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ORDINANCE 1993-45

AN ORDINANCE AMENDING SECTION 3.13.040. AND 3.13.150. IN THE PROVO CITY ORDINANCES TO SET UNIFORM FEES FOR COPYING RECORDS AND TO PROVIDE RETENTION SCHEDULES FOR RECORDS NOT SCHEDULED BY THE UTAH MUNICIPAL GENERAL RECORDS RETENTION SCHEDULE.

WHEREAS, Utah Code § 63-2-701 provides that political subdivisions may adopt an ordinance relating to information practices, records management, and records retention; and

WHEREAS, pursuant to this authority Provo City has adopted Chapter 13 of Title 3 of the Provo City Ordinances; and

WHEREAS, Provo City desires amend sections of Chapter 13, Title 3, of the Provo City Ordinances to set uniform fees for copying records and to provide retention schedules for records not scheduled by the Utah Municipal General Records Retention Schedule;

NOW THEREFORE, be it ordained by the Municipal Council of Provo City, Utah as follows:

PART I:

**3.13.040. Fees.**

(1) The Mayor shall propose, and the municipal council shall establish and revise as necessary, a schedule of reasonable fees for the cost of duplicating a record or compiling a record. The full cost of making a record available may be charged by the City including all costs associated in compiling a record in a form or format other than that maintained by the City.

(a) The ordinary fee for providing a photocopy of a record shall be ten cents per page photocopied.

(b) Where City employees are required to assemble or compile a record, a department may charge a fee equal to fifty cents per page or ten dollars per hour, whichever most accurately reflects the actual cost of assembling or compiling the record.

(c) When a request is made for copies of pictures, computer diskettes, cassette tapes, or other miscellaneous records, a department may charge the full cost of duplication, including \$10.00 per hour for the actual time spent by the employee in making or obtaining the duplication.

(d) When a request is made for copies of a record which contains more than one subject of a private or controlled record, the portion of the record that pertains

45 to another subject shall be segregated from the portion that the Applicant is entitled  
46 to inspect and the Applicant shall pay the full cost of making the newly formed  
47 record, including all costs associated in compiling the requested information into a  
48 form or format other than that maintained by the City, which may include any  
49 professional fees associated with compiling the record into the new form or format  
50 which is not otherwise maintained by the City.

51 (e) The following charges are hereby authorized per page for the following  
52 specific services:

Cost	Category	Size
\$ .75	blueprint	8 1/2" x 11"
2.00	blueprint	12" x 18"
3.00	blueprint	15" x 30"
5.00	blueprint	30" x 30"
5.00	400 scale aerial	

65 (2) The City may fulfill a request without charge when it determines that:

- 66 (a) releasing the records primarily benefits the public rather than a person; or
- 67 (b) the individual requesting the record is the subject of the record; or
- 68 (c) the Applicant's legal rights are directly implicated by the information in the  
69 record, and the Applicant is impecunious.

70 (3) The City shall not charge a fee for:

- 71 (a) reviewing a record to determine whether it is subject to disclosure; or
- 72 (b) inspecting a public record.

73 (4) This section does not apply to, alter, repeal, or reduce fees established by other  
74 sections of these ordinances or other statutes.

75 (5) Payment for the duplication of a record shall be paid before a record application  
76 is processed if the fees are expected to exceed fifty dollars (\$50), or if the Applicant has not  
77 paid fees from previous requests. Any prepaid amount in excess of the actual cost due shall  
78 be returned to the applicant.

### 81 3.13.150. Records Management and Retention.

82 (1) The City Recorder shall under the direction of the administration:

83 (a) establish and maintain an active, continuing program for the economic and  
84 efficient management and retention of the City's records as provided by this chapter  
85 and Utah law;

86 (b) work with the state archives in the care, maintenance, scheduling, disposal,  
87 classification, access, and preservation of records;

88 (c) cooperate in surveys conducted by the state archivist.

89 (2) Unless otherwise provided by law or ordinance, each department of the City shall  
90 retain records for the appropriate time period set forth in the Utah Municipal General  
91 Records Retention Schedule.

92 (3) If no Utah Municipal General Records retention schedule is applicable exists for  
93 a particular record, before a department destroys a record, the department shall contact the  
94 City Recorder, who shall review the record and prepare and submit to the Administration  
95 and Municipal Council a recommended retention schedule for the record. Upon approval  
96 of the schedule by the Administration and Municipal Council, each department shall retain  
97 the record for the period of time required by the approved record schedule or as long as the  
98 department may need the record and then destroy the record.  
99

100  
101 PART II:

102  
103 This ordinance shall take effect immediately after it has been posted or published as  
104 required by law.  
105

106  
107 END OF ORDINANCE.

ORDINANCE NUMBER 1992-47

SHORT TITLE:

AN ORDINANCE AMENDING TITLE 3 OF THE PROVO CITY ORDINANCES BY THE ADDITION OF CHAPTER 3.13, TO CONFORM ACCESS AND MANAGEMENT OF PROVO CITY RECORDS TO BE IN COMPLIANCE WITH THE GOVERNMENT RECORDS ACCESS AND MANAGEMENT ACT AS ENACTED BY THE UTAH STATE LEGISLATURE.

I

PASSAGE BY MUNICIPAL COUNCIL

ROLL CALL

DISTRICT	NAME	MOTION	SECOND	FOR	AGAINST	OTHER
N WEST	DAVID L. RAIL			✓		
N EAST	DONALD J. BUTLER			✓		
EAST	JAMES H. DALEY			✓		
S WEST	V. BEN PORTER			✓		
CW I	MARK G. HATHAWAY			✓		
CW II	SHARI C. HOLWEG	✓		✓		
CW III	DENNIS R. HALL		✓	✓		
TOTALS				7		

This ordinance was passed by the Municipal Council of Provo City, on the 16<sup>th</sup> day of June 1992 on a roll call vote as described above.  
Signed this 16<sup>th</sup> day of June 1992.

Municipal Council of Provo City, Utah

Donald J. Butler  
Chairman

II

APPROVAL BY MAYOR

This Ordinance is approved by me this 22<sup>ND</sup> day of JUNE 1992.

Joseph G. Fenkemeier  
Mayor

ORDINANCE NUMBER 1992-47

III

CITY RECORDER'S CERTIFICATE AND ATTEST

This ordinance was recorded in the office of the Provo City Recorder on the 26<sup>th</sup> day of June 1992, with a short summary being published on the 25<sup>th</sup> day of June 1992, in The Daily Herald, a newspaper published in Provo, Utah. I hereby certify and attest that the foregoing constitute a true and accurate record of proceedings with respect to Ordinance Number 1992-47.

SEAL

Signed this 26<sup>th</sup> day of June 1992.

Marilyn J. Perry  
City Recorder

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ORDINANCE 1992-47

AN ORDINANCE AMENDING TITLE 3 OF THE PROVO CITY ORDINANCES BY THE ADDITION OF CHAPTER 3.13, TO CONFORM ACCESS AND MANAGEMENT OF PROVO CITY RECORDS TO BE IN COMPLIANCE WITH THE GOVERNMENT RECORDS ACCESS AND MANAGEMENT ACT AS ENACTED BY THE UTAH STATE LEGISLATURE.

WHEREAS, the Government Records Access and Management Act provides that local political subdivisions may enact local ordinances;

WHEREAS, the Municipal Council finds that it would be in the best interest of the local communities' health, safety, morals and welfare to enact legislation dealing with specific local issues in this area;

WHEREAS, the Municipal Council finds the time requirements for document retrieval as described hereafter are reasonable;

NOW, THEREFORE, be it ordained by the Municipal Council of Provo City, Utah, as follows:

PART I:

**Chapter 3.13. Records Access and Management.**

- 3.13.010. Definitions.
- 3.13.020. Access to Public Records.
- 3.13.030. Access to Private, Controlled, and Protected Documents.
- 3.13.040. Fees.
- 3.13.050. Requests - Time Limit for Responses.
- 3.13.060. Denials.
- 3.13.070. Sharing Records.
- 3.13.080. Public Records.
- 3.13.090. Private Records.
- 3.13.100. Controlled Records.
- 3.13.110. Protected Records.
- 3.13.120. Business Confidentiality.
- 3.13.130. Classification.
- 3.13.140. Segregation of Information.
- 3.13.150. Records Management and Retention.
- 3.13.160. Appeals.
- 3.13.170. Judicial Review.
- 3.13.180. Accuracy of Record.
- 3.13.190. Criminal Penalties and Disciplinary Action.
- 3.13.200. No Liability for Release.
- 3.13.210. Severability.

**3.13.010. Definitions.**

As used in this chapter:

"Applicant" means a person who requests to inspect a record, or make a copy of a record maintained by the City.

"City" means the City of Provo, Utah, and its departments, agencies, commissions, and boards.

"City Records Appeals Board" or "Records Appeal Board" shall be composed of members of the Provo City Municipal Council and such

60 other individuals as the Municipal Council shall appoint.

61 **"Chronological logs"** means the regular and customary records  
62 of law enforcement agencies and other public safety agencies that  
63 show the time and general nature of police, fire, and paramedic  
64 calls made to the agency and any arrests or jail booking made by  
65 the agency.

66 **"Classification," "classify,"** and their derivative forms mean  
67 determining whether a record or information contained in a record  
68 is public, private, controlled, or otherwise exempt from  
69 disclosure.

70 **"Computer program"** means a series of instructions or  
71 statements that permit the functioning of a computer system in a  
72 manner designed to provide storage, retrieval, and manipulation of  
73 data from the computer system, and any associated documentation and  
74 source material that explain how to operate the computer program.  
75 **"Computer program"** does not mean: (i) the original data, including  
76 numbers, text, voice, graphics, and images; (ii) analysis,  
77 compilation, and other manipulated forms of the original data  
78 produced by use of the program; (iii) the mathematical or  
79 statistical formulas excluding the underlying mathematical  
80 algorithms contained in the program) that would be used if the  
81 manipulated forms of the original data were to be produced  
82 manually.

83 **"Controlled record"** means a record containing data on  
84 individuals that is classified controlled as provided by Section  
85 3.13.100. This definition of controlled does not apply in other  
86 chapters of these ordinances unless that section specifically  
87 refers to this definition.

88 **"Contractor"** means: (i) any person who contracts with the city  
89 to provide goods or services; or (ii) any private, nonprofit  
90 organization that receives funds from a governmental entity.  
91 Contractor does not mean a private provider.

92 **"Designation," "designate,"** and their derivative forms mean  
93 indicating, based on a the City's familiarity with a record series  
94 or based on the City's review of a reasonable sample of a record  
95 series, the primary classification that a majority of records in a  
96 record series would be given if classified and the classification  
97 that other records typically present in the record series would be  
98 given if classified.

99 **"Governmental entity"** means the State of Utah, or an agency,  
100 office, division, branch, department, agency or other political  
101 subdivision of the State of Utah.

102 **"Gross compensation"** means every form of remuneration payable  
103 for a given period to an individual for services provided including  
104 salaries, commissions, vacation pay, severance pay, bonuses, and  
105 any board, rent, housing, lodging, payments in kind, and any  
106 similar benefit received from the individual employer.

107 **"Initial contact report"** means an initial written recorded  
108 report, prepared by peace officers engaged in public patrol or  
109 response duties describing official actions initially taken in  
110 response to either a public complaint about or the discovery of an  
111 apparent violation of law, which report may describe: (a) the date,  
112 time location, and nature of the complaint, the incident, or  
113 offense; (b) the department's actions taken in response to the

114 incident; (c) any assessment of the injuries or damages suffered in  
115 the incident; (d) the general scope of the department's  
116 investigation of the incident; (e) the name address, and other  
117 identifying information about any person arrested or charged in  
118 connection with the incident. Initial contact reports do not  
119 include follow-up or investigative reports prepared after the  
120 initial contact report.

121 **"Individual"** means a human being.

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

125 **"Private record"** means a record containing data on individuals  
126 that is private as provided by Section 3.13.090.

127 **"Protected record"** means a record that is classified protected  
128 as provided by Section 3.13.110.

129 **"Public record"** means a record that is not private,  
130 controlled, or protected as provided in Section 3.13.090, 3.13.100,  
131 or 3.13.110 of this chapter or a record that is not exempt from  
132 disclosure as provided in Subsection 3.13.020(3)(b).

133 **"Record"** means all books, letters, documents, papers, maps,  
134 plans, photographs, films, cards, tapes, recordings, electronic  
135 data or other documentary materials, regardless of physical form or  
136 characteristics, prepared, owned, used, received, or retained by  
137 the city, another political subdivision, or governmental entity  
138 where all the information in the original is reproducible by  
139 photocopy or other mechanical or electronic means. "Record" does  
140 not mean: (i) temporary drafts or similar materials prepared for  
141 the originator's personal use or prepared by the originator for the  
142 personal use of an individual for whom he is working; (ii)  
143 materials that are legally owned by an individual in his private  
144 capacity; (iii) materials to which access is limited by the laws of  
145 copyright or patent unless the copyright or patent is owned by the  
146 City or another governmental entity; (iv) proprietary software; (v)  
147 junk mail or commercial publications; (vi) books and other  
148 materials that are cataloged, indexed, or inventoried and contained  
149 in the collections of libraries open to the public regardless of  
150 physical form or characteristics of the material; (vii) daily  
151 calendars and other personal notes or notes prepared by the  
152 originator for the originator's personal use or for the personal  
153 use of an individual for whom he is working; (viii) computer  
154 programs as defined above that are developed or purchased by or for  
155 any governmental entity for its own use; notes or internal  
156 memoranda prepared as part of the deliberative process by a member  
157 of the judiciary, an administrative law judge, or any other person  
158 or body charged by law with performing a quasi-judicial function;  
159 or (ix) items of evidence including pictorial or diagrammatic  
160 exhibits offered or received in evidence in administrative or  
161 judicial proceedings.

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

165 **"Records officer"** means the individual in each department that  
166 is designated by the administration to work with the City Recorder  
167 in the care, maintenance, scheduling, disposal, and preservation of

168 records.

169 "Schedule," "scheduling", and their derivative forms mean the  
170 process of specifying the length or time each record or record  
171 series should be retained by the City or a department of the City  
172 for administrative, legal, fiscal, or historical purposes,  
173 transferred to the state archives, or destroyed.

174 "State archives" means the Division of Archives and Records  
175 Service created in Section 63-2-901 of the Utah Code.

176 "State archivist" means the director of the state archives.

177 "Subject of a record" includes all individuals and persons  
178 whose name or identity are or could be determined by means of a  
179 record.

180 "Summary data" means statistical records and compilations that  
181 contain data derived from private, controlled, or protected  
182 information but that do not disclose private, controlled, or  
183 protected information.  
184

### 185 3.13.020. Access to Public Records.

186 (1) In enacting this ordinance, the Municipal Council is  
187 acting pursuant to authority granted by Section 63-2-701 of the  
188 Utah Code.

189 (a) This ordinance recognizes two constitutional rights:

190 (i) the public's right of access to information  
191 concerning the conduct of the public's business; and

192 (ii) the right of privacy in relation to personal  
193 data gathered by governmental entities.

194 (b) This ordinance also recognizes a public policy  
195 interest in allowing the City to restrict access to certain  
196 records as specified in this chapter for the public good.

197 (c) It is the intent of this ordinance to:

198 (i) promote the public's right of easy and  
199 reasonable access to unrestricted public records;

200 (ii) specify those conditions under which the public  
201 interest in allowing restrictions on access to records  
202 may outweigh the public's interest in access;

203 (iii) prevent abuse of confidentiality by permitting  
204 confidential treatment of records only as specifically  
205 provided by this chapter or other applicable state or  
206 federal law;

207 (iv) provide guidelines for both disclosure and  
208 restrictions on access to government records, which are  
209 based on the equitable weighing of the pertinent  
210 interests and which are consistent with nationwide  
211 standards of information practices;

212 (v) favor public access when, in the application of  
213 this ordinance countervailing interests are of equal  
214 weight; and

215 (vi) establish fair and reasonable records  
216 management practices.

217 (2) Every person has the right to inspect a public record free  
218 of charge and the right to obtain one copy of a public record  
219 during normal working hours, subject to Sections 3.13.040 and  
220 3.13.050

221 (3) All records are public unless otherwise expressly provided

222 by ordinance or statute.

223 (4) The following records are not public:

224 (a) records that are private, controlled, or protected  
225 under Sections 3.13.090, 3.13.100, 3.13.110 of these  
226 Ordinances; and

227 (b) records to which access is appropriately restricted  
228 by another ordinance, state statute, court rule, federal  
229 statute, or federal regulation, including records for which  
230 access is governed or restricted as a condition of  
231 participation in a state or federal program or for receiving  
232 state or federal funds.

233 (5) Provo City shall provide a person with a copy of a public  
234 record if:

235 (a) the person requesting the record has a right to  
236 inspect it;

237 (b) the person makes proper application for the record;

238 (c) the person identifies the record with reasonable  
239 specificity; and

240 (d) the person pays the lawful fees.

241 (6) (a) Provo City is not required to create a record in  
242 response to a request.

243 (b) Provo City may provide a record in a particular  
244 format if:

245 (i) the City is able to do so without unreasonably  
246 interfering with its governmental duties and  
247 responsibilities; and

248 (ii) the Applicant agrees to pay the additional cost  
249 of providing the record in the requested format.

250 (c) Nothing in this section requires the City to fulfill  
251 an unreasonable, repetitive, or duplicative request.

252 (7) In the case of voluminous requests, the City may limit the  
253 number of pages copied to no more than 50 pages; or permit the  
254 Applicant to copy such additional pages as may be authorized by the  
255 Mayor.

256 (8) The City may offer its own copyrighted or patented record  
257 or other intellectual property for sale, and may control by  
258 ordinance, policy, or agreement the access, duplication, and  
259 distribution of the material based on terms the City considers to  
260 be in the public interest. Nothing in this chapter shall be  
261 construed to limit or impair the rights or protections granted to  
262 the City under federal copyright or patent law as a result of its  
263 ownership of the intellectual property right.

264 (9) A record provided to the Office of the City Attorney by a  
265 department of the City shall be considered a record of that  
266 department for purposes of this chapter if the department retains  
267 a copy of the record.

268 (10) Records exchanged between the Office of the City Attorney  
269 and the administration or a department of the City are not subject  
270 to this chapter.

271 (11) A department of the City shall not use the physical form,  
272 electronic or otherwise, in which a record is stored to deny, or  
273 unreasonably hinder the rights of persons to inspect and receive  
274 copies of a record under this ordinance.

275

276 **3.13.030. Access to Private, Controlled, and Protected Documents.**

277 (1) Upon proper application, the City shall disclose a private  
278 record to:

279 (a) the subject of the record;

280 (b) the parent or legal guardian of an unemancipated  
281 minor who is the subject of the record;

282 (c) the legal guardian of a legally incapacitated  
283 individual who is the subject of the record;

284 (d) any other individual who has a power of attorney or  
285 submits a notarized release from the subject of the record or  
286 his legal representative dated no more than 90 days before the  
287 date the request is made; or

288 (e) any person to whom the record must be provided  
289 pursuant to court order as provided in Subsection (7) or a  
290 legislative subpoena as provided in Chapter 14, Tile 36 of the  
291 Utah Code.

292 (2) Upon proper application the City shall disclose a  
293 controlled record to:

294 (a) a physician, psychologist, or certified social worker  
295 upon submission of a notarized release from the subject of the  
296 record that is dated no more than 90 days prior to the date  
297 the request is made and a signed acknowledgement that the  
298 person receiving the record may not disclose controlled  
299 information from that record to any person, including the  
300 subject of the record; and

301 (b) any person to whom the record must be provided  
302 pursuant to court order as provided in subsection (7) or a  
303 legislative subpoena as provided in Chapter 14, Tile 36 of the  
304 Utah Code.

305 (3) If there is more than one subject of a private or  
306 controlled record, the portion of the record that pertains to  
307 another subject shall be segregated from the portion that the  
308 Applicant is entitled to inspect.

309 (4) Upon proper application, the City shall disclose a  
310 protected record to:

311 (a) the person who submitted the record;

312 (b) any other individual who:

313 (i) has a power of attorney from all persons,  
314 governmental entities, or political subdivisions whose  
315 interests were sought to be protected by the protected  
316 classification; or

317 (ii) submits a notarized release from all persons,  
318 governmental entities, or political subdivisions whose  
319 interests were sought to be protected by the protected  
320 classification or from their legal representatives dated  
321 no more than 90 days prior to the date the request is  
322 made; or

323 (c) any person to whom the record must be provided  
324 pursuant to court order as provided in subsection (7) or a  
325 legislative subpoena as provided in Chapter 14, Tile 36 of the  
326 Utah Code.

327 (5) Notwithstanding anything in this chapter to the contrary,  
328 initial contact reports concerning on going civil or criminal law  
329 enforcement investigations shall not be disclosed while the

330 investigation continues if disclosure would impair or jeopardize  
331 the success of the investigation.

332 (6) The City may disclose a record classified private,  
333 controlled, or protected to another governmental entity, another  
334 state, the United States, or a foreign government only as provided  
335 by Section 3.13.070 of these Ordinances.

336 (7) The City shall disclose a record pursuant to the terms of  
337 a court order signed by a judge from a court of competent  
338 jurisdiction, provided that:

339 (a) the record deals with a matter in controversy over  
340 which the court has jurisdiction;

341 (b) the court has considered the merits of the request  
342 for access to the record; and

343 (c) the court has considered and, where appropriate,  
344 limited the Applicant's use and further disclosure of the  
345 record in order to protect privacy and business  
346 confidentiality interests consistent with the provisions of  
347 these ordinances.

348 (d) to the extent the record is properly classified  
349 private, controlled, or protected, the interests favoring  
350 access, considering limitations thereon, outweigh the  
351 interests favoring restriction of access; and

352 (e) where access is restricted by a rule, statute or  
353 regulation, the court has authority independent of this  
354 chapter to order disclosure.

355 (8) The Mayor may disclose or authorize disclosure of private  
356 or controlled records for research purposes if the Mayor:

357 (a) determines that the research purpose cannot  
358 reasonably be accomplished without use or disclosure of the  
359 information to the researcher in individually identifiable  
360 form;

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

364 (c) requires the researcher to assure the integrity,  
365 confidentiality, and security of the records and requires the  
366 removal or destruction of the individual identifiers  
367 associated with the records as soon as the purpose of the  
368 research project has been accomplished;

369 (d) prohibits the researcher from disclosing the record  
370 in individually identifiable form or from using the record for  
371 other purposes without approval by the City.

372 (e) secures from the researcher a written statement of  
373 his understanding of and agreement to the conditions of this  
374 subsection and his understanding that violation of the terms  
375 of this subsection may subject him to criminal prosecution  
376 under Section 3.13.190.

377 (f) Obtains written indemnification of the City by the  
378 researcher as a condition of permitting research under this  
379 subsection.

380 (9) Nothing in this section prohibits the City from disclosing  
381 a record to persons other than those listed in Subsection (1), (2),  
382 and (3) if the City determines that disclosure is in the public  
383 interest.

384 (10) Where the Applicant is not the subject of a record, or  
385 his or her agent, the City shall have the right, but not the  
386 obligation or duty, to notify the subject of the record and upon  
387 the subject of the record's request, delay disclosure for not  
388 longer than two business days.  
389

390 **3.13.040. Fees.**

391 (1) The Mayor shall propose, and the municipal council shall  
392 establish and revise as necessary, a schedule of reasonable fees  
393 for the cost of duplicating a record or compiling a record. The  
394 full cost of making a record available may be charged by the City  
395 including all costs associated in compiling a record in a form or  
396 format other than that maintained by the City.

397 (2) The City may fulfill a request without charge when it  
398 determines that:

399 (a) releasing the records primarily benefits the public  
400 rather than a person; or

401 (b) the individual requesting the record is the subject  
402 of the record; or

403 (c) the Applicant's legal rights are directly implicated  
404 by the information in the record, and the Applicant is  
405 impecunious.

406 (3) The City shall not charge a fee for:

407 (a) reviewing a record to determine whether it is subject  
408 to disclosure; or

409 (b) inspecting a public record.

410 (4) This section does not apply to, alter, repeal, or reduce  
411 fees established by other sections of these ordinances or other  
412 statutes.

413 (5) Payment for the duplication of a record shall be paid  
414 before a record application is processed if the fees are expected  
415 to exceed fifty dollars (\$50), or if the Applicant has not paid  
416 fees from previous requests. Any prepaid amount in excess of the  
417 actual cost due shall be returned to the applicant.  
418

419 **3.13.050. Requests - Time Limit for Responses.**

420 (1) A person making a request for a record shall furnish on an  
421 application form provided by the City, his or her name, mailing  
422 address, daytime telephone number, and a description of the record  
423 requested that identifies the record with reasonable specificity.  
424 A person requesting a record classified private, controlled, or  
425 protected as allowed by Sections 3.13.090, 3.13.100, 3.13.110, of  
426 these Ordinances shall provide two forms of identification such as  
427 a drivers license, birth certificate, social security card, etc.,  
428 verifying his or her identity, before the City releases the  
429 private, controlled, or protected record or information.

430 (2) Requests for a record shall ordinarily be directed to the  
431 department in possession of the record. If a department does not  
432 have the record or refuses to accept the application, the person  
433 making application may file the application with the City Recorder  
434 who shall accept the application and thereafter evaluate the  
435 request and either obtain and provide the record or deny the  
436 request.

437 (3) Except as provided in Subsection (4), the City shall

438 respond to a record request no later than ten business days (five  
439 days after receiving a written request if the applicant  
440 demonstrates that expedited response to the record request benefits  
441 the public rather than the applicant) after receiving the request  
442 by:

443 (a) approving the request and providing the record;

444 (b) denying the request;

445 (c) notifying the Applicant that it does not maintain the  
446 record and providing, if known, a referral to the City department  
447 that does maintain the record or to the City Recorder; or

448 (d) notifying the Applicant that because of the extraordinary  
449 circumstances listed in Subsection (4), it cannot immediately  
450 approve or deny the request, and specifying the earliest time and  
451 date when the record(s) will be available.

452 (4) The following circumstances constitute "extraordinary  
453 circumstances" that allow the City to delay approval or denial by  
454 an additional number of days as specified in Subsection (5) if the  
455 City determines that due to the extraordinary circumstances it  
456 cannot respond within the time limits provided in Subsection (3):

457 (a) another department of the City or a governmental  
458 entity is using the record, in which case the Recorder shall  
459 immediately request that the department or governmental entity  
460 currently in possession provide the Recorder with a copy of  
461 the record as soon as reasonably possible;

462 (b) another City department or governmental entity is  
463 using the record as part of an audit and returning the record  
464 before the completion of the audit would impair the conduct of  
465 the audit;

466 (c) the request is for a voluminous quantity of records;

467 (d) the department is currently processing a large number  
468 of records requests;

469 (e) the request requires a department to review a large  
470 number of records to locate the record(s) requested;

471 (f) the decision to release a record involves legal  
472 issues requiring analysis of statutes, rules, ordinances,  
473 regulations, or case law;

474 (g) segregating information the applicant is entitled to  
475 inspect from information that the applicant is not entitled to  
476 inspect requires extensive editing; or

477 (h) segregating information the applicant is entitled to  
478 inspect from information that the applicant is not entitled to  
479 inspect requires computer programming.

480 (5) If a department claims that one of the extraordinary  
481 circumstances applies, the department shall:

482 (a) disclose the public records that it has located;

483 (b) provide the Applicant with an estimate of the amount  
484 of time it will take to finish the work required to respond to  
485 the request; and

486 (c) complete the search and disclose those records the  
487 applicant is entitled to inspect as soon as reasonably  
488 possible.

489 (6) If a request for access is accepted by a department of the  
490 City not in possession of the record, the department shall promptly  
491 forward the application to the City Recorder. If the request is

492 forwarded promptly, the time limit for response begins when the  
493 application is received by the City Recorder.

494 (7) Delay in making a record available shall not alone  
495 constitute a denial unless a record is available and the City fails  
496 to provide the requested record within the time period specified by  
497 this these ordinances.  
498

### 499 **3.13.060. Denials.**

500 (1) If the City denies the request in whole or part, it shall  
501 provide a notice of denial to the applicant either in person or by  
502 sending the notice to the applicant's address.

503 (2) The notice of denial shall contain the following  
504 information:

505 (a) a description of the record or portions of the record  
506 to which access was denied, provided that the description does  
507 not disclose private, controlled, or protected information, or  
508 information otherwise properly exempt from disclosure;

509 (b) citations to the provisions of this chapter, another  
510 state statute, federal statute, or federal regulation that  
511 exempt the record or portions of the record from disclosure,  
512 provided that the citations do not disclose private,  
513 controlled, or protected information;

514 (c) a statement that the Applicant has the right to  
515 appeal the denial to the City Appeals Board and then to the  
516 district court; and

517 (d) the time limits for filing an appeal and the name and  
518 business address of the Mayor and Chairman of the City Records  
519 Appeals Board.

520 (3) Unless otherwise required by a court or agency of  
521 competent jurisdiction, a department may not destroy or give up  
522 custody of any record to which access was denied until the period  
523 in which to bring an appeal has expired or the end of the appeals  
524 process, including judicial appeal.  
525

### 526 **3.13.070. Sharing Records.**

527 (1) The City may provide a record or a record series that is  
528 private, controlled, or protected, to another governmental entity,  
529 government-managed corporation, political subdivision, state,  
530 federal, or foreign government if the requesting entity:

531 (a) serves as a repository or archives for purposes of  
532 historical preservation, administrative maintenance, or  
533 destruction;

534 (b) enforces, litigates, or investigates civil, criminal,  
535 or administrative law, and the record is necessary to a  
536 proceeding or investigation;

537 (c) is authorized by state statute to conduct an audit  
538 and the record is needed for that purpose; or

539 (d) is one that collects information for presentence,  
540 probationary or parole purposes.

541 (2) Before the City provides a record or record series that is  
542 classified protected, private or controlled to another authorized  
543 entity, the requesting entity shall provide written assurance:

544 (a) that the record or record series is necessary to the  
545 performance of the City's duties and functions.

546 (b) that the record or record series will be used for a  
547 purpose similar to the purpose for which the information in  
548 the record or record series was collected or obtained; and

549 (c) that the use of the record or record series produces  
550 a public benefit that outweighs the individual privacy right  
551 that protects the record or record series.

552 (3) Notwithstanding Subsection (2), the City may disclose a  
553 record to another state, the United States, or a foreign government  
554 for the reasons listed in Subsections (1) and (2) if disclosure is  
555 authorized by executive agreement, treaty, federal statute,  
556 compact, federal regulation, or state statute.

557 (4) Before disclosing a record or record series under this  
558 section to another authorized entity, including another state, the  
559 United States, or a foreign government, the City shall:

560 (a) inform the recipient of the record's classification  
561 and the accompanying restrictions on access; and

562 (b) obtain the recipient's written agreement that it will  
563 abide by those restrictions on access unless a statute,  
564 federal regulation, or interstate agreement otherwise governs  
565 the sharing of the record or record series.

566 (5) The City shall provide a private, controlled, or protected  
567 record to another authorized entity if the requesting entity:

568 (a) is entitled by law to inspect the record; or

569 (b) is required to inspect the record as a condition of  
570 participating in a state or federal program or for receiving  
571 state or federal funds.

572 (6) Notwithstanding any other provision of this section, if a  
573 more specific state statute, federal statute, or federal regulation  
574 or court order prohibits or requires sharing information, that  
575 statute or federal regulation controls.

576 (7) Records of the City Library are not subject to the  
577 provisions of this section.

578 (8) Records that may be evidence or relate to a violation of  
579 law may be disclosed to a government prosecutor, peace officer, or  
580 auditor.

### 581 **3.13.080. Public Records.**

582 (1) The following records are public except to the extent they  
583 contain information expressly permitted to be treated  
584 confidentially under the provisions of Subsection 3.13.020 (3)(b)  
585 or Sections 3.13.030 (4), 3.13.090, 3.13.100, and 3.13.110 of these  
586 Ordinances:

587 (a) laws, ordinances, and executive orders;

588 (b) names, gender, job titles, job descriptions, gross  
589 compensation, job qualifications, business addresses, business  
590 telephone numbers, number of hours worked per pay period, and  
591 dates of employment of its former and present employees and  
592 officers, excluding undercover law enforcement officers or  
593 investigative personnel if disclosure could reasonably be  
594 expected to impair the effectiveness of investigations or  
595 endanger any individual's safety;

596 (c) final opinions and orders that are made by the City  
597 in an administrative, adjudicative, or judicial proceeding  
598 except that if the proceedings were properly closed to the  
599

600 public, the opinion and order may be withheld to the extent  
601 that they contain information that is private, protected, or  
602 controlled;

603 (d) final interpretations of statutes or rules unless  
604 classified as protected;

605 (e) information contained in or compiled from a  
606 transcript, minutes, or report of the open portion of a  
607 meeting of a City Council, commission, or board of all votes  
608 of each member of the City as provided by Chapter 4 Title 52  
609 of the Utah Code, Open and Public Meetings;

610 (f) records containing data on individuals that would  
611 otherwise be classified as private if the individual who is  
612 the subject of the record has given the City written  
613 permission to make the records available to the public;

614 (g) original data in a computer program if the City  
615 chooses not to disclose the program;

616 (h) summary data;

617 (2) The following records are normally public, but to the  
618 extent the a record is expressly exempt from disclosure pursuant to  
619 this Chapter, access may be restricted:

620 (a) administrative staff manuals, instructions to staff,  
621 and statements of policy;

622 (b) contracts executed by the City and records  
623 documenting a contractor's services and compliance with the  
624 terms of a contract with the City, including documentation of  
625 the compensation that the City pays to a contractor;

626 (c) records relating to assistance or incentives offered  
627 by or requested from the City, encouraging a person to expand  
628 or relocate a business in Provo;

629 (d) chronological logs and initial contact reports;

630 (e) correspondence by and with the City in which the  
631 governmental entity determines or states an opinion upon the  
632 rights of the City, the public, or any person;

633 (f) empirical data contained in drafts if:

634 (i) the empirical data is not reasonably available  
635 to the Applicant elsewhere in similar form; and

636 (ii) the City is given a reasonable opportunity to  
637 correct any errors or make non-substantive changes before  
638 release;

639 (g) drafts that are circulated to anyone other than  
640 employees or officers of the City, a governmental entity, a  
641 political subdivision of the State of Utah, or a federal  
642 agency if the City and the federal agency are jointly  
643 responsible for implementation of a program or project that  
644 has been legislatively approved; and (h) drafts that have  
645 never been finalized but were relied upon by the City in  
646 carrying out action or policy;

647 (i) original data in a computer program if the City  
648 chooses not to disclose the program;

649 (j) records that would disclose information relating to  
650 formal charges or disciplinary actions against a past or  
651 present City employee if:

652 (i) the disciplinary action has been completed and  
653 all time periods for appeal have expired; and

- 654 (ii) the formal charges were sustained;  
655 (k) final audit reports;  
656 (l) occupational and professional licenses;  
657 (m) business licenses;  
658 (n) records that do not contain data on individuals if  
659 the public's interest in access outweighs the City's or other  
660 person's interest of non-disclosure;  
661 (o) records relating to government assistance or  
662 incentives publicly disclosed, contracted for, or given by the  
663 City, encouraging a person to expand relocate a business in  
664 Provo, except as provided in Subsection 3.13.110;  
665 (p) a notice of violation or similar records used to  
666 initiate proceedings for discipline or sanctions against  
667 persons regulated by the City, but not including records that  
668 initiate employee discipline;  
669 (3) The list of public records in this section is not  
670 exhaustive and should not be used to limit access to records.  
671

672 **3.13.090. Private Records.**

- 673 (1) The following records are private:  
674 (a) records concerning an individual's eligibility for  
675 unemployment insurance benefits, social services, welfare  
676 benefits, or the determination of benefit levels;  
677 (b) records containing data on individuals describing  
678 medical history, diagnosis, condition, treatment, evaluation,  
679 or similar medical data;  
680 (c) records of the City library that when examined alone  
681 or with other records identify a patron;  
682 (d) records concerning a current or former employee of,  
683 or applicant for employment with the City that would disclose  
684 that individual's home address, home telephone number, social  
685 security number, insurance coverage, marital status, or  
686 payroll deductions.  
687 (2) The following records are private when properly  
688 classified:  
689 (a) records concerning a current or former employee of,  
690 or applicant for employment with the City, including  
691 performance evaluations and personal status information such  
692 as race, religion, or disabilities, but not including records  
693 that are public under authority of this chapter;  
694 (b) records describing an individual's finances except  
695 that the following is public;  
696 (i) records described in Section 3.13.080.  
697 (ii) information provided to the City for the  
698 purpose of complying with a financial assurance  
699 requirement; or  
700 (iii) records that may be disclosed in accordance  
701 with another statute;  
702 (c) records containing data on individuals the disclosure  
703 of which constitutes a clearly unwarranted invasion of  
704 personal privacy;  
705 (d) records of City departments or agencies if the  
706 disclosure of those records would conflict with the fiduciary  
707 obligations of the department or agency;

708 (e) records provided by the United States or by a  
709 government entity outside the state that are given with the  
710 requirement that the records be managed as private records, if  
711 the providing entity states in writing that the record would  
712 not be subject to public disclosure if retained by it.  
713

714 **3.13.100. Controlled Records.**

715 A record is controlled if:

716 (1) the record contains medical, psychiatric, or psychological  
717 data about an individual;

718 (2) the City reasonably believes that:

719 (a) releasing the information in the record to the  
720 subject of the record would be detrimental to the subject's  
721 mental health or the safety of any individual; or

722 (b) releasing the information would constitute a  
723 violation of normal professional practice and medical ethics;  
724 and

725 (3) the City has properly classified the record.  
726

727 **3.13.110. Protected Records.**

728 The following records are protected if properly classified by  
729 the City:

730 (1) trade secrets as defined in Section 13-24-2 of the Utah  
731 Code if the person submitting the trade secret has provided the  
732 City with the information specified in Section 3.13.120 of these  
733 ordinances;

734 (2) commercial or non-individual financial information  
735 obtained from a person if;

736 (a) disclosure of the information would result in unfair  
737 competitive injury to the person submitting the information or  
738 would impair the ability of the City to obtain necessary  
739 information in the future;

740 (b) the person submitting the information has a greater  
741 interest in prohibiting access than the public has in  
742 obtaining access; and

743 (c) the person submitting the information has provided  
744 the City with the information specified in Section 3.13.120 of  
745 these Ordinances;

746 (3) commercial or financial information acquired or prepared  
747 by the City to the extent that disclosure would lead to financial  
748 speculation in currencies, securities, or commodities that will  
749 interfere with a planned transaction by the City or cause  
750 substantial financial injury to the City;

751 (4) test questions and answers to be used in future license,  
752 certification, registration, employment, or academic examinations;

753 (5) records, the disclosure of which would impair the City's  
754 procurement proceedings or give an unfair advantage to any person  
755 proposing to enter into a contract or agreement with the City,  
756 except that this subsection does not restrict the right of a person  
757 to see bids submitted to or by the City after bidding has closed  
758 and a bid has been accepted;

759 (6) records that would identify real property or the appraisal  
760 or estimated value of real property or personal property, including  
761 intellectual property, under consideration for trade, sale, or

762 public acquisition before any rights to the property are acquired  
763 unless:

764 (a) public interest in obtaining access to the  
765 information outweighs the City's need to acquire the real  
766 property on the best terms possible;

767 (b) the information has already been disclosed to persons  
768 not employed by or under a duty of confidentiality to the  
769 entity;

770 (c) in the case of records that would identify property,  
771 potential sellers of the described property have already  
772 learned of the City's plans to acquire the property or of the  
773 City's estimated value of the real property; or

774 (d) in the case of records that would identify the  
775 appraisal or estimated value of property, the potential  
776 sellers have already learned of the City's estimated value of  
777 the property;

778 (7) records prepared in contemplation of sale, exchange,  
779 lease, rental, or other compensated transaction of real or personal  
780 property including intellectual property, which, if disclosed prior  
781 to completion of the transaction, would reveal the appraisal or  
782 estimated value of the subject property, unless:

783 (a) the public interest in access outweighs the interest  
784 in restricting access, including the City's interest in  
785 maximizing the financial benefit of the transaction; or

786 (b) when prepared by or on behalf of the City, appraisals  
787 or estimates of the value of the subject property have already  
788 been disclosed to persons not employed by or under a duty of  
789 confidentiality to the entity.

790 (8) records created or maintained for civil, criminal, or  
791 administrative enforcement purposes or for audit purposes, or for  
792 discipline, licensing, certification, or registration purpose, if  
793 release of the records:

794 (a) reasonably could be expected to interfere with  
795 investigations undertaken for enforcement, discipline,  
796 licensing, certification, or registration purposes;

797 (b) reasonably could be expected to interfere with  
798 audits, disciplinary, or enforcement proceedings;

799 (c) would create a danger of depriving a person of a  
800 right to a fair trial or impartial hearing;

801 (d) reasonably could be expected to disclose the identity  
802 of a source who is not generally known outside of government  
803 and, in the case of a record compiled in the course of an  
804 investigation, disclose information furnished by a source not  
805 generally known outside of government if disclosure would  
806 compromise the source; or

807 (e) reasonably could be expected to disclose  
808 investigative or audit techniques, procedures, policies, or  
809 orders not generally known outside of government if disclosure  
810 would interfere with enforcement or audit efforts;

811 (9) records, the disclosure of which would jeopardized the  
812 life or safety of an individual;

813 (10) records, the disclosure of which would jeopardize the  
814 security of governmental property, governmental programs, or  
815 governmental record-keeping systems from damage, theft, or other

816 appropriation or use contrary to law or public policy.  
817 (11) records that, if disclosed, would jeopardize the security  
818 or safety of a correctional facility, or records relating to  
819 incarceration, treatment, probation, or parole, that would  
820 interfere with the control and supervision of an offender's  
821 incarceration, treatment, probation, or parole;  
822 (12) records and audit work papers that identify audit,  
823 collection, and operational procedures and policies if disclosure  
824 would risk circumvention of an audit;  
825 (13) records of a City department or of an agent of the city  
826 relating to an ongoing or planned audit until the final audit is  
827 released;  
828 (14) records prepared by or on behalf of the City in  
829 anticipation of litigation that are not available under the rules  
830 of discovery;  
831 (15) records disclosing an attorney's work product, including  
832 the mental impressions, or legal theories of an attorney or other  
833 representative of the City entity concerning litigation;  
834 (16) records of communications between the City and an  
835 attorney representing, retained, or employed by the City if the  
836 communications would be privileged as provided by Section 78-24-8  
837 of the Utah Code.  
838 (17) personal files of a municipal council member including  
839 personal correspondence to or from a member of the Municipal  
840 Council, but not correspondence that gives notice of legislative  
841 action or policy;  
842 (18) requests for draft ordinances if the Mayor or municipal  
843 council member requesting the draft ordinance specifies that the  
844 draft be protected;  
845 (19) research requests from the administration or City Council  
846 to the City Attorney's Office or the Municipal Council Attorney and  
847 research findings prepared in response to these requests;  
848 (20) drafts, unless otherwise classified as public;  
849 (21) records concerning strategy pending litigation;  
850 (22) records of investigations of loss occurrences and  
851 analysis of loss occurrences that may be covered by the City Claims  
852 Committee;  
853 (23) records, other than personnel evaluations, that contain  
854 a personal recommendation concerning an individual if disclosure  
855 would constitute a clearly unwarranted invasion of personal  
856 privacy, or disclosure is not in the public interest;  
857 (24) communications between individuals sitting on a board or  
858 commission who are acting in a judicial capacity to the extent that  
859 the communications relate to the deliberative aspects of an appeal  
860 or other adjudication;  
861 (25) records that reveal the location of historic, prehistoric  
862 paleontological, or biological resources that if known would  
863 jeopardize the security or those resources or of valuable historic,  
864 scientific, educational, or cultural information;  
865 (26) records of City departments if the disclosure of the  
866 records would conflict with the fiduciary obligations of the  
867 department;  
868 (27) records of the Mayor's office, including, but not limited  
869 to, budget recommendations, legislative proposals, and policy

870 statements, that if disclosed would reveal the mayor's contemplated  
871 policies or contemplated courses of action before the mayor has  
872 implemented or rejected those policies or courses of action or made  
873 them public.

874 (28) records of Budget Officer relating to budget analysis,  
875 revenue estimates, and fiscal notes of proposed legislation before  
876 issuance of the final recommendations in these areas; and

877 (29) records provided by the United States or by a government  
878 entity outside the state that are given with the requirement that  
879 the records be managed as private records, if the providing entity  
880 states in writing that the record would not be subject to public  
881 disclosure if retained by it;

882 (30) transcripts, minutes, or reports of the closed portion of  
883 a meeting of a public body except as provided in Section 52-4-7 of  
884 the Open and Public Meetings Act;

885 (31) records that would reveal the contents of settlement  
886 negotiations but not including final settlements or empirical data  
887 to the extent that they are not otherwise exempt from disclosure;

888 (32) memoranda prepared by staff and used in the decision-  
889 making process by the Mayor or his designee charged with performing  
890 a quasi-judicial function;

891 (33) records that would reveal negotiations regarding  
892 assistance or incentives offered by or requested from the City for  
893 the purpose of encouraging a person to expand or relocate a  
894 business in Provo but only if disclosure would result in actual  
895 economic harm to the person or place the City at a competitive  
896 disadvantage, but this section may not be used to restrict access  
897 to a record evidencing a final contract;

898 (34) materials to which access must be limited for purposes of  
899 securing or maintaining the City's proprietary protection of  
900 intellectual property rights including, but not limited to,  
901 patents, copyrights, and trade secrets;

902 (35) the name of a donor or a prospective donor to the City,  
903 the Provo Foundation, or other non-profit City-related entity, and  
904 other information concerning the donation that could reasonably be  
905 expected to reveal the identity of the donor, provided that:

906 (a) the donor requests anonymity in writing;

907 (b) any terms, conditions, restriction, or privileges  
908 relating to the donation may not be classified protected under  
909 this subsection.

### 910 3.13.120. Business Confidentiality.

911 (1)(a) Any person who provides the City with a record that he  
912 believes should be protected under Subsection 3.13.110 (1) or (2),  
913 shall provide with the record a written claim of business  
914 confidentiality and a concise statement of reasons supporting the  
915 claim of business confidentiality.

916 (b) The claimant shall be notified by the City if a  
917 record claimed to be protected under Subsection 3.13.110 (1)  
918 or (2) is classified public.

919 (2) Except as provided by court order, the City shall not  
920 disclose records claimed to be protected under Subsection 3.13.110  
921 (1) or (2), but which it determines should be classified public  
922 until the period in which to bring an appeal expires or the end of  
923

924 the appeals process, including judicial appeal.

925 (3) Disclosure or acquisition of information under this  
926 chapter shall not constitute misappropriation under Subsection 13-  
927 24-2(2) of the Utah Code.

928  
929 **3.13.130. Classification.**

930 (1) City departments and agencies shall:

931 (a) evaluate all record series that it uses or creates;

932 (b) designate those record series as provided by this  
933 chapter;

934 (c) report the designation of its record series to the  
935 administration, who upon review and approval shall report the  
936 designation to the state archives.

937 (2) The City may classify a particular record, record series,  
938 or information within a record at any time, but is not required to  
939 classify a particular record, record series, or information until  
940 access to the record is requested.

941 (3) The City may redesignate or reclassify a record or record  
942 series, or information within a record at any time.

943 (4) Each year, beginning July 1, 1993, the City Recorder shall  
944 report to the administration the classification for each record  
945 series that was created or classified during the previous calendar  
946 year. A copy of the report shall be provided to state archives  
947 where required by law.

948 (5) If more than one provision of this chapter appears to  
949 govern the classification of a record, the City shall classify the  
950 record by considering the nature of the interests intended to be  
951 protected and the specificity of the competing provisions.

952 (6) Nothing in Section 3.13.090, 3.13.100, or 3.13.110  
953 mandates or otherwise requires the City to classify a record as  
954 private, confidential, or protected.

955 (7) Upon petition by the subject of a record, the City may  
956 reclassify a record as private, confidential, or protected if the  
957 individual's right of privacy clearly outweighs the City's or the  
958 public's interest in having the record classified as public.

959 (8) A court may, on appeal or in a declaratory or other  
960 action, order the confidential treatment of records for which no  
961 exemption from disclosure applies if:

962 (a) there are compelling interests favoring restriction  
963 of access to the record; and

964 (b) the interests favoring restriction of access clearly  
965 outweigh the interests favoring access.

966 (9) If the City requests a court to restrict access to a  
967 record under this section, the City shall pay the reasonable  
968 attorneys' fees incurred by the lead party in opposing the City's  
969 request, if:

970 (a) the court finds that no statutory or constitutional  
971 exemption from disclosure could reasonably apply to the record  
972 in question; and

973 (b) the court denies confidential treatment under this  
974 section.

975 (10) (a) Access to drafts and empirical data in drafts may be  
976 limited under this section, but the court may consider, in its  
977 evaluation of interests favoring restriction of access, only those

978 interests that relate to the underlying information, and not to the  
979 deliberative nature of the record;

980 (b) Access to original data in a computer program may be  
981 limited under this section, but the court may consider, in its  
982 evaluation of interests favoring restriction of access, only  
983 those interests that relate to the underlying information, and  
984 not to the status of that data as part of a computer program.  
985

986 **3.13.140. Segregation of Information.**

987 Notwithstanding any other provision in this chapter, if the  
988 City receives a request for access to a record that contains both  
989 information that the Applicant is entitled to inspect and  
990 information that the Applicant is not entitled to inspect under  
991 this chapter, and, if the information the Applicant is entitled to  
992 inspect is intelligible, the City:

993 (1) shall allow access to public information in the record  
994 that the Applicant is entitled to inspect under this chapter; and

995 (2) may deny access to information in the record that is  
996 exempt from disclosure to the Applicant, by issuing a notice of  
997 denial as provided in Section 3.13.060.  
998

999 **3.13.150. Records Management and Retention.**

1000 (1) The City Recorder shall under the direction of the  
1001 administration:

1002 (a) establish and maintain an active, continuing program  
1003 for the economic and efficient management and retention of the  
1004 City's records as provided by this chapter and Utah law;

1005 (b) work with the state archives in the care,  
1006 maintenance, scheduling, disposal, classification, access, and  
1007 preservation of records;

1008 (c) cooperate in surveys conducted by the state  
1009 archivist.

1010 (2) Unless otherwise provided by law or ordinance, each  
1011 department of the City shall retain records for the appropriate  
1012 time period set forth in the Utah Municipal General Records  
1013 Retention Schedule.

1014 (3) If no retention schedule is applicable, each department  
1015 shall retain the record as long as the department may need the  
1016 record and then destroy the record.  
1017

1018 **3.13.160. Appeals.**

1019 (1) (a) Any person aggrieved by the City's access  
1020 determination under this chapter, including a person not a party to  
1021 the City's proceeding, may appeal the determination within 30 days  
1022 to the Mayor by filing a notice of appeal.

1023 (2) The duties of the Mayor under this section may be  
1024 delegated by the Mayor.

1025 (3) The appeal shall contain the following information:

1026 (a) the petitioner's name, mailing address, and daytime  
1027 telephone number; and

1028 (b) the relief sought.

1029 (4) The petitioner may file a short statement of facts,  
1030 reasons, and legal authority in support of the appeal.

1031 (5) If the City claims extraordinary circumstances and

1032 specifies the date when the records will be available under  
1033 Subsection 3.13.050, and, if the Applicant believes the  
1034 extraordinary circumstances do not exist or that the time specified  
1035 is unreasonable, the Applicant may appeal the City's claim of  
1036 extraordinary circumstances or date for compliance within 30 days  
1037 after notification of a claim of extraordinary circumstances by the  
1038 City, despite the lack of "determination."

1039 (6) The Mayor shall make a determination on the appeal within  
1040 the following period of time:

1041 (a) within five business days after receipt of the  
1042 appeal;

1043 (b) within twelve business days if the Mayor determines  
1044 that notice of the appeal should be given to a subject of a  
1045 record or a person who has submitted a claim of business  
1046 confidentiality, and notice is given to such person or  
1047 persons.

1048 (7) The failure of the Mayor to make a determination within  
1049 the time specified in Subsection (6), shall be considered the  
1050 equivalent of an order denying the appeal.

1051 (8) The provisions of this section notwithstanding, the  
1052 parties participating in the proceeding may, by agreement, extend  
1053 the time periods specified in this section.

1054 (9) The Mayor, upon consideration and weighing of the various  
1055 interests and public policies pertinent to the classification and  
1056 disclosure or nondisclosure, may order the disclosure of  
1057 information properly classified as private or protected if the  
1058 interests favoring access outweigh the interests favoring  
1059 restriction of access.

1060 (10) The City shall send written notice of the determination  
1061 of the Mayor to all participants. If the Mayor affirms the denial  
1062 in whole or in part, the denial shall include a statement that the  
1063 Applicant has the right to appeal the denial to either the Records  
1064 Appeals Board or the district court, the time limits for filing an  
1065 appeal, and the name and business address of the secretary of the  
1066 Records Appeals Board.

1067 (11) Any person aggrieved by the Mayor's access determination  
1068 under this chapter, may appeal the determination within 30 days to  
1069 the City Records Appeals Board, by filing an appeal containing the  
1070 information required in Subsection (3) and a copy of the Mayor's  
1071 notice of denial.

1072 (12) The Records Appeals Board's review shall be in camera,  
1073 and de novo. Members of the Records Appeals Board may not disclose  
1074 any information or record reviewed by the Board in camera unless  
1075 the disclosure is otherwise authorized by this chapter.

1076 (13) In making an access determination, the Records Appeals  
1077 Board shall consider and weigh the various interests and public  
1078 policies pertinent to the classification and disclosure or  
1079 nondisclosure, and shall order the disclosure of information  
1080 properly classified as private, controlled, or protected if the  
1081 public interests favoring access outweighs the interests favoring  
1082 restriction of access.

1083 (14) The Records Appeals Board shall make a determination in  
1084 camera on the appeal within fifteen (15) business days of receipt  
1085 of the notice. If the Records Appeals Board fails to make a

1086 determination within this time, that failure shall be considered  
1087 the equivalent of an order denying the appeal.

1088 (15) If the Records Appeals Board affirms the denial in whole  
1089 or in part, it shall send to the appellant a written statement that  
1090 the appellant may appeal the decision to the district court.  
1091

### 1092 3.13.170. Judicial Review.

1093 (1) If the Mayor or the City Records Appeals Board denies a  
1094 records request under Section 3.13.160 the appellant may petition  
1095 for judicial review in district court.

1096 (2) The petition shall be filed no later than 30 days from the  
1097 date of the Municipal Council's determination.

1098 (3) The petition for judicial review shall be a complaint  
1099 governed by the Utah Rules of Civil Procedure and shall contain:

1100 (a) the petitioner's name and mailing address;

1101 (b) a copy of the Mayor's or City Records Appeals Board's  
1102 decision from which the appeal is taken;

1103 (c) the name and department that made the initial  
1104 determination;

1105 (d) a request for relief specifying the type and extent  
1106 of relief requested; and

1107 (e) a statement of the reasons why the petitioner is  
1108 entitled to relief.

1109 (4) All additional pleadings and proceedings in the district  
1110 court are governed by the Utah Rules of Civil Procedure.

1111 (5) Review of the disputed records by the district court shall  
1112 be in camera.

1113 (6) The court shall:

1114 (a) make its decision de novo, but may allow the  
1115 introduction of evidence presented to the Mayor or City  
1116 Records Appeals Board;

1117 (b) determine all questions of fact and law without a  
1118 jury; and

1119 (c) decide the issue at the earliest practical  
1120 opportunity.

1121 (7) The court may, upon consideration and weighing of the  
1122 various interests and public policies pertinent to the  
1123 classification and disclosure or nondisclosure, order the  
1124 disclosure of information properly classified as private,  
1125 controlled, or protected if the public interest in access outweighs  
1126 the subject of a record's and the City's interests in restricting  
1127 access.  
1128

### 1129 3.13.180. Accuracy of Record.

1130 (1) The City Recorder with the assistance of the City  
1131 Personnel Department shall prepare and file with the state  
1132 archivist a statement explaining the purposes for which data on  
1133 individuals are collected and used by the City. That statement is  
1134 a public record. A copy of the statement shall be filed with other  
1135 governmental entities where required by law.

1136 (2) Upon request, the City shall explain to an individual:

1137 (a) the reasons he or she is asked to furnish private or  
1138 confidential information;

1139 (b) the intended uses of the information; and

1140 (c) the consequences for refusing to provide the  
1141 information.

1142 (3) The City shall not use private, controlled, or protected  
1143 data for purposes other than those set forth in these ordinances or  
1144 given in the statement filed with the state archivist under  
1145 Subsection (1).

1146 (4) Upon request, the City shall disclose to the subject the  
1147 content of the information that is classified public and the  
1148 context in which it is used.

1149 (5) Upon request and a reasonable showing that the individual  
1150 is the subject of a record classified private, the City shall  
1151 disclose to the subject or to his authorized attorney the content  
1152 of the information classified private and the context in which it  
1153 is used.

1154 (6) Subject to Sub-section (11), an individual may contest the  
1155 accuracy or completeness of any data on individuals classified as  
1156 public or private concerning him by petitioning the City to amend  
1157 the record. The petition shall contain the following information:

1158 (a) the petitioner's name, mailing address, and daytime  
1159 telephone number; and

1160 (b) a brief statement explaining why the City should  
1161 amend the record.

1162 (7) The City shall either approve or deny the petition to  
1163 amend no later than 30 days after the petition.

1164 (8) If the City approves the petition, it shall correct all of  
1165 its records that contain the same incorrect information as soon as  
1166 practical. The City may not disclose the record until it has  
1167 amended it.

1168 (9) If the City denies the petition, it shall:

1169 (a) inform the petitioner in writing; and

1170 (b) provide a brief statement giving its reason for  
1171 denying the petition.

1172 (10) If a City denies a petition to amend a record, the  
1173 petitioner may submit a written statement contesting the  
1174 information in the record. The City shall:

1175 (a) file the petitioner's statement with the disputed  
1176 record if the record is in a form such that the statement can  
1177 accompany the record or make the statement accessible if the  
1178 record is not in a form such that the statement can accompany  
1179 the record; and

1180 (b) disclose the petitioner's statement along with the  
1181 information in the record whenever the City discloses the  
1182 disputed information.

1183 (11) The petitioner may appeal the denial of the petition to  
1184 amend a record to district court as provided in section 3.13.170.

1185 (12) This section does not apply to records that the City  
1186 determines must be maintained in their original form to protect the  
1187 public interest and to preserve the integrity of the record system.  
1188

### 1189 3.13.190. Criminal Penalties and Disciplinary Action.

1190 (1) (a) Any employee or other person who has lawful access to  
1191 any private, controlled, or protected record under this chapter,  
1192 and who intentionally discloses or provides a copy of a private,  
1193 controlled, or protected record to any person knowing that such

1194 disclosure is prohibited, is guilty of an class B misdemeanor.

1195 (b) It is a defense to prosecution under Subsection

1196 (1)(a) that the actor released private, controlled, or  
1197 protected information in the reasonable belief that the  
1198 disclosure of the information was necessary to expose a  
1199 violation of law involving government corruption, abuse of  
1200 office, or misappropriation of public funds or property.

1201 (c) It is a defense to prosecution under Subsection

1202 (1)(a) that the record could have lawfully been released to  
1203 the recipient if it had been properly classified.

1204 (2) (a) A person who by false pretenses, bribery, or theft,  
1205 gains access to or obtains a copy of any private, controlled, or  
1206 protected record to which he is not legally entitled is guilty of  
1207 a class B misdemeanor.

1208 (b) No person shall be guilty under Subsection (2) (a)  
1209 who receives the record, information, or copy after the fact  
1210 and without prior knowledge of or participation in the false  
1211 pretenses, bribery, or theft.

1212 (3) A public employee who intentionally refuses to release a  
1213 record the disclosure of which the employee knows is required by  
1214 law or by final unappealed order from the City, or a court, is  
1215 guilty of a class B misdemeanor.

1216 (4) In addition to, and apart from, the criminal penalties  
1217 provided by this section, the City may take disciplinary action  
1218 which may include suspension or discharge against any employee who  
1219 intentionally violates any provision of this chapter.  
1220

1221 **3.13.200. No Liability for Release.** Neither the City nor any  
1222 officer or employee of the City is liable for damages resulting  
1223 from the release of a record where the person or government entity  
1224 requesting the record presented evidence of authority to obtain the  
1225 record even if it is subsequently determined that the Applicant had  
1226 no actual authority.  
1227

1228 **3.13.210. Severability.**

1229 If any word phrase, sentence, part, section, subsection, or  
1230 other portion of this ordinance, or any application thereof to any  
1231 person or circumstance is declared void, unconstitutional, or  
1232 invalid for any reason, such word, phrase, sentence, part, section,  
1233 subsection, or other portion, or the proscribed application  
1234 thereof, shall be severable, and the remaining provisions of this  
1235 ordinance, and all applications thereof, not having been declared  
1236 void, unconstitutional, or invalid, shall remain in full force and  
1237 effect.  
1238

1239 PART II:

1240  
1241 This ordinance shall take effect immediately after being  
1242 posted or published as required by law.  
1243

1244 END OF ORDINANCE.