

**DRAFT**

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

**ORDINANCE 2006- 01**

**APPROVED**

**Section 1. Short Title**

The ordinance is known as the "Spring City Government Records Access and Management Act."

**Section 2. Purpose and Intent**

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

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

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

2. The City also recognizes a public policy interest in allowing the city to restrict access to certain records, as specified in this ordinance, for the public good.

3. 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. specify conditions which the public interest in allowing restrictions on access to records may outweigh the public's interest in access; and

c. prevent abuse of confidentiality by the city by permitting confidential treatment of records; and

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

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

### Section 3. Definitions.

As used in this ordinance:

1. "Audit" means:

- a. a systematic examination of financial, management, program, and related records for the purpose of determining the fair presentation of financial statements, adequacy of internal controls, or compliance with laws and regulations; or
- b. a systematic examination of program procedures and operations for the purpose of determining their effectiveness, economy, efficiency, and compliance with statutes and regulations.

2. "Chronological logs" mean the regular and customary summary records 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, protected, or exempt from disclosure under **Section 4 (3)(b)**.

4. "Computer program" means:

a. 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 would be used if the manipulated forms of the original data were to be produced manually.

5. "Controlled record" means a record containing data on individuals that is controlled as provided in **Section 13**.

6. "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.

a. "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," "designate," and their derivative forms mean indicating, based on a governmental entity's familiarity with a record series or based on a governmental entity'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. "Government audit agency" means any city government entity that conducts audits.

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

(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 nature of 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; or

(vi) 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 (16)(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). 5.

11. "Individual" means a human being.
12. "Person" means any individual, nonprofit or profit corporation, partnership, sole proprietorship, or other type of business organization.
13. "Private provider" means any person who contracts with the city to provide services directly to the public.
14. "Private record" means a record containing data on individuals that is private as provided by Section 10 12.
15. "Protected record" means a record that is classified protected as provided by Section 12 15.
16. "Public record" means a record that is not private, controlled, or protected and that is not exempt from disclosure as provided in sections 10, 11, and 12 12, 13, 14, and 15, of this ordinance.
17. (a) "Record" means all books, letters, documents, papers, maps, plans, photographs, films, cards, tapes, recordings, electronic data, or other documentary materials regardless of physical form or characteristics:
  - (i) which are prepared, owned, received, or retained by a governmental entity or political subdivision; and
  - (ii) where all of the information in the original is reproducible by photocopy or other mechanical or electronic means.
- (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 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 a governmental entity or political subdivision;

(iv) proprietary software;

(v) junk mail or commercial publications received by a governmental entity or an official or employee of a governmental entity;

(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;

(viii) computer programs as defined in **Subsection (5)** that are developed or purchased by or for any governmental entity for its own use; or

(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 and Parole, or a member of any other body charged by law with performing a quasi-judicial function.

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

19. **"Records committee" means the city council.**

20. "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.

21. **"Schedule," "scheduling," and their derivative forms mean the process of specifying the length of time each record series should be retained by the city for administrative, legal, fiscal, or historical purposes and when each record series should be transferred to the state archives or destroyed.**

22. "Summary data" means statistical records and compilations that contain data derived from private, controlled, or protected information but that do not disclose private, controlled, or protected information.

#### **Section 4. Confidentiality Agreements**

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

#### **V. Records of Security**

1. The records of the city regarding security measures designed for the protection of persons or property, public or private, are not subject to this chapter. These records include:

- (1) security plans;
- (2) security codes and combinations, and passwords;
- (3) passes and keys;
- (4) security procedures; and
- (5) building and public works designs, to the extent that the records or information relate to the ongoing security measures of the city.

#### **Section 5. 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 Sections 6 7 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 private, controlled, or protected as allowed by Sections 10, 11, and 12 12, 13, 14, and 15 of this ordinance; 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 ~~Section 10, 11, or 12~~ 12, 13, 14 or 15, may be 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), Section 5.6.~~

(b) The city may disclose records that are private under ~~Subsection 10.2~~ 12 or protected under ~~Section 12.15~~ to persons other than those specified in ~~Section 5.6~~ 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 outweighs the interest favoring restriction of access.

6. (a) The disclosure of records to which access is 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 provisions of that statute, rule, or regulation.

(b) This ~~chapter ordinance~~ applies to records described in ~~Subsection (a) 5.3 (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) the person identifies the record with reasonable specificity; and
- (c) the person 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 from that person.

~~(i) the city is able to do so without unreasonably interfering with the employee or designees duties and responsibilities; and~~

~~(ii) the requester agrees to pay the governmental entity for its costs incurred in providing the record in the requested.~~

9. If a person requests copies of more than 50 pages of records from the city, 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 governmental entity's offices and waive the fees for copying the records.

10. (a) If the city owns an intellectual property right and that offers the intellectual property right for sale or license 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 chapter 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 which a record is stored to deny, or unreasonably hinder the rights of persons to inspect and receive copies of a record under this chapter.

## **Section 6. 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;

(ii) submits a notarized release from the subject of the record or his legal representative dated no more 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 protected record to:

(i) a physician, psychologist, certified social worker, insurance provider or producer, or a government public health agency upon submission of a release from the subject of the record that is dated no more than 90 days prior to the date the request is made and a signed acknowledgment of the terms of disclosure of controlled information as provided by Subsection (b); and

(ii) any person to whom the record must be disclosed pursuant to court order.

(b) A person who receives a record from the city in accordance with ~~Subsection 5.2a. 6~~ (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 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 notarized release from all persons, governmental entities, or political subdivisions whose interests were sought to be protected by the protected classification or from their legal representatives dated no more than 90 days prior to the date the request is made;

(c) any person to whom the record must be provided pursuant to a court order; or

5. The city may disclose a private, controlled, or protected record to another governmental entity, city, political subdivision, another state, the United States, or a foreign government only as provided by Utah Code annotated 63-2-206 or Section 10 of this ordinance.

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 the 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 private or controlled records, business confidentiality interests in the case of records protected under ~~Subsections 63-2-304(1) and (2)~~ 15 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, outweigh the interests favoring restriction of access; and

(e) where access is restricted by a rule, statute, or regulation referred to in ~~Subsection 63-2-201(3)(b)~~, 5 the court has authority independent of this chapter 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 use or disclosure of the information to the researcher in individually identifiable form;

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

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

(iv) prohibits the researcher from disclosing the record in individually identifiable form, except as provided in ~~Subsection (8)(b)~~, Section 6 or from using the record for purposes other than the research approved by the governmental entity; and

(v) secures from the researcher a written statement of his understanding of and agreement to the conditions of this Subsection (8) and his understanding that violation of the terms of this Subsection (8) may subject him to criminal prosecution under Section 63-2-801 26.

(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 evaluator 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) 5 and 16.4-20, the city may disclose records that are private under Section 10-12 or protected under Section 12-15 to persons other than those specified in this section.

(b) Under section 16-20, the City Council may require the disclosure of records that are private under Section 10-12 controlled under Section 11-14 or protected under Section 63-2-304-15 to persons other than those specified in this section.

(c) Under Subsection 63-2-404(8) 21, the court may require the disclosure of records that are private under Section 63-2-302, controlled under Section 63-2-303, or protected under Section 13 to persons other than those specified in this section.

## Section 7. Fees.

1. The city may charge a reasonable fee to cover the governmental entity's actual cost of duplicating a record or compiling a record in a form other than that maintained by the city. This initial fee, until changed by Resolution, is as set forth in Exhibit "A" in any regular city council meeting.

2. When the city compiles a record in a form other than that normally maintained by the city, the actual costs under this section may include the following:

(a) the cost of staff time for summarizing, compiling, or tailoring the record either into an organization or media to meet the person's request;

(b) the cost of staff time for search, retrieval, and other direct administrative costs for complying with a request. The hourly charge may not exceed the salary of the lowest paid employee

who, in the discretion of the custodian of records, has the necessary skill and training to perform the request; provided, however, that no charge may be made for the first quarter hour of staff time; and

(c) in the case of fees for a record that is the result of computer output other than word processing, the actual incremental cost of providing the electronic services and products together with a reasonable portion of the costs associated with formatting or interfacing the information for particular users, and the administrative costs as set forth in Subsections (2) (a) and (b).

3. Fees shall be established as follows:

(a) Governmental entities with fees established by the city council shall establish the fees defined in Subsection (2), or other actual costs associated with this section through the budget process.

(b) The city shall establish fees by resolution or written formal policy adopted by city council.

4. The city may fulfill a record request without charge and is encouraged to do so when it determines that:

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

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

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

5. The city may not charge a fee for:

(a) reviewing a record to determine whether it is subject to disclosure, except as permitted by Subsection (2) (b); or

(b) inspecting a record.

6. (a) A person who believes that there has been an unreasonable denial of a fee waiver under Subsection (4) may appeal the denial in the same manner as a person appeals when inspection of a public record is denied under Section 9.

(b) The adjudicative body hearing the appeal has the same authority when a fee waiver or reduction is denied as it has when the inspection of a public record is denied.

7. (a) All fees received under this section by the city shall be retained by the governmental entity as a dedicated credit.

(b) Those funds shall be used to recover the actual cost and expenses incurred by the city in providing the requested record or record series.

8. The city may require payment of past fees and future estimated fees before beginning to process a request if fees are expected to exceed \$50, or if the requester has not paid fees from previous requests. Any prepaid amount in excess of fees due shall be returned to the requester.

9. This section does not alter, repeal, or reduce fees established by other ordinances or resolutions passed by the city council.

### **Section Eight. Procedures for Access**

1. A person making a request for a record shall furnish the governmental entity 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. The city shall establish within this ordinance a method for specifying where and to whom requests for access shall be directed.

(a) All requests for information from the city shall be in written form at Spring City Hall

(b) the person or persons responsible for the reply to the request shall be within the specific department with which the employee is specified as being within; or

(c) the mayor or city council.

3. (a) 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, 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