

ORDINANCE NO. 2007-55

AN ORDINANCE OF OGDEN CITY, UTAH, AMENDING THE OGDEN MUNICIPAL CODE BY AMENDING CHAPTER 5 OF TITLE 4 TO AMEND THE CITY'S PROCEDURES RELATING TO THE GOVERNMENT RECORDS ACCESS AND MANAGEMENT ACT; AND BY PROVIDING THAT THIS ORDINANCE SHALL BECOME EFFECTIVE IMMEDIATELY UPON PUBLICATION AFTER FINAL PASSAGE.

The Council of Ogden City hereby ordains:

SECTION 1. Chapter amended. Chapter 5 of Title 4 of the Ogden Municipal Code is hereby amended to read and provide as follows:

**4-5-1: [PURPOSE:]**

- A. **[Establishment Of Policies, Guidelines And Procedures:]** It is the purpose and intent of the City Council in enacting this Chapter to establish policies, guidelines and procedures for retention, maintenance and access for the records of the City in accordance with the Government Records Access and Management Act (hereinafter referred to as "the Act"), Utah Code Annotated title 63, chapter 2. All entities of the City shall comply with the provisions of this Chapter and with the Act and shall also comply with other Federal and State statutory and regulatory record-keeping requirements.
- B. **[Recognition Of Constitutional Rights:]** In enacting this Chapter, the City Council recognizes two (2) fundamental constitutional rights: the right of privacy in relation to personal data gathered by the City; and the public's right of access to information concerning the conduct of the public's business.
- C. **[Restriction Of Certain Records:]** The City Council also recognizes a public policy interest in allowing the City to restrict access to certain records, as specified in this Chapter, for the public good.
- D. **[Intent: It is the intent of the City Council:]**
  - 1. That all records of the City, which are defined by applicable Utah statutory and case law as public records, shall be made available to citizens within a reasonable time after request and at a reasonable cost as set forth in this Chapter;
  - 2. To establish and maintain an active, continuing program for the economical and efficient management of the City's records as provided in this Chapter;
  - 3. To provide guidelines for both disclosure and restrictions on access to government records, which are based on the equitable weighing of the pertinent interests and which are consistent with nationwide standards of information practices; and
  - 4. Favor public access when, in the application of this Chapter, countervailing interests are of equal weight.

4. Junk mail or commercial publications received by the City or by an officer or employee of the City;
5. Books and other materials that are catalogued, indexed, or inventoried and contained in the collections of libraries open to the public, regardless of physical form or characteristics of the material;
6. Personal notes or daily calendars prepared by any City employee for personal use or the personal use of a supervisor or such notes, calendars, or internal memoranda prepared for the use of an officer or agency acting in a quasi-judicial or deliberative process or pursuant to matters discussed in a meeting closed pursuant to Utah Open Meetings Act; or
7. Proprietary computer software programs as defined above under the term "computer software program" that are developed or purchased by or for the City for its own use.

#### **4-5-3: [PUBLIC RECORDS; RIGHT TO INSPECT AND RECEIVE COPIES:]**

- A. **[Provisions:]** Every person has the right to see, review, examine and take a copy of all public records of the City during normal working hours upon payment of the lawful fee and pursuant to the provisions of this Chapter. All records of the City are public unless otherwise expressly provided by the Act. Public record does not include:
1. Records classified as private, controlled, or protected in accordance with the Act and the policies and procedures established in this Chapter; and
  2. Records to which access is restricted pursuant to court rule, 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.
- B. **[No Obligation To Create Record:]** The City has no obligation to create a record or record series in response to a request from a member of the public, if the record requested is not otherwise regularly maintained or kept.
- C. **[Record Holder:]** When a record is temporarily held by a custodial City agency, pursuant to that custodial agency's statutory or ordinance functions, such as investigation, litigation or audit, the record shall not be considered a record of the custodial agency for the purposes of this Chapter. The record shall be considered a record of the agency or agencies which usually keeps or maintains that record, and any requests for access to such records shall be directed to that agency or agencies, rather than the custodial agency.
- D. **[Accommodations For Disabled:]** Reasonable accommodations regarding access to City records shall be provided to persons with disabilities in accordance with City policy and applicable law.

#### **4-5-4: [CONFIDENTIALITY AGREEMENTS:]**

If the City receives a request for a record that is subject to a confidentiality agreement executed before April 1, 1992, the law in effect at the time the agreement was executed, including late judicial interpretations of the law, shall govern access to the record, unless all parties to the confidentiality agreement agree in writing to be governed by the provisions of this Chapter.

2. The record requested is for either a voluminous quantity of records or requires the City to review a large number of records or perform extensive research to locate the materials requested;
  3. The City is currently processing either a large number of records requests or is subject to extraordinary seasonal work loads in the processing of other work;
  4. The request involves an analysis of legal issues to determine the proper responses to the request;
  5. The request involves extensive editing to separate public data in a record from that which is not public; or
  6. Providing the information request requires computer programming or other format manipulation.
- D. **[Inability Within Time Limitations; Estimate:]** When a record request cannot be responded to within the time frames provided herein, the City Recorder shall give the requester an estimate of the time required to respond to the request.
- E. **[Right Of Appeal:]** The failure or inability of the City Recorder to respond to a request for a record within the time frames set out herein, or the agency's denial of such a request, shall give the requester the right to appeal as provided in Section 4-5-25 of this Chapter.

**4-5-8: [FEES:]**

- A. **[Authority:]** The City Recorder offices and departments releasing copies of public records in accordance with this Chapter, shall charge a reasonable fee to cover the City's actual cost of duplicating a record, compiling a record in a form other than that maintained by the City, postage, the cost of providing a certified copy of a record, or any other fee reasonably related to the City's cost of fulfilling the request for the record consistent with this Chapter.
- B. **[Exception:]** A record may be provided without payment of the costs of duplication, if the duplication costs will not exceed fifteen dollars (\$15.00) and the City determines that:
1. The individual requesting the record is a member of the media and releasing the record primarily benefits the public rather than a person;
  2. The individual requesting the record is the subject of the record or is a person authorized under subsection 4-5-10B of this Chapter to have access to the subject's record; or
  3. The record is to be released to another governmental entity for a public purpose.
- C. **[Prepayment:]** The City may require payment of past fees and future estimated fees before beginning to process a request if fees are expected to exceed twenty five dollars (\$25.00), or if the requester has not paid fees from previous requests. Any prepaid amount in excess of fees due shall be returned to the requester.
- D. **[Standard Fees:]** Standard fees to be charged under this Section shall be adopted pursuant to Chapter 6 of this Title, or any successor provision.
- E. **[Members Of Public; Exception:]** Records provided by the City to members of the public for purposes of information, education or the solicitation of public opinion shall not be subject to the fees authorized in this Section.

B. Controlled records shall be made available to:

1. A physician, psychologist certified social worker, insurance provider or agent, or a government public health agency upon submission of a release from the subject of the record that is dated no more than ninety (90) days prior to the date the request is made and a signed acknowledgment of the terms of disclosure of controlled information as provided by subsection C of this Section;
2. Or any person presenting a legislative subpoena or a court order signed by a judge of competent jurisdiction.

C. **[Disclosure Prohibited:]** A person who receives a record from the City in accordance with subsection B1 of this Section may not disclose controlled information from that record to any person, including the subject of the record.

**4-5-12: [PROTECTED RECORDS:]**

A. **[Classified:]** Protected records shall be those City records classified as "protected", as defined in the Act, Utah Code Annotated section 63-2-304, as amended, and as classified and defined in the rules and regulations established pursuant to this Chapter.

B. **[Availability:]** Protected records shall be made available to:

1. The person who submitted the record to the City;
2. A person who has power of attorney from all persons, governmental entities, or political subdivisions whose interests were sought to be protected by the classification of the record;
3. A person who submits a notarized release from all persons, governmental entities, or political subdivisions whose interests were sought to be protected by the classification of the record or from their legal representatives dated no more than ninety (90) days prior to the date the request is made; and
4. Any person presenting a legislative subpoena or a court order regarding the release of the information and signed by a judge of competent jurisdiction.

**4-5-13: [ADDITIONAL PERMITTED DISCLOSURE OF SPECIFIC RECORDS:]**

A. **[Private Or Controlled Records; Research:]** The City may disclose or authorize disclosure of private or controlled records for research purposes in accordance with section 63-2-202(8) of the Act.

B. **[Governmental Entities:]** The City may disclose a private, controlled or protected record to another governmental entity, political subdivision, another state, the United States or a foreign government only as provided by section 63-2-206 of the Act.

C. **[Private Records; Discretion Of City:]** The City may at its discretion disclose records that are private under subsection 63-2-302(2) of the Act or protected under the provisions of this Chapter and the Act, if the agency head or the agency head's 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.

**4-5-14: [SEGREGATION OF RECORDS:]**

2. Develop policies and procedures for the classification and designation of the records of the City as public, private, controlled or protected in accordance with this Chapter and the Act;
  3. Develop access policies and procedures to govern and implement the provisions of the Act and this Chapter; and
  4. Approve classifications or designations applied to record series maintained by the City and provide a statement explaining the purposes for which a record series designated private or controlled are collected and used by the City.
- D. **[Maintenance Procedures:]** Records maintenance procedures shall be developed to ensure that due care is taken to maintain and preserve City records safely and accurately over the long term. The Committee shall be responsible for monitoring the application and use of technical processes in the creation, duplication and disposal of City records. They shall monitor compliance with required standards of quality, permanence and admissibility pertaining to the creation, use and maintenance of records. Policies and regulations regarding types and formats of papers, inks, electronic media and other records and information storage media, materials, equipment, procedures and techniques shall be developed.
- E. **[Fees:]** Standard fees to be charged under this Section shall be adopted pursuant to Chapter 6 of this Title, or any successor provision.
- F. **[Report To State Archives:]** The City Recorder shall provide to the State archives all retention schedules and all designations and classifications applied to record series maintained by the City, including a statement explaining the purposes for which record series designated private or controlled are collected and used by the City.
- G. **[General Policy For Retention:]** It is the general policy of the City to follow the Utah Municipal General Records Retention Schedule as prepared by the Utah Department of Administrative Services and approved by the State Records Committee. If it is ~~[determine]~~ determined that there is a need to retain records of the City beyond the minimum length of time recommended by the State or, if the record in question is not addressed in the above retention schedule, the Mayor, upon the recommendation of the Records Committee, may approve longer or additional retention schedules.

#### **4-5-17: [DISPOSAL OF RECORDS:]**

- A. **[Limitations:]** Any City record which has been requested in accordance with this Chapter and the Act, that is disposable by approved retention schedule, may not be disposed of until the request is granted and fulfilled, or sixty (60) days after the request is denied if no appeals are filed, or sixty (60) days after all appeals are completed, pursuant to Section 4-5-25 of this Chapter.
- B. **[Records Subject To Litigation:]** No City record, disposable by approved retention schedule, which is subject to pending litigation ~~[ef]~~ or audit shall be disposed of until the litigation or audit has been completed or resolved.

#### **4-5-22: [AMENDMENTS AND CHANGES TO RECORDS:]**

- A. **[Requests In Writing:]** Records of the City may be amended or corrected as needed. Requests for amendments, corrections or other changes shall be made in writing to the

**4-5-25: [APPEAL:]**

- A. **[Records Review Board:]** Persons aggrieved by the City's classification or designation of a record; or of an access decision, or by a response to a record request may appeal the determination to the Records Review Board.
- B. **[Written Appeal; Content:]** The appellant shall set forth in writing the nature and date of the request, attaching a copy of the request form, if available, and setting out the basis and legal authority for the request.
- C. **[Time Limitation; Filing:]** An appeal under this Section shall be brought within thirty (30) calendar days of the date of the action aggrieved, or of the date when the person grieving reasonably should have become aware of the action. All appeals shall be filed in the City Recorder's office.
- D. **[Hearing Scheduled:]** No later than three (3) business days after receiving a notice of appeal, the City Recorder shall schedule a hearing before the Records Review Board which shall be held no sooner than fifteen (15) calendar days and no later than thirty (30) calendar days from the date of the filing of the appeal.
- E. **[Testimony; Comments:]** At the hearing, the Records Review Board shall allow the parties to testify, present evidence and comment on the issues. The Records Review Board may allow other interested persons to comment on the issues.
- F. **[Authority Of Board:]** The Records Review Board 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 or protected if the interests favoring access outweigh the interest favoring restriction of access. In making such disclosure the Mayor/Records Review Board may limit the requestor's use and further disclosure of a record as provided in section 63-2-403(11)(c) of the Act.
- G. **[Determination; Court Order:]** The Records Review Board shall make a determination on any appeal within five (5) business days after the hearing. The Records Review Board shall issue a signed order either granting the petition, in whole or in part, or upholding the initial determination of the City. The order of the Records Review Board shall include:
  - 1. A statement of reasons for the decision;
  - 2. 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;
  - 3. A statement that any party to the appeal may appeal the decision of the Records Review Board to District Court within thirty (30) days after the date of the order;
  - 4. A brief summary of the appeal and a notice that, in order to protect its right on appeal, the party may wish to seek advice from an attorney.
- H. **Appeal To District Court:** Appeal of any final decision may be made to the District Court, in accordance with the Act and the Utah Rules of Civil Procedure.