

## CHAPTER 10

**RECORDS ACCESS AND MANAGEMENT**

## SECTION:

1-10-1: Government Records Access And Management Act Adopted  
By Reference

1-10-1: **GOVERNMENT RECORDS ACCESS AND MANAGEMENT  
ACT ADOPTED BY REFERENCE:** Except insofar as the  
application thereof is clearly impractical or inappropriate, in view of the  
context of purposes or penalty as provided, all of the definitions,  
requirements, regulations, prohibitions, provisions and sections of the Utah  
government records access and management act<sup>1</sup>, as amended, are  
hereby adopted by the city. Any and all violations thereof shall be  
considered violations of this chapter and each such violation shall subject  
the violator thereof to penalty provisions under this chapter if proceeded  
hereunder. (2003 Code)

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1. UCA § 63-2-101 et seq.

CHAPTER 73  
RECORDS ACCESS

ARTICLE

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**ARTICLE 1 - PURPOSE, DEFINITIONS, AND AUTHORITY**

Section

- 73-1-1 PURPOSE  
73-1-2 DEFINITIONS

Section 73-1-1 PURPOSE. Pursuant to powers granted by the State of Utah as set forth in various provision of the Utah code, the City of Green River, Utah, intends by this ordinance to regulate access to its records, to maintain proper record access, classification, storage, and retention.

Section 73-1-2 DEFINITIONS. For the purposes of this Chapter, the following words and phrases shall have the meanings herein described:

Audit: 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 a systematic examination of program procedures and operations for the purpose of determining their effectiveness, economy, efficiency, and compliance with statutes and regulation.

Chronological logs: The regular and customary summary records of law enforcement agencies and other public safety agencies that show the time and general nature of police, fire, and paramedic calls made to the agency and any arrests or jail bookings made by the agency.

Classification, classify, and their derivative forms: Determining whether a record series, record, or information within a record is public, private, controlled, or protected, or exempt from disclosure under Utah Code.

Computer program: Does **not** mean: the original data, including numbers, text, voice, graphics, and images; analysis, compilation, and other manipulated forms of the original data produced by use of the program; or the mathematical or statistical formulas (excluding the underlying mathematical algorithms contained in the program) that could be used if the manipulated forms of the original data were to be produced manually.

Controlled record: A record containing data on individuals that is controlled as provided by Section 11.

Summary data: Statistical records and compilations that contain data derived from private, controlled, or protected information but that do not disclose private, controlled, or protected information.

## ARTICLE 2 - ACCESS TO PUBLIC RECORDS

### Section

73-2-1	RIGHT OF PUBLIC ACCESS
73-2-2	PUBLIC RECORDS
73-2-3	NON-PUBLIC RECORDS
73-2-4	CLASSIFICATION
73-2-5	DISCLOSURE
73-2-6	COURT RULE, STATE OR FEDERAL STATUTES

Section 73-2-1 RIGHT OF PUBLIC ACCESS. Every person has the right to inspect a public record free of charge and the right to take a copy of a public record during normal working hours, subject to the payment of costs and fees pursuant to Section 6 of this ordinance.

Section 73-2-2 PUBLIC RECORDS. All records are public unless otherwise expressly provided by this ordinance or State or Federal law or regulation.

Section 73-2-3 NON-PUBLIC RECORDS. Records that are appropriately classified private, controlled, or protected as allowed by Sections 10, 11, and 12 of this ordinance; and records to which access is restricted pursuant to court rule, another 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 are not public records.

Section 73-2-4 CLASSIFICATION. Only those records specified in Sections 10, 11, or 12 may be classified private, controlled, or protected.

Section 73-2-5. DISCLOSURE. The City may not disclose a record that is private, controlled, or protected to any person except as provided in Subsection (5)(b) or Section 5. The City may, at its discretion, disclose records that are private under Subsection 10.2 or protected under Section 12 to persons other than those specified in Section 5 if the City Council, or a designee, determines that there is no interest in restricting access to the record, or that the interests favoring access outweigh the interest favoring restriction of access.

Section 73-2-6 COURT RULE, STATE OR FEDERAL STATUTES. The disclosure of records to which access is governed or limited pursuant to court rule, another state statute, federal statute, or federal regulation, including records for which access is governed or limited as a condition of participation in a state or federal program or for receiving state or federal funds, is governed by the specific provisions of that statute, rule or regulation. This chapter applies insofar as it is not inconsistent with the statute, rule, or regulation.

## ARTICLE 3 - COPIES

### Section

73-3-1	CERTIFIED COPIES
73-3-2	INTELLECTUAL PROPERTY RIGHTS
73-3-3	PHYSICAL FORMS NOT EXCLUDED

Section 73-3-1 CERTIFIED COPIES. The City shall provide a person with a certified copy of a record if: the person requesting the record has a right to inspect it; identifies the record with reasonable specificity; and pays the lawful fees.

- A. The City is not required to create a record in response to a request.
- B. Nothing in this ordinance requires the City to fulfill a person's records request if the request unreasonably duplicates prior records requests from that person.

Section 73-4-5 ACCESS BY OTHER GOVERNMENT AGENCIES. The City may disclose a record classified private, controlled, or protected to another governmental entity, city, another state, the United States, or a foreign government only as provided by Utah Code.

Section 73-4-6 REQUESTOR'S IDENTITY REQUIRED. Before releasing a private, controlled, or protected record, the City shall obtain evidence of the requestor's identity.

Section 73-4-7 DISCLOSURE BY COURT ORDER. The City shall disclose a record pursuant to the terms of a court order signed by a judge from a court of competent jurisdiction, provided that: the record deals with a matter in controversy over which the court has jurisdiction; the court has considered the merits of the request for access to the record; and the court has considered and, where appropriate, limited the requester's use and further disclosure of the record in order to protect privacy interests in the case of private or controlled records, business confidentiality interests in the case of records protected under Utah Code , and privacy interests or the public interest in the case of other protected records; to the extent the record is properly classified private, controlled, or protected, the interests favoring access, considering limitations thereon, outweigh the interests favoring restriction of access; and where access is restricted by a rule, statute, or regulation referred to in Subsection 4.3(b), the court has authority independent of this ordinance to order disclosure.

Section 73-4-8 RESEARCH PURPOSES. The City may disclose or authorize disclosure of private or controlled records for research purposes if the City: determines that the research purpose cannot reasonably be accomplished without use of disclosure of the information to the researcher in individually identifiable form; determines that the proposed research is without fraud, and that the value of the research outweighs the infringement upon personal privacy; 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 records as soon as the purpose of the research project has been accomplished; secures from the researcher a written statement of his understanding of and agreement to the conditions of this Section and his understanding that violation of the terms of this Section may subject him to criminal prosecution under the Utah Code.

Section 73-4-9 DISCLOSURE BY RESEARCHER. 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. The City may require indemnification as a condition of permitting research under this subsection.

Section 73-4-10 OTHER DISCLOSURES. Under Subsection 4.5(b) and Section 16.4 the City may disclose records that are private under Section 10, or protected under Section 12, to persons other than those specified in this Section. Under Section 16 of the City Council may require the disclosure of records that are private under Section 10, controlled under Section 11, or protected under Section 12 to persons other than those specified in this section. Under the Utah Code, the court may require the disclosure of records that are private under Section 10, controlled under Section 11, or protected under Section 13, to persons other than those specified in this Section.

## ARTICLE 5 - FEES

### Section

73-5-1 FEES

Section 73-5-1 FEES. The City may charge a reasonable fee to cover the City's actual cost of duplicating a record or compiling a record in a form other than that maintained by the City. The fees may be set by Resolution.

- A. The City may fulfill a record request without charge when it determines that: releasing the record primarily benefits the public rather than a person; the individual requesting the record is the subject of the record; or the requester's legal rights are directly implicated by the information in the record, and the requester is impecunious.

- A. For claims under Subsection 73-6-4/A, the governmental entity currently in possession of the record shall return the record to the originating entity within five business days of the request for the return unless returning the record would impair the holder's work.
- B. For claims under Subsection 73-6-4/B, the originating City shall notify the requester when the record is available for inspection and copying;
- D. For claims under Subsection 73-6-4/C, /D, and /E, the City shall: disclose the records that it has located which the requester is entitled to inspect; provide the requester with an estimate of the amount of time it will take to finish the work required to respond to the request; and complete the work and disclose those records that requester is entitled to inspect as soon as reasonably possible;
- E. For delays under Subsection 73-6-4/F, the City shall either approve or deny the request within five business days after the response time specified for the original request has expired;
- F. For delays under Subsection 73-6-4/G, the City shall fulfill the request within 15 business days from the date of the original request;
- G. For delays under Subsection 73-6-4/H, the City shall complete its programming and disclose the requested records as soon as reasonably possible.

**Section 73-6-6 FAILURE TO PROVIDE.** If the City fails to provide the requested records or issue a denial within the specified time period, that failure is considered the equivalent of a determination denying access to the records.

## ARTICLE 7 - DENIAL OF ACCESS

### Section

- 73-7-1 NOTICE OF DENIAL
- 73-7-2 CONTENTS OF DENIAL
- 73-7-3 DESTRUCTION BARRED

**Section 73-7-1 NOTICE OF DENIAL.** If the City denies the request in whole or part, it shall provide a notice of denial to the requester either in person or sending the notice to the requester's address.

**Section 73-7-2 CONTENTS OF DENIAL.** The notice of denial shall contain the following information:

- A. A description of the record or portions of the record to which access was denied, provided that the description does not disclose private, controlled, or protected information or records to which access is restricted pursuant to court rule, another 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.
- B. Citations to the provisions of this ordinance, another state statute, federal statute, court rule or order or federal regulation that exempt the record or portions of the record from disclosure, provided that the citations do not disclose private, controlled, or protected information;
- C. Statement that the requester has the right to appeal the denial to the City Council; and
- D. A brief summary of the appeals process, and the time limits for filing an appeal.

**Section 73-7-3 DESTRUCTION BARRED.** Unless otherwise required by a court or agency of competent jurisdiction, the City may not destroy or give up custody of any record to which access was denied until the period for an appeal has expired, or until the end of the appeals process, including judicial appeal.

- D. Contracts entered into by the City;
- E. Any account, voucher, or contract that deals with the receipt or expenditure of funds by the City;
- F. Records relating to governmental 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 the Utah code.
- G. Chronological logs and initial contact reports;
- H. Correspondence by and with the City in which the City determines or states an opinion upon the rights of the state, a political subdivision, the public, or any person;
- I. Empirical data contained in drafts if the empirical data is not reasonably available to the requester elsewhere in similar form, and the City is given a reasonable opportunity to correct any errors or make nonsubstantive changes before release;
- J. Drafts that are circulated to anyone other than the City, State or to anyone other than a federal agency of the City, State or Federal agency are jointly responsible for implementation of a program or project that has been legislatively approved;
- K. Drafts that have never been finalized but were relied upon by the City in carrying out action or policy;
- L. Original data in a computer program if the City chooses not to disclose the program;
- M. Arrest warrants after issuance, except that, for good cause, a court may order restricted access to arrest warrants prior to service;
- N. Search warrants after execution and filing of the return, except that a court, for good cause, may order restricted access to search warrants prior to trial;
- Q. Records that would disclose information relating to formal charges or disciplinary actions against a past or present City employee if the disciplinary action has been completed and all time periods for administrative appeal have expired, and the formal charges were sustained;
- P. Records maintained by the Division of State Lands and Forestry or the Division of Oil, Gas and Mining that evidence mineral production on governmental lands;
- Q. Final audit reports;
- R. Occupational and professional licenses;
- S. Business licenses; and
- T. A notice of violation, a notice of agency action under the Utah Code, 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 73-8-3 LIST NOT EXHAUSTIVE. The list of public records in this section is not exhaustive and should not be used to limit access to records.

## ARTICLE 9 - PRIVATE RECORDS

### Section

- 73-9-1 DEFINITION OF PRIVATE RECORDS
- 73-9-2 PRIVATE CLASSIFICATION BY THE CITY

## ARTICLE 11 - PROTECTED RECORDS

### Section

#### 73-11-1 DEFINITION OF PROTECTED RECORDS

Section 73-11-1 DEFINITION OF PROTECTED RECORDS. The following records are protected if properly classified by the City:

- A. Trade secrets as defined in if the person submitting the trade secret has provided the City with information specified in the Utah Code.
- B. Commercial information or nonindividual financial information obtained from a person if 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, or the person submitting the information has a greater interest in prohibiting access than the public in obtaining access;
- C. The person submitting the information has provided the City with the information specified in Section 63-2-308 of Utah Code.
- D. Commercial or financial information acquired or prepared by the City to the extent that a disclosure would lead to financial speculations in currencies, securities, or commodities that will interfere with a planned transaction by the City or cause substantial financial injury to the City or cause substantial financial injury to the City or State economy;
- E. Test questions and answers to be used in future license, certification, registration, employment, or academic examination;
- F. Records the disclosure of which would impair governmental procurement 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;
- G. 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:
  - (1) Public interest in obtaining access to the information outweighs the City's need to acquire the property on the best terms possible;
  - (2) The information has already been disclosed to persons not employed by or under a duty of confidentiality to the entity;
  - (3) In the case of records that would identify property, potential sellers of the property described have already learned of the City's plans to acquire the property;
  - (4) 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;
- H. 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 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, 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 employed by or under a duty of confidentiality to the City.

- W. Records that reveal the location of historic, prehistoric, paleontological, or biological resources that, if known, would jeopardize the security of those resources or of valuable historic, scientific, educational, or cultural information;
- X. Records of independent state agencies if the disclosure of the records would conflict with the fiduciary obligations of the agency;
- Y. Records provided by the United States or by a government entity outside the state that are given to the City with a requirement that 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;
- Z. Transcripts, minutes, or reports of the closed portion of a meeting of a public body except as provided in Section 52-4-7 of the Open and Public Meeting Act;
- A1. Records that would reveal the contents of settlement of a meeting of a public body except as provided in Section 52-4-7 of the Open and Public Meeting Act;
- B1. 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;
- C1. 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 City at competitive disadvantage, but this section may not be used to restrict access to a record evidencing a final contract;
- D1. Materials to which access must be limited for purposes of securing or maintaining the City's proprietary protection of intellectual property rights including patent's, copyrights, and trade secrets.

## **ARTICLE 12 - RECORDS CLASSIFICATION AND DESIGNATION**

### Section

- 73-12-1- RESONSIBILITY
- 73-12-2 RECLASSIFAIOTN

Section 73-12-1 RESPONSIBILITY. The City shall evaluate all record series that it uses or creates; designate those record series as provided by this ordinance; report the designation of its record services to the state archives.

Section 73-12-2 RECLASSIFICATION. The City may redesignate a record series or reclassify a record or record series, or information within a record at any time.

## **ARTICLE 13. RECORDS RETENTION**

### Section

- 73-13-1 RETENTION SCHEDULE

Section 73-13-1 RETENTION SCHEDULE. The City shall use and employ the retention schedule for each record series as provided by the Utah State Archives and Records Service, and updated from time to time.

## **ARTICLE 14 - SEGREGATION OF RECORDS**

### Section

- 73-14-1 SEGREGATION REQUIRED

Section 73-15-8 DELEGATION OF AUTHORITY. The duties of the Mayor under this section may be delegated.

Section 73-15-9 NOTICE FILED WITH CITY RECORDER. The notice of appeal to the City Council must be filed with the City Recorder no later than 30 days after the Mayor has denied the appeal or fails to make a determination within the time specified in 73-15-4.

Section 73-15-10 CONTENTS OF NOTICE OF APPEAL. The notice of appeal shall contain the following information:

- A. The petitioner's name, mailing address, and daytime telephone number;
- B. A full description of the information requested, dates and times of contacts and notices, and the relief sought;
- C. A short statement of facts, reasons, and legal authority in support of the appeal.

Section 73-15-11 HEARING TO BE SCHEDULED. No later than three days after receiving a notice of appeal, the recorder shall schedule a hearing for the City Council to discuss the appeal, which shall be held no sooner than 15 days and no later than 30 days from the date of the filing of the appeal.

Section 73-15-12 TESTIMONY GIVEN. At the hearing, the City Council shall allow the parties to testify, present evidence, and comment on the issues. The City Council may allow other interested persons to comment on the issues.

Section 73-15-13 ORDER TO BE GIVEN. No later than three business days after the hearing, the City Council shall issue a signed order either granting the petition in whole or in part, or upholding the determination of the City in whole or in part.

Section 73-15-14 CONTENTS OF ORDER. The order of the City shall include:

- A. A statement of reasons for the decision, including citations to this ordinance or federal regulation that governs disclosure of the record provided that the citations do not disclose private, controlled, or protected information;
- B. A description of the record or portions of the record to which access was ordered or denied, provided that the description does not disclose private, controlled, or protected information;
- C. A statement that any party to the appeal may appeal the City's decision to district court; and
- D. A brief summary of the appeal, and a notice that in order to protect its rights on appeal, the party may wish to seek advice from an attorney.

Section 73-15-15 NONREQUESTOR MAY APPEAL. A person aggrieved by the City's classification or designation determination under this Chapter, but who is not requesting access to the records, may appeal that determination using the procedures provided in this Section. If a nonrequestor is the only appellant, the procedures provided in this Section shall apply, except that the determination on the appeal shall be made within 30 days after receiving the notice of appeal.

## ARTICLE 16 - JUDICIAL REVIEW

### SECTION

#### 73-16-1 PETITION FOR JUDICIAL REVIEW

Section 73-16-1 PETITION FOR JUDICIAL REVIEW. Any party to a proceeding before the City Council may petition for judicial review by the district court of the City Council's order. The petition shall be filed no later than 30 days after the date of the City Council's order.

Section 73-18-4 CORRECTION OF RECORDS. If the City approves the request, it shall correct all of its records that contain the same incorrect information as soon as practical. A City may not disclose the record until it has amended it.

Section 73-18-5 DENIAL OF REQUEST TO AMEND. If the City denies the request it shall inform the requester in writing; and provide a brief statement giving its reasons for denying the request.

Section 73-18-6 CONTEST OF DENIAL. If the City denies a request to amend a record, the requester may submit a written statement contesting the information in the record.

Section 73-18-7 ACTION IF DENIAL CONTESTED. If a denial is contested, the City shall file the requester's statement with the disputed record if the record is in a form such that the statement can accompany the record or make the statement accessible if the record is not in a form such that the statement can accompany the record; and disclose the requester's statement along with the information in the record whenever the city discloses the disputed information.

Section 73-18-8 APPEAL OF DENIAL. The requester may appeal the denial of the request to amend a record pursuant to Section 16 of this ordinance.

Section 73-18-9 APPLICATIONS BARRED. This Section does not apply to records relating to title to real or personal property, medical records, judicial case files, or any other records that the City determines must be maintained in their original form to protect the public interest and to preserve the integrity of the record system.

## **ARTICLE 19. RIGHTS OF INDIVIDUALS ON WHOM DATA IS MAINTAINED**

### Section

- 73-19-1 STATEMENT TO BE FILED
- 73-19-2 EXPLANATION TO BE GIVEN
- 73-19-3 USES BARRED

Section 73-19-1 STATEMENT TO BE FILED. The City shall file with the State Archivist a statement explaining the purposes for which record series designated private or controlled are collected and used by that City.  
That statement is a public record.

Section 73-19-2 EXPLANATION TO BE GIVEN. Upon request, the City shall explain to an individual the reasons the individual is asked to furnish to the City information that could be classified private or controlled; the intended uses of the information; and the consequences for refusing to provide the information.

Section 73-19-3 USES BARRED. The City may not use private or controlled records for purposes other than those given in the statement filed with the State Archivist under this Chapter, or for purposes other than those for which another governmental entity could use the record under Section 63-2-206 of Utah Code.

## **ARTICLE 20 - CRIMINAL PENALTIES**

### Section

- 73-20-1 DISCLOSURE OF PRIVATE RECORDS UNLAWFUL
- 73-20-2 DEFENSE TO PROSECUTION
- 73-20-3 FALSE PRETENSES UNLAWFUL
- 73-20-4 REFUSAL OF RELEASE UNLAWFUL

Section 73-20-1 DISCLOSURE OF PRIVATE RECORDS UNLAWFUL. A public employee or other person who has lawful access to any private, controlled, or protected record under this Chapter, and who intentionally discloses or provides a copy of a private, controlled or protected record to any person, knowing that such disclosure is prohibited, is guilty of a Class B misdemeanor.