

ORDINANCE 96-59

AN ORDINANCE AMENDING TITLE 4, CHAPTER 4.01 OF THE LAYTON MUNICIPAL CODE, SPECIFICALLY SECTIONS 4.01.301, 4.01.304, 4.01.403 AND 4.01.404 THEREOF; ENSURING COMPLIANCE AND CONSISTENCY WITH STATE LAW; PROVIDING FOR REPEALER; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Title 4 of the Layton Municipal Code consists of the City's Records Access and Management Act, which was adopted in response to a State legislative enactment; and

WHEREAS, since this Act's adoption, there have been amendments to the State law regarding this enactment; and

WHEREAS, it becomes necessary to amend the City's ordinances to reflect the statutory amendments, thus ensuring compliance therewith.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF LAYTON CITY AS FOLLOWS:

Section I: Repealer. If any provisions of the City's Code heretofore adopted are inconsistent herewith they are hereby repealed.

Section II: Enactment. Title 4, Chapter 4.01 of the Layton Municipal Code is hereby amended to read as follows:

**4.01.301. Records that must be disclosed.**

(1) The following records are public except to the extent they contain information expressly permitted to be treated confidentially under the provisions of Subsections 4.01.201 (3)(b) and (6)(a):

- (a) laws;
- (b) names, gender, gross compensation ranges, job titles, job descriptions, business addresses, business telephone numbers, number of hours worked per pay period, dates of employment, and relevant education, previous employment, and similar job qualifications of the governmental entity's former and present employees and officers excluding:
  - (i) undercover law enforcement personnel; and
  - (ii) investigative personnel if disclosure could reasonably be expected to impair the effectiveness of investigations or endanger any individual's safety;
- (c) 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, controlled, or protected;
- (d) final interpretations of statutes or rules by the City unless classified as protected as provided in Subsections 4.01.304(15), (16), and (17);
- (e) information contained in or compiled from a transcript, minutes, or report of the open portions of a meeting of the City as provided by Chapter 4, Title 52, Open and Public Meetings, including the records of all votes of each member of the voting board, commission or council;
- (f) 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;

(g) records filed with or maintained by county recorders, clerks, treasurers, surveyors, zoning commissions, the Division of State Lands and Forestry, ~~Fire and State Lands, the School and Institutional Trust Lands Administration,~~ the Division of Oil, Gas and Mining, the Division of Water Rights, or other governmental entities that give public notice of:

- (i) titles or encumbrances to real property;
- (ii) restrictions on the use of real property;
- (iii) the capacity of persons to take or convey title to real property; or
- (iv) tax status for real and personal property;

(h) data on individuals that would otherwise be private under this chapter of the individual who is the subject of the record has given the City written permission to make the records available to the public;

(i) documentation of the compensation that the City pays to a contractor or private provider; and

(j) summary data.

(2) The following records may be considered public, but to the extent that a record may be exempt from disclosure, access may be restricted under Section 4.01.201(3)(b), 4.01.302, 4.01.303, or 4.01.304:

(a) administrative staff manuals, instructions to staff, and statements of policy;

(b) records documenting a contractor's or private provider's compliance with the terms of a contract with the City;

(c) records documenting the services provided by a contractor or a private provider to the extent the records would be public if prepared by the City;

(d) contracts entered in 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 government assistance or incentives publicly disclosed, contracted for, or given by the City, encouraging a person to expand or relocate a business in Utah, except as provided in Subsection 4.01.304(31);

(g) chronological logs and initial contact reports;

(h) correspondence by and with the City entity 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:

(i) the empirical data is not reasonably available to the requester elsewhere in similar form; and

(ii) 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:

(i) within the City;

(ii) another political subdivision;

(iii) a federal agency if the City and federal agency are jointly responsible for implementation of a program or project that has been legislatively approved;

(iv) a government-managed corporation; or

(v) a contractor or private provider;

(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 warrant 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;

- (o) records that would disclose information relating to formal charges or disciplinary actions against a past or present City employee if:
  - (i) the disciplinary action has been completed and all time periods for administrative appeal have expired; and
  - (ii) the ~~formal charges on which the disciplinary action was based~~ were sustained; and
  - (iii) the applicable statute of limitation has run for conduct that may expose the City to liability;
- (p) final audit reports;
- (q) occupational and professional licenses;
- (r) business licenses; and
- (s) a notice of violation, a notice of agency action under Section 63-46b-3 U.C.A., 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.

**4.01.304. Protected records.**

The following records are protected:

- (1) trade secrets as defined in Section 13-24-2, U.C.A., if the person submitting the trade secret has provided the governmental entity with the information specified in Section 4.01.308;
- (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 Section 4.01.308;
- (3) commercial or financial information acquired or prepared by the City to the extent that 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, registration, employment, or academic examinations;
- (5) records the disclosure of which would impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract or agreement with the City, except that this subsection does not restrict the right of a person to see bids submitted to or by the City after bidding has closed, the bids have been reviewed and an award has been made;
- (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 City;
  - (c) in the case of records that would identify property, potential sellers of the described property have already been informed by the City of its plans to acquire the property; or
  - (d) in the case of records that would identify the appraisal or estimated value of property, the potential sellers have already been informed by the City of its 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 of 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 and audit workpapers that identify audit, collection, and operational procedures and methods used by the finance department, if disclosure would interfere with audits or collections;
- (13) records of a governmental audit agency relating to an ongoing or planned audit until the final audit is released;
- (14) records prepared by or on behalf of the City in anticipation of litigation that are not available under the rules of discovery;
- (15) 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 or the prevention thereof;
- (16) records of communications between the City and an attorney representing, retained, or employed by the City if the communications would be privileged as provided in Section 78-24-8, U.C.A.;
- (17) personal files of an elected or appointed official, including personal correspondence to or from another elected or appointed official or legislator, but not correspondence that gives notice of legislative action or policy;
- (18) research requests from elected or appointed official to the Office of the City Attorney or the Finance Director Office and research findings prepared in response to these requests;
- (19) drafts, unless otherwise classified as public;
- (20) records concerning the City's strategy about collective bargaining or pending litigation;

(21) records of investigations of loss occurrences and analyses of loss occurrences that may be covered by outside insurance coverage, municipal insurance pool, worker's compensation, the Risk Management Fund, the Employers' Reinsurance Fund, the Uninsured Employers' Fund, or similar divisions or entities;

(22) records, other than personnel evaluations, that contain a personal recommendation concerning an individual if disclosure would constitute a clearly unwarranted invasion of personal privacy, or disclosure is not in the public interest;

(23) 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;

(24) records of City departments if the disclosure of the records would conflict with the fiduciary obligations of the department;

(25) records of the City Manager's office, including, but not limited to, budget recommendations, legislative proposals, and policy statements, that if disclosed would reveal the City Manager's contemplated policies or contemplated courses of action before the Manager has implemented or rejected those policies or courses of action or made them public;

(26) records of the office of finance relating to budget analysis, revenue estimates, and fiscal notes of proposed legislation before issuance of the final recommendations in these areas;

(27) 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 states that the record would not be subject to public disclosure if retained by it;

(28) transcripts, minutes, or reports of the closed portion of a meeting of a public body except as provided in Section 52-4-7~~3~~ of the Open and Public Meetings Act;

(29) 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;

(30) memoranda prepared by staff and used in the decision-making process by an administrative law judge, or a member of any other body charged by law with performing a quasi-judicial function;

(31) 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 section may not be used to restrict access to a record evidencing a final contract;

(32) 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;

(33) the name of a donor or a prospective donor to the City, including a public institution of higher education, and other information concerning the donation that could reasonably be expected to reveal the identity of the donor, provided that:

(a) the donor requests anonymity;

(b) any terms, conditions, restrictions, or privileges relating to the donation may not be classified protected by the City under this subsection;

(34) the following records of the City, which have been developed, discovered, or received by or on behalf of officials, staff, employees, or private contractors of the City unpublished notes, unpublished research notes and data, unpublished manuscripts, creative works in process, inquisitorial correspondence, and confidential information contained in research proposals. Nothing in this subsection shall be construed to affect the ownership of a record.

#### 4.01.403. Appeals to the City Council.

(1) A petitioner may appeal to the City Council by filing a notice of appeal with the Council's staff no later than:

- (a) 10 days after the City Manager has granted or denied the records request in whole or in part, including a denial under Subsection 4.01.204(7); or
- (b) within 10 days from the expiration the time period allowed in Subsection 4.01.401(5) with no determination being made.

(2) The notice of appeal shall contain the following information:

- (a) the petitioner's name, mailing address, and daytime telephone number;
- (b) a copy of any denial of the records request; and
- (c) the relief sought.

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

(4) No later than three business days after receiving a notice of appeal, the Council staff shall:

(a) schedule a hearing for the City Council to discuss the appeal ~~which shall be held no sooner than 10 days and no later than 40 days from the date of the filing of the appeal at the next regularly scheduled Council meeting falling at least fourteen (14) days after the date the notice of appeal is filed but no longer than forty-five (45) days after the date the notice of appeal was filed provided, however, the Council may schedule an expedited hearing upon application of the petitioner and good cause shown;~~

(b) send a copy of the notice of hearing to the petitioner; and

(c) send a copy of the notice of appeal, supporting statement, and a notice of hearing

to:

(i) each member of the Council;

(ii) the records officer and the City Manager; and

(iii) any person who made a business confidentiality claim under Section 4.01.308 for a record that is the subject of the appeal; and

(iv) all parties in interest that participated in the proceedings before the City

Manger.

(5) ~~(a) No later than ten business days after receiving the notice of appeal, the City Manager may submit to the Council a~~ written statement of facts, reasons, and legal authority in support of the Manager's position ~~must be submitted to the City Recorder not later than five (5) business days before the hearing.~~

(b) The City shall send a copy of the written statement to the petitioner by first class mail, postage prepaid. The staff shall forward a copy of the written statement to each member of the Council.

(6) No later than ten business days after the notice of appeal is sent by the staff, a person whose legal interests may be substantially affected by the proceeding may file a request for intervention before the Council. Any written statement of facts, reasons, and legal authority in support of the intervener's position shall be filed with the request for intervention. The person seeking intervention shall provide copies of the statement to all parties to the proceedings before the Council.

(7) The Council shall hold a hearing ~~no sooner than 10 days and no later than 40 days after receiving the notice of appeal within the period of time described in Subsection (4).~~

(8) At the hearing, the Council shall allow the parties to testify, present evidence, and comment on the issues. The Council may allow other interested persons to comment on the issues.

(9) (a) The Council may review the disputed records. ~~However, if the Council is weighing the various interests under Subsection (11) the Council must review the disputed records.~~ The review shall be in camera.

(b) Members of the Council may not disclose any information or record reviewed in camera unless the disclosure is otherwise authorized by this chapter.

(10) (a) Discovery is prohibited, but the Council may issue subpoenas or other orders to compel production of necessary evidence.

(b) The Council's review shall be de novo.

(11) (a) No later than 10 business days after the hearing, the Council shall issue a signed order either granting the petition in whole or in part or upholding the determination of the City Manager whole or in part.

(b) The 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, controlled, or protected if the public interest favoring access outweighs the interest favoring restriction of access.

(c) In making a determination under Subsection (b), the Council shall consider and, where appropriate, limit 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 Subsections 4.01.304(1) and (2), and privacy interests or the public interest in the case of other protected records.

(12) The order of the Council shall include:

(a) a statement of reasons supporting the determinations;

(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 or information exempt from disclosure under Subsection 4.01.201(3)(b); and

(c) a statement that any party to the proceeding before the records committee may appeal the Council's decision to district court.

(13) If the Council fails to issue a decision within 45 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 Council in writing if he considers the appeal denied.

#### 4.01.404. Judicial review.

(1) (a) Any party to a proceeding before the Council may petition for judicial review by the district court of the Council's order.

(b) The petition shall be filed within 30 days after the date of the Council's order, or within 30 days from the expiration of the time period set forth in Subsection 4.01.403(13).

(c) ~~The City is a necessary party to the petition for judicial review.~~

(d) ~~The City Recorder shall be served with notice of the petition in accordance with the Utah Rules of Civil Procedure.~~

(2) The petition for judicial review shall be a complaint governed by the Utah Rules of Civil Procedure and shall contain:

(a) the petitioner's name and mailing address;

(b) a copy of the Council's order from which the appeal is taken, or claim that a determination has yet to be formalized and the prescribed time period has expired;

(c) the name and mailing address of the City's representative that issued the initial determination with a copy of that determination;

(d) a request for relief specifying the type and extent of relief requested; and

(e) a statement of the reasons why the petitioner is entitled to relief.

(4) If the appeal is based on the denial of access to a protected record, the court shall allow the claimant of business confidentiality to provide to the court the reasons for the claim of business confidentiality.

(5) All additional pleading and proceedings in the district court are governed by the Utah Rules of Civil Procedure, and applicable state law.

. . . .

Section III: Severability. If any section, subsection, sentence, clause or phrase of this ordinance is declared invalid or unconstitutional by a court of competent jurisdiction, said portion shall be severed and such declaration shall not affect the validity of the remainder of this ordinance.

Section IV: Effective Date. This Ordinance being necessary for the peace, health and safety of the City, shall become effective immediately upon posting.

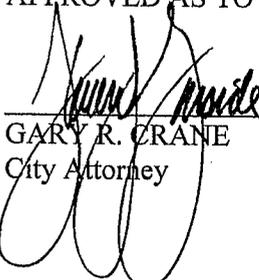
PASSED AND ADOPTED by the City Council of Layton City, Utah, this \_\_\_\_\_ day of \_\_\_\_\_, 1996.

\_\_\_\_\_  
JERRY STEVENSON, Mayor

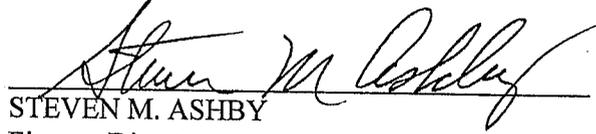
ATTEST:

\_\_\_\_\_  
STEVEN M. ASHBY, City Recorder

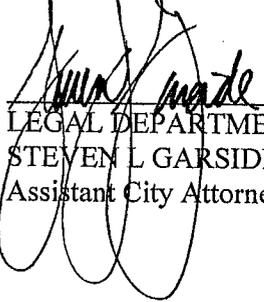
APPROVED AS TO FORM:

  
\_\_\_\_\_  
GARY R. CRANE  
City Attorney

FISCAL IMPACT REVIEW:

  
\_\_\_\_\_  
STEVEN M. ASHBY  
Finance Director

PREPARED/SUBMITTED BY:

  
\_\_\_\_\_  
LEGAL DEPARTMENT  
STEVEN L GARSIDE  
Assistant City Attorney