requester satisfactorily demonstrates that an expedited response time primarily benefits the public at large, rather than the requester individually. A requester seeking records for publication or broadcast purposes is presumed to be acting primarily for the benefit of the public at

large.

2. The following extraordinary circumstances shall justify a department's failure to timely respond to a written request for a record, ten (10) business days and shall extend the time for response thereto to that time reasonably necessary to respond to the request, as determined by the department head. Extraordinary circumstances shall include but not be limited to the following:

(a) The department, another department, or some other governmental entity is currently and actively using the record requested;

(b) The record requested is for a voluminous quantity of records or requires the department to review a large number of records or perform extensive research to locate the materials requested;

(c) The department is currently processing a large number of records requests or is subject to extraordinary seasonal work loads in the processing of other work;

(d) The release of the record involves legal issues that require an agency to seek legal counsel for analysis of applicable laws;

(e) The request involves extensive editing to separate public data in a record from that which is not public; or

(f) Providing the information requested requires computer programming or other format manipulation.

3. When a timely response cannot be made to a record request, the agency shall notify the register that it cannot immediately approve or deny the request because of one of the extraordinary circumstances listed above, and provide an explanation of the circumstances and an estimate of the time required to respond to the request. If the agency fails to provide the requested record within the estimated time, that failure shall be considered a denial of the request.

D. The failure or inability of a department to respond to a request for a record within the time frames set out herein, or the department's denial of such a request, shall give the requester the right to appeal as provided by this Ordinance.

E. Any County record which is subject to litigation, criminal investigation or audit or has been requested in accordance with this Ordinance and the Act, that is disposable by approved retention schedule, may not be disposed of until the litigation or audit has been resolved or the request is granted and fulfilled, or sixty (60) days after the request is denied if no appeals are filed, or sixty (60) days after all appeals are completed, pursuant to the appeals provision of this Ordinance.

F. In response to a request for access, an agency may redesignate or reclassify the record or segregate data in the requested record in accordance with this Ordinance and the Act.

**SECTION 8. FEES.**

A. An agency may charge a reasonable fee to cover its actual cost of duplicating a record or compiling a record in a form other than that maintained by the agency.

B. An agency may fulfill a record request without charge and is encouraged to do so when it determines that:

1. releasing the record primarily benefits the public rather than a person;
2. the individual requesting the record is the subject of the record; and,
3. the requester's rights are directly implicated by the information in the record, and the requester is impecunious.

C. Fee policies adopted by the County shall be consistent with this section.

**SECTION 9. APPEALS:**

A. 1. Persons aggrieved by the County's classification of a record or by an agency's response to a record request may request and be granted an initial administrative appeal of that grievance, in accordance with County policies. An initial administrative appeal may be made, at the requester's option, to a hearing board convened pursuant to such policies.

2. A written notice of appeal shall be filed with the director of the involved agency, who shall immediately notify the County Clerk. The County Clerk shall institute the initial convening of the appeals hearing within ten (10) business days after the date the written notice of appeal is received.

3. The County Clerk shall send a written notice by certified mail of the date and location of the hearing to the requester, and notice to members of the Board of County Commissioners and the director of the involved agency. The hearing shall be conducted in accordance with policies adopted by the County Commission and with the Utah Open Meetings Act.

4. Failure of the Board of County Commissioners to issue a written decision within five (5) days after conclusion of the hearing grants to the requester the right to carry the appeal to the District Court.

5. The appeal of a decision of the Board of County Commissioners may be made to the District Court, in accordance with the Act and the Utah Rules of Civil Procedure.

6. The appellant shall set forth in writing the nature and date of the request, attaching a copy of the request for, if available, and setting out the basis and legal authority for the request.

7. The decisions of the Board of County Commissioners regarding access to or classification of records shall be forwarded to the County Records Officer for corrective action including any reclassification or designation of data or records which may be necessitated by the appellate decision.

#### **SECTION 10. ACCOMMODATIONS FOR DISABLED:**

Reasonable accommodations regarding access to governmental records shall be provided to persons with disabilities in accordance with policies developed under the provisions of this Ordinance.

#### **SECTION 11. AMENDMENTS OR CORRECTIONS:**

Records held by the County may be amended or corrected as needed. Requests for amendments, corrections, or other changes shall be made in writing to the department having custody of the records and setting forth, with specificity, the amendment or correction requested and the reason for the changes. When an amendment or correction of a government record is made, as a general rule, both the original record and the amended or corrected record shall be retained, unless the nature of the record indicates otherwise or as may be provided by policies and procedures adopted under the provisions of this Ordinance.

#### **SECTION 12. DISCIPLINARY ACTION:**

A. A County employee or other person having lawful custody of County records, who knowingly refuse to permit access to records in accordance with the Act and this Ordinance, or who knowingly permit access to non-public records knowing that such access is prohibited, or who knowingly, without authorization or legal authority, disposes of, alters or removes records or allows other persons to do so in violation of the provisions of the Act, this Ordinance, or other law or regulation may be subject to criminal prosecution and disciplinary action, including termination.

B. In accordance with the Act, neither the County nor any of its departments, officers or employees shall be liable for damages resulting from the release of a record where the requester presented evidence of authority to obtain the record, even if it may be subsequently determined that the requester had no such authority.

### **SECTION 13. COUNTY RECORDS OFFICER;**

A. There shall be appointed a County Records Officer to oversee and coordinate records access and management and County archives activities. The Records Officer shall make annual reports of records services activities to the Board of County commissioners.

B. Each department of County government shall appoint a Records Representative to assist with and be directly responsible for the implementation of this Ordinance. Regular training shall be provided under the direction of the Records Officer to Agency Records Representatives.

D. The Records Officer shall develop and provide records management maintenance and access standards, policies and procedures, as approved by the Board of County Commissioners to govern and implement the provisions of the Act and this Chapter. Copies of any rule or policy promulgated under this Ordinance shall be forwarded by the County Records Officer to the Utah State Division of Archives within thirty (30) days after its effective date. Any department's internal policies regarding records management and access shall be consistent with this Ordinance and state law.

### **SECTION 14. RECORDS MAINTENANCE PROCEDURES:**

A. Records maintenance procedures shall be developed to ensure that due care is taken to maintain and preserve County records safely and accurately over the long term. The Records Officer shall be responsible for monitoring the application and use of technical processes in the creation, duplication, and disposal of County records, and they shall monitor compliance with required standards of quality, permanence, and admissibility pertaining to the creation, use, and maintenance of records. Policies and regulations regarding types and formats of papers, inks, electronic media, and other records and information storage media, materials, equipment, procedures and techniques shall be developed and promulgated, subject to the approval of the Board of County Commissioners.

B. All County records which constitute an intellectual property right shall remain the property of the County unless federal or state legal authority provides otherwise. All other records shall be the property of the State of Utah. Property rights to County may not be permanently transferred from the County records to any private individual or entity, including those legally disposable obsolete County records. This prohibition does not include the providing of copies of County records for release or distribution under this Ordinance. All record disposal shall be conducted in accordance with policies and procedures.

C. Custodians of any County records shall, at the expiration of their terms of office, appointment or employment, deliver custody and control of all records kept or received by them to their successors, supervisors, or to the County Records Officer.

D. All records which are in the possession of any County department shall, upon termination of activities of such department, be transferred to any successor department, or to the County Archives, provided that such transfer is consistent with the formal provisions of such termination.

#### **SECTION 15. COUNTY ARCHIVES:**

It is the responsibility of the section to receive, store, and preserve County agency records and other materials and to store and to provide reasonable access thereto as may be calculated to accurately and safely maintain County records over a long term in compliance with this Ordinance and the Act.

#### **SECTION 16. NON-VERBAL OR NON-WRITTEN FORMATS;**

A. The County retains and reserves to itself the right to use any type of non-verbal or non-written formats for the storage, retention and retrieval of government records, including but not limited to audio tapes, video tapes, micro-forms, and any type of computer, data processing, imaging, or electronic information storage or processing equipment or systems, which are not prohibited by state statute, and which do not compromise legal requirements for record storage, retrieval, security and maintenance, to store and maintain County records. All computerized and non-written format records and data which are properly classified in accordance with the Act and this Ordinance, shall be made available to a requester, in accordance with this Ordinance and the Act.

B. The methods of access to records in non-written formats or data processing systems shall be as determined appropriate by the department head of the department maintaining the records, considering all circumstances. Access may include

but not be limited to the following:

1. By using a County computer terminal or other viewing or listening device to retrieve data directly from the terminal screen or device; provided, however, that due regard shall be exercised to ensure that any non-public records will not be accessed, retrieved or displayed on the device and that records are not erased or damaged;

2. By providing paper or "hard" copies of record printouts or by providing magnetic tapes, disks, or other means of electronic storage containing the non-written format or data processing system records; or

3. By the use, where appropriate, of remote terminals which have access to County computer, data processing, or electronic information systems pursuant to a formal two-party contract permitting such remote terminal access and provided that due regard shall be exercised to ensure that non-public records will not be available by remote terminal access.

C. computer software programs are not considered a record. Software programs shall not be subject to disclosure under this Ordinance or the Act, including copyrighted software and other copyrighted materials which have been purchased by or licensed to the County and software and other materials which have been copyrighted by the County.

#### **SECTION 17. CRIMINAL PENALTIES:**

Knowing violation of this Ordinance is a class B Misdemeanor, punishable as set forth in the Utah State Criminal Code.

#### **SECTION 18. JUSTICE COURT RECORDS:**

Records activities of the County Justice Court system shall comply with and be governed by Section 63-2-702 of the Act.

#### **SECTION 19. EFFECTIVE DATE:**

This Ordinance shall become effective fifteen days after its passage and upon at least one publication in a newspaper published in and having general circulation in Garfield County. After approval and adoption, a copy and summary of this Ordinance shall be forwarded by the County Records Officer to Utah State Archives.



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