

ORDINANCE No. 1992-2

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 APPROPRIATE STATE STATUTE; SETTING OUT RESPONSE TIME REQUIREMENTS AND FEE FORMULAS FOR PUBLIC RECORD ACCESS REQUESTS; CREATING THE OFFICE OF COUNTY ARCHIVES 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 San Juan ordains as follows:

SECTION I. The Ordinance of San Juan County is hereby enacted to read as follows:

(1) The Board of County Commissioners of San Juan County finds the following:

A. It is in the best interests of San Juan 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. As the records of San Juan 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 statutory 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 a public policy interest in allowing the government to restrict access to certain records, as specified in the Ordinance, for the public good.

(2) In enacting this Ordinance, it is the purpose and intent of the Board of County Commissioners to provide, in accordance with the Government Records Access and Management Act (hereinafter referred to as "the Act"), Chapter 2 of Title 63 of Utah Code Annotated (1953), 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.

(3). As used in this ordinance, the following definitions shall be applicable.

A. "Act" shall refer to the Government Records Access and Management Act, Section 63-2-101, 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 San Juan County Government or any public or private entity which

pursuant to contract with the County has agreed to produce and maintain public County records.

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. "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.

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

H. "Private" records shall refer to those records classified as private under the provisions of this ordinance and of the Act.

I. "Protected" records shall refer to those records

classified as protected under the provisions of this ordinance and the Act.

J. "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.

K. 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;

(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 materials;

(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.

(4) A. Members of the public shall have the right to see, review, examine and take copies, in any format maintained by the County of all County governmental records defined as "public" under the provisions of this ordinance, upon the payment of the lawful fee and pursuant to the provisions of this ordinance, the Act and 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 purpose of this ordinance. 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. Only when records have been formally filed for permanent archival retention shall County Archives be responsible for responding to records requests.

(5) A. Public records shall be those County records as defined in Act, Section 63-2-301 (Utah Code Annotated, 1953 as amended) Public records shall be made available to any person. All County records are considered public unless they are (1) expressly classified otherwise in accordance with policies and procedures established by this chapter, (2) are so classified by the Act, or (3) are made non-public by 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. Private records shall be made available to the following persons: The subject of the record, the parent or legal guardian of a 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 notarized release from the subject of the record or his legal representative, or any person possessed of and serving 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.

D. Protected records shall be those County records classified as "protected", as defined in the Act, (Utah Code Annotated, Section 63-2-304, 1953 as amended) and as classified and defined in procedures established in this ordinance. Protected records shall be made available to the person who submitted the information in the record, to a person who has power of attorney or notarized release 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 competent jurisdiction.

(6) A. 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 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 no-public status is not specifically established by the Act or another statute, by this ordinance, the public's right to access and the record subject's right of privacy must be compared. The County shall not classify as public nor 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, 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.

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 subject's record has been made.

C. The County may require the requester of records provide a written release, notarized within thirty (30) days before the request, from the subject of the records in question before access to such records is provided.

(7) All County records and records series, of any format shall be classified and scheduled for retention according to the provisions of the Act and this ordinance. Any records or record series generated in the future shall also be so classified and scheduled for retention. Records classification and scheduling for retention shall be conducted under the supervision of the Records Officer, who is designated as the County Clerk, who shall be assisted by Department Head and the Records Policy Administration Board consisting of the Records Policy Administration Board, a member of the Commission staff and the County Attorney, or designee. Classification and retention scheduling forms and guidelines shall be prepared and promulgated by the Records Officer and Records Policy Administration Board.

(8) A. Under circumstances in which an agency is not able to immediately respond to a records request, the requester 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 and all time frames provided under this ordinance shall commence from that time and date. Requesters of non-public information shall adequately identify themselves and their status prior to receiving access to non-public records.

B. 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.

C. 1. In most circumstances and excepting those eventualities set out below at subparagraph C.2 an agency shall respond to a written request for a public record within fifteen (15) business days after that request.

2. Extraordinary circumstances shall justify an agency's failure to respond to a written request for a public record within fifteen (15) business days 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 shall include but not be limited to the following:

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

(b) The record request 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 request involves an analysis of legal issues to determine the proper response to the request;

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

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

3. When a record request cannot be responded to within ten (10) days, the agency director shall give the requester an estimate of the time required to respond to the request.

D. The failure or inability of an agency to respond to a request for a record within the time frames set out herein, or the agency's denial of such request, shall give the requester the right to appeal as provided in Section 10.

E. Any County record which 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 request is granted and fulfilled, or sixty days after the request is denied if no appeals are filed, or sixty days after all appeals are completed, pursuant to Section 10.

F. No County record, disposable by approved retention schedule, which is subject to pending litigation or audit shall be

disposed of until the litigation or audit has been completed or resolved.

(9) Applicable fees for the processing of information requests under this ordinance shall generally be set at actual cost or as otherwise established by statute or by policies adopted under this ordinance.

(10) A. Persons aggrieved by the County's classification of a record or by an agency's response to a record request may be granted a full administrative appeal of that grievance, in accordance with policies adopted by the Records Policy Administration/Board. An intermediate or initial appeal may be made, at the requester's option, to Board of County Commissioners. 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.

B. An appeal under this section shall be brought within thirty (30) calendar days of the date of the notice of Agency Action or where no notice may have been given within 30 days of the date when the person grieving reasonably should have become aware of the action.

C. The appellant shall set forth in writing the nature and a 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 the Board of County Commissioners regarding access to or classification of records shall be forwarded

to the County Records Policy Administration/Board for corrective action including any reclassification of records which may be necessitated by the appellate decision.

(11) Reasonable accommodations regarding access to governmental records shall be provided to persons with disabilities in accordance with policies developed under Section 14 of this ordinance.

(12) Government 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 agency having custody of the records and setting forth, with specificity, the amendment or correction requested. When an amendment or correction of a government record is made, both the original record and the amended or corrected record shall be retained, unless provided otherwise by policies and procedures adopted under the provisions of this ordinance.

(13) A. County employees who knowingly refuse to permit access to records in accordance with the Act and this ordinance, who knowingly permit access to non-public records, or who knowingly, without authorization or legal authority dispose of, alter, or remove records or allow other persons to do so in violation of the provisions of this 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 agencies, 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.

14. A. There shall be appointed a County Records Officer to oversee and coordinate records access and management and County archives activities, who shall be the County Clerk. The Records Officer shall make annual reports or record services activities to the Board of County Commissioners.

B. There is hereby created the Governmental Records Access and Management Policy Administration ("Record Policy Administration") to be chaired by the County Records Officer. Members of the Records Policy Administration shall include representatives from the Commission staff, the County departments, and the elected offices or designees. The Records Policy Administration/Board shall meet periodically as needed. The minutes and other records of Records Policy Administration shall be maintained and staff provided by the County Commission.

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 shall be provided under the direction of the Records Policy Administration to Agency Records Representatives.

D. The Records Policy Administration shall develop records maintenance and access policies and procedures to govern and implement the provisions of the Act and this Ordinance. Approval

and promulgation of records policies and procedures shall be in accordance with the provisions of this code of ordinances and the Ordinance. Copies of any rule or policy promulgated under this ordinance shall be forwarded by the Board to the Utah State Division of Archives within thirty (30) days after its effective date. Any agency's internal policies regarding records management and access shall be consistent with this ordinance and state law.

(15) 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 Office shall be responsible for monitoring the application and use of technical processes in the creation, duplication, and disposal of County records. 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 shall remain the property of the County unless federal or state legal authority provides otherwise. Property rights to County records may not be permanently transferred 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 copies of County records otherwise produced for release or distribution under this chapter.

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.

(16) There is created the County Archives and Records Service 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 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. 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 material, and artifacts through methods promulgated by the Records Policy Administration.

(17) 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 prohibited by state statute, and 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 as public, shall be made available to a requester within a reasonable time and at a reasonable cost.

B. Members of the public shall have the right to have access to records, in accordance with this Ordinance and the Act, contained in non-written formats or data processing systems. The method of access to such public records 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; 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 systems 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.

(18) Knowing violation of this Ordinance is a misdemeanor, punishable as set forth in this code of ordinances.

SECTION II. This Ordinance shall become effective July 1, 1992, fifteen days after its passage and upon at least one publication in a newspaper published in and have general circulation in San Juan County.

APPROVED and ADOPTED this 22nd day of June, 1992.

BOARD OF COUNTY COMMISSIONERS:

By: Ty Lewis
Ty Lewis, Chairman