ORDINANCE No. 93-7

AN ORDINANCE AMENDING THE CODE OF REVISED ORDINANCES OF SMITHFIELD CITY, A UTAH MUNICIPALITY, AMENDING THE RECORDS, ACCESS AND MANAGEMENT ORDINANCE AS ADOPTED MARCH 11, 1992.

3-344 PUBLIC RECORDS

3-344.1 SHORT TITLE

The ordinance is known as the "Smithfield City Government Records and Access and Managment Act."

3-344.2 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.

3-344.3 DEFINITIONS

As used in this ordinance:

1. "Audit" means:

a. a systematic examination of financial, management, program, and related records for the purpose of determining the fair presentation of financial statements, adequacy of internal controls, or compliance with laws and regulation; or

b. a systematic examination of program procedures and operations for the purpose of determining their effectiveness, economy, efficiency, and compliance with statutes and regulations.

2. "Chronological logs" means the regular and customary summary records of law enforcement agencies and other public safety agencies that show the time and general nature of police, fire, and paramedic calls made to the agency and any arrests or jail bookings made by the agency.

3. "Classification", "classify", and their derivative forms mean determining whether a record series, record, or information within a record is public, private, controlled or protected, or exempt from disclosure under Utah code, Section 63-2-201(3)(b).

4. 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 (excluding the underlying mathematical algorithms contained in the program) that could be used if the manipulated forms of the original data were to be produced manually.

5. "Controlled record" means a record containing date on individuals that is controlled as provided by Section 11.

6. a. "Contractor" means:

(i) any person who contracts with the city to provide goods or services directly to the city; or

(ii) any private, nonprofit organization that receives funds from the city.

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

7. "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.

8. "Designation", in "designate", and their derivative forms

mean indicating, based on the city's familiarity with a record series or based on the city's review of a reasonable sample of a record series, the primary classification that a majority of records in a record series would be given if classified and the classification that other records typically present in the record series would be given if classified.

9. a. "Initial contract report" means an initial written report, however titled, prepared by peace officers engaged in public patrol or response duties describing official actions initially taken in response to either a public complaint about or the discovery of an apparent violation of law, which report may describe:

(i) the date, time, location, and nature of the complaint, the incident, or offense:

(ii) names of victims;

(iii) the nature or general scope of the agency's initial actions taken in response to the incident;

(iv) the general natureof any injuries or estimate of damages sustained in the incident;

(v) the name, address, and other identifying information about any person arrested or charged in connection with the incident;

(iv) the identity of the public safety personnel (except undercover personnel) or prosecuting attorney involved in responding to the initial incident.

b. Initial contact reports do not include follow-up or investigative reports prepared after the initial contact report. However, if the information specified in Subsection (a) appears in follow-up or investigative reports, it may only be treated confidentially if it is private, controlled, protected, or exempt from disclosure under Section 63-2-201(3)(b) of the Utah Code.

10. "Individual" means a human being.

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

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

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

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

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

16. a. "Record" means all books, letters, documents, papers, maps, plans, photographs, films, cards, tapes, recording, or other documentary materials, and electronic data regardless of physical form or characteristics, prepared, owned, used, received, or retained by the city;

b. "Record" does not mean:

(i) temporary drafts or similar materials for the originator's personal use or prepared by the originator for the personal use of an individual for whom he is working;

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

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

(iv) proprietary software;

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

(vi) books and other materials that are cataloged, indexed, or inventoried and contained in the collections of libraries open to the public, regardless of physical form or characteristics of the material;

(vii) daily calendars and other personal notes prepared by the originator for the originator's personal use or for the personal use of an individual for whom he is working; or

(viii)computer programs as defined that are developed or purchased by or for the city for its own use.

(ix) notes or internal memoranda prepared as part of the deliberative process by a member of the judiciary, an administrative law judge, a member of, the Board of Pardons, or a member of any other body charged by law with performing a quasi-judicial function.

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

18. "Records officer" means the city recorder and other individuals as appointed by the Mayor to work in the care, maintenance,

scheduling, designation, classification, disposal, and preservation of records.

19. "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.

3-344.4 RIGHT OF PUBLIC ACCESS

1. Every person has the right to inspect a public record free of charge and the right to take a copy of a public record during normal working hours, subject to the payment of costs and fees pursuant 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 appropriately classified, controlled, or protected as allowed by Sections 10, 11, and 12 of this ordinances; and

b. records to which access is restricted pursuant to court rule, another state statute, federal statute, or federal regulation, including records for which access is governed or restricted as a condition of participation in a state or federal program or for receiving state or federal funds.

4. only those records specified in Sections 10, 11, or 12 maybe classified private, controlled, or protected.

5. a. The city may not disclose a record that is private, controlled, or protected to any person except as provided in Subsection (5)(b) or Section 5.

b. The city may, at its discretion, disclose records that are private under Subsection 10.2 or protected under Section 12 to persons other than those specified in Section 5 if the city council, or a designee, determines that there is no interest in restricting access to the record, or that the interests favoring access outweight the interest favoring restriction of access.

6. a. The disclosure of records to which access in governed or limited pursuant to court rule, another state statute, federal statute, or federal regulation, including records for which access is governed or limited as a condition of participation in a state or federal program or for receiving state or federal funds, is governed by the specific provision of that statute, rule or regulation.

b. This chapter applies to records described in Subsection (a)

insofar as this chapter is not inconsistent with the statute, rule, or regulation.

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

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

b. identifies the record with resaonable specificity; and

c. pays the lawful fees.

8. a. The city is not required to create a record in response to a request.

b. Nothing in this ordinance requires the city to fulfill a person's records request if the request unreasonably duplicates prior records requests for that person.

9. If a persons requests copies of more than 50 pages of records, and if the records are contained in files that do not contain records that are exempt from disclosure, the city may:

a. provide the requester with the facilities for copying the requested records and require that the requester make the copies homself; or

b. allow the requester to provide his own copying facilities and personnel to make the copies at the city offices, and waive the fees for copying the records.

10. a. If the city owns an intellectual property right and offers the intellectual property right for sale, or license, the City may control by ordinance or policy the duplication, and distribution of the material based on terms the city considers to be in the public interest.

b. Nothing in this ordinance shall be construed to limit or impair the rights or protections granted to the city under federal copyright or patent law as a result of its ownership of the intellectual property right.

11. The City may not use the physical form, electronic or otherwise, in whcih a record is stored to deny, or unreasonably hinder the rights of persons to inspect and receive copies of a record under this ordinance.

3-344.5 ACCESS TO NON PUBLIC RECORDS

1. Upon request the city shall disclose a private record 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 90 days before the date the request is made; or

e. any person to whom, the record must be provided pursuant to court order.

2. a. Upon request, the city shall disclose a controlled record 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 90 days prior to the date the request is made and a signed acknowledgement of the terms of disclosure of controlled information as provided by Subsection b; and

(ii) any person to whom a record must be disclosed pursuant to Court Order.

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 the record.

3. If there is more than one subject of a private or controlled record, the portion of the record that pertains to another subject shall be segregated from the portion that the requester is entitled to inspect.

4. Upon request the city shall disclose a protected record to:

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

b. any other individual who;

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

(ii) submits a notorized release from their legal representatives dated no more than 90 days prior to the date the request is made; or

c. any person to whom a record must be provided pursuant to a court order.

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

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

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

a. the record deals with a matter in controversy over which the court has jurisdiction.

b. the court has considered he merits of the request for access to the record; and

c. the court has considered and, where appropriate, limited the requester's use and further disclosure of the record in order to protect privacy interests in the case of privacy or controlled records, business confidentiality interests in the case of records protected under Subsections 63-2-304(1) and (2), and privacy interests or the public interest in the case of other protected records;

d. to the extent the record is properly classified private, controlled, or protected, the interests favoring access, considering limitations thereon, outweight the interests favoring restriction of access; and

e. where access is restricted by a rule, or regulation referred to in Subsection 4.3(b), the court has authority independent of this ordinance to order disclosure.

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

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

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

(iii) requires the researcher to assure the integrity, con-

fidentiality, and security of the records and requires the removal or destruction of the individual identifiers associated with the records as soon as the purpose of the research project has been accomplished;

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

(v) secures from the researcher a written statement of his understanding of and agreement to the conditions of this Subsection and his understanding that violation of the terms of this Subsection may subject him to criminal prosecution under Section 63-2-801 of the Utah Code.

b. A researcher may disclose a record in individually identifiable form if the record is disclosed for the purpose of auditing or evaluating the research program and no subsequent use or disclosure of the record in individually identifiable form will be made by the auditor or eva;iatpr exce[t as [rpvo

valuator except as provided by this section.

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

9. a. Under Subsections 4.5(b) and Section 16.4 the city may disclose records that are private under Section 10, or protected under Section 12 to persons other than those specified in this section.

b. Under Section 16 the City Council may require the disclosure of records that are private under Section 10, controlled under Section 11, or protected under Section 12 to persons other than thoses specified in this section.

c. Under Subsecrtion 63-2-404(8) of the Utah Code the court may require the disclosure of records that are private under section 10, controlled under Section 11, or protected under Section 13 to persons other than those specified in this section.

3-344.6 **FEES**

1. The city may charge a reasonalbe 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. The fees may be set by Resolution. The initial fee, until changed by Resolution, is as set forth in Exhibit "A" hereto.

a. A city may fulfill a record request without charge when it determines that:

(i) releasing the record primarily benefits the public rather than a person;

(ii) the individual requesting the record is the subject of the record; or

(iii) the requester's legal rights are directly implicated by the information in the record, and the requester is impecunious.

b. A city may not charge a fee for:

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

(ii) inspecting a record.

3-433.7 PROCEDURES 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 if available, and a description of the records requested that identifies the record with reasonable specificity.

2. As soon as reasonably possible, but no later than ten business days after receiving a written request, or five business days after receiving a written request if the requester demonstrates that expedited response to the record request benefits the public rather than the person,1 the city shall respond to the request by:

(i) approving the request and providing the record;

(ii) denying the request;

(iii) notifying the requester that it does not maintain the record and providing, if known, the name and address of where the record can be found; or

(iv) notifying the requester that because of one of the extraordinary circumstances listed in, Subsection 4, it, cannot immediately approve or deny the request. The notice shall describe the circumstances relied upon and specify the earliest time and date when the records will be available.

3. Any person who requests a record to obtain information for a story or report for publication or broadcast to the general public is persumed to be acting to benefit the public rather than a person.

4. The following circumstances constitute "extraordinary cir-

cumstances" that allow the city to delay approval or denial by an additional period of time as specified in Subsection 7.5 if the city determines that due to the extraordinary circumstances it cannot respond within the time limits provided in Subsection 7.2:

a. another governmental entity is using the record, in which case the city shall promptly request that the governmental entity currently in possession return the record;

b. another governmental entity is using the record as part of an audit and returning the record before the completion of the audit would impair the conduct of the audit;

c. the request is for a voluminous quantity of records;

d. the city is currently processing a large number of records requests;

e. the request requires the city to review a large number of records to locate the records requested;

f. the decision to release a record involves legal issues that require the city to seek legal counsel for the analysis of statutes, rules, ordinances, regulations, or case law;

g. segregating information that the requester is entitled to inspect from information that the requester is not entitled to inspect requires extensive editing; or

h. segregating information that the requester is entitled to inspect from information that the requester is not entitled to inspect tequires computer programming.

5. If one of the extraordinary circumstances listed in Subsection 4. precludes approval or denial within the time specified in Subsection 2., the following time limits apply to the extraordinary circumstances:

a. for claims under Subsection 4.a., the governmental entity currently in possession of the record shall return the record to the originating entity within five business days of the request for the return unless returning the record would impair the holder's work.

b. for claims under Subsection 4.b., the originating city shall notify the requester when the record is available for inspection and copying;

c. for claims under Subsection 7.4.c., 7.4.d., and 7.4.e., the city shall:

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

(ii) provide the requester with an estimate of the amount of time it will take to finish the work required to respond to the request; and

(iii) complete the work and disclose those records that requester is entitled to inspect as soon as reasonably possible;

d. for delays under Subsection 7.4.f., the city shall either approve or deny the request within five business days after the response time specified for the original request has expired;

e. for delays under Subsection 7.4.g., the city shall fulfill the request within 15 business days from the date of the original request; or

f. for delays under Subsection 7.4.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.

3-344.8 DENIALS

1. If the city denies the request in whole or part, it shall provide a notice of denial to the requester either in person or by sending the notice to 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 or records to which access is restricted prusuant to court rule, another state statute, federal statute, or federal regulation, including records for which access is governed or restricted as a condition of participation in a state or federal program or for receiving state or federal funds.

b. citations to the provisions of this ordinance, another state statute, federal statute, court rule or roder 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. statement that the requester has the right to appeal the denial to the city council; 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 for an appeal has expired or the end of the appeals process, including judicial appeal.

3-344.9 RECORDS THAT MUST BE DISCLOSED

1. The following records are public.

a. laws and ordinances;

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

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

d. final interpretation of statutes or rules by the city unless classified as protected as provided in Subsections 12 (15), (16) and (17).

e. information contained in or compiled from a transcript, or report of the open portion of a meeting of the city including the records of all votes of each member of the city council.

f. judicial records unless a court orders the records to be restricted under the rules of civil or criminal procedure or unless the records are private under this ordinance;

g. records filed with or maintained by county recorders, clerks, treasurers, surveyors, zoning commissions the Division of State Lands and Forestry, the Division of Oil, Gas and Mining, the Division of Water Rights, or other governmental entities that give public notice of:

(i) titles or encumbrances to real property;

(ii) restrictions on the use of real property;

(iii) the capacity of persons to take or convey title to real property; or

(iv) tax status for real and personal property;

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

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

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

k. summary data.

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

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

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

c. 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;

d. contracts entered into by the city;

e. any account, voucher, or contract that deals with the receipt or expenditure of funds by the city;

f. records relating to governmental assistance or incentives publicly disclosed, contracted for, or given by the city, encouraging a person to expand or relocate a business in Utah, except as provided in Subsection 63-2-304(34) of the Utah Code.

g. chronological logs and initial contact reports;

h. correspondence by and with the city in whcih the city determines or states an opinion upon the rights of the state, a political subdivision, the public, or any person;

i. empirical data contained in drafts if:

(i) the empirical data is not reasonably available to, the requester elsewhere in similar form; and

(ii) the city is given a reasonable opportunity to correct any errors or make nonsubstantive changes before release;

j. drafts that are circulated to anyone other than the city, state or anyone other than a federal agency if the city, state or federal agency are jointly responsible for implementation of a program or project that has been legislatively approved; and

k. drafts that have never been finalized but were relied upon by the city in carrying out action or policy;

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

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

n. search warrants after execution and filing of the return, except that a court, for good cause, may order restricted access to search warrants prior to trial;

o. records that would disclose information relating to formal charges or disciplinary actions against a past or present city employee if:

(i) the disciplinary action has been completed and all time periods for administrative appeal hqave expired; and

(ii) the formal charges were sustained;

p. records maintained by the Division of State Lands and Forestry or the Division of Oil, Gas and Mining that evidence mineral production on government lands;

g. final audit reports;

r. occupational and professional licenses;

s. business licenses; and

t. a notice of violation, a notice of agency action under Section 63--46b-3 of the Utah Code, or similar records used to initiate proceedings for discipline or sanctions against persons regulated by the city, but not including records that initiate employee discipline.

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

3-344-10 PRIVATE RECORDS

1. The following records are private:

a. records concerning an individual's eligibility for unemploy-

ment insurance benefits, social services, welfare benefits, or the determination of benefit levels;

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

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

d. records received or generated in a Senate or House ethics committee concerning any alleged violationof the rules or legislative ethics if the ethics committee meeting was closed to the public;

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

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

a. records concerning a current or former employee of, or applicant for employment with the city, including performance evaluations and personal status information such as race, religion, or disabilities, but not including records that are public under Subsections 9.(b)., 9.2(c) or private under Subsection 10.1 (e).

b. records describing an individual's finances, except that the following are public:

(i) records described in Subsection 9.1;

(ii) information provided to the city for the purpose of complying with a financial assurance requirement; or

(iii) records that must be disclosed in accordance with another statute;

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

d. other records containing data on individuals the disclosure of which constitutes a clearly unwarranted invasionof personal privacy;

e. records provided by the United States or by a governmental entity outside the state that are given with the requirement that the records by managed as private records, if the providing

entity states in wwriting that the record would not be subject to public disclosure if retained by it.

3-344.11 CONTROLLED RECORDS

A record is controlled only if:

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

2. the city reasonably believes that:

a. releasing the information in the record to the subject of the record would be detrimental to the subject's mental health or to the safety of any individual; or

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

c. the city has properly classified the record.

3-344.12 PROTECTED RECORDS

The following records are protected if properly classified by the city:

1. trade secrets as defined in Section 13-24-2 of Utah Code Annotated if the person submitting the trade secret has provided the city with the information specified in section 63-2-308 of Utah Code Annotated.

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

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

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

c. the person submitting the information has provided the city with the information specified in Section 63-2-308 of Utah Code Annotated.

3. commercial or finiancial information acquired or prepared by the 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 cause substantial financial injury to the city or state economy;

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

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

6. records that would identify real property or the appraisal or estimated value of real or personal property, including intellectual property, under consideration for public acquisition before any rights to the property are acquired unless;

a. public interest in obtaining access to the information outweighs the city's need to acquire the property on the best terms possible;

b. the information has already been disclosed to persons not employed by or under a duty of confidentiality to the entity;

c. in the case of records that would identify property, potential sellers of the property described have already learned of the city's plans to acquire the property;

d. in the case of records that would identify the apprisal or estimated value of property, the potential sellers have already learned of the city's estimated value of the property;

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

a. the public interest in access outweighs the interests in restricting access, including the city's interest in maximizing the financial benefit of the transaction; or

b. when prepared by or on behalf of the city, appraisals or estimates of the value of the subject property have already been disclosed to persons not employed by or under a duty of confidentiality to the city.

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

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

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

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

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

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

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

10. records the disclosure of which would jeopardize the security of governmental property, governmental programs, or governmental record keeping systems from damage, theft, or other appropriation or use contrary to law or public policy;

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

12. records that if disclosed, would reveal recommendations made to the Board of Pardons by an employee of or contractor for the Department of Corrections, the board of Pardons, or the Department of Human Services that are based on the employee's or contractor's supervision, diagnosis, or treatment of any person within the board's jurisdiction;

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

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

15. records prepared by or on behalf of the city safety in anticipation of litigation that are not available under the rules of discovery;

16. records disclosing an attorney's work product, including the

mental impressions or legal theories of an attorney or other representative of the city concerning litgation;

17. records of communications between the city and an attorney representing, retained or employed by the city if the communications would be privileged as provided in Section 78-24-8 of Utah Code Annotated.

18. drafts, unless otherwise classified as public;

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

20. records of investigations of loss occurrences and analyses of loss occurences.

21. records, other than personnel evaluations, that contain a personal recommendation concerning an individual if disclosure would constitute a clearly unwarranted invasion of persona privacy, or disclosure is not in the public interest.

22. records that reveal the location of historic, prehistoric, palentological, 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 provided by the United States or by a government entity outside the state that are given to the city with a requirement that they be managed as protected records if the providing entity certifies that the record would not be subject to public disclosure if retained by it;

25. transcripts, minutes, or reports of the closed portion of a meeting of a public body except as provided in Section 52-4-7 of the open and Public Meeting Act;

26. records that would reveal the contents of settlement negotiations but not including final settlements or empirical data to the extent that they are not otherwise exempt from disclosure;

27. memoranda prepared by staff and used in the decision-making process by an administrative law judge, a member of the Board of Pardons, or a member of any other body charged by law with performing a quasi-judicial function;

28. records that would reveal negotiations regarding assistance or incentives offered by or requested from the city for the purpose of encouraging a person to expand or locate a business in

Utah, but only if disclosure would result in actual economic harm to the person or place the city at a competitive disadvantage, but this section may not be used to restrict access to a record evidencing a final contract; and

29. materials to which access must be limited for purpose of securing or maintaining the city's proprietary protection of intellectual property rights including patents, copyrights, and trade secrets.

3-344.13 RECORDS CLASSIFICATION AND DESIGNATION

1. The city shall:

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

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

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

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

3. The city may redesignate a record series or reclassify a record or record series, or information within a record at any time.

3-344.14 RECORDS RETENTION

The city shall by Resolution establish a retention sechdule for each record series. The initial retention schedule shall be set for in Exhibit "B" hereto.

3-344.15 SEGREGATIONOF RECORDS

Notwithstanding any other provision in this ordinance, if the city receives a request for access to a record that contains both information that the requester is entitled to inspect and information that the requester is not entitled to inspect under this ordinance, and, if the information the requester is entitled to inspect is intelligible, the city:

1. shall allow access to information in the record that the requester is entitled to inspect under this ordinance; and

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

3-344.16 APPEALS

1. a. any person aggrieved by the city's access determination under this ordinance, including a person not a party to the city's proceeding, may appeal the determination to the mayor and City Council by filing a notice of appeal.

b. if the city claims extraordinary circumstances and specifies the date when the records will be available and, if the requester believes the extraordinary circumstances do not exist or that the time specified is unreasonable, the requester may appeal the city's claim of extraordinary circumstances or date for compliance within 30 days after notification of a claim of extraordinary circumstances by the city, despite the lack of a "determination" or its equivalent.

2. a. If the appeal involves a record that is the subject of a business confidentiality claim under Section 63-2-308 of the Utah Code, the city recorder shall:

(i) send notice of the requester's appeal to the business confidentiality claimant within three business days after receiving notice, except that if notice under this section must be given to more than 35 persons, it shall be given as soon as reasonably possible;

(ii) send notice of the business confidentiality claim and the schedule for the city recorder's determination to the requester within three business days after receiving notice of the requester is appeal.

b. The claimant shall have seven business days after notice is sent by the City Recorder to submit further support, for the claim of business confidentiality.

3. a. The mayor shall make a determination on any appeal within the following period of time:

(i) within five business days after the mayor's receipt of notice of appeal; or

(ii) within twelve business days after the city sends the requester's notice of appeal to a person who submitted a claim of business confidentiality.

b. If the mayor fails to make a determination within the time specified in Subsection (3)(a), the failure shall be considered the equivalent of an order denying the appeal.

c. The provisions of this section notwithstanding, the parties participating in the proceeding may, by agreement, extend the time periods specified in this section.

4. The mayor may, upon consideration and weighing of the various interests and public policies pertinent to the classification and disclosure or nondisclosure, order the disclosure of information properly classified as private under Section 10.2 or protected under Section 12 if the interests favoring access outweigh the interest favoring restriction of access.

5. The city shall send written notice of the determination of the mayor to all participants. If the mayor affirms the denial in whole or in part, the denial shall include a statement that the requester has the right to appeal the denial to the City Council, and the time limits for filing an appeal.

6. The duties of the mayor under this seciton may be delegated.

7. The notice of appeal to the City Council must be filed with the City Recorder no later than 30 days after the Mayor has denied the appeal or fails to make a determination within the time specified in Subsection 16.3(a).

8. The notice of appeal shall contain the following information:

a. the petitioner's name, mailing address, and daytime telephone number; and

b. the relief sought.

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

10. No later than three days after receiving a notice of appeal, the recorder shall:

a. schedule a hearing for the city council to discuss the appeal which shall be held no sooner than 15 days and no later than 30 days from the date of the filing of the appeal;

b. At the hearing, the city council shall allow the partiest to testify, present evidence, and comment on the issues. The city council may allow other interested persons to comment on the issues.

c. No later than three business days after the hearing, the city council shall issue a signed order either granting the petition in whole or in part or upholding the determination of the city in whole or in part.

d. The order of the city shall include:

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

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

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

(iv) a brief summary of the appeal, and a notice that in order to protect its rights on appeal, the party may wish to seek advice from an attorney.

11. A person aggrieved by the city's classification or designation determination under this chapter, but who is not requesting access to the records, may appeal that determination using the procedures provided in this section. If a nonrequestor is the only appellant, the procedures provided in this section shall appl, except that the determination on the appeal shall be made within 30 days after receiving the notice of appeal.

3-344.17 JUDICAL 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.

3-344.18 CONFIDENTIAL TREATMENT OF RECORS FOR WHICH NO EXEMPTION APPLIES

1. A court may, on appeal or in a declaratory or other action, order the confidential treatment of records for which no exemption from disclosure applies if:

a. there are compelling interest favoring restriction of access to the record; and

b. the interests favoring restriction of access clearly outweighs the interests favoring access.

2. If the City requests a court to restrict access to a record under this section, the court shall require the city to pay the reasonable attorney's fees incurred by the lead party in opposing the City's request, if:

a. the court finds that no statutory or constitutional exemption from disclosure could reasonably apply to the record in question; and

b. the court denies confidential treatment under this section.

3. This section does not apply to records that are specifically required to be public under Section 9 of this ordinance or

Section 63-2-301 of the Utah Code, except as provided in Subsection 4.

4. a. Access to drafts and empirical data in drafts may be limited under this section, but the court may consider, in its evaluation of interests favoring restriction of access, only those interests that relate to the underlying information, and not to the deliberative nature of the record.

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

3-344.19 REQUEST TO AMEND A RECORD

1. a. Subject to Subsection 7, an individual may contest the accuracy or completeness of any public, or private, or protected record concerning him by requested the city to amend the record. However, this section does not affect the right of access to private or portected records.

b. The request shall contain the following information:

(i) The requester's name, mailing address, and daytime telephone number; and

(ii) a brief statement explaining why the city should amend the record.

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

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

4. If the city denies the request it shall:

a. inform the requester in writing; and

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

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

b. The city shall:

(i) file the requester's statement with the disputed record if the record is in a form such that the statement can accompany the record or make the statement accessible if the record is not in a form such that the statement can accompany the record; and

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

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

7. This section does not apply to records relating to title to real or personal property, medical records, judicial case files, or any other records that the city determines must be maintained in their original form to protect the public interest and to preserve the integrity of the record system.

3-344.20 RIGHTS OF INDIVIDUALS ON WHOM DATA IS MAINTAINED

1. a. The city shall file with the state archivist a statement explaining the purposes for which record series designated private or controlled are collected and used by that city.

b. That statement is a public record.

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

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

b. the intended uses of the information; and

c. the consequences for refusing to provide the information.

3. The city may not use private or controlled records for purposes other than those given in the statement filed with the state archivist under Subsection (1) or for purposes other than those for which another governmental entity could use the record under Section 63-2-206.

3-344.21 CRIMINAL PENALTIES

1. a. A public employee or other person who has lawful access to any private, controlled, or protected record under this chapter, and who intentionally discloses or provides a copy of a private, controlled or protected record to any person knowing that such disclosure is prohibited, is guilty of a Class B misdemeanor.

b. it is a defense to prosecution under Subsection (1)(a) that

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

c. It is a defense to prosecution under Subsection (1)(a) that the record could have lawfully been released to the recipient if it had been properly classified.

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

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

3. a. A public employee who intentionally refuses to release a record the disclosure of which the employee knows is required by law or by final unappealed order from a city, the records committee, or a court, is guilty of a class B misdemeanor.

Adopted by the City Council of Smithfield, Utah this 28 day of April, 1993.

/s/ J. Kenneth Webb
Mayor

ATTEST:

/s/ Mary Ann Barkdull
City Recorder

3-344.22. SCHEDULE A - FEES.

COPIES PER PAGE: $.25 per page up to and including 25 pages

$.50 per page above 25 pages.

CERTIFIED COPIES PER PAGE:

COMPILATION TIME PER HOUR: $10.00 per hour if more than 15 minutes is required.
$5.00 per police reports.

3-344.23. SCHEDULE B - RETENTION SCHEDULE

The retention schedule of this municipality is the schedule promulgated by the Utah Division of Archives and Records Services for local governments with the following amendments:

ORDINANCE No. 92-5

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

SEC. 1. SHORT TITLE

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

SEC. 2. PURPOSE AND INTENT

1. In enacting this act the city recognizes two fundamental constitutional rights:

a. the right of privacy in relation to personal data gathered by the city; and

b. the public's right of access to information concerning the conduct of the public's business.

2. It is the intent of the city to:

a. establish fair information practices to prevent abuse of personal information by the city while protecting the public's right of easy and reasonable access to unrestricted public records; and

b. provide guidelines of openness to government information and privacy of personal information to consistent with nationwide standards.

c. Establish and maintain an active, continuing program for the economical and efficient management of the city's records as provided in this Ordinance.

SEC. 3. DEFINITIONS

As used in this Ordinance:

1. "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 of information within a record series as public, private, confidential, or protected.

3. 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, compliation, and other manipulated forms of the original data procuced by use of the progam; 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. "Confidential record" means a record containing date on individuals that is classified confidential as provided by Section 11.

5. 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, commission, vacation pay, severance pay, bonuses, and any board, rent, housing, lodging, payments in kind, and any similar benefit received fropm 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, confidential, or protected as provided in Sections 10, 11, and 12 of this Ordinance.

14. 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) proprietary 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.

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

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

18. "Summary data" means statistical records and compliations that contain data derived from private, confidential, or protected information but that do not disclose private, confidential, or protected information.

SEC. 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 appropriately classified private, confidential, 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.

SEC. 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 notorized 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 confidential to:

(i) a physician, psychologist, or certified social worker upon submission of a notorized 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 confidential 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 a power of attorney from the subject of the record; or

(ii) submits a notorized release from the subject if 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, confidential, or portected 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, confidential, 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.

SEC. 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 set forth in Exhibit "A" hereto.

SEC. 7. PROCEDURES 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, confidential, or protected information requires extensive editing; or

h. separating public information from private, confidential, or protected information requires computer programing.

6. If a city claims that one of the extraordinary circumstances listed on 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.

SEC, 8.

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, confidential, 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, confidential, 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.

SEC, 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 confidential;

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 out weighs 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 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 publically announced its 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 but were relied upon by the city in carrying out action or policy.

SEC. 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 individuals' 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 individual 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 or should to 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 the public interest;

10. recores 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.

SEC. 11. RECORDS THAT MAY BE CLASSIFIED AS CONFIDENTIAL

The city may classify a record a confidential 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.

SEC. 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 submitted 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 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 jeoparidze 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 audit 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 analyses 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, palentological, or biological resources that if known would jeoparidze 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 evaluation, 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.

SEC. 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 is public, private, confidential, 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 is not required to reclassify any record or record series created before April 1, 1992., until:

a. information is added to the record series; or

b. a person requests access to the record or to a record within the record series.

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

SEC. 14. RECORDS RETENTION

The city shall by Resolution establish a retention schedule for a record series. The intital retention schedule shall be as set forth in Exhibit "B" hereto.

SEC. 15. SEPARATION OF RECORDS

Notwithstanding any other provision in this Ordinance, if the city receives a request for access to a record in a reocrd series that is classified as private, confidential, 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.

SEC. 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 roiginal 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. The city council may allow other interested persons to comment on the issues.

c. No later than three business days after the hearing, the city council shall issue a signed order either granting the petition in whole or in part or upholding the determination of the city in whole or in part.

d. The order of the city shall include:

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

(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, confidential, 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.

SEC. 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.

Adopted by the City Council of Smithfield, Utah, this 4 day of March, 1992.

J. Kenneth Allen
Mayor

ATTEST:

Mary Ann Parkinson
Recorder

Councilmembers vote:

Posting Date: March 16, 1992