

ORDINANCE NO. 92-8

AN ORDINANCE OF MAPLETON CITY, A UTAH MUNICIPALITY,  
ESTABLISHING A RECORDS ACCESS AND MANAGEMENT PROGRAM.

SEC. 1. SHORT TITLE

The Ordinance is known as the "Mapleton City  
Government Records Access and Management Act."

SEC. 2. PURPOSE AND INTENT

1. In enacting this act, the city recognizes two fundamental constitutional rights:

a. the right of privacy in relation to personal data gathered by the city; and

b. the public's right of access to information concerning the conduct of the public's business.

2. It is the intent of the city to:

a. establish fair information practices to prevent abuse of personal information by the city while protecting the public's right of easy and reasonable access to unrestricted public records; and

b. provide guidelines of openness to government information and privacy of personal information consistent with nationwide standards.

c. Establish and maintain an active, continuing program for the economical and efficient management of the city's records as provided in this Ordinance.

SEC. 3. DEFINITIONS

As used in this Ordinance:

1. "Audit" means:

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

7. "Gross compensation" means 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.

8. "Designation," "designate," and their derivative forms mean 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.

9. a. "Initial contact report" means 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:

- (i) the date, time, location, and nature of the complaint, the incident, or offense;
- (ii) names of victims;
- (iii) the nature or general scope of the agency's initial actions taken in response to the incident;
- (iv) the general nature of any injuries or estimate of damages sustained in the incident;
- (v) the name, address, and other identifying information about any person arrested or charged in connection with the incident;
- (vi) 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) appears in follow-up or investigative reports, it may only be treated

(vi) books and other materials that are cataloged, indexed, or inventoried and contained in the collections of libraries open to the public, regardless of physical form or characteristics of the material;

(vii) 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; or

(viii) computer programs as defined that are developed or purchased by or for the city for its own use.

(ix) 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 bylaw with performing a quasi-judicial function.

17. "Record series" means a group of records that may be treated as a unit for purposes of designation, description, management, or disposition.

18. "Records officer" means the city recorder unless another individual is appointed by the Mayor to work in the care, maintenance, scheduling, designation, classification, disposal, and preservation of records.

19. "Summary data" means statistical records and compilations that contain data derived from private, controlled, or protected information but that do not disclose private, controlled, or protected information.

#### SEC. 4. RIGHT OF PUBLIC ACCESS

1. Every person has the right to inspect a public record free of charge and the right to take a copy of a public record during normal working hours, subject to the payment of costs and fees pursuant to Section 6 of this Ordinance.

2. All records are public unless otherwise expressly provided by this Ordinance or State or Federal law or regulation.

3. The following records are not public:

c. pays the lawful fees.

8. a. The city is not required to create a record in response to a request.

b. Nothing in this Ordinance requires the city to fulfill a person's records request if the request unreasonably duplicates prior records requests from that person.

9. If a person requests copies of more than 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:

a. provide the requester with the facilities for copying the requested records and require that the requester make the copies himself; or

b. 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.

10. a. 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 terms the city considers to be in the public interest.

b. Nothing in this Ordinance 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.

11. 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 a record under this Ordinance.

#### SEC. 5. ACCESS TO NON PUBLIC RECORDS

1. Upon request the city shall disclose a private record to:

a. the subject of the record;

(i) 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

(ii) submits a notarized release from their legal representatives dated no more than 90 days prior to the date the request is made; or

c. any person to whom a record must be provided pursuant to a court order.

5. 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 63-2-206.

6. Before releasing a private, controlled, or protected record, the city shall obtain evidence of the requester's identity.

7. The City shall disclose a record pursuant to the terms of a court order signed by a judge from a court of competent jurisdiction, provided that:

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

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

c. the court has considered and, where appropriate, limited the requester's use and further disclosure of the record in order to protect privacy interests in the case of private or controlled records, business confidentiality interests in the case of records protected under Subsections 63-2-304(1) and (2), and privacy interests or the public interest in the case of other protected records;

d. to the extent the record is properly classified private, controlled, or protected, the interests favoring access, considering limitations thereon, outweigh the interests favoring restriction of access; and

e. where access is restricted by a rule, statute, or regulation referred to in Subsection 4.3(b), the court

Section 10, or protected under Section 12 to persons other than those specified in this section.

b. Under Section 16 the City Council may require the disclosure of records that are private under Section 10, controlled under Section 11, or protected under Section 12 to persons other than those specified in this section.

c. Under Subsection 63-2-404(8) of the Utah Code the court may require the disclosure of records that are private under Section 10, controlled under Section 11, or protected under Section 13 to persons other than those specified in this section.

#### SEC. 6. FEES

1. 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. The initial fee, until changed by Resolution, is as set forth in Exhibit "A" hereto.

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

(i) releasing the record primarily benefits the public rather than a person;

(ii) the individual requesting the record is the subject of the record; or

(iii) the requester's legal rights are directly implicated by the information in the record, and the requester is impecunious.

b. A city may not charge a fee for:

(i) reviewing a record to determine whether it is subject to disclosure; or

(ii) inspecting a record.

#### SEC. 7. PROCEDURES FOR ACCESS

1. 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 records requested that identifies the record with reasonable specificity.

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.

5. If one of the extraordinary circumstances listed in Subsection 4. precludes approval or denial within the time specified in Subsection 2., the following time limits apply to the extraordinary circumstances:

a. for claims under Subsection 4.a., the governmental entity currently in possession of the record shall return the record to the originating entity within five business days of the request for the return unless returning the record would impair the holder's work.

b. for claims under Subsection 4.b., the originating city shall notify the requester when the record is available for inspection and copying;

c. for claims under Subsection 7.4.c., 7.4.d., and 7.4.e., the the city shall:

(i) disclose the records that it has located which the requester is entitled to inspect;

(ii) 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

(iii) complete the work and disclose those records that requester is entitled to inspect as soon as reasonably possible;

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

SEC. 9. RECORDS THAT MUST BE DISCLOSED

1. The following records are public.

a. laws and ordinances;

b. names, gender, gross compensation, 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 qualification of the city's former and present employees and officers excluding undercover law enforcement personnel or 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 obtain information that is private, protected, or controlled;

d. final interpretation of statutes or rules by the city unless classified as protected as provided in Subsections 12 (15), (16) and (17).

e. 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;

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 Ordinance;

g. records filed with or maintained by county recorders, clerks, treasurers, surveyors, zoning commissions the Division of State Lands and Forestry, the Division of Oil, Gas and Mining, the Division of

a business in Utah, except as provided in Subsection 63-2-304(34) of the Utah Code.

- g. chronological logs and initial contact reports;
- h. correspondence by and with the city in which the city determines or states an opinion upon the rights of the state, a political subdivision, the public, or any person;
- i. empirical data contained in drafts if:
  - (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 the city, state or to anyone other than 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; and
- k. drafts that have never been finalized but were relied upon by the city in carrying out action or policy;
- l. original data in a computer program if the city chooses not to disclose the program;
- m. arrest warrants after issuance, except that, for good cause, a court may order restricted access to arrest warrants prior to service;
- n. search warrants after execution and filing of the return, except that a court, for good cause, may order restricted access to search warrants prior to trial;
- 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 were sustained;

2. The following records are private if properly classified by the city:

a. records concerning a current or former employee of, or applicant for employment with the city, including performance evaluations and personal status information such a race, religion, or disabilities, but not including records that are public under Subsections 9.(b), 9.2(o) or private under Subsection 10.1(e).

b. records describing an individual's finances, except that the following are public:

(i) records described in Subsection 9.1;

(ii) information provided to the city for the purpose of complying with a financial assurance requirement; or

(iii) records that must be disclosed in accordance with another statute;

c. records of independent state agencies if the disclosure of those records would conflict with the fiduciary obligations of the agency;

d. other records containing data on individuals the disclosure of which constitutes a clearly unwarranted invasion of personal privacy.

e. 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.

#### SEC. 11. CONTROLLED RECORDS

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

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;

d. in the case of records that would identify the appraisal or estimated value of property, the potential sellers have already learned of the city's estimated value of the property;

7. records prepared in contemplation of sale, exchange, lease, rental, or other compensated transaction of real or personal property including intellectual property, which, if disclosed prior to completion of the transaction, would reveal the appraisal or estimated value of the subject property, unless:

a. the public interest in access outweighs the interests in restricting access, including the city's interest in maximizing the financial benefit of the transaction; or

b. when prepared by or on behalf of the city, appraisals or estimates of the value of the subject property have already been disclosed to persons not employed by or under a duty of confidentiality to the city.

13. records and audit workpapers 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 Section 78-24-8 of Utah Code Annotated.

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, that contain a personal recommendation concerning an individual if disclosure would constitute a clearly unwarranted invasion of personal privacy, or disclosure is not in the public interest.

22. records that reveal the location of historic, prehistoric, paleontological, or biological resources that if known would jeopardize the security of those resources or of 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;

not required to classify a particular record, record series, or information until access to the record is requested.

3. The city may redesignate a record series or reclassify a record or record series, or information within a record at any time.

#### SEC. 14. RECORDS RETENTION

The city shall by Resolution establish a retention schedule for each record series. The initial retention schedule shall be as set forth in Exhibit "B" hereto.

#### SEC. 15. SEGREGATION OF RECORDS

Notwithstanding any other provision in this Ordinance, if the city receives a request for access to a record that contains both information that the requester is entitled to inspect and information that the requester is not entitled to inspect under this Ordinance, and, if the information the requester is entitled to inspect is intelligible, the city:

1. shall allow access to information in the record that the requester is entitled to inspect under this Ordinance; and

2. may deny access to information in the record if the information is exempt from disclosure to the requester, issuing a notice of denial.

#### \* SEC. 16. APPEALS

1. a. Any person aggrieved by the city's access determination under this Ordinance, including a person not a party to the city's proceeding, may appeal the determination to the Mayor and City Council by filing a notice of appeal.

b. 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 30 days after notification of a claim of extraordinary circumstances by the city, despite the lack of a "determination" or its equivalent.

2. a. If the appeal involves a record that is the subject of a business confidentiality claim under

5. 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, and the time limits for filing an appeal.

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

7. The notice of appeal to the City Council must be filed with the City Recorder no later than 30 days after the Mayor has denied the appeal or fails to make a determination within the time specified in Subsection 16.3 (a).

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

a. the petitioner's name, mailing address, and daytime telephone number; and

b. the relief sought.

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

10. No later than three days after receiving a notice of appeal, the recorder shall:

a. schedule a hearing for the city council to discuss the appeal which shall be held no sooner than 15 days and no later than 30 days from the date of the filing of the appeal;

b. 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.

c. No later than three business days after the hearing, the city council shall issue a signed order either granting the petition in whole or in part or upholding the determination of the city in whole or in part.

2. 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 attorneys' fees incurred by the lead party in opposing the City's request, if:

a. the court finds that no statutory or constitutional exemption from disclosure could reasonably apply to the record in question; and

b. the court denies confidential treatment under this section.

3. This section does not apply to records that are specifically required to be public under Section 9 of this Ordinance or Section 63-2-301 of the Utah Code, except as provided in Subsection 4.

4. a. 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 interest that relate to the underlying information, and not to the deliberative nature of the record.

b. 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.

#### SEC. 19. REQUEST TO AMEND A RECORD

1. a. Subject to Subsection 7, an individual may contest the accuracy or or completeness of any public, or private, or protected record concerning him by requesting the city to amend the record. However, this section does not affect the right of access to private or protected records.

b. The request shall contain the following information:

(i) The requester's name, mailing address, and daytime telephone number; and

(ii) a brief statement explaining why the city should amend the record.

SEC. 20. CRIMINAL PENALTIES

1. a. A public employee or other person who has lawful access to any private, controlled, or protected record under this chapter, and who intentionally discloses or provides a copy of a private, controlled or protected record to any person knowing that such disclosure is prohibited, is guilty of a class B misdemeanor.

b. It is a defense to prosecution under Subsection (1)(a) that the 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.

c. It is a defense to prosecution under Subsection (1)(a) that the record could have lawfully been released to the recipient if it had been properly classified.

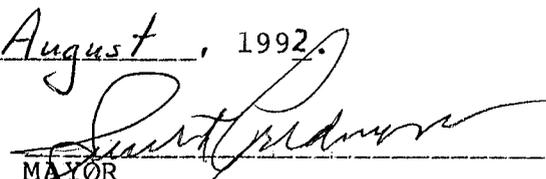
2. a. A person who by false pretenses, bribery, or theft, gains access to or obtains a copy of any private, controlled, or protected record to which he is not legally entitled is guilty of a class B misdemeanor.

b. No person shall be guilty under Subsection (2)(a) who receives the record, information, or copy after the fact and without prior knowledge of or participation in the false pretenses, bribery, or theft.

3. a. 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 a city, the records committee, or a court, is guilty of a class B misdemeanor.

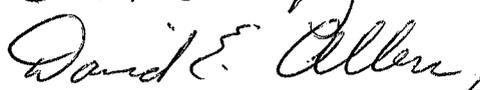
This Ordinance shall take effect on the 4<sup>th</sup> day of August, 1992.

DATED 4<sup>th</sup> this day of August, 1992.

  
MAYOR

ATTEST:

  
City Recorder

Certified Copy  
, City Recorder

SCHEDULE A  
MAPLETON CITY RECORDS ACCESS AND MANAGEMENT ACT  
SCHEDULE OF FEES FOR COPY WORK

REGULAR COPIES (MAXIMUM NUMBER OF COPIES AT THIS RATE IS 25. HOURLY RATE WILL ALSO BE APPLIED AFTER 25 COPIES)	\$ 0.10 PER PAGE
CERTIFIED COPIES	\$ 1.00 PER PAGE
RESEARCH AND COMPILATION	\$ 25.00 PER HOUR
COMPLETE COPY OF THE MAPLETON CITY CODE	\$ 100.00 EACH
COPY OF THE SUBDIVISION CODE (TITLE 17)	\$ 10.00 EACH
COPY OF THE ZONING CODE (TITLE 18)	\$ 15.00 EACH

SCHEDULE B  
RETENTION SCHEDULE

The retention schedule of this municipality is the schedule promulgated by the Utah Division of Archives and Record Service for local governments with the following amendments:

*None*