

ORDINANCE NO. 92-3

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

SECTION 1. SHORT TITLE

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

SECTION 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.

SECTION 3. DEFINITIONS

As used in this Ordinance:

1. "Chronological logs" means the regular and customary 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.

2. "Classification," "classify," and their derivative forms mean the process of designating a record series or information within a record series as

public, private, controlled, or protected.

3. "Computer program"

a. "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 computer system, and any associated documentation and source material that explain how to operate the computer program.

b. "Computer program" does not mean:
(i) the original data, including numbers, text, voice, graphics, and images;
(ii) analysis, compilation, and other manipulated forms of the original data produced by use of the program; or
(iii) the mathematical or statistical formulas that would be used if the manipulated forms of the original data were to be produced manually.

4. "Controlled record" means a record containing data on individuals that is classified controlled as provided by Section 11.

5. "Contractor"

a. "Contractor" means: (i) any person who contracts with a city to provide goods or services directly to a city; or
(ii) any private, nonprofit organization that receives funds from a city.

b. "Contractor" does not mean a private provider.

6. "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.

7. "Incident reports" mean records customarily created by law enforcement agencies and other public safety agencies about specific incidents and that normally include:

a. the nature of the complaint, the

incident, or offense;

b. the agency's actions taken in response to the incident;

c. any assessment of the injuries or damages suffered in the incident;

d. the general scope of the agency's investigation of the incident;

e. the name, address, and other identifying information about any person arrested or charged in connection with the incident;

f. search warrants or arrest warrants issued in connection with the incident; and

g. the identity of the officers and public safety personnel involved in investigating or prosecuting the incident;

8. "Individual" means a human being.

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

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

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

12. "Protected record" means a record that is classified protected as provided by Section 11.

13. "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.

14. "Record"

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 a 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 a person 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) propriety software; (v) junk mail or commercial publications received by a city or an official or employee of a city; (vi) books and other materials that are cataloged, indexed, or inventoried and contained in the collections of libraries open to the public, regardless of physical form or characteristics of the material; (vii) personal notes or notes prepared by the judiciary as part of the deliberative process; or (viii) computer programs as defined that are developed or purchased by or for the city for its own use.

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

16. "Records officer" means the individual designated by the Mayor to work in the care, maintenance, scheduling, disposal, and preservation of records.

17. "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.

SECTION 4. RIGHT OF PUBLIC ACCESS

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

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

3. The following records are not public:

a. records that are appropriate, or protected as allowed by Sections 10, 11, and 12 of this Ordinance; and

b. records to which access is

restricted by another state statute, federal statute, or federal regulation, either directly or as a condition of participation in a state or federal program or for receiving state or federal funds.

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

- a. the person requesting the record has a right to see it;
- b. he identifies the record with reasonable specificity and;
- c. he pays the lawful fees.

5. 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.

6. If a person requests 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.

7. If the city owns a copyright or patent affecting a record, and offers the copyrighted or patented record for sale, the city may control by ordinance or policy the access, duplication, and distribution of the material based on terms the city considers to be in the public interest. 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 copyright or patent.

SECTION 5. ACCESS TO NON PUBLIC RECORDS

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

a. the subject of the record;

b. the parent or legal guardian of an unemancipated minor who is the subject of the record;

c. the legal guardian of a legally incapacitated individual who is the subject of the record;

d. any other individual who (i) has a power of attorney from the subject of the record; or (ii) submits a notarized release from the subject of the record or his legal representative dated no later than 30 days before the date the request is made; or

e. any person who has a court order signed by a judge from a Utah court, other than a justice of the peace court, or a federal court of competent jurisdiction to the extent that the record deals with a matter in controversy over which the court has jurisdiction after the court has considered the merits of the record request.

2. a. Upon request, the city shall disclose a record that is classified controlled to: (i) a physician, psychologist, or certified social worker upon submission of a notarized release from the subject of the record that is dated no more than 30 days prior to the date the request is made and a signed acknowledgement of the terms of disclosure of confidential information as provided by Subsection b; and (ii) any person who has a court order signed by a judge from a Utah court, other than a justice of the peace court, or a federal court of competent jurisdiction to the extent that the record deals with a matter in controversy over which the court has jurisdiction after the court has considered the merits of the record requested.

b. a person who receives a record from the city in accordance with Subsection 5.2.a(i) may not disclose controlled information from that record to any person, including the subject of a record.

3. Upon request the city shall disclose a record that is classified as protected to:

a. the person who submitted the information in the record;

b. any other individual who (i) has power of attorney from the subject of the record; or (ii) submits a notarized release from the subject of the record or his legal representative dated no more than 30 days prior to the date the request is made; or

c. any person who has a court order signed by a judge from a Utah court other than a justice of the peace court, or a federal court of competent jurisdiction to the extent that the record deals with a matter in controversy over which the court has jurisdiction after the court has considered the merits of the record request.

4. The city may disclose a record classified private, controlled, or protected to another city, another state, the United States, or a foreign government only as provided by Utah Code annotated 63-2-206.

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

6. Nothing in this section prohibits the city from disclosing a record to persons other than those listed in Subsections 5.1, 5.2 and 5.3 if the city determines that disclosure is in the public interest.

SECTION 6. FEES

1. The city shall charge a reasonable fee to cover the city's actual cost of duplicating a record or compiling a record in a form other than that maintained by the city. Fees shall be set by Resolution. The initial fee, until changed by Resolution, is as follows: the city shall charge .10 cents per copy for each copy made, plus the hourly wage fee of the employee who does the work. All research and record retrieval shall be done as work loads permit.

SECTION 7. PROCEDURE FOR ACCESS

1. A person making a request for a record shall furnish the city with a written request containing his name, mailing address, daytime telephone number, and a description of the records requested that identifies the record with reasonable specificity.

2. Except as provided in Subsection 7.3, a city shall respond to a records request no later than ten business days after receiving the request by:

a. approving the request and providing the record;

b. denying the request;

c. notifying the requester that it does not maintain the record and providing, if known, the name and address of the city that does maintain the record; or

d. notifying the requester that because of the extraordinary circumstances listed in Subsection 4, it, cannot immediately approve or deny the request, and specifying the earliest time and date when the records will be available.

3. If a requester demonstrates that he is a member of the news media or that expedited release of the record benefits the public rather than an individual, the city shall respond to a records request no later than five business days after receiving the request.

4. The following circumstances constitute "extraordinary circumstances" that allow a city to delay approval or denial by an additional number of days as specified in Subsection 7.6 if the city determines that due to the extraordinary circumstances it cannot respond within the time limits provided in Subsections 7.2 or 7.3:

a. another governmental entity is using the record, in which case the city shall immediately 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 requiring analysis of statutes, rules, ordinances, regulations, or case law;

g. separating public information from private, controlled, or protected information requires extensive editing; or

h. separating public information from private, controlled, or protected information requires computer programming.

6. If a city claims that one of the extraordinary circumstances listed in Subsection 5. precludes approval or denial within the time specified in Subsection 2. or 3., the following time limits apply to the extraordinary circumstances:

a. for claims under Subsection 5.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 5.b., the originating city shall notify the requester when the record is available for inspection and copying;

c. for claims under Subsection 7.5.c., 7.5.d., and 7.5.e., the city shall:
(i) disclose the public records that it has located; (ii) provide the requester with an estimate of the amount of time it will take to finish the search; and (iii) complete the search and disclose the requested records as soon as reasonably possible;

d. for claims under Subsection 7.5.c., the city shall either approve or deny the request within five days after the response time designated for the original request has expired;

e. for claims under Subsection 7.5.g., the city shall fulfill the request within 15 business days from the date of the original request; or

f. for claims under Subsection 7.5.h., the city shall complete its programming and disclose the requested records as soon as reasonably possible.

7. If the city fails to provide the requested records or issue a denial within the specified time period, that failure is considered the equivalent of a determination denying access to the records.

SECTION 8. NOTICE OF DENIAL

1. If the city denies the request in whole or part, it shall send a notice of denial to the requester's address.

2. The notice of denial shall contain the following information:

a. a description of the record or portions of the record to which access was denied, provided that the description does not disclose private, controlled, or protected information;

b. citations to the provisions of this Ordinance, another state statute, federal statute, or federal regulation that exempt the record or portions of the record from disclosure, provided that the citations do not disclose private, controlled, or protected information.

c. a statement that the requester has the right to appeal the denial to the mayor and then to the city council and then to district court; and

d. a brief summary of the appeals process, and the time limits for filing an appeal.

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

SECTION 9. RECORDS THAT MUST BE CLASSIFIED PUBLIC RECORDS

The city shall classify the following records as public except to the extent they contain information

expressly permitted to be classified as exempt from disclosure under the provisions of Subsection 4.36 or Section 10, 11 or 12.

1. names, gender, gross compensation, job titles, job descriptions, job qualifications, business addresses, business telephone numbers, number of hours worked per pay period, and dates of employment of its former and present employees and officers excluding undercover law enforcement officers or investigative personnel if disclosure would impair the effectiveness of investigations or endanger any person's safety;

2. final opinions, including concurring and dissenting opinions, and orders that are made by a 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 classified as private, protected, or controlled.

3. final interpretation of statutes or rules by a city unless classified as protected as provided in Section 13.

4. information contained in or compiled from a transcript, minutes, or reproduction of a proceeding of a city including the records of all votes of each member of the city except as provided by the Open and Public Meetings Act;

5. laws;

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 properly classified as private;

7. records 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 evidence.

- 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;
- d. tax status for real and personal property; or

- e. mineral production on governmental lands;
8. records of the Department of Commerce pertaining to incorporations, mergers, name changes, and uniform commercial code filings;
9. records containing data on individuals that would otherwise be classified as private if the individual who is the subject of the record has given the city written permission to make the records available to the public;
10. records that do not contain data on individuals if the public's interest in access outweighs the interest of the city or other persons who seek to prevent disclosure;
11. original data in a computer program if the city chooses not to disclose the program;
12. administrative staff manuals, instructions to staff, and statements of policy;
13. records documenting a contractor's or private provider's compliance with the terms of a contract with a city;
14. 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;
15. records documenting the compensation that a city pays to a contractor or private provider.
16. contracts entered into by a city;
17. information in or taken from any account, voucher, or contract that deals with the receipt or expenditure of funds by a city;
18. records relating to assistance or incentives offered by or requested from a city, encouraging a person to expand or relocate a business in Utah, except the city may withhold the person's name and disclose only the size and nature of the business, using Standard Industrial Classification or a similar description of the business unless:
 - a. the person has publicly announced it's plans to expand or relocate in Utah; or
 - b. ten days have elapsed since the person accepted the city's commitment to provide assistance or incentives;

19. summary data;
20. chronological logs and incident reports;
21. correspondence by and with a city in which the city determines or states an opinion upon the rights of the state, a political subdivision, the public, or any person;
22. 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;
23. drafts that are circulated to anyone other than a city or to anyone other than a federal agency are jointly responsible for implementation of a program or project that has been legislatively approved; and
24. drafts that have never been finalized by were relied upon by the city carrying out action or policy.

SECTION 10. RECORDS THAT MAY BE CLASSIFIED PRIVATE RECORDS

The city may classify only the following records as private:

1. records concerning an individual's eligibility for unemployment insurance benefits, social services, welfare benefits, or the determination of benefit levels;
2. records describing an individual's finances except that the following is public:
 - a. records described in Section 9;
 - b. information provided to the city for the purpose of complying with a financial assurance requirement; or
 - c. records that may be disclosed in accordance with another statute;
3. records containing data on individuals describing medical history, diagnosis, condition, treatment, evaluation, or similar medical data;

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

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

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

7. 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;

8. information in the municipality's personnel file, applications, nominations, recommendations, or proposals for public employment or appointment, except information relating to formal charges against the employee and disciplinary action unless such charges and action are not sustained should be groundless or except as the data is already classified as public;

9. information comprising a personal recommendation or evaluation concerning an individual, or provided by the individual with respect to a third party if disclosure would constitute a clearly unwarranted invasion of privacy and disclosure is not in public interest;

10. records that would disclose military status; and

11. records provided by the United States or by a city outside the state that are given with the requirement that the records be given private status.

SECTION 11. RECORDS THAT MAY BE CLASSIFIED AS CONTROLLED

The city may classify a record as controlled only if:

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

2. the city reasonably believes that releasing the record would be detrimental to the subject's mental health or to the safety of any individual.

SECTION 12. RECORDS THAT MAY BE CLASSIFIED AS PROTECTED

The city may classify only the following records as protected:

1. trade secrets as defined in Section 13-24-2 of U.C.A. if the person submitting the trade secret has provided the city with the information specified in Section 63-2-308 of U.C.A.

2. commercial or nonindividual financial information exchanged between a city and a person if:

a. disclosure of the information would 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 of U.C.A.

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

4. test questions and answers to be used in future license, 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 a city, except that this subsection does not restrict the right of a person to see bids submitted by a city after bidding has closed;

6. records that would identify real property or the value of the real 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 real property on the best terms possible; or

b. potential sellers of the real property have already learned of the city's plans to acquire the property or of the city's estimated value of the real property;

7. records compiled for civil enforcement or law enforcement purposes or for licensing, certification, or registration if release of the records would:

a. interfere with enforcement proceedings or investigations for licensing, certification, or registration;

b. deprive a person of a right to a fair trial or impartial hearing;

c. 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

d. disclose investigative techniques, procedures, policies, or orders not generally known outside of government if disclosure would interfere with enforcement efforts;

8. records the disclosure of which would jeopardize the life or safety of an individual;

9. records the disclosure of which would jeopardize the security of governmental recordkeeping systems;

10. records relating to incarceration, probation, or parole, if the disclosure of the records would jeopardize the security of a governmental facility, or interfere with the supervision of an individual's incarceration, probation or parole;

11. records that would disclose audit techniques, procedures, and policies if disclosure would risk circumvention of an audit;

12. records and audits workpapers that identify audit procedures and methods used by the Utah State Tax Commission to select tax returns for audit reviews or that disclose an auditor's mental impressions about an audit;

13. records of a governmental audit agency relating to an ongoing or planned audit until the final audit is released;

14. records prepared by or on behalf of a city in anticipation of litigation that are not available under

the rules of discovery, unless the records are otherwise classified as public;

15. records disclosing an attorney's work product, including the mental impressions, or legal theories of an attorney or other representative of a city concerning litigation;

16. records of communications between a city and an attorney representing, retained or employed by the city if the communications would be privileged as provided in Section 78-24-8 of U.C.A.

17. personal files of a member of the city council, but not correspondence that gives notice of legislative action or policy;

18. drafts, unless otherwise classified as public;

19. records concerning a city's strategy about collective bargaining or pending litigation;

20. records of investigations of loss occurrences and analysis of loss occurrences;

21. communications between individuals sitting on a board or commission who are acting in a judicial capacity to the extent that the communications relate to the deliberative aspects of the adjudications;

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

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

24. records of personnel evaluations, appointments, retention decisions, and promotions generated in a meeting closed in accordance with Chapter 4, Title 52, Utah Open and Public Meetings;

25. records of the mayor's office, including, but not limited to, budget recommendation, legislative proposals and policy statements, that if disclosed would reveal the mayor's contemplated policies or contemplated courses of action before the mayor has implemented or rejected those policies or courses of action or made them public;

26. records of the office of the mayor relating to budget analysis, revenue estimates, and fiscal notes of proposed budgets before issuance of the final recommendations in these areas; and

27. records provided by the United States or by a governmental entity outside the state that are given to the governmental city with a requirement that they be given a protected status.

SECTION 13. RECORDS CLASSIFICATION

1. The city shall:

a. examine all records or record series that it creates or to which it adds information after that date;

b. classify those records or record series as provided by this Ordinance;

c. designate a primary classification for each majority of the information in the record series as public, private, controlled, or protected; and

d. indicate whether information within a classification other than the primary classification is present in the record series, and list the appropriate classifications.

2. The city may reclassify a record or record series at any time.

SECTION 14. RECORDS RETENTION

The city shall by Resolution establish a retention schedule for a record series. The initial retention schedule shall be as outlined by the Utah State Archives in the Utah Municipal General Records Retention Schedule.

SECTION 15. SEPARATION OF RECORDS

Notwithstanding any other provision in this Ordinance, if the city receives a request for access to a record in a record series that is classified as private, controlled, or protected, and the record contains information that standing alone would be public and intelligible, the city:

1. shall allow access to public information in the record; and

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

SECTION 16. APPEALS

1. Any person aggrieved by the city's determination under this Ordinance, including a person not a party to the city's proceeding, may appeal the determination to the governing board by filing a notice of appeal.

2. The notice of appeal must be filed with the City Recorder no later than:

a. 30 days after the city has responded to the records request by either providing the requested records or denying the request in whole or in part; or

b. 35 days after the original request, if the city failed to respond to the request.

3. 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.

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

5. In the case of a protected record, the mayor shall inform the claimant of business confidentiality of the appeal and allow the claimant to provide further support for the claim of business confidentiality.

6. No later than five 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 within 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.

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.

SECTION 17. JUDICIAL REVIEW

1. Any party to a proceeding before the city council may petition for judicial review by the district court of the city council's order. The petition shall be filed no later than 30 days after the date of the city council's order.

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f. search warrants or arrest warrants issued in connection with the incident; and

g. the identity of the officers and public safety personnel involved in investigating or prosecuting the incident;

8. "Individual" means a human being.

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

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

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

12. "Protected record" means a record that is classified protected as provided by Section 11.

13. "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.

14. "Record"

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 a 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 a person 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) propriety software; (v) junk mail or commercial publications received by a city or an official or employee of a city; (vi) books and other materials that are cataloged, indexed, or inventoried and contained in the collections of libraries open to the public, regardless of physical form or characteristics of the material; (vii) personal notes or notes prepared by the judiciary as part of the deliberative process; or (viii) computer programs as defined that are developed or purchased by or for the city for its own use.

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

16. "Records officer" means the individual designated by the Mayor to work in the care, maintenance, scheduling, disposal, and preservation of records.

17. "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.

SECTION 4. RIGHT OF PUBLIC ACCESS

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

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

3. The following records are not public:

a. records that are appropriate, or protected as allowed by Sections 10, 11, and 12 of this Ordinance; and

b. records to which access is restricted by another state statute, federal statute, or federal regulation, either directly or as a condition of participation in a state or federal program or for receiving state or federal funds.

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

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

b. he identifies the record with reasonable specificity and;

c. he pays the lawful fees.

5. 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.

6. If a person requests 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.

7. If the city owns a copyright or patent affecting a record, and offers the copyrighted or patented record for sale, the city may control by ordinance or policy the access, duplication, and distribution of the material based on terms the city considers to be in the public interest. 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 copyright or patent.

SECTION 5. ACCESS TO NON PUBLIC RECORDS

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

a. the subject of the record;

b. the parent or legal guardian of an unemancipated minor who is the subject of the record;

c. the legal guardian of a legally incapacitated individual who is the subject of the record;

d. any other individual who (i) has a power of attorney from the subject of the record; or (ii) submits a notarized release from the subject of the record or his legal representative dated no later than 30 days before the date the request is made; or

e. any person who has a court order signed by a judge from a Utah court, other than a justice of the peace court, or a federal court of competent jurisdiction to the extent that the record deals with a matter in controversy over which the court has jurisdiction after the court has considered the merits of the record request.

2. a. Upon request, the city shall disclose a

record that is classified controlled to: (i) a physician, psychologist, or certified social worker upon submission of a notarized release from the subject of the record that is dated no more than 30 days prior to the date the request is made and a signed acknowledgement of the terms of disclosure of confidential information as provided by Subsection b; and (ii) any person who has a court order signed by a judge from a Utah court, other than a justice of the peace court, or a federal court of competent jurisdiction to the extent that the record deals with a matter in controversy over which the court has jurisdiction after the court has considered the merits of the record requested.

b. a person who receives a record from the city in accordance with Subsection 5.2.a(i) may not disclose controlled information from that record to any person, including the subject of a record.

3. Upon request the city shall disclose a record that is classified as protected to:

a. the person who submitted the information in the record;

b. any other individual who (i) has power of attorney from the subject of the record; or (ii) submits a notarized release from the subject of the record or his legal representative dated no more than 30 days prior to the date the request is made; or

c. any person who has a court order signed by a judge from a Utah court other than a justice of the peace court, or a federal court of competent jurisdiction to the extent that the record deals with a matter in controversy over which the court has jurisdiction after the court has considered the merits of the record request.

4. The city may disclose a record classified private, controlled, or protected to another city, another state, the United States, or a foreign government only as provided by Utah Code annotated 63-2-206.

5. Before releasing a record classified private,

controlled, or protected, the city shall obtain evidence of the requester's identity.

6. Nothing in this section prohibits the city from disclosing a record to persons other than those listed in Subsections 5.1, 5.2 and 5.3 if the city determines that disclosure is in the public interest.

SECTION 6. FEES

1. The city shall charge a reasonable fee to cover the city's actual cost of duplicating a record or compiling a record in a form other than that maintained by the city. Fees shall be set by Resolution. The initial fee, until changed by Resolution, is as follows: the city shall charge .10 cents per copy for each copy made, plus the hourly wage fee of the employee who does the work. All research and record retrieval shall be done as work loads permit.

SECTION 7. PROCEDURE FOR ACCESS

1. A person making a request for a record shall furnish the city with a written request containing his name, mailing address, daytime telephone number, and a description of the records requested that identifies the record with reasonable specificity.

2. Except as provided in Subsection 7.3, a city shall respond to a records request no later than ten business days after receiving the request by:

a. approving the request and providing the record;

b. denying the request;

c. notifying the requester that it does not maintain the record and providing, if known, the name and address of the city that does maintain the record; or

d. notifying the requester that because of the extraordinary circumstances listed in Subsection 4, it, cannot immediately approve or deny the request, and specifying the earliest time and date when the records will be available.

3. If a requester demonstrates that he is a member of the news media or that expedited release of the record benefits the public rather than an individual, the city shall respond to a records request no later than five business days after receiving the request.

4. The following circumstances constitute "extraordinary circumstances" that allow a city to delay approval or denial by an additional number of days as specified in Subsection 7.6 if the city determines that due to the extraordinary circumstances it cannot respond within the time limits provided in Subsections 7.2 or 7.3:

a. another governmental entity is using the record, in which case the city shall immediately 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 requiring analysis of statutes, rules, ordinances, regulations, or case law;

g. separating public information from private, controlled, or protected information requires extensive editing; or

h. separating public information from private, controlled, or protected information requires computer programming.

5. If a city claims that one of the extraordinary

circumstances listed in Subsection 5. precludes approval or denial within the time specified in Subsection 2. or 3., the following time limits apply to the extraordinary circumstances:

a. for claims under Subsection 5.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 5.b., the originating city shall notify the requester when the record is available for inspection and copying;

c. for claims under Subsection 7.5.c., 7.5.d., and 7.5.e., the city shall:
(i) disclose the public records that it has located; (ii) provide the requester with an estimate of the amount of time it will take to finish the search; and (iii) complete the search and disclose the requested records as soon as reasonably possible;

d. for claims under Subsection 7.5.c., the city shall either approve or deny the request within five days after the response time designated for the original request has expired;

e. for claims under Subsection 7.5.g., the city shall fulfill the request within 15 business days from the date of the original request; or

f. for claims under Subsection 7.5.h., the city shall complete its programming and disclose the requested records as soon as reasonably possible.

6. If the city fails to provide the requested records or issue a denial within the specified time period, that failure is considered the equivalent of a determination denying access to the records.

SECTION 8. NOTICE OF DENIAL

1. If the city denies the request in whole or part, it shall send a notice of denial to the requester's address.

2. The notice of denial shall contain the following information:

a. a description of the record or portions of the record to which access was denied, provided that the description does not disclose private, controlled, or protected information;

b. citations to the provisions of this Ordinance, another state statute, federal statute, or federal regulation that exempt the record or portions of the record from disclosure, provided that the citations do not disclose private, controlled, or protected information.

c. a statement that the requester has the right to appeal the denial to the mayor and then to the city council and then to district court; and

d. a brief summary of the appeals process, and the time limits for filing an appeal.

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

SECTION 9. RECORDS THAT MUST BE CLASSIFIED PUBLIC RECORDS

The city shall classify the following records as public except to the extent they contain information expressly permitted to be classified as exempt from disclosure under the provisions of Subsection 4.36 or Section 10, 11 or 12.

1. names, gender, gross compensation, job titles, job descriptions, job qualifications, business addresses, business telephone numbers, number of hours worked per pay period, and dates of employment of its former and present employees and officers excluding

undercover law enforcement officers or investigative personnel if disclosure would impair the effectiveness of investigations or endanger any person's safety;

2. final opinions, including concurring and dissenting opinions, and orders that are made by a 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 classified as private, protected, or controlled;

3. final interpretation of statutes or rules by a city unless classified as protected as provided in Section 13;

4. information contained in or compiled from a transcript, minutes, or reproduction of a proceeding of a city including the records of all votes of each member of the city except as provided by the Open and Public Meetings Act;

5. laws;

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 properly classified as private;

7. records 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 evidence.

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;

d. tax status for real and personal property; or

e. mineral production on governmental lands;

8. records of the Department of Commerce pertaining to incorporations, mergers, name changes, and uniform commercial code filings;

9. records containing data on individuals that would otherwise be classified as private if the individual who is the subject of the record has given the city written permission to make the records available to the public;

10. records that do not contain data on individuals if the public's interest in access outweighs the interest of the city or other persons who seek to prevent disclosure;

11. original data in a computer program if the city chooses not to disclose the program;

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

13. records documenting a contractor's or private provider's compliance with the terms of a contract with a city;

14. 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;

15. records documenting the compensation that a city pays to a contractor or private provider.

16. contracts entered into by a city;

17. information in or taken from any account, voucher, or contract that deals with the receipt or expenditure of funds by a city;

18. records relating to assistance or incentives offered by or requested from a city, encouraging a person to expand or relocate a business in Utah, except the city may withhold the person's name and disclose only the size and nature of the business, using Standard Industrial Classification or a similar description of the business unless:

a. the person has publicly announced it's plans to expand or relocate in Utah; or

b. ten days have elapsed since the person accepted the city's commitment to provide assistance or incentives;

19. summary data;
20. chronological logs and incident reports;
21. correspondence by and with a city in which the city determines or states an opinion upon the rights of the state, a political subdivision, the public, or any person;
22. 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;
23. drafts that are circulated to anyone other than a city or to anyone other than a federal agency are jointly responsible for implementation of a program or project that has been legislatively approved; and
24. drafts that have never been finalized by were relied upon by the city carrying out action or policy.

SECTION 10. RECORDS THAT MAY BE CLASSIFIED PRIVATE RECORDS

The city may classify only the following records as private:

1. records concerning an individual's eligibility for unemployment insurance benefits, social services, welfare benefits, or the determination of benefit levels;
2. records describing an individual's finances except that the following is public:
 - a. records described in Section 9;
 - b. information provided to the city for the purpose of complying with a financial assurance requirement; or
 - c. records that may be disclosed in accordance with another statute;
3. records containing data on individuals

describing medical history, diagnosis, condition, treatment, evaluation, or similar medical data;

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

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

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

7. 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;

8. information in the municipality's personnel file, applications, nominations, recommendations, or proposals for public employment or appointment, except information relating to formal charges against the employee and disciplinary action unless such charges and action are not sustained should be groundless or except as the data is already classified as public;

9. information comprising a personal recommendation or evaluation concerning an individual, or provided by the individual with respect to a third party if disclosure would constitute a clearly unwarranted invasion of privacy and disclosure is not in public interest;

10. records that would disclose military status; and

11. records provided by the United States or by a city outside the state that are given with the requirement that the records be given private status.

SECTION 11. RECORDS THAT MAY BE CLASSIFIED AS CONTROLLED

The city may classify a record as controlled only if:

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

2. the city reasonably believes that releasing

the record would be detrimental to the subject's mental health or to the safety of any individual.

3. releasing the information would constitute a violation of normal professional practice and medical ethics.

SECTION 12. RECORDS THAT MAY BE CLASSIFIED AS PROTECTED

The city may classify only the following records as protected:

1. trade secrets as defined in Section 13-24-2 of U.C.A. if the person submitting the trade secret has provided the city with the information specified in Section 63-2-308 of U.C.A.

2. commercial or nonindividual financial information exchanged between a city and a person if:

a. disclosure of the information would 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 of U.C.A.

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

4. test questions and answers to be used in future license, 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 a city, except that this subsection does not restrict the right of a person to see bids

submitted by a city after bidding has closed;

6. records that would identify real property or the value of the real 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 real property on the best terms possible; or

b. potential sellers of the real property have already learned of the city's plans to acquire the property or of the city's estimated value of the real property;

7. records compiled for civil enforcement or law enforcement purposes or for licensing, certification, or registration if release of the records would:

a. interfere with enforcement proceedings or investigations for licensing, certification, or registration;

b. deprive a person of a right to a fair trial or impartial hearing;

c. 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

d. disclose investigative techniques, procedures, policies, or orders not generally known outside of government if disclosure would interfere with enforcement efforts;

8. records the disclosure of which would jeopardize the life or safety of an individual;

9. records the disclosure of which would jeopardize the security of governmental recordkeeping systems;

10. records relating to incarceration, probation, or parole, if the disclosure of the records would

jeopardize the security of a governmental facility, or interfere with the supervision of an individual's incarceration, probation or parole;

11. records that would disclose audit techniques, procedures, and policies if disclosure would risk circumvention of an audit;

12. records and audits workpapers that identify audit procedures and methods used by the Utah State Tax Commission to select tax returns for audit reviews or that disclose an auditor's mental impressions about an audit;

13. records of a governmental audit agency relating to an ongoing or planned audit until the final audit is released;

14. records prepared by or on behalf of a city in anticipation of litigation that are not available under the rules of discovery, unless the records are otherwise classified as public;

15. records disclosing an attorney's work product, including the mental impressions, or legal theories of an attorney or other representative of a city concerning litigation;

16. records of communications between a city and an attorney representing, retained or employed by the city if the communications would be privileged as provided in Section 78-24-B of U.C.A.

17. personal files of a member of the city council, but not correspondence that gives notice of legislative action or policy;

18. drafts, unless otherwise classified as public;

19. records concerning a city's strategy about collective bargaining or pending litigation;

20. records of investigations of loss occurrences and analysis of loss occurrences;

21. communications between individuals sitting on a board or commission who are acting in a judicial capacity to the extent that the communications relate to the deliberative aspects of the adjudications;

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

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

24. records of personnel evaluations, appointments, retention decisions, and promotions generated in a meeting closed in accordance with Chapter 4, Title 52, Utah Open and Public Meetings;

25. records of the mayor's office, including, but not limited to, budget recommendation, legislative proposals and policy statements, that if disclosed would reveal the mayor's contemplated policies or contemplated courses of action before the mayor has implemented or rejected those policies or courses of action or made them public;

26. records of the office of the mayor relating to budget analysis, revenue estimates, and fiscal notes of proposed budgets before issuance of the final recommendations in these areas; and

27. records provided by the United States or by a governmental entity outside the state that are given to the governmental city with a requirement that they be given a protected status.

SECTION 13. RECORDS CLASSIFICATION

1. The city shall:

a. examine all records or record series that it creates or to which it adds information after that date;

b. classify those records or record series as provided by this Ordinance;

c. designate a primary classification for each majority of the information in the record series as public, private, controlled, or protected; and

d. indicate whether information within a classification other than the primary classification is present in the record series, and list the appropriate classifications.

2. The city may reclassify a record or record series at any time.

SECTION 14. RECORDS RETENTION

The city shall by Resolution establish a retention schedule for a record series. The initial retention schedule shall be as outlined by the Utah State Archives in the Utah Municipal General Records Retention Schedule and as outlined in UCA 63-2-903.

SECTION 15. SEPARATION OF RECORDS

Notwithstanding any other provision in this Ordinance, if the city receives a request for access to a record in a record series that is classified as private, controlled, or protected, and the record contains information that standing alone would be public and intelligible, the city:

1. shall allow access to public information in the record; and

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

SECTION 16. APPEALS

1. Any person aggrieved by the city's determination under this Ordinance, including a person not a party to the city's proceeding, may appeal the determination to the governing board by filing a notice of appeal.

2. The notice of appeal must be filed with the City Recorder no later than:

a. 30 days after the city has responded to the records request by either providing the requested records or denying the request in whole or in part; or

b. 35 days after the original request, if the city failed to respond to the request.

3. 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.

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

5. In the case of a protected record, the mayor shall inform the claimant of business confidentiality of the appeal and allow the claimant to provide further support for the claim of business confidentiality.

6. No later than five 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 within 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.

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.

SECTION 17. JUDICIAL REVIEW

1. Any party to a proceeding before the city council may petition for judicial review by the district court of the city council's order. The petition shall be filed no later than 30 days after the date of the city council's order.