

ORDINANCE NO. 1-93

AN ORDINANCE OF WEBER COUNTY ESTABLISHING COUNTY POLICIES REGARDING THE MAINTENANCE AND PRESERVATION OF ACCURATE PUBLIC RECORDS; PROVIDING 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; DESIGNATING A COUNTY RECORDS OFFICER; PROVIDING AN APPEAL PROCESS FOR DENIAL OF RECORD REQUESTS; AND ESTABLISHING OTHER PROCEDURES REGARDING THE STORAGE OF AND ACCESS TO GOVERNMENTAL RECORDS HELD BY THE COUNTY.

WHEREAS, it is in the best interest of Weber 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 preserve records of vital and historical value, and

WHEREAS, the records of Weber 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; and

WHEREAS, it is in the best interests of Weber County and the citizens thereof that this resource be systematically and efficiently managed, and

WHEREAS, it is the policy of Weber County that all governmental records which are defined by applicable statutory and case law as public records shall be made available to citizens as hereinafter set forth in this ordinance, and

WHEREAS, the County recognizes a public policy interest in allowing the government to restrict access to certain records as specified in State law and in this chapter, and

WHEREAS, in enacting an ordinance, it is the purpose and intent of the Board of Weber County Commissioners to provide, in accordance with the Government Records Access Management Act, hereinafter referred to as "the Act", (63-2-101 et. seq., Utah Code Annotated 1953 as amended) an ordinance acknowledging and complying with the Act and providing for its application in the County, and

WHEREAS, it is in the best interests of Weber County and the citizens thereof that all 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,

NOW THEREFORE, the Board of Weber County Commissioners hereby ordains and adopts as follows:

SECTION ONE
DEFINITIONS

A. "Act" shall refer to the Government Records Access and Management Act, Subsection 63-2-101, 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 Weber County Government, and 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) 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 provisions 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 TWO RECORDS CLASSIFICATION

A. CONTROLLED RECORDS

Controlled records shall be those County records classified as "controlled", as defined in the Act and as classified and defined in procedures established in this chapter 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 90 days prior to request from the subject of the record or any person presenting a legislative subpoena or a court order signed by a judge of competent jurisdiction.

B. PRIVATE RECORDS

Private records shall be those County records classified as "private", as defined in the Act and as classified and defined in procedures established pursuant to this chapter 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 an unemancipated minor who is the subject of the 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 90 days prior to the request from the subject of the record or his legal representative, or any person possessed of and serving a legislative subpoena or a court order pursuant to a court of competent jurisdiction.

C. PUBLIC RECORDS

Public records shall be those County records as defined in the Act 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 under this chapter and the Act or made non-public by the Act or other applicable law.

Members of the public shall have the right to see, review, examine and take copies in any format maintained by the County all County governmental records designated as "public" under the provisions of this chapter, and of the Act and policies and procedures developed hereunder.

D. PROTECTED RECORDS

Protected records shall be those County records classified as "protected", as defined in the Act and as classified and defined in procedures established in this chapter 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 a notarized release dated not more than 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 for a court order regarding the release of the information and signed by a judge of competent jurisdiction.

SECTION THREE PRESUMPTION OF PUBLIC STATUS

The 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 establishes a presumption that governmental records will generally be considered open and public, with certain specific exceptions. In circumstances where a records 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 subjects 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 in this ordinance. Under 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 public.

SECTION FOUR DESIGNATION, CLASSIFICATION AND RETENTION OF RECORDS

All County records and records series, of any format, shall be evaluated, designated, classified and scheduled for retention 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 a particular record or item of data until access thereto is requested. Any records or records 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 schedule 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 agency director of the agency in charge of the record in question, or 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 and the Records Policy Administration.

SECTION FIVE PROCEDURE FOR PROVIDING RECORDS

A. A person may request a record from any County department at any time either orally or in writing.

B. Under circumstances in which an agency is not able to immediately respond to a records request, the requestor shall fill out and present to the agency a written request on forms provided by the County. The date and time of the request shall be noted on the written request form at all times provided under this chapter shall commence from that time and date. Requestors of non-public records shall adequately identify themselves and, if applicable, their status when requesting access to non-public records.

C. An agency 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 shall provide a notice of denial to the requestor. The denial notice shall include the reasons for denial and information regarding the appeals process and such other information as may be required by this chapter and the act.

D. 1. An agency shall respond to a written request for a record as soon as is reasonably possible, but not later than 10 business days after receiving the request or five business days after receiving the request if the requestor satisfactorily demonstrates that an expedited response time primarily benefits the public at large, rather than the requestor individually. A requestor 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 an agency's failure to timely respond to a written request for a record and shall extend the time for response thereto to that time reasonably necessary to respond to the request, as determined by the agency director. Extraordinary circumstances include:

- a. The agency, another agency, or some other governmental entity is currently actively using the record requested;
- b. The record requested is for either a voluminous quantity of records or requires the agency to review a large number of records or perform extensive research to locate the materials requested;

- c. The agency is currently processing either a large number of records requests or is subject to extraordinary seasonal work loads in the processing of other work;
- d. The release of a record involves legal issues that require an agency to seek legal counsel for an analysis of political law;
- 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.

When a timely response cannot be made to a record request, the agency shall notify the requestor 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 an agency to respond to a request for a record within the time frame set out herein, or the agency's denial of such a request, shall give the requestor the right to appeal as provided in this chapter.

E. Any 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 60 days after the request is denied if no appeals are filed, or 60 days after all appeals are completed.

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 chapter and the Act.

G. The County or any agency thereof 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.

H. When a record is temporarily held by a custodial County agency pursuant to that custodial agency's statutory and ordinance functions, such as record 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 agency's which usually keeps or maintains that record and in a request for access to such records shall be directed to that agency or agency's, rather than the custodial agency, pursuant to procedures established by the County. Only when records have been formally filed for permanent or archival retention shall County archives be responsible for responding to requests for another agency's records.

**SECTION SIX
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; or
3. The requestor's rights are directly implicated by the information in the record, and the requestor is impecunious.

**SECTION SEVEN
APPEALS**

A. 1. A person who is aggrieved by the County's classification of a record or by the agency's response to a record request may request and be granted an initial administrative appeal of that grievance, in accordance with the policies adopted by the Records Policy Administration. An initial administrative appeal may be made, at the requestors' option, to a hearing board convened pursuant to policies adopted by the Records Policy Administration.

2. A written notice of appeal shall be filed with the director of the involved agency, who shall immediately notify the County Records Officer. The Records Officer shall institute the initial convening of the Hearing Board within 10 business days after the date the written notice of appeal is received.

3. The Records Officer shall send a written notice by certified mail of the date and location of the hearing to the requestor, the notice to members of the Hearing Board 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 Hearing Board to issue a written decision and forward it to the appellant within five (5) days after conclusion of the hearing grants to the requestor the right to carry the appeal to the Board of County Commissioners.

B. 1. A requestor who is aggrieved by the Hearing Board Decision or who prefers to proceed directly to a hearing before the County Commission may file an appeal with the Chair of the Board of County Commissioners.

2. The County Commission review of the appeal shall be initially convened within 21 days following the decision of the Hearing Board or other appeal request.

3. Notices and staff assistance regarding the County Commission hearing shall be provided by the County Records Officer and shall be provided as set out in Subsection A above and in policies and procedures.

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 requestor 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.

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

D. The decisions of any Hearing Board of the Board of the County Commissioners regarding access to or classification of records shall be forwarded to the County Records Policy Administration for corrective action including any reclassification or redesignation of data or records which may be necessitated by the appellant decision.

SECTION EIGHT AMENDMENTS

A. Records held by the County may be amended or corrected as needed. Request for amendments, corrections or other changes shall be made in writing to the Agency having custody of the records and setting forth the specificity, the amendment or correction requested and the reasons for the change. When an amendment or correction of a government record is made, generally 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 chapter.

SECTION NINE PENALTIES

A. A County employee or other person having lawful custody of County records who knowingly refuses to permit access to records in accordance with the Act and this chapter, or who permits 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 chapter, or other law or regulation may be subject to criminal prosecution and disciplinary action, including termination.

B. In accordance with Act, neither the County or any of its agencies, officers or employees shall be liable for damages resulting from the release of a record where the requestor presented evidence of authority to obtain the record, even if it may be subsequently determined that the requestor had no such authority.

C. Knowing violation of this chapter is a misdemeanor, punishable as set forth in the Weber County general ordinances.

SECTION TEN COUNTY RECORDS OFFICER, RECORDS POLICY ADMINISTRATION

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. There is hereby created the Government Records Access and Management Policy Administration ("Records Policy Administration") to be chaired by the County Records Officer. Members of the Records Policy Administration shall include representatives from the staff of the Weber County Commission, the County Departments, and from the elected offices. The Records Policy Administration shall meet periodically as needed, as determined by the County Records Officer. The minutes and other records of the Records Policy Administration shall be maintained and staff provided by the archives office.

C. Each agency of County government shall appoint a records representative to assist with and be directly responsible for the implementation of this ordinance. Regular training for agency records representatives shall be provided under the direction of the Records Policy Administration.

D. The Records Policy Administration shall develop and provide records management, maintenance and access standards, policies and procedures, as provided by the Board of County Commissioners, to govern and implement the provisions of the act and this chapter. Approval and promulgation of records, policies and procedures shall be in accordance with the provisions of this code of ordinances and the Act. 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 30 days after its effective date. Any agencies internal policies regarding records management and access shall be consistent with this ordinance and state law.

SECTION ELEVEN RECORDS MAINTENANCE PROCEDURES

A. A Records Maintenance Procedure 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 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 property of the State of Utah. Property from the County to any private individual or entity, including those legally disposable obsolete County records of County archives or other agencies. This prohibition does not include the providing of record copies for release or distribution under this chapter. All records disposals shall be conducted in accordance with the 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 agency shall, upon termination of activities of such agency, be transferred to any successor agency or to the County Archives, provided that such transfer is consistent with the formal provisions of such termination.

SECTION TWELVE COUNTY ARCHIVES

A. There is created the County Archives and Services Section, to be managed by the County Records Officer. It is the responsibility of the Section to receive, store and preserve County agency records and other materials and to store and provide reasonable access thereto as may be calculated to accurately and safely maintain county records over a long term in compliance with this chapter and the Act. Policies and guidelines regarding the nature of records and record series which are to be received and stored by County Archives shall be developed and promulgated by the Records Policy Administration. County archives shall be considered the formal, official repository of County records; the central depository for the reports, publications, productions in other media, rules, policies, and regulations of the County, where not otherwise determined by law; and, where appropriate, historical

artifacts. Each agency shall be responsible for assisting the County archives in the collection of such records, depository materials and artifacts through methods promulgated by the Records Policy Administration.

SECTION THIRTEEN 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 do not compromise legal requirements for records storage, retrieval, security and maintenance, to store and maintain County records. All computerized and non-written format records and data which are designated and classified in accordance with the act in this chapter, shall be made available to a requestor in accordance with this chapter 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 agency director of the agency 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 insure 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, discs, 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 provide that due regard shall be exercised to insure that non-public records will 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 chapter 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 FOURTEEN
COUNTY JUSTICE COURT SYSTEM

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

SECTION FIFTEEN
MISCELLANEOUS PROVISIONS

A. 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 ordinance. 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 advise of the Weber County Attorney.

B. The County may, as determined appropriate by the Agency Director of the agency responding to a request for records, notify the subject of a record that a request for access to the subjects records has been made.

C. Reasonable accommodations regarding access to governmental records shall be provided to persons with disabilities in accordance with policies developed under this chapter.

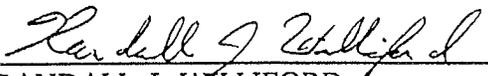
SECTION SIXTEEN
EFFECTIVE DATE

A. This ordinance shall become effective 15 days after its passage and upon at least one publication in a newspaper published in and having general circulation in Weber County. After approval and adoption, a copy and summary of this ordinance shall be forwarded by the County Records Officer to Utah State Archives.

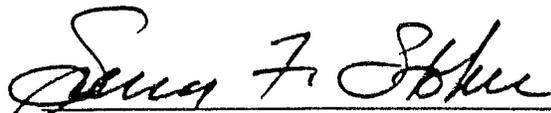
APPROVED AND ADOPTED this _____ day of _____, 1992.

By the Board of County Commissioners


JOAN D. HELLSTROM, CHAIRMAN

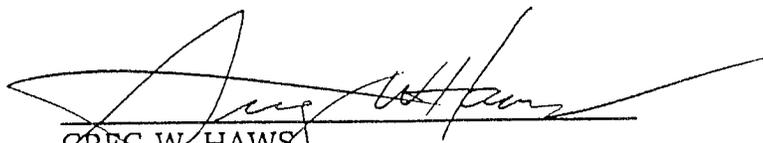


RANDALL J. WILLIFORD



SPENCER F. STOKES

ATTEST:



GREG W. HAWS
COUNTY CLERK