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**CEDAR CITY ORDINANCE**

**ORDINANCE NO.** 0810-94

**ORDINANCE ADOPTING CHAPTER 1A GOVERNING  
RECORDS ACCESS AND MANAGEMENT.**

**BE IT HEREBY ORDAINED** by the City Council of Cedar City, Utah, that Chapter 1A be adopted governing records access and management as follows:

**CHAPTER 1A**

**RECORDS ACCESS AND MANAGEMENT**

**ARTICLE I**

**INTRODUCTORY PROVISIONS**

**SECTION 1A-1. Title.**

This Chapter shall be known as the "Records Access and Management Ordinance of Cedar City, Utah."

**SECTION 1A-2. Purpose and Intent.**

Cedar City recognizes two fundamental rights: (1) the right of privacy in relation to personal data gathered by the City; and (2) the public's right of access to information concerning the conduct of the public's business. In enacting this Chapter, it is the intent of Cedar City to:

- A. Maintain and preserve accurate government records;
- B. Provide ready access to records which are defined by law as open to the public;
- C. Retain the security of records which are defined by law as non-public;
- D. Comply with the Government Records Access and Management Act (hereinafter referred to as the "Act"), Chapter 2 of Title 63, Utah Code Annotated, 1953 as amended; and
- E. Comply with all other Federal, State and local constitutional, statutory and regulatory record-keeping requirements.

**SECTION 1A-3. Definitions.**

As used in this Ordinance, the following definitions shall be applicable:

- (1) Act: The Government Records Access and Management Act, Section 63-2-1, et seq., Utah Code Annotated, 1953 as amended.
- (2) Audit: (A) a systematic examination of financial, management, program and related records for the purpose of determining the fair presentation of financial statements, adequacy of internal controls, or compliance with laws and regulations; or (B) a systematic examination of programmed procedures and operations for the purpose of determining their effectiveness, economy, efficiency and compliance with statutes and regulations.
- (3) Chronological Log: A regular and customary summary record of law enforcement agencies and other public safety agencies that show the time and general nature of police, fire, and paramedic calls made and any arrests or jail bookings made by the Department of Public Safety.
- (4) Classification: Determining whether a record series, record, or information within a record is public, private, controlled, protected or exempt from disclosure.
- (5) Computer Program: A 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 source material that explains how to operate the computer program. It does not mean: (a) the original data, including numbers, text, voice, graphics, and images; (b) analysis, compilation and other manipulated forms of the original data produced by the use of the program; or (c) the mathematical or statistical formulas (excluding the underlying mathematical algorithms contained in the program) that would be used if the manipulated forms of the original data were to be produced manually.
- (6) Contractor: Any person who contracts with the City to provide goods or services directly to the City or any private, non-profit organization that receives funds from the City. Contractor does not mean a private provider.
- (7) Controlled Records: Those defined as controlled under provisions of this Ordinance and in accordance with the provisions of the Act.
- (8) Data: Individual entries (i.e. birthdate, address, etc.) in records.
- (9) Designation: Indication based on the City's familiarity with a record series or based on the City's review of a reasonable sample of a record series, the primary classification that a majority of records in a record

series would be given if classified and the classification that other records typically present in the record series would be given if classified.

- (10) Gross Compensation: Every form of remuneration payable for a given period to an individual for services provided including salaries, commissions, vacation pay, severance pay, bonuses, and any board, rent, housing, lodging, payments in kind, and any similar benefits received from the individual's employer.
- (11) Initial Contact Report: Initial written or recorded report however titled prepared by peace officers engaged in public patrol or response duties describing official actions initially taken in response to either a public complaint about or the discovery of an apparent violation of law which report may describe:
  - (a) the date, time, location and nature of complaint, the incident, or an offense; (b) names of victims; (c) the nature or general scope of the agency's initial actions taken in response to the incident; (d) the general nature of any injury or estimate of damages sustained in the incident; (e) the name, address, and other identifying information about any person arrested or charged in connection with the incident; and (f) the identity of the public safety personnel (except undercover personnel) or prosecuting attorney involved in responding to the initial incident. Initial Contact Reports do not include follow-up or investigative reports prepared after the initial contact report. However, if the information specified above appears in follow-up or investigative reports, it may only be treated confidentially if it is private, controlled, protected, or exempt from disclosure pursuant to this Chapter.
- (12) Non-Public Records: Those records defined as private, controlled, or protected under the provisions of this Chapter and the Act.
- (13) Person: Any individual, non-profit or profit corporation, partnership, sole proprietorship, or other type of business organization.
- (14) Private Records: Those records classified as private under the provisions of this Chapter and the Act.
- (15) Private Provider: Any person who contracts with a government entity to provide services directly to the public.
- (16) Protected Records: Those records classified as protected under the provisions of the Chapter and the Act.

- (17) Public Records: Those records which have not been classified as non-public in accordance with the provisions of this Chapter and the Act.
- (18) Record: All books, letters, documents, papers, maps, plans, photographs, films, cards, tapes, recording, or other documentary materials, and electronic data, regardless of physical form or characteristics, prepared, owned, used, received, or retained by the City where all the information in the original is reproducible by some mechanical, electronic, photographic or other means. Record does not mean: (a) temporary drafts or other 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) priority software; (e) junk mail or commercial publications received by the City or by an officer or employee of the City; (f) books and other materials that are cataloged, indexed, or inventoried and contained in the collections of City libraries open to the public, regardless of physical form or characteristics of the materials; (g) daily calendars and other personal notes prepared by the originator for the originator's personal use, or for the personal use of an individual for whom he is working; and (h) notes or internal memorandum 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 the Utah Open Meeting Act, or proprietary computer software program as defined above that are developed or purchased by or for the City for its own use.
- (19) Record Series: A group of records that may be treated as a unit for purposes of designation, description, management, or disposition.
- (20) Schedule: The process of specifying the length of time each record series should be retained by the City for administrative, legal, fiscal, or historical purposes, and when each record series should be transferred to the State archives or destroyed.
- (21) Summary Data: Statistical records and compilations that contain data derived from private, controlled, or private information, but that do not disclose private, controlled or protected information.

## ARTICLE II

### ACCESS

#### SECTION 1A-4. Access to Public Records.

- A. Any person shall have the right to see, review, examine and take copies of all City government records defined as "public" under the provisions of this Chapter, upon the payment of the designated fee and pursuant to the provisions of this Chapter, the Act, and policies and procedures developed hereunder.
- B. Public records are all City records unless they are:
  - (1) expressly classified otherwise in accordance with procedures established by this Chapter;
  - (2) expressly classified otherwise by the Act; or
  - (3) are made non-public by other applicable law.
- C. The City 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.
- D. When a department record is temporarily held by another department, the record shall not be considered the borrowing department's record for the purposes of this Chapter, provided however, that the records shall be considered a record of the department which usually keeps or maintains that record and any request for access to such records shall be directed to that department rather than the department temporarily holding the records.

#### SECTION 1A-5. Access to Non-Public Records

- A. Private Records shall be those City Records classified as "private" as defined in the Act and as classified and defined pursuant to this Chapter. Private records shall be made available to:
  - (1) the subject of the record;
  - (2) the parent or legal guardian of a minor who is the subject of a record;
  - (3) the legal guardian of an incapacitated individual who is the subject of the record;
  - (4) any person who has power of attorney or a notarized release from the subject of the record or their

legal representative; or

- (5) any person possessed of and serving a legislative subpoena or court order issued by a court of competent jurisdiction.

B. Controlled Records shall be those City records classified as "controlled" as defined in the Act and as classified and defined by this Chapter. A person who receives a record from the City may not disclose controlled information from that record to any person, including the subject of the record. Controlled Records shall be made available to:

- (1) a physician, psychologist, or licensed social worker who submits a notarized release from the subject of the record that is dated no more than 90 days prior to the date the request is made and a signed acknowledgement of the terms of disclosure of Controlled information; or
- (2) any person presenting a legislative subpoena signed by a judge of competent jurisdiction.

C. Protected Records shall be those City Records classified as "Protected" as defined in the Act and classified and defined in this Chapter. Protected records shall be made available to:

- (1) the person who submitted the records;
- (2) a person who has power of attorney or notarized release from all persons or governmental entities whose interests are protected by the classification of the record; or
- (3) to any person presenting a legislative subpoena or court order regarding the release of the information and signed by a judge of competent jurisdiction.

D. Where a private, controlled, protected or non-public record contains more than one subject of the record, the portion of the record that pertains to another subject shall be segregated from the portion that the requestor is entitled inspect.

E. Before releasing a private, controlled or protected record, the City shall obtain evidence of the requestor's identity.

F. (1) The City may disclose or authorize disclosure of private or controlled records for research purposes

if the City:

- (a) determines that the research purpose cannot reasonably be accomplished without use of disclosure of information to the researcher in individually identifiable form;
- (b) determines that the proposed research is bona fide, and that the value of the research outweighs the infringement upon personal privacy;
- (c) requires the researcher to assure the integrity, confidentiality, and security of the records and requires the removal or destruction of the individual identifiers associated with the record as soon as the purpose of the research project has been accomplished;
- (d) prohibits the researcher from disclosing the record in individually identifiable form except as provided in subsection (2), or from using the record for purposes other than the research approved by the City; and
- (e) secures from the researcher a written statement of understanding of an agreement to the conditions of this subsection and that violation of the terms of this subsection may subject him/her to criminal prosecution under Title 63-2-801, Utah Code Annotated, 1953 as amended.

(2) A researcher may disclose a record in individually identifiable form if the record is disclosed for the purpose of auditing or evaluating the research program and no subsequent use or disclosure of the record in individually identifiable form will be made by the auditor or evaluator except as provided by this Section.

(3) The City may require indemnification as a condition of permitting research under this subsection.

G. The City recognizes and upholds the personal right of privacy retained by persons who may be the subject of government records. The City also recognizes that the Act and Utah case law establish a presumption that government records will be generally considered open and public with certain exceptions:

- (1) In circumstances where a record's public or non-public status is not specifically established by the Act and other statute, this Ordinance, or policies established made under this Ordinance, the public's right to access and the record subject's right of privacy must be compared.
- (2) In accordance with decisions of the Utah Supreme Court, City records which have not specifically been made public by the Act and which refer to named and readily identifiable individuals which deal with matters of a delicate nature which could engender shame, humiliation, or embarrassment in the subject of that record, in accordance with accepted standards of social propriety, shall generally not be classified as public records, and release thereof may constitute a clearly unwarranted invasion of privacy in accordance with the Act and procedures established in this Ordinance.

- H. The City may as determined appropriate by the department head of the department responding to a request for records notify the subject of a private or controlled record that a request for access to the subject's record has been made.
- I. The City may require that the requestor of private records provide a written release notarized within ninety days (90) before the request from the subject of the records in question before access to such records is provided.
- J. The City may share information with other government agencies regardless of classification as long as those agencies are willing to abide by the requirements of this Chapter. Nothing in this Chapter prevents the City from examining private, controlled, or protected records for government or administrative purposes.
- K. Under circumstances set out in this Chapter, it may be appropriate to disclose non-public records to persons other than those set out in this Chapter. The determination to so release such records shall be made by the City Recorder's office, consistent with this Chapter and upon advise of the City Attorney.

## ARTICLE III

### CLASSIFICATION

#### SECTION 1A-6. Records Classified as Public.

- A. The following City Records are public according to the Act except to the extent they contain information expressly permitted to be treated confidentially pursuant to court rule, state statute, federal statute, or federal regulation, including records for which access is governed or restricted as a condition of participation in a state or federal program or for receiving state or federal funds:
- (1) laws and ordinances;
  - (2) names, gender, gross compensation, job title, job descriptions, job qualifications, business address, business telephone number, number of hours worked per day per pay period, dates of employment, relative education, previous employment, and similar job qualifications of the governmental entity's former and present employees and officers, excluding undercover law enforcement personnel and investigative personnel if disclosure could reasonably be expected to impair the effectiveness of investigations or endanger any individual's safety;
  - (3) final opinion, including concurring and dissenting opinions, and orders that are made by a government entity in an administrative, adjudicative, or judicial proceeding except that if the proceedings were properly closed to the public, the opinion and order may be withheld to the extent that they contain information that is private, protected, or controlled;
  - (4) final interpretations of statutes, ordinances or rules by the City unless classified as protected;
  - (5) information contained in or compiled from a transcript, minutes, or report of the open portions of a meeting of a government entity as set forth in Title 52-4, Utah Code Annotated, 1953 as amended, including the records of all votes of each member of the government entity;
  - (6) judicial records unless a court orders the records to be restricted under the rules of civil or criminal procedure, or unless the records are private under the Act;

- (7) Records filed with or maintained by City Recorders, Clerks, Treasurers, Surveyors, Zoning Commission, etc, that give public notice of:
  - (a) titles or encumbrances to real property;
  - (b) restrictions on the use of real property;
  - (c) the capacity of persons to take or convey title to real property; or
  - (d) tax status for real and personal property;
- (8) Data on individuals that would otherwise be private under the Act if the individual who is the subject of the record has given the City written permission to make the records available to the public;
- (9) Documentation of the compensation that a government entity pays to a contractor or private provider;
- (10) Summary data; and
- (11) Written record request.

B. The following records are normally public, but to the extent that a record is expressly exempt from disclosure, access may be restricted under Title 63-2-201 (3)(b) 63-2-302, 63-2-303, or 63-2-304 of the Act:

- (1) Administrative staff manuals, instructions to staff, and statements of policy;
- (2) Records documenting the compensation that the City pays to a contractor or private provider;
- (3) Records documenting the services provided by a contractor or a private provider to the extent the record would be public if prepared by the City;
- (4) Contracts entered into by the City;
- (5) Any account, voucher, or contract that deals with receipt or expenditure of funds by the City;
- (6) Records relating to government assistance or incentives publicly disclosed, contracted for, or given by the City encouraging a person to expand or relocate a business in Utah, except as provided in subsection 63-2-304 (34) of the Act;
- (7) Initial contact reports;

- (8) Chronological logs;
- (9) Correspondence by and with a government entity in which the government entity determines or states an opinion upon the rights of the State, a political subdivision, the public, or any person;
- (10) Empirical data contained in drafts if:
  - (a) the empirical data is not reasonably available to the requestor elsewhere in the similar form; and
  - (b) the City is given a reasonable opportunity to correct any errors or make nonsubstantive changes before release;
- (11) Drafts that are circulated to anyone other than a government entity, political subdivision, a federal agency if the government and federal agency are jointly responsible for implementation of a program or project that has been legislatively approved, a government-managed corporation, or a contractor or private provider;
- (12) Drafts that have never been finalized but were relied upon by the City in carrying out action or policy;
- (13) Original data in a computer program if the government entity chooses not to disclose the program;
- (14) Arrest warrants after issuance, except that for good cause a court may order restricted access to arrest warrants prior to service;
- (15) Search warrants after execution and filing of the return except that a court for good cause may order restrictive access to search warrants prior to trial;
- (16) Records that would disclose information relating to formal charges or disciplinary actions against a past or present City employee if:
  - (a) the disciplinary action has been completed and all time periods for administrative appeal have expired; and
  - (b) the formal charges were sustained;
- (17) Final audit reports;

- (18) Occupational and professional licenses;
- (19) Business licenses; and
- (20) A notice of violation, a notice of department action under Title 63-46b-3 of the Act, or similar records used to initiate proceedings for discipline or sanctions against persons regulated by the City, but not including records that initiate employee discipline.

**SECTION 1A-7. Records Classified as Private.**

**A. The following records are private:**

- (1) Records concerning an individual's eligibility for unemployment insurance benefits, social services, welfare benefits, or the determination of benefit levels;
- (2) Records containing data on individuals describing medical history, diagnosis, condition, treatment, evaluation, or similar medical data;
- (3) Records of the Cedar City Library that when examined alone or with other records identify the patron; or
- (4) Records concerning a current or former employee of or applicant for employment with the City that would disclose that individual's home address, home telephone number, social security number, insurance coverage, marital status, or payroll deductions.

**B. The following records are private if properly classified by the City:**

- (1) Records concerning a current or former employee of or applicant for employment with the City, including performance evaluations and personal status information such as race, religion or disabilities, but not including records that are public under Title 63-2-301(1)(b) or Title 63-2-301(2)(o), or private under Title 63-2-302(1)(e) of the Act;
- (2) Records describing an individual's finances, except that the following are public:
  - (a) Records described in Title 63-2-301(1);

- (b) Information provided to the government entity for the purpose of complying with a financial assurance requirement; or
  - (c) Records that must be disclosed in accordance with another statute;
- (3) Records of the City or independent State Agencies if the disclosure of those records conflict with the fiduciary obligations of the City or state agency;
  - (4) Other records containing data on individuals, the disclosure of which constitutes a clearly unwarranted invasion of personal privacy; and
  - (5) Records provided by the United States or by a government entity outside the state that are given with the requirements that the records be managed as private records, if the providing entity states in writing that the record would not be subject to public disclosure if retained by it.

**SECTION 1A-8. Records Classified as Controlled.**

A. The following records are controlled if:

- (1) The record contains medical, psychiatric or psychological data about an individual;
- (2) The City reasonably believes that releasing the information in the record to the subject of the record would be detrimental to the subject's mental health or to the safety of any individual, or releasing the information would constitute a violation of normal professional practice and medical ethics; and
- (3) The City has properly classified the record.

**SECTION 1A-9. Records Classified as Protected.**

A. The following records are protected:

- (1) Trade secrets as defined in Title 13-24-2, Utah Code Annotated, 1953 as amended, if the person submitting the trade secret has provided the City with information specified in Title 63-2-308, Utah Code annotated, 1953 as amended;

- (2) Commercial information or non-individual financial information obtained from a person if:
  - (a) disclosure of the information could reasonably be expected to result in unfair competitive injury to the person submitting the information or would impair the ability of the City to obtain necessary information in the future;
  - (b) the person submitting the information has a greater interest in prohibiting access than the public in obtaining access; and
  - (c) the person submitting the information has provided the City with the information specified in Title 63-2-308, Utah Code Annotated, 1953 as amended;
- (3) Commercial or financial information acquired or prepared by the City to the extent that disclosure would lead to financial speculations in currency, securities or commodities that will interfere with a planned transaction by the City or cause substantial financial injury to the City or national economy;
- (4) Test questions and answers to be used in future license, certification, registration, employment or academic examinations;
- (5) Records, the disclosure of which would impair City procurement proceedings, or give an unfair advantage to any person proposing to enter into a contract or agreement with the City except that this subsection does not restrict the right of a person to see bids submitted to or by the City after bidding has closed;
- (6) Records that would identify real property or the appraisal or estimated value of real or personal property, including intellectual property, under consideration for public acquisition before any rights to the property are acquired unless:
  - (a) public interest in obtaining access to the information outweighs the City's need to acquire the property on best terms possible;
  - (b) the information has already been disclosed to persons not employed by or under a duty of confidentiality to the entity;

- (c) in the case of records that would identify property, potential sellers of the described property have already learned of the City's plans to acquire the property or of the City's estimated value of the real property; or
  - (d) in the case of records that would identify the appraisal or estimated value of property, the potential sellers have already learned of the City's estimated value of the property;
- (7) Records prepared in contemplation of sale, exchange, lease, rental or other compensated transaction of real or personal property, including intellectual property, which if disclosed prior to completion of the transaction would reveal the appraisal or estimated value of the subject property unless:
- (a) the public interest in access outweighs the interests in restricting access, including the City's interest in maximizing the financial benefit of the transaction; or
  - (b) when prepared by or on behalf of the City, appraisals or estimates of the value of the subject property have already been disclosed to persons not normally employed by or under a duty confidentiality to the entity;
- (8) Records created or maintained for civil, criminal or administrative enforcement purposes, or audit purposes or for discipline, licensing, certification or registration purposes if release of the records:
- (a) reasonably could be expected to interfere with investigations undertaken for enforcement, discipline, licensing, certification, or registration purposes;
  - (b) reasonably could be expected to interfere with audits, disciplinary, or enforcement proceedings;
  - (c) would create a danger of depriving a person of a right to a fair trial or impartial hearing;
  - (d) reasonably could be expected to disclose the identity of a source who is not generally known outside of government and, in the case of a record compiled in the course of an

investigation, disclose information furnished by a source not generally known outside government if disclosure would compromise the source; or

- (e) reasonably could be expected to disclose investigative or audit techniques, procedures, policies or orders not generally known outside of government if disclosure would interfere with enforcement or audit efforts;
- (9) Records, the disclosure of which would jeopardize the life or safety of an individual;
- (10) Records, the disclosure of which would jeopardize the security of City property, City programs or City record-keeping systems from damage, theft or other appropriation, or use contrary to law or public policy;
- (11) Records that if disclosed would jeopardize the security or safety of a correctional facility, or records relating to incarceration, treatment, probation or parole that would interfere with the control and supervision of an offender's incarceration, treatment, probation or parole;
- (12) Records that if disclosed would reveal recommendations made to the Board of Pardons by an employee of or contractor of the Department of Corrections, Board of Pardons, or the Department of Human Services that are based on the employee's or contractor's supervision, diagnosis or treatment of any person within the Board's jurisdiction;
- (13) Records and audit papers that identify audit, collection, and operational procedures and methods used by the Utah State Tax Commission, if the disclosure would interfere with audits or collections;
- (14) Records of a government audit agency relating to an ongoing or planned audit until the final audit is released;
- (15) Records prepared by or on behalf of the City solely in anticipation of litigation that are not available under the rules of discovery;
- (16) Records disclosing an attorney's work product, including the mental impressions or legal theories of an attorney or other representative of the City concerning litigation;

- (17) Records of communications between the City and an attorney representing, retained or employed by the City if the communications would be privileged as provided in Section 78-24-8, Utah Code Annotated, 1953 as amended;
- (18) Drafts, unless otherwise classified as public;
- (19) Records concerning the City's strategy about collective bargaining or pending litigation;
- (20) Records of investigations of loss occurrences and analysis of loss occurrences that may be covered by the City or by the Utah Risk Management Mutual Association;
- (21) Records other than personnel evaluations that contain a personal recommendation concerning an individual if disclosure would constitute a clearly unwarranted invasion of personal privacy, or disclosure is not in the public interest;
- (22) Records that reveal the location of historic, prehistoric, paleontological, or biological resources that if known would jeopardize the security of those resources, or of the valuable historic, scientific, educational or cultural information;
- (23) Records if the disclosure of such records would conflict with the fiduciary obligations of the City;
- (24) Records provided by the United States or by a government entity outside the state that are given to the City with a requirement they be managed as protected records if the providing entity certifies that the record would not be subject to public disclosure if retained by it;
- (25) Transcripts, minutes or reports of the closed portion of a meeting of a public body, except as provided in Section 52-4-7, Utah Code Annotated, 1953 as amended;
- (26) Records that would reveal the contents of settlement negotiations, but not including final settlements or empirical data to the extent that they are not otherwise exempt from disclosure;
- (27) Memoranda prepared by staff and used in the decision-making process by an administrative law

judge, a member of the Board of Pardons, or a member of any other body charged by law with performing a quasi-judicial function;

- (28) Records that would reveal negotiations regarding assistance or incentives offered by or requested from the City for the purpose of encouraging a person to expand or locate a business in Utah, but only if disclosure would result in actual economic harm to the person, or place the governmental entity at a competitive disadvantage, but this section may not be used to restrict access to a record evidencing a final contract;
- (29) Materials to which access must be limited for purposes of securing or maintaining the governmental entities proprietary protection of intellectual property rights including patents, copyrights and trade secrets;
- (30) The name of a donor or a prospective donor to the City, and other information concerning the donation that could reasonably be expected to reveal the identity of the donor provided that:
  - (a) The donor requests anonymity in writing;
  - (b) Any terms, conditions, restrictions and privileges relating to the donation may not be classified protected by the City under the subsection; and
  - (c) The entity to which the donation is made is primarily engaged in educational, charitable, or artistic endeavors, and has no regulatory or legislative authority over the donor, a member of the immediate family, or any entity owned or controlled by the donor or the immediate family.

## ARTICLE IV

### PROCEDURES

#### SECTION 1A-10. Records Access Procedures.

- A. Requests for all records shall in the majority of cases be responded to as soon as reasonably possible. A person making a request for a record shall furnish the City with a written request containing their name, mailing address, daytime telephone number, if available, and a description of the records requested that identifies the record with reasonable specificity.
- B. The City may respond to a request for a record by approving and providing the record, denying the request, or giving such other appropriate response as made by policies and procedures. All denials for a request must be made by the City Records Office.
- C. In most circumstances and excepting eventualities set out below in paragraph D, the City shall respond to a written request for a record within ten (10) business days after receiving a written request; or five (5) business days after receiving a written request if the requestor demonstrates that expedited response to the record request benefits the public rather than the person.
- D. Extraordinary circumstances shall justify the City's failure to respond to a written request for a record within the time specified, and shall extend the time for response to that time reasonably necessary to respond to the request, as determined by the City Recorder. Extraordinary circumstances shall include but not be limited to the following:
  - (1) The City or some other governmental entity is currently and actively using the record requested;
  - (2) The record requested is for either a voluminous quantity of records or requires the City to review a large number of records or perform extensive research to locate the materials requested;
  - (3) The City is currently processing a large number of record requests or is subject to extraordinary seasonal work loads in the processing of other work;
  - (4) The request involves an analysis of legal issues to determine the proper response by the City to the request;

- (5) The request involves extensive editing to separate public information in a record from that which is not public; or
- (6) Providing the information request requires computer programming or other format manipulation.

When the City determines that a record request cannot be responded to within the time set forth above, the City shall give the requester an estimate of the time required to respond to the request.

- E. The City differentiates between a record and data contained in that record. Only those requesters having a right to the data will receive the data. All private, controlled and protected data will be deleted from requested records unless the requester has the right to that data under this Chapter.
- F. Any City record which has been requested in accordance with this Chapter and the Act that is disposable by approved retention schedule may not be disposed of until 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 this Chapter.
- G. The failure or inability of the City to respond to a request for a record within the time frame set forth herein, or the City's denial of such a request, shall give the requester the right to appeal pursuant to this Chapter.
- H. No City record disposable by an approved retention schedule which is subject to pending litigational or audit shall be disposed of until the litigational or audit has been completed or resolved.
- I. Reasonable accommodations regarding access to government records shall be provided to persons with disabilities.
- J. Subpoenas and other methods of discovery under the State and Federal Statutes or rules of civil, criminal, administrative or legislative procedure are not written requests under this Chapter. Compliance with civil, criminal, administrative and legislative discoveries shall be governed by the applicable statutes and rules of procedure.

#### SECTION 1A-11. Fees.

The following fees shall be paid to the City in connection with a records request:

- (1) Making photocopies of records and City files - 25 cents per page;
- (2) Certifying a record - \$2.00 per record;
- (3) Copies of automobile accident reports or incident reports - \$5.00 for cover page, plus .25 per each additional page, per report;
- (4) Search of records, beginning after the first twenty minutes - actual costs incurred by the City;
- (5) Compilation of records in a form other than that maintained by the City, if the City chooses to provide such compilation - actual costs incurred by the City;
- (6) For copies of any computer program or information in a disk format, fees shall be charged consistent with the cost of creating the program or for compiling the information on the disk. No copyrighted material may be obtained when otherwise required by law.

**SECTION 1A-12. Appeals.**

- A. Persons aggrieved by the City's classification of a record or by the City's response to a record request may request and be granted a full administrative appeal of that grievance. An intermediate or initial appeal shall be made to the City Manager. A requester who is aggrieved by the City Manager's decision may file an administrative appeal of that decision with the City Council. The appeal of a decision of the City Council may be made within thirty (30) to the District Court, in accordance with the Act and the Utah Rules of Civil Procedure.
- B. An intermediate appeal under this Section shall be brought within thirty (30) calendar days of the date of the action aggrieved or of the date when the person grieving reasonably should have become aware of the action. An administrative appeal shall be filed within thirty (30) days after the City Manager has denied the appeal or fails to make a determination within three (3) business days after the appeal hearing.
- C. The notice of appeal shall be filed with the City Recorder's Office and shall contain the following information:
  - (1) the petitioner's name, mailing address and daytime telephone number;
  - (2) a copy of any denial of the records request; and

(3) the relief sought.

- D. The City Recorder's Office shall schedule the appeal before the City Manager or City Council no sooner than fifteen (15) and no later than thirty (30) days from the date of filing of the appeal. The written decision of the City Manager or Council regarding access to or classification of records shall be made no more than ten (10) business days after the hearing and shall be forwarded to the City Recorder's Office for corrective action, including any reclassification of any records which may be necessitated by the appellate decision.
- E. The provisions of this Chapter notwithstanding, the persons participating in the proceeding may by agreement or stipulation, extend the time period specified in this Chapter.
- F. The City Manager or City Council may upon consideration and weighing of the various interests and public policies pertinent to the classification and disclosure or non-disclosure order the disclosure of information properly classified as private or protected if the interests favoring access outweigh the interests favoring restriction of access.

#### **SECTION 1A-13. Liability.**

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

## ARTICLE V

### GENERAL PROVISIONS

#### SECTION 1A-14. City Records Officer/Records Management Committee.

- A. The City Recorder shall oversee and coordinate the management of City Records.
- B. There is hereby created the Records Management Committee to be chaired by the City Recorder. Members of the Records Management Committee shall include representatives from each of the different departments of the City. The Records Management Committee shall meet periodically as needed.
- C. Regular training shall be provided under the direction of the City Recorder to the members of the Records Management Committee.
- D. The Records Management Committee shall develop, as needed, records maintenance and access policies and procedures to govern and implement the provisions of this Chapter. Copies of all rules and policies promulgated under this Chapter shall be forwarded to the Utah State Division of Archives within thirty (30) days after its effective date. All record policies and procedures shall be consistent with this Chapter and the Act.

#### SECTION 1A-15. Records Classification, Designation, Retention and Maintenance.

- A. The City Recorder with the assistance of the Records Management Committee shall develop City policies and guidelines relating to the classification, designation, retention and maintenance of City records. All City records and record series of any format shall be classified and scheduled for retention according to the provision of the Act and this Chapter. Any records or record series generated in the future shall also be so classified, designated and scheduled for retention. Classification forms and guidelines shall be prepared and promulgated by the City Recorder's Office. Policies and regulations regarding types of papers, inks, electronic media, and other record storage materials may be developed and promulgated by the City Recorder's office.
- B. The City may designate or redesignate or classify or reclassify records or data at any time, and it 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.

- C. All City records shall remain the property of the City unless Federal or State legal authority provides otherwise. Property rights to City records may not be permanently transferred from the City to any private individual or entity, including legally disposable City records that are obsolete. This prohibition does not include the providing of copies of City records otherwise produced for release or distribution under this Chapter.
- D. Custodians of any City 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 City Recorder's officer.

#### **SECTION 1A-16. Electronic Records.**

- A. The City 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 record storage, retrieval, security and maintenance to store and maintain City records. All computerized and non-written format records and data which are properly classified in accordance with the Act and this Chapter 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 the Act and this Chapter contained in non-written formats or data processing systems. The method of access to such public records shall be as determined appropriate by the director of the department maintaining the records considering all circumstances. Access may include but not be limited to the following:
  - (1) Using a City 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) Providing paper or hardcopies of data printouts or providing magnetic tapes, discs, or other means of electronic storage containing the non-written format or data processing system records; or
  - (3) Using where appropriate remote terminals which have access to City 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 Chapter or the Act, including copyrighted software and other copyrighted materials that have been purchased by or licensed to the City and software and other materials which have been copyrighted by the City.

**SECTION 1A-17. Amendment of Records.**

- A. Government records held by the City may be amended or corrected by the City as needed. Policies and procedures may be adopted by the City Recorder's office for such amendments. Outside requests for amendments, corrections or other changes will be made in writing to the department having custody of the records and setting forth with specificity the amendment or correction requested. The City Recorder's office after receiving a recommendation from the department director shall either approve or deny the request.
- B. The City Recorder's office shall issue an order approving or denying the request to amend no later than thirty (30) days after receipt of the request.
- C. If the request is approved, the City Recorder's office shall correct the records that contain the incorrect information as soon as practical. 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 Chapter.
- D. If the request is denied, the City Recorder's office shall inform the requester in writing the reasons for denying the request. The requester may appeal the denial of the request to amend a record pursuant to this Chapter.

**SECTION 1A-18. Disciplinary Action.**

The City may take disciplinary action which may include suspension or termination against any employee who intentionally violates any provision of this Chapter.

**EFFECTIVE DATE:** This Ordinance, Cedar City Ordinance Chapter 1A shall become effective upon the expiration of twenty days (20) from the date of publication as required by law and as set forth on the attached Certificate of Passage.

DATED this 12<sup>th</sup> day of August, 1994.



Harold Grant Shirley  
HAROLD GRANT SHIRLEY, MAYOR

ATTEST:

Bonnie Moritz  
BONNIE MORITZ, CITY RECORDER

CERTIFICATION OF PASSAGE

STATE OF UTAH )  
                  ) :SS.  
County of Iron )

I do hereby certify that on the 17<sup>th</sup> day of August,  
1994 a true and correct copy of the hereunto attached Ordinance  
0810-94, regarding Records Asset Management was  
published in the newspaper published within the municipality.

Said Ordinance became effective on the 6<sup>th</sup> day of  
September, 1994.

IN WITNESS WHEREOF, I hereunto set my hand and affix the seal  
of Cedar City Corporation, at Cedar City, County of Iron, State of  
Utah, this 31<sup>st</sup> day of August, 1994.



Bonnie Moritz  
BONNIE MORITZ  
Cedar City Recorder