

## SUMMARY

Pursuant to Section 63-2-701(7) of Utah Code Annotated, the following summary is submitted with the City of Orem's Records Access and Management Ordinance.

1. Classification: Sections 2-30-6, 2-30-7, 2-30-8, and 2-30-9 of the Ordinance establish the standards of classification, including public, private, controlled, and protected.
2. Designation: Sections 2-30-14 and 2-30-15 provide for the establishment of a City Records Officer and Records Management Committee, whose responsibility it is to develop policies and guidelines relating to classification, designation, retention and maintenance of City records.
3. Access: Sections 2-30-4, 2-30-5, and 2-30-10 establish the procedures for accessing City records.
4. Denial: Section 2-30-10 establishes the procedures for denying access to City records.
5. Appeals: Section 2-30-12 establishes the appeals process.
6. Segregation: Section 2-30-5 establishes the process for segregation of private, controlled and protected information.
7. Management: Sections 2-30-14 and 2-30-15 provide for the establishment of a City Records Officer and Records Management Committee, whose responsibility it is to develop policies and guidelines relating to classification, designation, retention and maintenance of City records. The City Recorder has been designated as the City Records Officer for the City of Orem.
8. Retention: Sections 2-30-14 and 2-30-15 provide for the establishment of a City Records Officer and Records Management Committee, whose responsibility it is to develop policies and guidelines relating to classification, designation, retention and maintenance of City records.
9. Amendment of Records: Section 2-30-17 establishes the standards for amending City records.
10. Fees: Section 2-30-11 establishes the fee for processing information requests.

ORDINANCE NO. 0-92-010AN ORDINANCE ESTABLISHING A RECORDS ACCESS  
AND MANAGEMENT PROGRAM

WHEREAS it is in the best interest of the City of Orem and the citizens thereof, and essential for the administration of City government, to maintain and preserve accurate government records; to provide ready access to records which are defined by law as open to the public; to maintain the security of records which are defined by law as non-public; and to ensure the preservation of vital and historically valuable records; and

WHEREAS the records of the City of Orem are a resource containing information which allows government programs to function; provide officials with a basis for making decisions and ensuring continuity with past operations; permit citizens to research and document matters of personal and community importance; and are a resource that must be systematically and efficiently managed; and

WHEREAS the City desires that all government records, 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 ordinance; and

WHEREAS the City of Orem recognizes the personal right of privacy retained by persons who may be the subject of a government records and the public policy interest in allowing the government to restrict access to certain records, as specified in state law and this Article, for the public good; and

WHEREAS state law allows the City of Orem to adopt an ordinance relating to information practices including classification, designation, access, denials, segregation, appeals, management, retention, and amendment of records; and

WHEREAS the City of Orem desires to adopt an ordinance dealing with records access and management in compliance with state law.

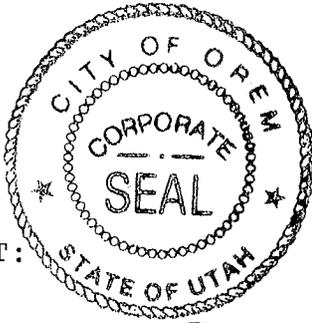
NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF OREM, UTAH, as follows:

2. If any part of this ordinance shall be declared invalid, such decision shall not affect the validity of the remainder of this ordinance.

3. All ordinances, resolutions or policies in conflict herewith are hereby repealed.

4. This ordinance shall take effect immediately upon passage and publication in a newspaper of general circulation in the City of Orem.

PASSED and APPROVED this 30th day of June, 1992.



Stella Welsh  
CITY OF OREM, by  
Stella Welsh, Mayor

ATTEST:

Melody Downey  
Melody Downey, City Recorder

COUNCILMEMBERS VOTING "AYE"

Judy Bell  
Kelvin C. Clayton  
James T. Evans  
Steven L. Heinz  
H. Keith Hunt  
Stella Welsh  
W. Chris Yandow

COUNCILMEMBERS VOTING "NAY"

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1. Article 2-30 of the Orem City Code is hereby adopted to read as follows:

**Article 2-30. Records Access and Management**

**2-30-1. Title.**

This Article shall be known as the "Records Access and Management Ordinance of the City of Orem, Utah."

**2-30-2. Purpose and Intent.**

The City of Orem recognizes two fundamental 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. In enacting this Article, it is the intent of the City of Orem to:

- A. Maintain and preserve accurate government records,
- B. Provide ready access to records which are defined by law as open to the public,
- C. Retain the security of records which are defined by law as non-public.
- D. Comply with the Government Records Access Management Act (hereinafter referred to as "the Act") Chapter 2 of Title 63 of the Utah Code Annotated (1953, as amended), and
- E. Comply with all other federal, state and City, constitutional, statutory and regulatory record-keeping requirements.

**2-30-3. Definitions.**

As used in this ordinance, the following definitions shall be applicable.

**Act** means the Government Records Access and Management Act, Section 63-2-1, et seq., Utah Code Annotated, 1953, as amended.

**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.

**Chronological log** means a regular and customary summary record of law enforcement agencies and other public safety agencies that show the time and

general nature of police, fire and paramedic calls made and any arrests or jail bookings made by the Department of Public Safety;

**City Records officer** means an individual appointed by the City Manager to work in the care, maintenance, scheduling, designation, classification, disposal, and preservation of records.

**Classification** means determining whether a record series, record, or information within a record is public, private, controlled, protected or exempt from disclosure under sections 2-30-6 through 2-30-9 Orem City Code.

**Computer Program** means 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 source material that explains how to operate the computer program. It does not mean;

1. The original data, including numbers, text, voice, graphics, and images;

2. Analysis, compilation, and other manipulated forms of the original data produced by use of the program; or

3. The mathematical or statistical formulas (excluding the underlying mathematical algorithms contained in the program) that would be used if the manipulated forms of the original data were to be produced manually.

**Contractor** means;

1. Any person who contracts with the City to provide goods or services directly to the City; or

2. Any private, nonprofit organization that receives funds from the City. Contractor does not mean a private provider.

**Controlled records** shall be those defined as controlled under the provisions of this ordinance and in accordance with the provisions of the Act.

**Data** shall refer to individual entries (for example, birth date, address, etc.) in records.

**Designation** means indication, 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.

**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.

**Individual** means a human being.

**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:

1. The date, time, location and nature of the complaint, the incident, or offense;
2. Names of victims;
3. The nature or general scope of the agency's initial actions taken in response to the incident;
4. The general nature of any injuries or estimate of damages sustained in the incident;
5. The name, address, and other identifying information about any person arrested or charged in connection with the incident;
6. The identity of the public safety personnel (except undercover personnel) or prosecuting attorney involved in responding to the initial incident.

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 sections 2-30-6 through 2-30-9 Orem City Code.

**Non-public records** means those records defined as private, controlled, or protected under the provisions of this ordinance and the Act.

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

**Private records** mean those records classified as private under the provisions of this ordinance and the Act.

**Private provider** means any person who contracts with a government entity to provide services directly to the public.

**Protected records** mean those records classified as protected under the provisions of this ordinance and the Act.

**Public records** mean those records which have not been classified as non-public in accordance with the provisions of this ordinance and the Act.

**Record** means all books, letters, documents, papers, maps, plans, photographs, films, cards, tapes, recordings, or other documentary materials, and electronic data regardless of physical form or characteristics, prepared, owned, used, received, or retained by the City where all the information in the original is reproducible by some mechanical, electronic, photographic or other means. Record does not mean:

1. Temporary drafts or similar materials prepared for the originator's personal use or prepared by the originator for the personal use of a person for whom he is working;
2. Materials that are legally owned by an individual in his private capacity;
3. Materials to which access is limited by the laws of copyright or patent;
4. Proprietary software;
5. Junk mail or commercial publications received by the City or by an officer or employee of the City;
6. Books and other materials that are catalogued, indexed, or inventoried and contained in the collections of City libraries open to the public, regardless of physical form or characteristics of the material;
7. 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;
8. Notes 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 the Utah Open Meetings act; or Proprietary computer software programs as defined above that are developed or purchased by or for the City for its own use.

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

**Schedule** means the process of specifying the length of time each record series should be retained by the City for administrative, legal, fiscal or historical purposes, and when each record series should be transferred to the state archives or destroyed.

**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.

**2-30-4. Access to Public Records.**

A. Any person shall have the right to see, review, examine, and take copies of all city government records defined as "public" under the provisions of this ordinance, upon the payment of the designated fee and pursuant to the provisions of this Article, the Act and policies and procedures developed hereunder.

B. Public Records are all city records unless they are:

1. Expressly classified otherwise in accordance with procedures established by this ordinance,
2. Expressly classified otherwise by the Act, or
3. Are made non-public by other applicable law.

C. 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.

D. When a department record is temporarily held by another department, the record shall not be considered the borrowing department's record for purposes of this Article; provided, however, that the record shall be considered a record of the department which usually keeps or maintains that record and any requests for access to such record shall be directed to that department rather than the department temporarily holding the record.

**2-30-5. Access to Non-Public Records.**

A. Private records shall be those city records classified as "private", as defined in the Act and as classified and defined in procedures established pursuant to this Article. Private records shall be made available to:

1. The subject of the record,
2. The parent or legal guardian of a minor who is the subject of a record,
3. The legal guardian of an incapacitated individual who is the subject of the record,
4. Any person who has a power of attorney or a notarized release from the subject of the record or his legal representative, or
5. Any person possessed of and serving a legislative subpoena, or court order issued by a court of competent jurisdiction.

B. Controlled records shall be those city records classified as "controlled", as defined in the Act, Section 63-2-303 (U.C.A., 1953, as amended) and as classified and defined in procedures established in this Article. A person who receives a record from the City may not disclose controlled information from

that record to any person, including the subject of the record. Controlled records shall be made available to;

1. A physician, psychologist, or licensed social worker who submits a notarized release from the subject of the record that is dated no more than 90 days prior to the date the request is made and a signed acknowledgment of the terms of disclosure of controlled information, or

2. Any person presenting a legislative subpoena or court order signed by a judge of competent jurisdiction.

C. Protected records shall be those city records classified as "protected", as defined in the Act, Section 63-2-304 (U. C. A., 1953, as amended) and as classified and defined in procedures established in this Article. Protected records shall be made available to:

1. The person who submitted the record,

2. A person who has a power of attorney or notarized release from all persons or governmental entities whose interests are protected by the classification of the record, or

3. To any person presenting a legislative subpoena or a court order regarding the release of the information and signed by a judge of competent jurisdiction.

D. Where a private, controlled, protected or non-public record contains more than one subject of the record, the portion of the record that pertains to another subject shall be segregated from the portion that the requester is entitled to inspect.

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

F. 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 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 (2), 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 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.

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.

3. The City may require indemnification as a condition of permitting research under this subsection.

G. The City recognizes and upholds the personal right of privacy retained by persons who may be the subject of government records. The City also recognizes that the Act and Utah case law establish a presumption that government records will generally be considered open and public, with certain specific exceptions.

1. In circumstances where a record's public or non-public status is not specifically established by the Act, another statute, this ordinance, or policies established or classifications made under this ordinance, the public's right to access and the record subject's right of privacy must be compared.

2. In accordance with decisions of the Utah Supreme Court, City records which have not been specifically made public by the Act and which refer to named or readily identifiable individuals which deal with matters of a delicate nature which could engender shame, humiliation or embarrassment in the subject of that record, in accordance with accepted standards of social propriety, shall generally not be classified as public records, and release thereof may constitute a clearly unwarranted invasion of privacy in accordance with the Act and procedures established in this ordinance.

H. The City may, as determined appropriate by the department head of the department responding to a request for records, notify the subject of a private or controlled record that a request for access to the subject's record has been made.

I. The City may require that the requester of private records provide a written release, notarized within ninety (90) days before the request, from the subject of the records in question before access to such records is provided.

J. The City may share information with other government agencies regardless of classification as long as those agencies are willing to abide by the requirements of this ordinance. Nothing in this Article prevents the City from examining private, controlled or protected records for government or administrative purposes.

K. Under circumstances set out in this Article, it may be appropriate to disclose non-public records to persons other than those set out in this Article. The determination to so release such records shall be made by the City Records Officer, consistent with this Article and upon the advice of the City Attorney.

#### **2-30-6. Records Classified as Public.**

A. The following city records are public according to the Act except to the extent they contain information expressly permitted to be treated confidentially 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:

1. Laws and ordinances;

2. Names, gender, gross compensation, job title, job descriptions, job qualifications, business addresses, business telephone numbers, number of hours worked per pay period, and dates of employment, and relevant education, previous employment, and similar job qualifications of the governmental entity's former and present employees and officers, excluding undercover law enforcement personnel and investigative personnel if disclosure could reasonably be expected to impair the effectiveness of investigations or endanger any individual's safety;

3. Final opinions, including concurring and dissenting opinions, and orders that are made by a government entity in an administrative, adjudicative, or judicial proceeding except that if the proceedings were properly closed to the public, the opinion and order may be withheld to the extent that they contain information that is private, protected, or controlled;

4. Final interpretations of statutes, ordinances or rules by the City unless classified as protected;

5. Information contained in or compiled from a transcript, minutes, or report of the open

portions of a meeting of a government entity as provided by Chapter 4, Title 52, Open and Public Meetings, Utah Code Ann. including the records of all votes of each member of the government entity;

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 the Act;

7. Records filed with or maintained by city recorders, clerks, treasurers, surveyors, zoning commissions, etc. 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. Data on individuals that would otherwise be private under the Act if the individual who is the subject of the record has given the City written permission to make the records available to the public;

9. Documentation of the compensation that a government entity pays to a contractor or private provider;

10. Summary data; and

11. Written record requests.

B. The following records are normally public, but to the extent that a record is expressly exempt from disclosure, access may be restricted under Sections 63-2-201(3)(b), 63-2-302, 63-2-303, or 63-2-304 of the Act:

1. Administrative staff manuals, instructions to staff, and statements of policy;

2. Records documenting the compensation that the City pays to a contractor or private provider;

3. Records documenting the services provided by a contractor or a private provider to the extent the records would be public if prepared by the City;

4. Contracts entered into by the City;

5. Any account, voucher, or contract that deals with the receipt or expenditure of funds by the City;

6. Records relating to government assistance or incentives publicly disclosed, contracted for, or given by the City, encouraging a person to expand or relocate a business in Utah, except as provided in subsection 63-2-304(34) of the Act;

7. Initial contact reports.

8. Chronological logs.

9. Correspondence by and with a government entity in which the government entity determines or states an opinion upon the rights of the state, a political subdivision, the public, or any person;

10. Empirical data contained in drafts if:

a. The empirical data is not reasonably available to the requester elsewhere in similar form; and

b. The City is given a reasonable opportunity to correct any errors or make nonsubstantive changes before release;

11. Drafts that are circulated to anyone other than a government entity, political subdivision, a federal agency if the government entity and the federal agency are jointly responsible for implementation of a program or project that has been legislatively approved, a government-managed corporation, or a contractor or private provider;

12. Drafts that have never been finalized but were relied upon by the City in carrying out action or policy.

13. Original data in a computer program if the government entity chooses not to disclose the program;

14. Arrest warrants after issuance, except that, for good cause, a court may order restricted access to arrest warrants prior to service;

15. 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;

16. 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;

17. Final audit reports;

18. Occupational and professional licenses;

19. Business licenses; and

20. A notice of violation, a notice of department action under Section 63-46b-3, of the Act 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.

#### **2-30-7. Records Classified as Private.**

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 the Orem City Library that when examined alone or with other records identify a patron;

4. 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.

B. The following records are private if properly classified by the City:

1. Records concerning a current or former employee of, or applicant for employment with the City, including performance evaluations and personal status information such as race, religion, or disabilities, but not including records that are public under Subsections 63-2-301(1)(b) or 63-2-301(2)(o), or private under Subsection 63-2-302(1)(e) of the Act.

2. Records describing an individual's finances, except that the following are public:

a. Records described in Subsection 63-2-301(1);

b. Information provided to the government entity for the purpose of complying with a financial assurance requirement; or

c. Records that must be disclosed in accordance with another statute;

3. Records of the City or independent state agencies if the disclosure of those records would conflict with the fiduciary obligations of the City or state agency;

4. Other records containing data on individuals the disclosure of which constitutes a clearly unwarranted invasion of personal privacy; and

5. Records provided by the United States or by a government 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.

#### **2-30-8. Records Classified as Controlled.**

The following records are controlled if:

1. The record contains medical, psychiatric, or psychological data about an individual;

2. The City reasonably believes that 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 releasing the information would constitute a violation of normal professional practice and medical ethics; and

3. The City has properly classified the record.

#### **2-30-9. Records Classified as Protected.**

The following records are protected:

1. Trade secrets as defined in Section 13-24-2 Utah Code Ann. if the person submitting the trade secret has provided the City with the information specified in Section 63-2-308 Utah Code Ann.

2. Commercial information or nonindividual financial information obtained from a person if:

a. Disclosure of the information could reasonably be expected to result in unfair competitive injury to the person submitting the information or would impair the ability of the City to obtain necessary information in the future;

b. The person submitting the information has a greater interest in prohibiting access than the public in obtaining access; and

c. The person submitting the information has provided the City with the information specified in Section 63-2-308 Utah Code Ann.

3. Commercial or financial information acquired or prepared by the City to the extent that disclosure would lead to financial speculations in currencies, securities, or commodities that will interfere with a planned transaction by the City or cause substantial financial injury to the City or national economy;

4. Test questions and answers to be used in future license, certification, registration, employment, or academic examinations;

5. Records the disclosure of which would impair city procurement proceedings or give an unfair advantage to any person proposing to enter into a contract or agreement with the City except that this subsection does not restrict the right of a person to see bids submitted to or by the City after bidding has closed;

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; or

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 described property have already learned of the City's plans to acquire the property or of the City's estimated value of the real property; or

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 entity.

8. Records created or maintained for civil, criminal, or administrative enforcement purposes or audit purposes, or for discipline, licensing, certification, or registration purposes, if release of the records;

a. Reasonably could be expected to interfere with investigations undertaken for enforcement, discipline, licensing, certification, or registration purposes;

b. Reasonably could be expected to interfere with audits, disciplinary, or enforcement proceedings;

c. Would create a danger of depriving a person of a right to a fair trial or impartial hearing;

d. Reasonably could be expected to disclose the identity of a source who is not

generally known outside of government and, in the case of a record compiled in the course of an investigation, disclose information furnished by a source not generally known outside of government if disclosure would compromise the source; or

e. Reasonably could be expected to disclose investigative or audit techniques, procedures, policies, or orders not generally known outside of government if disclosure would interfere with enforcement or audit efforts;

9. Records the disclosure of which would jeopardize the life or safety of an individual;

10. Records the disclosure of which would jeopardize the security of city property, city programs, or city recordkeeping systems from damage, theft, or other appropriation or use contrary to law or public policy;

11. Records that, if disclosed, would jeopardize the security or safety of a correctional facility, or records relating to incarceration, treatment, probation, or parole, that would interfere with the control and supervision of an offender's incarceration, treatment, probation, or parole;

12. Records 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;

13. Records and audit workpapers that identify audit, collection, and operational procedures and methods used by the Utah State Tax Commission, if the disclosure would interfere with audits or collections;

14. Records of a government 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 Utah Code Ann.;

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 that may be covered by the City or by the Utah Risk Management Mutual Association;

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 if the disclosure of the records would conflict with the fiduciary obligations of the City;

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 Meetings Act, Utah Code Ann.;

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 governmental entity at a competitive disadvantage, but this section may not be used to restrict access to a record evidencing a final contract;

29. Materials to which access must be limited for purposes of securing or maintaining the

governmental entity's proprietary protection of intellectual property rights including patents, copyrights, and trade secrets;

30. The name of a donor or a prospective donor to the City, and other information concerning the donation that could reasonably be expected to reveal the identity of the donor, provided that:

a. The donor requests anonymity in writing;

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

c. The entity to which the donation is made is primarily engaged in educational, charitable, or artistic endeavors, and has no regulatory or legislative authority over the donor, a member of his immediate family, or any entity owned or controlled by the donor or his immediate family;

#### **2-30-10. Records Access Procedures.**

A. Requests for records shall, in the majority of cases, be responded to as soon as reasonably possible. The requester shall fill out and present to the City a written request on forms provided by the City. The requester shall identify him/herself on the request form. The date and time of the request shall be noted on the written request form and all time frames provided under this section shall commence from that time and date. Requesters of non-public information shall adequately identify their status prior to receiving access to non-public records. The department director may waive the requirement of a written request form.

B. The City may respond to a request for a record by approving the request and providing the record, denying the request, or giving such other appropriate response as may be established by policies and procedures. All denials for a request must be made by the City Records Officer.

C. In most circumstances and excepting those eventualities set out below in paragraph D, the City shall respond to a written request for a record within five (5) business days after that request.

D. Extraordinary circumstances shall justify the City's failure to respond to a written request for a record within five (5) business days and shall extend the time for response to that time reasonably necessary to respond to the request, as determined by the department director. Extraordinary circumstances shall include but not be limited to the following:

1. The City, or some other governmental entity is currently and actively using the record requested;

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 response by the City to the request;

5. The request involves extensive editing to separate public information in a record from that which is not public; or

6. Providing the information request requires computer programming or other format manipulation.

When the City determines that a record request cannot be responded to within five (5) business days, the department director shall give the requester an estimate of the time required to respond to the request.

E. The City differentiates between a record and the data contained in that record. Only those requesters having a right to the data will receive the data. All private, controlled, and protected data will be deleted from requested records unless the requestor has the right to that data under this ordinance.

F. 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 days after the request is denied if no appeals are filed, or sixty days after all appeals are completed, pursuant to Section 2-30-12 Orem City Code.

G. The failure or inability of the City to respond to a request for a record within the time frames set out herein, or the City's denial of such a request, shall give the requester the right to appeal pursuant to Section 2-30-12 of the Orem City Code.

H. No City record, disposable by an approved retention schedule, which is subject to pending litigation or audit shall be disposed of until the litigation or audit has been completed or resolved.

I. Reasonable accommodations regarding access to government records shall be provided to persons with disabilities.

J. Subpoenas and other methods of discovery under the state or federal statutes or rules of civil, criminal, administrative or legislative procedure are not written requests under this Article. Compliance with civil, criminal, administrative and legislative discovery shall be governed by the applicable statutes and rules of procedure.

#### **2-30-11. Fees.**

Applicable fees for the processing of information requests under this Article shall generally be set at actual cost or as otherwise established by statute, ordinance, resolution or by policies adopted under this Article. The City may not charge a fee for reviewing a record to determine whether it is subject to disclosure or for inspecting a record.

#### **2-30-12. Appeals.**

A. Persons aggrieved by the City's classification of a record or by the City's response to a record request may request and be granted a full administrative appeal of that grievance. An intermediate or initial appeal shall be made to the City Manager. A requester who is aggrieved by the City Manager's decision may file an administrative appeal of that decision with the City Council. The appeal of a decision of the City Council may be made within thirty (30) days to the District Court, in accordance with the Act and the Utah Rules of Civil Procedure.

B. An intermediate 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. An administrative appeal shall be filed within thirty (30) days after the City Manager has denied the appeal or fails to make a determination within three (3) business days after the appeal hearing.

C. The notice of appeal shall be filed with the City Records Officer and shall contain the following information:

1. The petitioner's name, mailing address, and daytime telephone number;
2. A copy of any denial of the records request; and
3. The relief sought.

D. The City Records Officer shall schedule the appeal before the City Manager or City Council no sooner than fifteen (15) and no later than thirty (30) days from the date of the filing of the appeal. The written decision of the City Manager or Council regarding access to or classification of records shall be made no more than ten (10) business days after the

hearing and shall be forwarded to the City Records Officer for corrective action including any reclassification of records which may be necessitated by the appellate decision.

E. The provisions of this section notwithstanding, the persons participating in the proceeding may, by agreement or stipulation, extend the time periods specified in this section.

F. The City Manager or City Council may, upon consideration and weighing of the various interests and public policies pertinent to the classification and disclosure or nondisclosure, order the disclosure of information properly classified as private or protected if the interests favoring access outweigh the interests favoring restriction of access

#### **2-30-13. Liability.**

In accordance with the Act, neither the City nor any of its officers or employees shall be liable for damages resulting from the release of a record where the requester presented to the City evidence of authority to obtain the record, even if it may be subsequently determined that the requester had no such authority.

#### **2-30-14. City Records Officer and Records Management Committee.**

A. The City Manager shall appoint the City Records Officer. The City Records Officer shall oversee and coordinate the management of City records. The City Records Officer shall make reports of records services activities to the City Council upon request by the City Council.

B. There is hereby created the Records Management Committee, to be chaired by the City Records Officer. Members of the Records Management Committee shall include representatives from each of the different departments of the City. The department representatives shall be called Department Records Representatives. The Records Management Committee shall meet periodically as needed, as determined by the Records Management Committee and/or the City Records Officer.

C. The Department Records Representative is to assist with and be directly responsible for the implementation of this ordinance in city departments. Regular training shall be provided under the direction of the City Records Officer to Department Records Representatives.

D. The Records Management Committee shall develop, as needed, records maintenance and access policies and procedures to govern and implement the provisions of this Article. Copies of all rules and policies promulgated under this ordinance shall be

forwarded to the Utah State Division of Archives within thirty (30) days after its effective date. All record policies and procedures shall be consistent with this Article and the Act.

#### **2-30-15. Records Classification, Designation, Retention and Maintenance.**

A. The City Records Officer with the assistance of the Records Management Committee shall develop city policies and guidelines relating to the classification, designation, retention and maintenance of city records. All City records and records series, of any format, shall be classified and scheduled for retention according to the provisions of the Act and this Article. Any records or record series generated in the future shall also be so classified, designated and scheduled for retention. Classification forms and guidelines shall be prepared and promulgated by the City Records Officer. Policies and regulations regarding types of papers, inks, electronic media, and other records storage materials may be developed and promulgated by the City Records Officer.

B. The City may designate or redesignate or classify or reclassify records or data at any time, and is not required to classify a particular record or item of data until access thereto is requested. Any records or record series generated in the future shall also be so designated, classified and scheduled for retention.

C. All City records shall remain the property of the City unless federal or state legal authority provides otherwise.

D. Property rights to City records may not be permanently transferred from the City to any private individual or entity, including legally disposable City records that are obsolete. This prohibition does not include the providing of copies of City records otherwise produced for release or distribution under this Article.

E. Custodians of any City records shall, at the expiration of their terms of office, appointment or employment, deliver custody and control of all records kept or received by them to their successors, supervisors, or to the City Records Officer.

#### **2-30-16. Electronic Records.**

A. The City retains and reserves to itself the right to use any type of non-verbal or non-written formats for the storage, retention and retrieval of government records, including but not limited to audio tapes, video tapes, micro-forms, and any type of computer, data processing, imaging, or electronic information storage or processing equipment or systems, which are not prohibited by state statute, and do not compromise legal requirements for record

storage, retrieval, security and maintenance, to store and maintain City records. All computerized and non-written format records and data which are properly classified in accordance with the Act and this Article as public, shall be made available to a requester within a reasonable time and at a reasonable cost.

B. Members of the public shall have the right to have access to records, in accordance with the Act and this Article, contained in non-written formats or data processing systems. The method of access to such public records shall be as determined appropriate by the director of the department maintaining the records, considering all circumstances. Access may include but not be limited to the following:

1. Using a city computer terminal or other viewing or listening device to retrieve data directly from the terminal screen or device; provided, however, that due regard shall be exercised to ensure that any non-public records will not be accessed, retrieved or displayed on the device and that records are not erased or damaged;

2. Providing paper or "hard" copies of data printouts or by providing magnetic tapes, disks, or other means of electronic storage containing the non-written format or data processing system records; or

3. Using, where appropriate, remote terminals which have access to city computer, data processing or electronic information systems pursuant to a formal two-party contract permitting such remote terminal access and provided that due regard shall be exercised to ensure that non-public records will not be available by remote terminal access.

C. Computer software programs are not considered a record. Software programs shall not be subject to disclosure under this Article or the Act, including copyrighted software and other copyrighted materials which have been purchased by or licensed to the City and software and other materials which have been copyrighted by the City.

#### **2-30-17. Amendment of Records.**

A. Government records held by the City may be amended or corrected by the City as needed. Policies and procedures may be adopted by the City Records Officer for such amendments. Outside requests for amendments, corrections, or other changes shall be made in writing to the department having custody of the records and setting forth, with specificity, the amendment or correction requested. The City Records Officer, after receiving a recommendation

from the department director, shall either approve or deny the request.

B. The City Records Officer shall issue an order approving or denying the request to amend no later than thirty (30) days after receipt of the request.

C. If the request is approved, the City Records Officer shall correct the records that contain the incorrect information as soon as practical. When an amendment or correction of a government record is made, both the original record and the amended or corrected record shall be retained, unless provided otherwise by policies and procedures adopted under the provisions of this Article.

D. If the request is denied, the City Records Officer shall inform the requester in writing the reasons for denying the request. The requester may appeal the denial of the request to amend a record pursuant to section 2-30-12 of the Orem City Code.

#### **2-30-18. Disciplinary Action.**

The City may take disciplinary action, which may include suspension or termination, against any employee who intentionally violates any provision of this Article.