

CHAPTER 2.36

RECORDS ACCESS AND MANAGEMENT PROGRAM

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2.36.010: **SHORT TITLE:** The ordinance codified in this chapter is known as the *MILLVILLE GOVERNMENT RECORDS ACCESS AND MANAGEMENT ACT*. (Ord. 15-100 § 1, 1992)

2.36.020: **PURPOSE AND INTENT:**

- A. In enacting this act, the city recognizes two (2) fundamental constitutional rights:

**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, 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.

**CONTROLLED
RECORD:**

A record containing data on individuals that is controlled as provided by section 2.36.110 of this chapter.

CONTRACTOR:

A. Any person who contracts with the city to provide goods or services directly to the city; or

B. Any private, nonprofit organization that receives funds from the city.

"Contractor" does not mean a private provider.

**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,

Initial contact reports do not include follow up or investigative reports prepared after the initial contact report. However, if the information specified in the definition of "initial contact report" appears in follow up or investigative reports, it may only be treated confidentially if it is private, controlled, protected, or exempt from disclosure under section 63-2-201(31)(b) of the Utah code.

- PERSON:** Any individual, nonprofit or profit corporation, partnership, sole proprietorship, or other type of business organization.
- 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 2.36.100 of this chapter.
- PROTECTED RECORD:** A record that is classified protected as provided by section 2.36.120 of this chapter.
- PUBLIC RECORD:** A record that has not been appropriately classified private, controlled, or protected as provided in sections 2.36.100 through 2.36.120 of this chapter.
- RECORD:** All books, letters, documents, papers, maps, plans, photographs, films, cards, tapes, recordings, electronic data, or other documentary materials, regardless of physical form or characteristics:
- A. Which are prepared, owned, received, or retained by a governmental entity or political subdivision; and
 - B. Where all of the information in the original is reproducible by photocopy or other mechanical or electronic means.

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

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. (Ord. 2000-12 § 1; Ord. 15-100 § 3, 1992)

2.36.040: RIGHT OF PUBLIC ACCESS:

- A. 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 2.36.060 of this chapter.
- B. All records are public unless otherwise expressly provided by this chapter or state or federal law or regulation.
- C. The following records are not public:
 - 1. Records that are appropriately classified private, controlled, or protected as allowed by sections 2.36.100 through 2.36.120 of this chapter; and
 - 2. 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.
- D. Only those records specified in sections 2.36.100 through 2.36.120 of this chapter may be classified private, controlled, or protected.
- E.
 - 1. The city may not disclose a record that is private, controlled, or protected to any person except as provided in section 2.36.050 of this chapter.
 - 2. The city may, at its discretion, disclose records that are private under subsection 2.36.100B of this chapter or protected under section 2.36.120 of this chapter to persons other than those specified in section 2.36.050 of this chapter if the city council, or a

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. 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 chapter. (Ord. 15-100 § 4, 1992)

2.36.050: ACCESS TO NONPUBLIC RECORDS:

- A. Upon request the city shall disclose a private record to:
1. The subject of the record;
 2. The parent or legal guardian of an unemancipated minor who is the subject of the record;
 3. The legal guardian of a legally incapacitated individual who is the subject of the record;
 4. Any other individual who:
 - a. Has a power of attorney from the subject of the record, or
 - b. Submits a notarized release from the subject of the record or his or her legal representative dated no later than ninety (90) days before the date the request is made; or
 5. Any person to whom the record must be provided pursuant to court order.
- B. 1. Upon request, the city shall disclose a controlled record to:
- a. A physician, psychologist, certified social worker, insurance provider or agent, or a government public health agency upon submission of a notarized 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 signed acknowledgment of the terms of disclosure of controlled information as provided by this section; and
 - b. Any person to whom a record must be disclosed pursuant to court order.

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;

4. 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

5. Where access is restricted by a rule, statute, or regulation referred to in subsection 2.36.040C2 of this chapter, the court has authority independent of this chapter to order disclosure.

H. 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 H2 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 or her understanding of and agreement to the conditions of this subsection and his or her understanding that violation of the terms of this subsection may subject him or her to criminal prosecution under section 63-2-801 of the Utah code.

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

2. Inspecting a record. (Ord. 2000-12 § 1: Ord. 15-100 § 6, 1992)

2.36.070: PROCEDURES FOR ACCESS:

- A. A person making a request for a record shall furnish the city with a written request containing his or her name, mailing address, daytime telephone number if available, and a description of the records requested that identifies the record with reasonable specificity.
- B. As soon as reasonably possible, but no later than thirty (30) working days after receiving a written request, or ten (10) working 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 D of this section it cannot immediately approve or deny the request. The notice shall describe the circumstances relied upon and specify the earliest time and date when the records will be available.
- C. 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. The following circumstances constitute "extraordinary circumstances" that allow the city to delay approval or denial by an additional period of time as specified in subsection E of this section if the city determines that due to the extraordinary circumstances it cannot respond within the time limits provided in subsection B of this section:
1. Another governmental entity is using the record, in which case the city shall promptly request that the governmental entity currently in possession return the record;

- b. 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
 - c. Complete the work and disclose those records that requester is entitled to inspect as soon as reasonably possible;
- 4. For delays under subsection D6 of this section, the city shall either approve or deny the request within ten (10) business days after the response time specified for the original request has expired;
 - 5. For delays under subsection D7 of this section, the city shall fulfill the request within thirty (30) business days from the date of the original request; or
 - 6. For delays under subsection D8 of this section, the city shall complete its programming and disclose the requested records as soon as reasonably possible.
- F. If the city fails to provide the requested records or issue a denial within the specified time period, that failure is considered the equivalent of a determination denying access to the records. (Ord. 15-100 § 7, 1992)

2.36.080: DENIALS:

- A. If the city denies the request in whole or part, it shall provide a notice of denial to the requester either in person or by sending the notice to requester's address.
- B. The notice of denial shall contain the following information:
 - 1. A description of the record or portions of the record to which access was denied, provided that the description does not disclose private, controlled, or protected information or records to which access is restricted pursuant to court rule, another state statute, federal statute, or federal regulation, including records for which access is governed or restricted as a condition of participation in a state or federal program or for receiving state or federal funds;
 - 2. Citations to the provisions of this chapter, another state statute, federal statute, court rule or order or federal regulation that exempt the record or portions of the record from disclosure, provided that the citations do not disclose private, controlled, or protected information;

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, treasurers, surveyors, zoning commissions, 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.
- B. The following records are normally public, but to the extent that a record is expressly exempt from disclosure, access may be restricted under subsection 2.36.040C2 of this chapter or sections 2.36.100 through 2.36.120 of this chapter:
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;

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 section 63-46b-3 of the Utah code, or similar records used to initiate proceedings for discipline or sanctions against persons regulated by the city, but not including records that initiate employee discipline.

C. The list of public records in this section is not exhaustive and should not be used to limit accesses to records. (Ord. 15-100 § 9, 1992)

2.36.100: PRIVATE RECORDS:

A. The following records are private:

1. Records concerning an individual's eligibility for unemployment insurance benefits, social services, welfare benefits, or the determination of benefit levels;

2. Records containing data on individuals describing medical history, diagnosis, condition, treatment, evaluation, or similar medical data;

3. Records of 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;

- B. The city reasonably believes that:
1. 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
 2. Releasing the information would constitute a violation of normal professional practice and medical ethics; and
 3. The city has properly classified the record. (Ord. 15-100 § 11, 1992)

2.36.120: **PROTECTED RECORDS:** The following records are protected if properly classified by the city:

- A. Trade secrets as defined in section 13-24-2 of Utah Code Annotated if the person submitting the trade secret has provided the city with the information specified in section 63-2-308 of Utah Code Annotated;
- B. Commercial information or nonindividual financial information obtained from a person if:
 1. 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,
 2. The person submitting the information has a greater interest in prohibiting access than the public in obtaining access, and
 3. The person submitting the information has provided the city with the information specified in section 63-2-308 of Utah Code Annotated;
- C. Commercial or financial information acquired or prepared by the city to the extent that a disclosure would lead to financial speculations in currencies, securities, or commodities that will interfere with a planned transaction by the city or cause substantial financial injury to the city or cause substantial financial injury to the city or state economy;
- D. Test questions and answers to be used in future license, certification, registration, employment, or academic examinations;

1. Reasonably could be expected to interfere with investigations undertaken for enforcement, discipline, licensing, certification, or registration purposes,
 2. Reasonably could be expected to interfere with audits, disciplinary, or enforcement proceedings,
 3. Would create a danger of depriving a person of a right to a fair trial or impartial hearing,
 4. 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
 5. 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;
- I. Records the disclosure of which would jeopardize the life or safety of an individual;
 - J. 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;
 - K. 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;
 - L. Records that, if disclosed, would reveal recommendations made to the board of pardons by an employee of or contractor for the department of corrections, the board of pardons, or the department of human services that are based on the employee's or contractor's supervision, diagnosis, or treatment of any person within the board's jurisdiction;
 - M. 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;

- Z. 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;
- AA. 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;
- BB. 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; and
- CC. Materials to which access must be limited for purposed of securing or maintaining the city's proprietary protection of intellectual property rights including patents, copyrights, and trade secrets. (Ord. 15-100 § 12, 1992)

2.36.130: RECORDS CLASSIFICATION AND DESIGNATION:

- A. 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. 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 to the record is requested.
- C. The city may redesignate a record series or reclassify a record or record series, or information within a record at any time. (Ord. 15-100 § 13, 1992)

than thirty five (35) persons, it shall be given as soon as reasonably possible;

b. Send notice of the business confidentiality claim and the schedule for the city recorder's determination to the requester within ten (10) business days after receiving notice of the requester's appeal.

2. The claimant shall have seven (7) business days after notice is sent by the city recorder to submit further support, for the claim of business confidentiality.

C. 1. The mayor shall make a determination on any appeal within the following period of time:

a. Within ten (10) business days after the mayor's receipt of the notice of appeal; or

b. Within twenty (20) business days after the city sends the requester's notice of appeal to a person who submitted a claim of business confidentiality.

2. If the mayor fails to make a determination within the time specified in subsection C1 of this section, the failure shall be considered the equivalent of an order denying the appeal.

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

D. 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 2.36.100B of this chapter or protected under section 2.36.120 of this chapter if the interests favoring access outweigh the interest favoring restriction of access.

E. 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.

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

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

- K. A person aggrieved by the city's classification or designation determination under this chapter, but who is not requesting access to the records, may appeal that determination using the procedures provided in this section. If a nonrequestor is the only appellant, the procedures provided in this section shall apply, except that the determination on the appeal shall be made within sixty (60) days after receiving the notice of appeal. (Ord. 15-100 § 16, 1992)

2.36.170: **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. 15-100 § 17, 1992)

2.36.180: **CONFIDENTIAL TREATMENT OF RECORDS FOR WHICH NO EXEMPTION APPLIES:**

- A. 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. 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. This section does not apply to records that are specifically required to be public under section 2.36.090 of this chapter or section

- E. 1. If the city denies a request to amend a record, the requester may submit a written statement contesting the information in the record.
2. The city shall:
- a. File the requester's statement with the disputed record if the record is in a form such that the statement can accompany the record or make the statement accessible if the record is not in a form such that the statement can accompany the record; and
 - b. Disclose the requester's statement along with the information in the record whenever the city discloses the disputed information.
- F. The requester may appeal the denial of the request to amend a record pursuant to section 2.36.160 of this chapter.
- G. This section does not apply to records relating to title to real or personal property, medical records, judicial case files, or any other records that the city determines must be maintained in their original form to protect the public interest and to preserve the integrity of the record system. (Ord. 15-100 § 19, 1992)

2.36.200: RIGHTS OF INDIVIDUALS ON WHOM DATA IS MAINTAINED:

- A. 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 that city.
2. That statement is a public record.
- B. Upon request, the city shall explain to an individual:
1. The reasons the individual is asked to furnish 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.
- C. 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 A1 of this section or for purposes other than those for