



City of LaVerkin
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ORDINANCE 2006-31

AN ORDINANCE REPLACING PORTIONS OF TITLE 1, CHAPTER 9, OF THE LAVERKIN CITY CODE REGARDING RECORDS AND RECORDS REQUESTS

WHEREAS, the LaVerkin City Council desires to provide for the regulation of records within the City of LaVerkin; and

WHEREAS, the Utah legislature has recently enacted a number of changes to the Government Records Access and Management Act (GRAMA); and

WHEREAS, the LaVerkin City ordinance needs to be revised to bring it into conformance with the new GRAMA statutes.

BE IT THEREFORE ORDAINED by the LaVerkin City Council that Title 1, Chapter 9 be and amended and replaced as follows:

1-9-3: DEFINITIONS:

As used in this chapter, the following words and terms shall have the meanings ascribed to them in this section:

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 program procedures and operations for the purpose of determining their effectiveness, economy, efficiency and compliance with statutes and regulations.

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.

CITY: Shall refer to the city of LaVerkin, Washington County, Utah.

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 Annotated section 63-2-201(3)(b).

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 computer system, and any associated documentation and source material that explain how to operate the computer program. "Computer program" 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 use of the program; or
- C. 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.

CONTRACTOR: Any person who contracts with the city to provide goods or services directly to the city or any private, nonprofit organization that receives funds from the city. "Contractor" does not mean a private provider.

CONTROLLED RECORD: A record containing data on individuals that is controlled as provided by section 1-9-12 of this chapter.

DESIGNATION, DESIGNATE (And Their Derivative Forms): Indicating, 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.

ELECTED OFFICIAL: Each person elected to a state office, county office, municipal office, school board or school district office, or special district office, but does not include judges.

EXPLOSIVE: A chemical compound, device, or mixture commonly used or intended for the purpose of producing an explosion and that contains oxidizing or combustible units or other ingredients in proportions, quantities, or packing so that an ignition by fire, friction, concussion, percussion, or detonator of any part of the compound or mixture may cause a sudden generation of highly heated gases and the resultant gaseous pressures are capable of producing destructive effects on contiguous objects or causing death or serious bodily injury.

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 benefit received from the individual's employer.

INDIVIDUAL: A human being.

INITIAL CONTACT REPORT: A. An 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:

1. The date, time, location and nature of the complaint, the incident or offense;
2. Names of victims;
3. The nature or general scope of the agency's initial actions taken in response to the incident;
4. The general nature of any injuries or estimate of damages sustained in the incident;
5. The name, address and other identifying information about any person arrested or charged in connection with the incident;
6. The identity of the public safety personnel (except undercover personnel) or prosecuting attorney involved in responding to the initial incident.

B. Initial contact reports do not include follow up or investigative reports prepared after the initial contact report. However, if the information specified in subsection A of this definition appears in follow up or investigative reports, it may only be treated confidentially if it is private, controlled, protected or exempt from disclosure under Utah Code Annotated section 63-3-201(3)(b).

PERSON: Any individual, nonprofit or profit corporation, partnership, sole proprietorship or other type of business organization *or any combination of these acting in concert with one another.*

PRIVATE PROVIDER: Any person who contracts with the city to provide services directly to the public.

PRIVATE RECORD: A record containing data on individuals that is classified private as provided by section 1-9-11 of this chapter.

PROTECTED RECORD: A record that is classified protected as provided by section 1-9-13 of this chapter.

PUBLIC RECORD: A record that has not been ~~appropriately~~ classified private, controlled or protected as provided in sections 1-9-11, 1-9-12 and 1-9-13 of this chapter.

RECORD: A. 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 city.

B. "Record" does not mean:

1. Temporary drafts or similar materials prepared for the originator's personal use or prepared by the originator for the personal use of an individual for whom he is working;
2. Materials that are legally owned by an individual in his private capacity;
3. Materials to which access is limited by the laws of copyright or patent, unless the copyright or patent is owned by the city;
4. Proprietary software;
5. Junk mail or commercial publications received by the city or an official or employee of the city;
6. Books and other materials that are cataloged or inventoried and contained in the collections of libraries open to the public, regardless of physical form or characteristics of the material;
7. 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;
8. "Computer programs" as defined herein that are developed or purchased by or for the city for its own use;
9. Notes or internal memoranda prepared as part of the deliberative process by a member of the judiciary, 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.
- 10. A personal note or personal communication prepared or received by an employee or official of the city in their private capacity.*
- 11. A telephone number or similar code used to access a mobile communication device that is used by an employee or official of the city, provided that the employee or official has designated at least one business telephone number that is a public record as provided in Section 1-9-10.A.2.*

RECORD SERIES: A group of records that may be treated as a unit for purposes of designation, description, management or disposition.

RECORDS COMMITTEE: *The Utah State Records Committee created in Utah Code Ann. § 63-2-501.*

RECORDS OFFICER: The city manager and other individuals as appointed by the mayor to work in the care, maintenance, scheduling, designation, classification, disposal and preservation of records.

STATE ARCHIVES: The Utah Division of Archives and Records Service created in Utah Code Ann. § 63-2-901.

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.

1-9-4: ADMINISTRATION:

The mayor shall:

- A. Program Establishment: Establish and maintain an active, continuing program for the economical and efficient management of the city's records in accordance with this chapter and Utah Code Annotated section 63-2-101 et seq., as amended. B. Appoint Records Officer: The mayor, upon the advice and consent of the city council, appoints the city manager as the records officer and the deputy clerk as the assistant records officer, who will be trained to work with the state archives in the care, maintenance, scheduling, disposal, classification, designation, access and preservation of city records. (Res. 1995-07, 8-2-1995; amd. 1998 Code)
- C. Ensure that officers and employees of the city that receive or process records requests receive required training on the procedures and requirements of this chapter and Title 63, Chapter 2 of the Utah Code.*
- ⊕ D. Documentation: Make and maintain adequate and proper documentation of the organization, functions, policies, decisions, procedures and essential transactions of the governmental entity designed to furnish information to protect the legal and financial rights of persons directly affected by the city's activities. ⊕ E. Schedule Of Records Submission: Submit to the state archivist proposed schedules of records for final approval by the state records committee ⊕ F. Surveys: Cooperate with the state archivist in conducting surveys made by the state archivist.
- ⊕ G. Rule Compliance: Comply with rules issued by the department of administrative services as provided by Utah Code Annotated section 63-2-904, as amended.
- ⊕ H. Report To State Archives:
 - 1. Records Designation: Report to the state archives the designation of records series that it maintains;
 - 2. Records Classification: Report to the state archives the classification of each record series that is classified; and
 - 3. Retention Schedules: Establish and report to the state archives retention schedules for objects that the governmental entity determines are not records referred to under Utah Code Annotated section 63-2-301(18), but that have historical or evidentiary value.

1-9-5: RIGHT OF PUBLIC ACCESS:

A. Right To Inspect: 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 1-9-6 of this chapter. Requests to inspect or copy records shall be made pursuant to section 1-9-8 of this chapter.

B. Records Designation:

1. Public: All records are public, unless otherwise expressly provided by this chapter or state or federal law or regulation.

2. Nonpublic: The following records are not public:

a. Records that are appropriately classified private, controlled or protected as provided by sections 1-9-11, 1-9-12 and 1-9-13 of this chapter; and

b. 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. 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; however, this chapter applies to such records insofar as this chapter is not inconsistent with the statute, rule or regulation.

C. Media: Any person who requests a record to obtain information for a story or report for publication or broadcast to the general public is presumed to be acting to benefit the public rather than a person.

D. Disclosure:

1. Government Entity, *Contractor or Private Provider*: The city may disclose a record classified private, controlled or public to another governmental entity, city, another state, the United States, or a foreign government *or a contractor or private provider who has a contract to provide services to the city* only as provided by Utah Code Annotated section 63-2-206.

2. Court Ordered Disclosure: Under Utah Code Annotated section 63-2-404(8), the court may require the disclosure of records that are private under section 1-9-11 of this chapter, controlled under section 1-9-12 of this chapter, or protected under section 1-9-13 of this chapter, to persons other than those specified in sections 1-9-11, 1-9-12 and 1-9-13 of this chapter. (Ord. 95-03, 6-7-1995)

3. *Private, controlled and public records may be disclosed to certain specified persons pursuant to sections 1-9-11, 1-9-12 and 1-9-13 of this chapter, subject to any exceptions described in this chapter.*

1-9-6: FEES:

A. Authority: 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 *and shall be approved by the mayor*. The initial fee, until changed by resolution, is as set forth in schedule A, which is on file in the office of the records officer.

B. *If the city agrees to compile a record in a form other than that normally maintained by the city, the city may charge a fee for the actual costs of compiling such record, including the following:*

(i) the cost of staff time for compiling, formatting, manipulating, packaging, summarizing, or tailoring the record either into an organization or media to meet the person's request;

(ii) the cost of staff time for search, retrieval, and other direct administrative costs for complying with a request; and

(iii) in the case of fees for a record that is the result of computer output other than word processing, the actual incremental cost of providing the electronic services and products together with a reasonable portion of the costs associated with formatting or interfacing the information for particular users.

B C. Exceptions:

1. The city may fulfill a record request without charge when it determines that:

a. Releasing the record primarily benefits the public rather than a person;

b. The individual requesting the record is the subject of the record, *or a person identified in Utah Code Ann. § 63-2-202(1) or (2)*; or

c. The requester's legal rights are directly implicated by the information in the record, and the requester is impecunious.

2. The city may not charge a fee for:

a. Reviewing a record to determine whether it is subject to disclosure; or

b. Inspecting a record.

c. The first quarter hour of staff time to compile the records requested if they are not in a format that is normally maintained by the city.

Ⓒ *D.* Prepayment; Conditions: The city requires payment of past fees and future estimated fees before beginning to process a request if fees are expected to exceed fifty dollars (\$50.00), or if the requester has not paid fees from previous requests. Any prepaid amount in excess of fees due shall be returned to the requester.

Ⓓ *E.* Other Fees Established: This section does not alter, repeal or reduce fees established by other ordinances, statutes or legislative acts.

1-9-7: RETENTION OF RECORDS:

A. Standards: ~~This chapter shall provide standards for the management and retention of the records of the city comparable to Utah Code Annotated section 63-2-903. The initial retention schedule shall be as set forth in schedule B, which is on file in the office of the records officer. The city shall not mutilate, destroy or dispose of a record or record series in contravention of the retention schedule.~~ *the model retention schedules maintained by the state archivist for each specific type of material that is classified as a record under this chapter and state law. The city shall also establish and report to the state archives retention schedules for any objects that the city determines are not defined as a record under section 1-9-3, and Utah Code Ann. § 63-2-103, but that have historical or evidentiary value, when such objects are discovered or identified.*

B. ~~Property Disposition~~ *Ownership of Records; Custody:*

1. Except as provided in subsection B2 of this section, all records created or maintained by the city are the property of the state and shall not be mutilated, destroyed or otherwise damaged or disposed of, in whole or in part, except as provided for in ~~this chapter~~ *state law*.

2. Records which constitute a valuable intellectual property shall be the property of the city.

3. The state archives may, upon request from the city, take custody of any record series of the city. If the city no longer wishes to maintain custody of a record which must be retained under the *state's* retention schedules, the city shall transfer it to the state archives for safekeeping and management.

C. Intentional Damage Unlawful: It is unlawful for the city to intentionally mutilate, destroy or otherwise damage or dispose of a record series knowing that such mutilation, destruction or damage is in contravention of the *state's* retention schedules.

1-9-8: ACCESS REQUESTS; PROCEDURE:

A. Information Required: A person making a request for a record shall furnish the city with a written request containing his name, mailing address, daytime telephone number, if available, and a description of the record requested that identifies the record with reasonable specificity. Before a person receives a record, the lawful fees set forth in this chapter shall be paid. If the record is private, controlled or protected, the city shall obtain evidence of the requester's identity before releasing the record. A person may request that the record provided be

certified. Subpoenas and other methods of discovery under the state or federal statutes or rules of civil procedure are not written requests under this section.

B. Ordered Disclosures:

1. In judicial or administrative proceedings in which an individual is requesting discovery of records classified private, controlled or protected under this chapter, or otherwise restricted from access by other statutes, the court or an administrative law judge shall follow the procedure in subsection K of this section before ordering disclosure. Until the court or an administrative law judge orders disclosure, these records are privileged from discovery.

2. If the court or administrative order requires disclosure, the terms of the order may limit the requester's further use and disclosure of the record in accordance with subsection K of this section, in order to protect the privacy interests recognized in this chapter.

3. This section does not otherwise limit a person's right to obtain records through the procedures set forth in this chapter, unless the court or an administrative law judge includes such a limitation in its order.

C. Time Limits: Unless the city determines that there are circumstances constituting "extraordinary circumstances" ⁹, as soon as reasonably possible, but no later than ten (10) business days after receiving a written request, or five (5) business days after receiving a written request if the requester demonstrates that expedited response to the record request benefits the public rather than the person, the city shall respond to the request by:

1. Approving the request and providing the record;

2. Denying the request;

3. Notifying the requester that it does not maintain the record and providing, if known, the name and address of where the record can be found; or

4. Notifying the requester that because of one of the extraordinary circumstances listed in subsection D1 of this section, it cannot immediately approve or deny the request.

D. Extraordinary Circumstances:

1. Specified: The following circumstances constitute "extraordinary circumstances" that allow the city to delay approval or denial of a records request by an additional period of time as specified in subsection D3 of this section:

a. Another governmental entity is using the record, in which case the city shall promptly request the governmental entity currently in possession return the record;

b. Another governmental entity is using the record as part of an audit and returning the record before the completion of the audit would impair the conduct of the audit;

- c. The request is for a voluminous quantity of records;
- d. The city is currently processing a large number of records requests;
- e. The request requires the city to review a large number of records to locate the records requested;
- f. The decision to release a record involves legal issues that require the city to seek legal counsel for the analysis of statutes, rules, ordinances, regulations or case law;
- g. Segregating information that the requester is entitled to inspect from information that the requester is not entitled to inspect requires extensive editing; or
- h. Segregating information that the requester is entitled to inspect from information that the requester is not entitled to inspect requires computer programming.

2. Notice: The Records Officer shall provide the requester with written notice of the extraordinary circumstance or circumstances which do not allow the city to provide records in the time specified in subsection C of this section and shall specify the earliest time and date when the record will be available.

3. Extended Time Limits: If one of the extraordinary circumstances listed in subsection D1 of this section precludes approval or denial within the time specified in subsection C of this section, the following time limits apply to the extraordinary circumstances:

- a. For claims under subsection D1a of this section, the city shall produce the record within ten (10) business days of the request for the return from the governmental entity holding the record, unless returning the record would impair the holder's work;
- b. For claims under subsection D1b of this section, the city shall notify the requester when the record is available for inspection and copying;
- c. For claims under subsection D1c, D1d and D1e of this section, the city shall:
 - (1) Disclose the records that it has located which the requester is entitled to inspect;
 - (2) 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
 - (3) Complete the work and disclose the records the requester is entitled to inspect as soon as reasonably possible.
- d. For delays under subsection D1f of this section, the city shall either approve or deny the request within fifteen (15) business days after the response time specified for the original request has expired;

e. For delays under subsection D1g of this section, the city shall fulfill the request within twenty (20) business days after the response time specified for in the original request has expired; or

f. For delays under subsection D1h of this section, the city shall complete its programming and disclose the requested records as soon as reasonably possible.

E. Appeals: If the city claims extraordinary circumstances and specifies the date when the records will be available and, if the requester believes the extraordinary circumstances do not exist or that the time specified is unreasonable, the requester may appeal the city's claim of extraordinary circumstances in accordance with section 1-9-18 of this chapter within thirty (30) days after notification of a claim of extraordinary circumstances by the city, despite the lack of a "determination" or its equivalent.

F. Limited City Resources: The time limits to respond to a request where extraordinary circumstances are involved are so set as to provide the requested records within a reasonable time, while at the same time recognizing the city's limited resources to respond to such a request.

G. Failure To Provide Within Time Requested: If the city fails to provide the requested records or issues a denial within the specified time period of either subsection C or D3 of this section, that failure is considered the equivalent of a determination denying access to the records, unless the city and the requester have agreed in writing to an extension of the time period. The city may not use the physical form, electronic or otherwise, in which a record is stored to deny, or unreasonably hinder the rights of persons to inspect and receive copies of the record under this chapter.

H. Duplicative Requests: Nothing in this chapter requires the city to fulfill a person's records request if the request unreasonably duplicates prior records requests from that person.

I. Voluminous Records: If a person requests copies of more than fifty (50) pages of records, and if the records are contained in files that do not contain records that are exempt from disclosure, the city may:

1. Provide the requester with the facilities for copying the requested records and require the requester make the copies himself; or

2. Allow the requester to provide his own copying facilities and personnel to make the copies at the city offices and waive the fees for copying the records.

J. Intellectual Property Rights:

1. If the city owns an intellectual property right and offers the intellectual property right for sale or license, the city may control by ordinance or policy the duplication and distribution of the material based on the terms the city considers to be in the public interest;

2. Nothing in this chapter shall be construed to limit or impair the rights or protections granted to the city under federal copyright or patent law as a result of its ownership of the intellectual property right.

K. Court Ordered Disclosure: The city shall disclose a record pursuant to the terms of the court order signed by a judge from a court of competent jurisdiction; provided, that:

1. The record deals with a matter in controversy over which the court has jurisdiction;

2. The court has considered the merits of the request for access to the record; and

3. 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 interest in the case of records protected under Utah Code Annotated sections 63-2-304(1) and (2), and privacy interests or the public interest in the case of other protected records;

4. To the extent the record is properly classified private, controlled or protected, the interest favoring access, considering limitations thereon, outweighs the interest favoring restrictions of access; and

5. Where access is restricted by a rule, statute or regulation referred to in subsection 1-9-5B2b of this chapter, the court has authority independent of this chapter to order disclosure.

L. Research Purposes:

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 the 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 records 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 K2 of this section, 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 his understanding of and agreement to the conditions of this subsection and his understanding that violation of the terms of this

subsection may subject him to criminal prosecution under Utah Code Annotated section 63-2-801.

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 subsection.

3. The city may require indemnification as a condition of permitting research under this subsection.

M. Disclosure To Another Governmental Entity: 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 Annotated section 63-2-206.

N. Confidentiality Agreements Predating April 1, 1992: If the city receives a request for a record that is subject to a confidentiality agreement executed before April 1, 1992, then Utah Code Annotated section 63-2-105 controls.

O. Format Of Records: Upon request, the city shall ~~shall~~ *may* provide a record in a particular format if:

1. The city is able to do so without unreasonably interfering with the city's duties and responsibilities; and

2. The requester agrees to pay the city for its costs incurred in providing the record in the requested format.

3. In response to a request, the city is not required to compile, format, manipulate, package, summarize, or tailor information, or provide a record in a particular format, medium, or program not currently maintained by the city.

4. The city is not obligated to fill a request if the record requested is accessible in the identical physical form and content in a public publication or product produced by the city, and the city provides the person requesting the record with the public publication or product and specifies where the record can be found in the public publication or product.

P. Creation Of A Record: The city is not required to create a record or record series in response to a request.

Q. Tape Duplication: Duplication of the audio tapes of all meetings can be made for an entire tape or a selection from the tape. Staff time charges will apply to time incurred in duplicating or selecting tape materials. Original tapes will not be let out of the city offices. Individuals other than city staff will not be allowed to operate the city duplication machine. (Ord. 95-03, 6-7-1995)

R. A person making a request for a record must submit the request to the governmental entity that prepares, owns, or retains the record.

1-9-9: CLASSIFICATION; DESIGNATION:

A. Designation: The city shall:

1. Evaluate all record series that it uses or creates;
2. Designate those record series as provided by this chapter;
3. Report the designation of its record series to the state archives.

B. Classification: The city may classify a particular record, record series or information within a record at any time, but is not required to classify a particular record, record series or information until access of the record is requested. The city may redesignate a record series or reclassify a record or record series, or information within a record at any time. If more than one provision of this chapter could govern the classification of a record, the city shall classify the record by considering the nature of the interest intended to be protected and specificity of the competing provisions. Nothing in subsection 1-9-11(B) or sections 1-9-12 and 1-9-13 of this chapter require the city to classify a record as private, controlled or confidential.

C. Business Confidentiality:

1. Any person who provides a governmental entity a record that he believes should be protected under subsections 1-9-13(A)(1) and A(2) of this chapter shall provide with the record a written claim of business confidentiality and a concise statement of reasons supporting the claim of business confidentiality.
2. The claimant shall be notified by the governmental entity if the record claimed to be protected under subsections 1-9-13(A)(1) and A(2) of this chapter is classified public or if the governmental entity determines that the record should be released after balancing interests under subsections 1-9-11(C)(2), 1-9-13(C) and 1-9-18(D)(5) of this chapter.
3. Except as provided by court order, the governmental entity may not disclose records claimed to be protected under subsections 1-9-13(A)(1) and A(2) of this chapter, but which it determines should be classified public until the period in which to bring an appeal expires or the end of the appeal process, including judicial appeal. This subsection does not apply where the claimant, after notice, has waived the claim by not appealing or intervening before the city council.

D. Misappropriation: Disclosure or acquisition of information under this subsection does not constitute misappropriation under Utah Code Annotated section 13-24-2(2).

- E. Records regarding security measures designed for the protection of persons or property, public or private, are not subject to this chapter. These records include security plans, security codes, combinations and passwords, passes and keys, security procedures and building and public works designs, to the extent that the records or information relate to the ongoing security measures of the city.*
- F. Notwithstanding the provisions of sections 10-9-5(B) and 10-9-10(B), and Utah Code Ann. § 63-2-201(6)(a) and (b), this chapter does not apply to a record containing protected health information as defined in 45 C.F.R., Part 164, Standards for Privacy of Individually Identifiable Health Information, if the record is controlled or maintained by a governmental entity and governed by 45 C.F.R., Parts 160 and 164, Standards for Privacy of Individually Identifiable Health Information.*

1-9-10: PUBLIC RECORDS:

A. Specified: The following records are public:

1. Laws and ordinances;
2. The city's former and present employees and officers' names, gender, gross compensation, job titles, job descriptions, business addresses, *business email address*, business telephone numbers, number of hours worked per pay period, dates of employment and relevant education, previous employment and similar job qualification. Undercover law enforcement personnel or investigative personnel are excluded from this subsection if disclosure would reasonably be expected to impair the effectiveness of investigations or endanger any individual's safety;
3. Final opinions, including concurring and dissenting opinions and orders that are made by the city 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 interpretation of statutes or rules by the city, unless the records were prepared by or on behalf of the city solely in anticipation of litigation that are not available under the rules of discovery, the records disclose an attorney's work product, including the mental impressions or legal theories of an attorney or other representative of the city concerning litigation, and the records are of communications between the city and an attorney representing, retained or employed by the city if the communications would be privileged as provided in Utah Code Annotated section 78-24-8;
5. Information contained in or compiled from a transcript, minutes or report of the open portion of a meeting of the city, including the records of all votes of each member of the city council;
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 this chapter;

7. Records filed with or maintained by county recorders, clerks, treasurer, surveyors, zoning commissions of the division of state lands and forestry, the division of oil, gas and mining, the division of water rights, or other governmental entities 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. Records of the department of commerce that evidence incorporations, mergers, name changes and uniform commercial code filings;

9. Data on individuals that would otherwise be private under this chapter if the individual who is the subject of the record has given the city written permission to make the records available to the public;

10. Documentation of the compensation that the city pays to a contractor or private provider; and

11. Summary data.

12. Voter registration records, including an individual's voting history, except for those parts of the record that are classified as private in Utah Code Ann. § 63-2-302(1)(i).

B. Restricted Access; Conditions: The following records are normally public, but access, upon approval of the city attorney, may be restricted in whole or in part as private, controlled or protected, or the record is one 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:

1. Administrative staff manuals, instructions to staff and statements of policy;
2. Records documenting a contractor's or private provider's compliance with the terms of a contract with the city;
3. Records documenting the services provided by a contractor or private provider to the extent the records would be public if prepared by the city;
4. Contracts entered into by the city;
5. Any account, voucher or contract that deals with the receipt or expenditure of funds by the city;

6. 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 Utah Code Annotated section 63-2-304(34);
7. Chronological logs and initial contact reports;
8. Correspondence by and with the city in which the city determines or states an opinion upon the rights of the state, political subdivision, the public or any person;
9. Empirical data contained in drafts if:
 - a. The empirical data is not reasonably available to the requester elsewhere in similar form; and
 - b. The city is given a reasonable opportunity to correct any errors or make nonsubstantive changes before release;
10. Drafts that are circulated to anyone other than *a government-managed corporation, or a contractor or private provider or the city, or the state or a federal agency* if the city, state or federal agency are jointly responsible for implementation of a program or project that has been legislatively approved;
11. Drafts that have never been finalized but were relied upon by the city in carrying out action or policy;
12. Original data in a computer program if the city chooses not to disclose the program;
13. Arrest warrants after issuance, except that for good cause, a court may order restricted access to arrest warrants prior to service;
14. 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;
15. 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;
16. Records maintained by the division of state lands and forestry or the division of oil, gas and mining that evidence mineral production on government lands;
17. Final audit reports;

18. Occupational and professional licenses;

19. Business licenses; and

20. A notice of violation, a notice of agency action under Utah Code Annotated section 63-46b-3, 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.

C. List Not Exhaustive: A list of public records in this section is not exhaustive and should not be used to limit access to records. ~~And~~ **Public** records shall be made available to any person making request pursuant to section 1-9-8 of this chapter.

1-9-11: PRIVATE RECORDS:

A. Specified: 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 publicly funded libraries that, when examined alone or with other records, identify a patron;

4. Records received or generated in a senate or house ethics committee concerning any alleged violation of the rules on legislative ethics if the ethics committee meeting was closed to the public; and

5. Records concerning a current or former employee of, or applicant for employment with, the city that would disclose the individual's home address, home telephone number, social security number, insurance coverage, marital status or payroll deductions.

6. That part of a record indicating a person's Social Security number or federal employer identification number if provided under Utah Code Ann. Sections 31A-23a-104, 31A-25-202, 31A-26-202, 58-1-301, 61-1-4, or 61-2-6.

7. That part of a voter registration record identifying a voter's driver license or identification card number, Social Security number, or last four digits of the Social Security number.

8. A record that contains information about an individual, is voluntarily provided by the individual, and goes into an electronic database that is designated by and administered under the authority of the Chief Information Officer, and acts as a repository of information about the individual that can be electronically retrieved and used to facilitate the individual's online interaction with a state agency or local government.

9. Information obtained through a criminal background check under Utah Code Ann. Title 11, Chapter 40, Criminal Background Checks by Political Subdivisions Operating Water Systems.

B. Properly Classified: 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 subsections 1-9-10(A)(2) and 1-9-10(B)(15) of this chapter or private under subsection A(5) of this section.
2. Records describing an individual's finances, except that the following are public:
 - a. Records described in subsection 1-9-10(A) of this chapter;
 - b. Information provided to the city 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 independent state agencies if the disclosure of the records would conflict with fiduciary obligations of the agency.
4. Other records containing data on individuals, the disclosure of which constitutes a clearly unwarranted invasion of personal privacy.
5. Records provided by the United States or by a governmental entity outside the state that are given with the requirement 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.

C. Disclosure Requirements:

1. Persons: Upon request, the city shall disclose a private record to:
 - a. The subject of the record, if the subject of the record is a nonprofit or profit corporation or limited liability company, then the city shall disclose the private record only upon receipt of a corporate or company resolution requesting the record and authorizing the individual to receive the record;
 - b. The parent or legal guardian of an unemancipated minor who is the subject of the record;
 - c. The legal guardian of a legally emancipated individual who is the subject of the record;
 - d. Any other individual who:

- (1) Has a power of attorney from the subject of the record; or
- (2) Submits a notarized release from the subject of the record or his legal representative dated no later than ninety (90) days before the date the request is made; or
- (3) If the record is a medical record described in Utah Code Annotated section 63-2-302(1)(b), is a health care provider, as defined in Utah Code Annotated section 26-33a-102(7), if releasing the record or information in the record is consistent with normal professional practice and medical ethics; or

e. Any person to whom the record must be provided pursuant to court order as provided in subsection 1-9-8(K) of this chapter or a legislative subpoena as provided in Utah Code Annotated title 36, chapter 14.

2. Context: When providing records under subsection C1 of this section or when providing public records about an individual to the persons specified in subsection C1 of this section, the city shall, upon request, disclose the context in which the record is used to that individual.

3. Other Persons: The city may disclose records from subsection B of this section to persons other than those identified in subsection C1 of this section specified if the *mayor or* Records Officer determines that there is no interest in restricting access to the record, or that the interest favoring access outweighs the interest favoring restriction of access.

D. Segregation: If there is more than one subject of a private record, the portion of the record that pertains to another subject shall be segregated from the portion that the requester is entitled to inspect and the city shall issue a notice of denial *in respect to the segregated portion* pursuant to sections 1-9-14 and 1-9-17 of this chapter.

E. Private Records of At Risk Employees and their Families:

1. *A person who meets the definition of an 'at-risk government employee' under Utah Code Ann. § 63-2-302.5 (current or former peace officer or law enforcement official, all judges including justice court judges, and certain prosecutors) may submit an application requesting that private information of the individual and family members residing with the individual, such as their home address, home telephone number, Social Security numbers, insurance coverage, marital status, or payroll deductions, be classified as private. Upon the city's granting such an application, such documents and information shall be private and may only be disclosed as provided in this section and Utah Code Ann. § 63-2-302.5.*
2. *If the city receives a subpoena for any of these records, the city shall mail a copy of the subpoena to the at-risk employee requesting that within ten (10) days he/she either authorizes release of the records, or is providing a motion to quash the subpoena. If no response is received from the at-risk employee within 10 days, or if the city receives a court order for production of the*

records, the city may thereafter release the records pursuant to the subpoena.

1-9-12: CONTROLLED RECORDS:

A. Specified: A record is controlled only if:

1. The record contains medical, psychiatric or psychological data about an individual;
2. The city reasonably believes that:
 - a. 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
 - b. Releasing the information would constitute a violation of normal professional practice and medical ethics; and
 - c. The city has properly classified the record.

B. Disclosure:

1. Upon a request, the city shall disclose a controlled record to:
 - a. A physician, psychologist, certified social worker, insurance provider or agent, or a governmental public health agency upon submission of a release from the subject of the record that is dated no more than ninety (90) days prior to the date the request is made and a signed acknowledgment of the terms of disclosure of controlled information as provided by subsection B2 of this section; and
 - b. Any person to whom a record must be disclosed pursuant to court order *as provided in subsection 1-9-8(K) of this chapter or a legislative subpoena as provided in Utah Code Annotated, Title 36, Chapter 14.*
2. A person who receives a record from the city in accordance with subsection B1a of this section may not disclose controlled information from the record to any person, including the subject of the record.
- ~~3. Any person to whom the record must be provided pursuant to court order as provided in subsection 1-9-8K of this chapter or a legislative subpoena as provided in Utah Code Annotated title 36, chapter 14.~~

- C. Segregation: If there is more than one subject of a controlled record, the portion of the record that pertains to another subject shall be segregated from the portion that the requester is entitled to inspect and the city shall issue a notice of denial pursuant to sections 1-9-14 and 1-9-17 of this chapter. (Ord. 95-03, 6-7-1995)

1-9-13: PROTECTED RECORDS:

- A. Specified; Properly Classified: The following records are protected if properly classified by the city:
1. Trade secrets as defined in Utah Code Annotated section 13-24-2, if the person submitting the trade secret has provided the city with the information specified in Utah Code Annotated section 63-2-308.
 2. Commercial information or nonindividual 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 Utah Code Annotated section 63-2-308.
 3. 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 state economy.
 4. Test questions and answers to be used in future license, certification, employment or academic examination.
 5. 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.
 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 the 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 property described have already learned of the city's plans to acquire the property; or

- d. In the case of records that would identify the appraised 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 employed by or under a duty or confidentiality to the city.
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 of 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 governmental property, governmental programs or governmental 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 and parole by an employee of or contractor for the department of corrections, the board of pardons and parole 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 work papers that identify audit, collection and operational procedures and methods used by the Utah State tax commission if disclosure would interfere with audits or collections.
14. Records of a governmental 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 Utah Code Annotated section 78-24-8.
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 analyses of loss occurrences.
21. Records, other than personnel evaluations, which 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 valuable historic, scientific, educational or cultural information.
23. Records of independent state agencies if the disclosure of the records would conflict with the fiduciary obligations of the agency.
24. 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.
25. Transcripts, minutes or reports of the closed portion of a meeting of a public body, except as provided in Utah Code Annotated section 52-4-7, open and public meetings act.

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 city at a competitive disadvantage, but this subsection 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 city's proprietary protection of intellectual property rights including patents, copyrights, and trade secrets.
30. *Records the disclosure of which could cause commercial injury to, or confer a competitive advantage upon a potential or actual competitor of, a commercial project entity as defined in Utah Code Ann. Subsection 11-13-103(4).*
31. *Accident reports, except as provided in Utah Code Ann. Sections 41-6a-404, 41-12a-202, and 73-18-13.*
32. *Records that provide detail as to the location of an explosive, including a map or other document that indicates the location of:*
(a) a production facility; or
(b) a magazine.
33. *Records provided by any pawnbroker or pawnshop to law enforcement.*
34. *Information regarding food security, risk, and vulnerability assessments performed by the Department of Agriculture and Food.*
35. *Except to the extent that the record is exempt from this chapter pursuant to Utah Code Ann. Section 63-2-106, records related to an emergency plan or program prepared or maintained by the Division of Emergency Services and Homeland Security the disclosure of which would jeopardize:*
(a) the safety of the general public; or
(b) the security of:
(i) governmental property;
(ii) governmental programs; or
(iii) the property of a private person who provides the Division of Emergency Services and Homeland Security information.

36. Records of the Department of Agriculture and Food relating to the National Animal Identification System or any other program that provides for the identification, tracing, or control of livestock diseases, including any program established under Utah Code Ann. Title 4, Chapter 24, Utah Livestock Brand and Anti-theft Act or Utah Code Ann. Title 4, Chapter 31, Livestock Inspection and Quarantine.

37. Unless otherwise classified as public under section 1-9-10 and/or Utah Code Ann. Section 63-2-301, an individual's home address, home telephone number, personal email address, or personal mobile phone number, if:

(a) the individual is required to provide the information in order to comply with a law, ordinance, rule, or order of a government entity; and

(b) the subject of the record has a reasonable expectation that this information will be kept confidential due to the nature of the law, ordinance, rule, or order and the individual complying with the law, ordinance, rule, or order.

B. Disclosure: Upon request, the city shall disclose a protected record to:

1. The person who submitted the information in the record;
2. Any other individual who:
 - a. Has a power of attorney from all persons, governmental entities or political subdivisions whose interests were sought to be protected by the protected classification; or
 - b. Submits a notarized release from their legal representatives dated no more than ninety (90) days prior to the date the request is made; or
3. Any person to whom the record must be provided pursuant to court order as provided in subsection 1-9-8K of this section or a legislative subpoena as provided in Utah Code Annotated title 36, chapter 14.

C. Other Persons:

1. The city may, at its discretion, disclose protected records to persons other than those identified in subsection B of this section if the *mayor or* records officer determines that there is no interest in restricting access to the record, or that the interest favoring access outweighs the interest favoring restriction of access.
2. *The city may, in its discretion, disclose a protected record if the mayor or records officer determines that all of the following are met: the disclosure is mutually beneficial to the subject of the record, the governmental entity and the public; and the disclosure serves a public purpose related to public safety or consumer protection; and the person who receives the record from the governmental entity agrees not to use or allow the use of the record for advertising or solicitation purposes.*

1-9-15: DATA MAINTAINED ON INDIVIDUALS; RIGHTS:

A. File With State Archivist:

1. 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 the city.
2. That statement is a public record.

B. ~~Explanation Notice To Individual Person Providing Documents:~~ Upon request, the city shall explain *provide notice of the following* to an individual ~~person that is asked to furnish information that could be classified as a private or controlled record, and shall further explain the following to that person upon request:~~

1. The reasons the individual *person* is asked to furnish *the information* to the city ~~information that could be classified private or controlled;~~
2. The intended uses of the information; and
3. The consequences for refusing to provide the information; and

4. The reasons and circumstances under which the information may be shared with or provided to other persons or governmental agencies, and the classes of persons and governmental entities that may receive the information from the city on a regular or contractual basis.

C. Uses: The city may not use private or controlled records for purposes other than those given in the statement filed with the state archivist under subsection A of this section or for purposes other than those for which another governmental entity could use the record under Utah Code Annotated section 63-2-206. (Ord. 95-03, 6-7-1995)

1-9-18: APPEAL PROCEDURE:

A. Aggrieved Party: Any person aggrieved by the city's access determination under this chapter, including a person not a party to the city's proceeding, may appeal the determination ~~first~~ *within thirty (30) days* to the mayor, and then *may appeal the mayor's decision within thirty (30) days* to the city council *or the state records committee or the district court* by filing notices of appeal as provided in this section. ~~The A~~ person aggrieved by the city's council's classification or designation determination under this chapter, *but who is* not requesting access to the records, may appeal the determination using the procedures in this section. If the nonrequester is the only appellant, the procedures provided in this section shall apply, except that the determination on the appeal shall be made within thirty (30) days after receiving the notice of appeal. (Ord. 95-03, 6-7-1995; amd. 1998 Code)

B. Extraordinary Circumstances: If the city claims extraordinary circumstances and specifies the date when the records will be available and, if the requester believes the extraordinary

circumstances do not exist or that the time specified is unreasonable, the requester may appeal the city's claim of extraordinary circumstances or date for compliance within thirty (30) days after notification of a claim of extraordinary circumstances by the city, despite the lack of a "determination" or its equivalent.

C. Claims Of Business Confidentiality:

1. If the appeal involves a record that is the subject of a business confidentiality claim under Utah Code Annotated section 63-2-308 or this chapter, the ~~records officer~~ *mayor* shall:

a. Send notice of the requester's appeal to the business confidentiality claimant within three (3) business days after receiving notice, except that if notice under this section must be given to more than thirty five (35) persons, it shall be given as soon as reasonably possible;

b. Send notice of the business confidentiality claim and a schedule for the city records determination to the requester within three (3) business days after receiving notice of the requester's appeal. (Ord. 95-03, 6-7-1995)

2. The claimant shall have seven (7) business days after notice is sent by the records officer to submit further support, for the claim of business confidentiality. (Ord. 95-03, 6-7-1995; amd. 1998 Code)

D. Mayor Appeal:

1. The aggrieved person's appeal to the mayor must meet the notice requirements of subsection F of this section.

2. The mayor shall make a determination on any appeal within the following period of time:

a. Within five (5) business days after the mayor's receipt of the notice of appeal; or

b. Within twelve (12) business days after the city sends the requester's notice of appeal to a person who submitted a claim of business confidentiality.

3. If the mayor fails to make a determination within the time specified in subsection D2 of this section, the failure shall be considered the equivalent of an order denying the appeal.

4. The provisions of this section notwithstanding, the parties participating in the proceedings may, by agreement, extend the time periods specified in this section.

5. The mayor may, upon consideration and weighing of the various interests and public policies pertinent to the classification and disclosure or nondisclosure, order the disclosure of information properly classified as private under subsection 1-9-11B or protected under section 1-9-13 of this chapter if the interests favoring access outweigh the interest favoring restriction of access.

6. The city shall send written notice of the determination of the mayor to all participants. If the mayor affirms the denial in whole or in part, the denial shall include a statement that the requester has the right to appeal the denial to the city council *or the state records committee or the district court*, and the time limits for filing an appeal, *and the name and business address of the executive secretary of the records committee*.

7. The duties of the mayor under this section may be delegated.

E. City Council Appeal:

1. ~~The A~~ notice of appeal to the city council must be filed with the city clerk/recorder no later than thirty (30) days after the mayor has denied the appeal or fails to make a determination within the time specified in subsection D2 of this section. The contents of the notice of appeal are governed by subsection F of this section.

2. No later than three (3) days after receiving the notice of appeal, the city clerk/recorder shall schedule a hearing before the city council to discuss the appeal which shall be held no sooner than fifteen (15) days and no later than thirty (30) days from the date of the filing of the appeal.

3. 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.

4. The city council may, upon consideration and weighing of the various interests and public policies pertinent to the classification and disclosure or nondisclosure, order the disclosure of information properly classified as private under section 1-9-11, controlled under 1-9-12, or protected under section 1-9-13 of this chapter if the public interest favoring access outweighs the interest favoring restriction of access.

5. No later than three (3) 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 mayor in whole or in part.

6. The order of the city council shall include:

a. A statement of reasons for the decision, including citations to this chapter 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 *either the state records committee or the* district court; and

d. A brief summary of the city council's determination, and a notice that in order to protect its rights on appeal to the district court, the party may wish to seek advice from an attorney.

7. If the city council fails to issue a decision within thirty five (35) days of the filing of the notice of appeal, that failure shall be considered the equivalent of an order denying the appeal. The petitioner shall notify the state records committee in writing if he considers the appeal denied.

F. Notice:

1. The notice of appeal shall contain the following information:

- a. The petitioner's name, mailing addresses and daytime telephone number; and
- b. The relief sought.

2. The petitioner may file a short statement of facts, reasons and legal authority in support of the appeal.

~~G. State Records Committee Appeal: If the requester concurs, the city council may also provide for an additional level of administrative review to the state records committee in accordance with Utah Code Annotated section 63-2-403.~~

~~H. 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 thirty (30) days after the date of the city council's order. (Ord. 95-03, 6-7-1995)~~

1-9-19: CONFIDENTIAL TREATMENT; NO APPLICABLE EXEMPTION;

A. Court Order: A court may, on appeal or in a declaratory or other action, order the confidential treatment of records for which no exemption from disclosure applies if:

1. There are compelling interests favoring restriction of access to the record; and
2. The interests favoring restriction of access clearly outweigh the interests favoring access.

B. City Request Access; Attorney Fees: If the city requests a court to restrict access to a record under this section, the court shall require the city to pay the reasonable attorney fees incurred by the lead party in opposing the city's request, if:

1. The court finds that no statutory or constitutional exemption from disclosure could reasonably apply to the record in question; and
2. The court denies confidential treatment under this section.

C. Exception: This section does not apply to records that are specifically required to be public under section 1-9-10 of this chapter or Utah Code Annotated section 63-2-301, *or by other LaVerkin ordinances or Utah statutes*, except as provided in subsection D of this section.

D. Limited Access:

1. Access to drafts and empirical data in drafts may be limited under this section, but the court may consider, in its evaluation of interests favoring restriction of access, only those interests that relate to the underlying information, and not to the deliberative nature of the record.

2. Access to original data in a computer program may be limited under this section, but the court may consider, in its evaluation of interest favoring restriction of access, only those interests that relate to the underlying information, and not to the status of that data as part of a computer program.

1-9-21: CRIMINAL PENALTIES:

A. Intentional Disclosure; Defense To Prosecution:

1. 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, *or improperly uses* a private, controlled or protected record to any person knowing that such disclosure is prohibited, is guilty of a class B misdemeanor and subject to penalty as provided in section 1-4-1 of this code.

2. It is a defense to prosecution under subsection A1 of this section that the ~~action~~ actor released private, controlled or protected information in the reasonable belief that the disclosure of the information was necessary to expose a violation of law involving government corruption, abuse of office or misappropriation of public funds or property.

3. It is a defense to prosecution under subsection A1 of this section that the record could have been released to the recipient if it had been properly classified.

B. False Pretenses, Bribery Or Theft:

1. A person who by false pretenses, bribery or theft, gains access to or obtains a copy of any private, controlled or protected record to which he is not legally entitled is guilty of a class B misdemeanor and subject to penalty as provided in section 1-4-1 of this code.

2. No person shall be guilty under subsection B1 of this section who receives the record, information or copy after the fact and without prior knowledge of or participation in the false pretenses, bribery or theft.

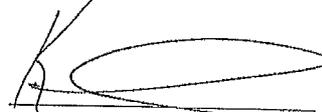
C. Intentional Refusal To Release: A public employee who intentionally refuses to release a record, the disclosure of which the employee knows is required by law or by final unappealed

order from the city, the state records committee or a court, is guilty of a class B misdemeanor and subject to penalty as provided in section 1-4-1 of this code.

This ordinance shall become effective immediately upon passage.

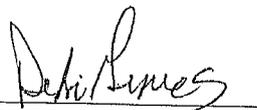
PASSED and adopted this 4th day of October, 2006.

LAVERKIN CITY

A handwritten signature in black ink, appearing to read 'Karl Wilson', written over a horizontal line.

Karl Wilson, Mayor

ATTEST:

A handwritten signature in black ink, appearing to read 'Debi Groves', written over a horizontal line.

Debi Groves, CMC
City Recorder