ORDINANCE NO. 10-20-92

AN ORDINANCE OF Nephi City, A UTAH MUNICIPALITY,
ESTABLISHING A RECORDS ACCESS AND MANAGEMENT PROGRAM.

SEC. 1. SHORT TITLE

The ordinance is known as the "GRAMA 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 effectiveness, economy, efficiency, and compliance with statutes and regulations.

2. "Chronological logs" means 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.

3. "Classification," "classify," and their derivative forms mean determining whether a record series, record, or information within a record is public, private, controlled, or

(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 confidentially if it is private, controlled, protected, or exempt from disclosure under Section 63-2-201(3)(b) of the Utah Code.

10. "Individual" means a human being.

11. "Person" means any individual, nonprofit or profit corporation, partnership, sole proprietorship, or other type of business organization.

12. "Private record" means a record containing data on individuals that is classified private as provided by Section 10.

13. "Private provider" means any person who contracts with the city to provide services directly to the public.

14. "Protected record: means a record that is classified protected as provided by Section 12.

15. "Public record" means a record that has not been appropriately classified private, controlled, or protected as provided in Sections 10, 11, and 12 of this ordinance.

16. a. "Record" means all books, letters, documents, papers, maps, plans, photographs, films, cards, tapes, recording, 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:

(i) 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;

(ii) materials that are legally owned by an individual in his private capacity;

(iii) materials to which access is limited by the laws of copyright or patent unless the copyright or patent is owned by the city;

(iv) proprietary software;

(v) junk mail or commercial publications received by the city or an official or employee of the city;

(vi) books and other materials that are cataloged, indexed, or inventoried and

or protected under Section 12 to persons other than those specified in Section 5 if the city council, or a designee, determines that there is no interest in restricting access to the record, or that the interests favoring access outweigh the interest favoring restriction of access.

6. a. 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.

b. This chapter applies to records described in Subsection (a) insofar as this chapter is not inconsistent with the statute, rule, or regulation.

7. The city shall provide a person with a certified copy of a record if:

a. the person requesting the record has a right to inspect it;

b. identifies the record with reasonable specificity; and

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:

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 has authority independent of this ordinance to order disclosure.

8. a. The city may disclose or authorize disclosure of private or controlled records for research purposes if the city:

(i) determines that the research purpose cannot reasonably be accomplished without use of disclosure of the information to the researcher in individually identifiable form;

(ii) determines that the proposed research is bona fide, and that the value of the research outweighs the infringement upon personal privacy;

(iii) 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;

(iv) prohibits the researcher from disclosing the record in individually identifiable form except as provided in Subsection (b), or from using the record for purposes other than the research approved by the city; and

(v) 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 Section 63-2-801 of the Utah Code.

b. 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.

known, the name and address of where the record can be found; or

(iv) notifying the requester that because of one of the extraordinary circumstances listed in, subsection 4, 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.

3. 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.

4. 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 7.5 if the city determines that due to the extraordinary circumstances it cannot respond within the time limits provided in Subsection 7.2:

a. 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. 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.

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 city shall:

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

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 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. records of the Department of Commerce that evidence incorporations, mergers, name changes, and uniform commercial code filings;

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

j. documentation of the compensation that the city pays to a contractor or private provider; and

k. summary data.

2. The following records are normally public, but to the extent that a record is expressly exempt from disclosure, access may be restricted under Subsection 4.3(b) or Sections 10, 11 or 12:

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

Gas and Mining that evidence mineral production on government lands;

q. final audit reports;

r. occupational and professional licenses;

s. business licenses; and

t. a notice of violation, a notice of agency action under 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.

3. The list of public records in this section is not exhaustive and should not be used to limit accesses to records.

SEC. 10. PRIVATE RECORDS

1. The following records are private:

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

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

c. records of publicly funded libraries that when examined alone or with other records identify a patron;

d. 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;

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

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;

employment, or academic examinations;

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.

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

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 Section 52-4-7 of the open and Public Meeting 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 section may not be used to restrict access to a record evidencing a final contract; and

29. 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.

SEC. 13. RECORDS CLASSIFICATION AND DESIGNATION

1. The city shall:

a. evaluate all record series that it uses or creates;

b. designate those record series as provided by this ordinance;

c. report the designation of its record services to the state archives.

2. 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.

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

policies pertinent to the classification and disclosure or nondisclosure, order the disclosure of information properly classified as private under Section 10.2 or protected under Section 12 if the interests favoring access outweigh the interest favoring restriction of access.

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.

d. The order of the city shall include:

(i) a statement of reasons for the decision,, including citations to this ordinance or federal regulation that governs disclosure of the record, provided that the citations do not disclose private, controlled, or protected information;

(ii) 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;

(iii) a statement that any party to the appeal may appeal the city's decision to district court; and

(iv) 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.

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.

2. The city shall issue an order either approving or denying the request to amend no later than 30 days after receipt of the request.

3. If the city approves the request, it shall correct all of its records that contain the same incorrect information as soon as practical. A city may not disclose the record until it has amended it.

4. If the city denies the request is shall:

a. inform the requester in writing; and

b. provide a brief statement giving its reasons for denying the request.

5. a. If the city denies a request to amend a record, the requester may submit a written statement contesting the information in the record.

b. The city shall:

(i) 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

(ii) disclose the requester's statement along with the information in the record whenever the city discloses the disputed information.

6. The requester may appeal the denial of the request to amend a record pursuant to Section 16 of the ordinance.

7. 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.

SEC. 20. RIGHTS OF INDIVIDUALS ON WHOM DATA IS MAINTAINED

1. a. 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.

b. That statement is a public record.

2. upon request, the city shall explain to an individual:

a. the reasons the individual is asked to furnish to the city information that could be classified private or controlled;

b. the intended uses of the information; and

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