

DRAFT

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

(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 date when the records will be available.

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

5. The following circumstances constitute "extraordinary circumstances" that allow a governmental entity to delay approval or denial by an additional period of time as specified in ~~Subsection 7.5 8~~ if the city determines that due to the extraordinary circumstances it cannot respond within the time limits provided in ~~Subsection 7.2 8~~:

(a) another governmental entity is using the record, in which case the originating governmental entity 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 governmental entity 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 governmental entity 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 requires computer programming.

6. If one of the extraordinary circumstances listed in ~~Subsection (4)-5~~ precludes approval or denial within the time specified in ~~Subsection (3) 3~~ the following time limits apply to the extraordinary circumstances:

(a) for claims under ~~Subsection (4)(a), 5~~ 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), 5~~ the originating governmental entity shall notify the requester when the record is available for inspection and copying;

(c) for claims under ~~Subsections 7.4.C., 7.4.D. and 7.4.e, 8~~ 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 the requester is entitled to inspect as soon as reasonably possible;

(d) for claims under ~~Subsection 7.4.f, 8~~, 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 claims under ~~Subsection 7.4.g, 8~~, the city shall fulfill the request within 15 business days from the date of the original request; or

(f) for claims under ~~Subsection 7.4.h, 8~~, the city shall complete its programming and disclose the requested records as soon as reasonably possible.

7. (a) If a request for access is submitted to the office of a governmental entity other than that specified by rule in accordance with Subsection (2), the office shall promptly forward the request to the appropriate office.

(b) If the request is forwarded promptly, the time limit for response begins when the record is received by the office specified by rule.

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

Section 9. 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 the requester's address.
2. The notice of denial shall contain the following information:
 - (a) a description of the record or portions of the record to which access was denied, provided that the description does not disclose private, controlled, or protected information or 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.
 - (b) citations to the provisions of this ordinance, court rule or order, another state statute, federal statute, or federal regulation that exempt the record or portions of the record from disclosure, provided that the citations do not disclose private, controlled, or protected information or information exempt from disclosure under section 4.5;
 - (c) a 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.

Section 10. Sharing Records

1. The city may provide a record that is private, controlled, or protected to another governmental entity, a government-managed corporation, a political subdivision, the federal government, or another state if the requesting entity:
 - (a) serves as a repository or archives for purposes of historical preservation, administrative maintenance, or destruction;
 - (b) enforces, litigates, or investigates civil, criminal, or administrative law, and the record is necessary to a proceeding or investigation;

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

(d) is one that collects information for persistence, probationary, or parole purposes.

2. The city may provide a private or controlled record or record series to another governmental entity, a political subdivision, a government-managed corporation, the federal government, or another state if the requesting entity provides written assurance:

(a) that the record or record series is necessary to the performance of the governmental entity's duties and functions;

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

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

3. The city may provide a record or record series that is protected under section 15 to another governmental entity, a political subdivision, a government-managed corporation, the federal government, or another state if:

(a) the record is necessary to the performance of the requesting entity's duties and functions; or

(b) the record will be used for a purpose similar to the purpose for which the information in the record or record series was collected or obtained.

4. (a) The city shall provide a private, controlled, or protected record to another governmental entity, a political subdivision, a government-managed corporation, the federal government, or another state if the requesting entity:

(i) is entitled by law to inspect the record;

(ii) is required to inspect the record as a condition of participating in a state or federal program or for receiving state or federal funds; or

(iii) is an entity described in Subsection (1) (a), (b), (c), or (d).

(b) Subsection (4) (a) (iii) applies only if the record is a record described in Section 15.

5. Before disclosing a record or record series under this section to another governmental entity, another state, the United States, or a foreign government, the originating governmental entity shall:

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

(b) if the recipient is not a governmental entity to which this chapter applies, obtain the recipient's written agreement which may be by mechanical or electronic transmission that it will abide by those restrictions on access unless a statute, federal regulation, or interstate agreement otherwise governs the sharing of the record or record series.

6. The city may disclose a record to another state, the United States, or a foreign government for the reasons listed in section 10 without complying with the procedures of section 10 if disclosure is authorized by executive agreement, treaty, federal statute, compact, federal regulation, or state statute.

7. (a) Subject to section 10, a governmental entity receiving a record under this section is subject to the same restrictions on disclosure of the record as the originating entity.

(b) The classification of a record already held by a governmental entity and the applicable restrictions on disclosure of that record are not affected by the governmental entity's receipt under this section of a record with a different classification that contains information that is also included in the previously held record.

8. Notwithstanding any other provision of this section, if a more specific court rule or order, state statute, federal statute, or federal regulation prohibits or requires sharing information, that rule, order, statute, or federal regulation controls.

9. The following records may not be shared under this section:

(a) records of publicly funded libraries.

10. Records that may evidence or relate to a violation of law may be disclosed to a government prosecutor, peace officer, or auditor.

Section 11. Records that must be Disclosed

1. The following records are public except to the extent they contain information expressly permitted to be treated confidentially under the provisions of Section 4:

(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 qualifications of the city's former and present employees and officers excluding undercover law enforcement personnel; 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 a governmental entity in an administrative, adjudicative, or judicial proceeding except that if the proceedings were properly closed to the public, the opinion and order may be withheld to the extent that they contain information that is private, controlled, or protected;

(d) final interpretations of statutes or rules by a governmental entity unless classified as protected as provided in Subsections 12 and 13.

(e) information contained in or compiled from a transcript, minutes, or report of the open portions of a meeting of the city as provided by Title 52, Chapter 4, Open and Public Meetings, Utah Code Annotated including the records of all votes of each member of the governmental entity;

(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 chapter;

(g) records or parts of records filed with or maintained by county recorders, clerks, treasurers, surveyors, zoning commissions, the Division of Forestry, Fire and State Lands, the School and Institutional Trust Lands Administration, 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 chapter if the individual who is the subject of the record has given the governmental entity written permission to make the records available to the public;

(j) documentation of the compensation that a governmental entity pays to a contractor or private provider;

(k) summary data; and

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 5 or Sections 12, 13, 14, or 15:~~

(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 government assistance or incentives publicly disclosed, contracted for, or given by a governmental entity, encouraging a person to expand or relocate a business in Utah, except as provided in ~~Subsection 63-2-304 (35)~~ Section 15.

(g) chronological logs and initial contact reports;

(h) correspondence by and with a governmental entity in which the governmental entity 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 governmental entity is given a reasonable opportunity to correct any errors or make non-substantive changes before release;
- (j) drafts that are circulated to anyone other than the city, state or to 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 cause, 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 governmental entity employee if:
 - (i) the disciplinary action has been completed and all time periods for administrative appeal have expired; and
 - (ii) the charges on which the disciplinary action was based were sustained;
- (p) records maintained by the Division of Forestry, Fire and State Lands, the School and Institutional Trust Lands Administration, or the Division of Oil, Gas and Mining that evidence mineral production on government lands;
- (q) 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, Utah Code Annotated, or similar records used to initiate proceedings for discipline or sanctions against persons regulated by a governmental entity, 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 access to records.

Section 12. Private records.

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

(a) records concerning an individual's eligibility for unemployment 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 for a Senate or House Ethics Committee concerning any alleged violation of the rules on legislative ethics, prior to the meeting, and after the meeting, if the ethics committee meeting was closed to the public;

(e) records concerning a current or former employee of Spring City, 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.

(f) records received or generated for a Senate confirmation committee concerning character, professional competence, or physical or mental health of an individual;

(i) if prior to the meeting, the mayor of the city determines release of the records:

(A) reasonably could be expected to interfere with the investigation undertaken by the city council; or

(B) would create a danger of depriving a person of a right to a fair proceeding or impartial hearing; and

(ii) after the meeting, if the meeting was closed to the public;

(f) employment 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;

(g) records or parts of records under Section 5 that a current or former employee identifies as private according to the requirements of that section;

(h) that part of a record indicating a person's Social Security number or federal employer identification number if provided under Section 31A-23a-104, 31A-26-202, 58-1-301, 61-1-4, or 61-2-6, Utah Code Annotated;

(i) that part of a voter registration record identifying a voter's driver license or identification card number, Social Security number, or last four digits of the Social Security number;

(j) a record that:

(i) contains information about an individual;

(ii) is voluntarily provided by the individual; and

(iii) goes into an electronic database that:

(A) is designated by and administered under the authority of the Mayor; and

(B) acts as a repository of information about the individual that can be electronically retrieved and used to facilitate the individual's online interaction with a state agency;

(k) information provided to the Insurance provider of the city under Subsection 31A-23a-115(2) (a) Utah Code Annotated; and

(l) information obtained through a criminal background check under Title 11, Chapter 40, Utah Code Annotated, Criminal Background Checks by Political Subdivisions Operating Water Systems.

(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 **Subsection 11**, or private under **Subsection 12**;

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

(i) records described in **Subsection 11**;

(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 **the city**;

(d) other records containing data on individuals the disclosure of which constitutes a clearly unwarranted invasion of personal privacy; and

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

Section 13: Private Information

1. As used in this section:

(a) "At-risk government employee" means a current or former:

(i) peace officer as specified in **Section 53-13-102, Utah Code Annotated**;

(ii) justice court judge;

(iii) a law enforcement official as defined in **Section 53-5-711, Utah Code Annotated**.

(b) "Family member" means the spouse, child, sibling, parent, or grandparent of an at-risk government employee who is living with the employee.

2. (a) Pursuant to Section 12 and 13 an at-risk government employee may file a written application that:

(i) gives notice of the employee's status to each agency of a government entity holding a record or a part of a record that would disclose the employee's or the employee's family member's home address, home telephone number, Social Security number, insurance coverage, marital status, or payroll deductions; and

(ii) requests that the government agency classify those records or parts of records private.

(b) An at-risk government employee desiring to file an application under this section may request assistance from the city to identify the individual records containing the private information specified in Subsection (2)(a)(i) of this section.

(c) The city shall develop a form that:

(i) requires the at-risk government employee to provide evidence of qualifying employment;

(ii) requires the at-risk government employee to designate each specific record or part of a record containing the employee's home address, home telephone number, Social Security number, insurance coverage, marital status, or payroll deductions that the applicant desires to be classified as private; and

(iii) affirmatively requests that the CITY holding those records classify them as private.

(d) providing the at-risk government employee requesting the classification with a disclaimer informing the employee that the employee may not receive official announcements affecting the employee's property, including notices about proposed annexations, incorporations, or zoning modifications.

3. The city holding records of an at-risk government employee classified as private under this section may release the record or part of the record if:

(a) the employee or former employee gives written consent;

(b) a court orders release of the records; or

(c) the city receives a certified death certificate for the employee or former employee.

4. (a) If the city who holds the private record receives a subpoena for the records, the city shall attempt to notify the at-risk government employee or former employee by mailing a copy of the subpoena to the employee's last-known mailing address together with a request that the employee either:

(i) authorize release of the record; or

(ii) within ten days of the date that the copy and request are mailed, deliver to the city who holds the private record a copy of a motion to quash filed with the court who issued the subpoena.

(b) The city shall comply with the subpoena if the government agency has:

(i) received permission from the at-risk government employee or former employee to comply with the subpoena;

(ii) has not received a copy of a motion to quash within ten days of the date that the copy of the subpoena was mailed; or

(iii) receives a court order requiring release of the records.

Section 14. Controlled records.

A record is controlled 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.

Section 15. Protected records.

The following records are protected if properly classified 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 governmental

entity with the information specified in Section 63-2-308 of Utah Code Annotated or Section 19 of this ordinance;

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

(a) disclosure of the information could reasonably be expected to result in unfair competitive injury to the person submitting the information or would impair the ability of the governmental entity 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 governmental entity with the information specified in Section 63-2-308 of Utah Code Annotated or Section 19 of this ordinance.

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

(4) records the disclosure of which could cause commercial injury to, or confer a competitive advantage upon a potential or actual competitor of, a commercial project entity or bidder as defined in Subsection 11-13-103 (4) of Utah Code Annotated;

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

(6) records the disclosure of which would impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract or agreement with a governmental entity, except that this Subsection (6) does not restrict the right of a person to see bids submitted to or by the city after bidding has closed;

(7) 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 described property have already learned of the City's plans to acquire the property; or

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

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

(a) the public interest in access outweighs the interests in restricting access, including the governmental entity's interest in maximizing the financial benefit of the transaction; or

(b) when prepared by or on behalf of a governmental entity, 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;

(9) 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;

- (10) records the disclosure of which would jeopardize the life or safety of an individual;
- (11) records the disclosure of which would jeopardize the security of governmental property, governmental programs, or governmental recordkeeping systems from damage, theft, or other appropriation or use contrary to law or public policy;
- (12) 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;
- (13) records that, if disclosed, would reveal recommendations made to the Board of Pardons and Parole by an employee of or contractor for the Department of Corrections, the Board of Pardons and Parole, 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;
- (14) records and audit work papers that identify audit, collection, and operational procedures and methods used by the State Tax Commission, if disclosure would interfere with audits or collections;
- (15) records of a governmental audit agency relating to an ongoing or planned audit until the final audit is released;
- (16) records prepared by or on behalf of the city solely in anticipation of litigation that are not available under the rules of discovery;
- (17) records disclosing an attorney's work product, including the mental impressions or legal theories of an attorney or other representative of a governmental entity concerning litigation;
- (18) 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;
- (19) drafts, unless otherwise classified as public;
20. records concerning a governmental entity's strategy about collective bargaining or pending litigation;
21. records of investigations of loss occurrences and analyses of loss occurrences that may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the Uninsured Employers' Fund, or similar divisions in other governmental entities;

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

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

(27) records of independent state agencies if the disclosure of the records would conflict with the fiduciary obligations of the agency;

(28) records of a public institution of higher education regarding tenure evaluations, appointments, applications for admissions, retention decisions, and promotions, which could be properly discussed in a meeting closed in accordance with Title 52, Chapter 4, Open and Public Meetings, Utah Code Annotated, provided that records of the final decisions about tenure, appointments, retention, promotions, or those students admitted, may not be classified as protected under this section;

(29) records of the governor's office, including budget recommendations, legislative proposals, and policy statements, that if disclosed would reveal the governor's contemplated policies or contemplated courses of action before the governor has implemented or rejected those policies or courses of action or made them public;

(30) records of the Office of the Legislative Fiscal Analyst relating to budget analysis, revenue estimates, and fiscal notes of proposed legislation before issuance of the final recommendations in these areas;

(31) records provided by the United States or by a government entity outside the state that are given to the governmental entity 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;

(32) transcripts, minutes, or reports of the closed portion of a meeting of a public body except as provided in Section 52-4-7, Utah Code Annotated;

(33) 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;

(34) memoranda prepared by staff and used in the decision-making process by 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;

(35) records that would reveal negotiations regarding assistance or incentives offered by or requested from a governmental entity for the purpose of encouraging a person to expand or locate a business in Utah, but only if disclosure would result in actual economic harm to the person or place the governmental entity at a competitive disadvantage, but this section may not be used to restrict access to a record evidencing a final contract;

(36) materials to which access must be limited for purposes of securing or maintaining the governmental entity's proprietary protection of intellectual property rights including patents, copyrights, and trade secrets;

(37) the name of a donor or a prospective donor to the city, including a public institution of higher education, and other information concerning the donation that could reasonably be expected to reveal the identity of the donor, provided that:

(a) the donor requests anonymity in writing;

(b) any terms, conditions, restrictions, or privileges relating to the donation may not be classified protected by the city under this Subsection (37); and

(c) except for public institutions of higher education, the governmental unit to which the donation is made is primarily engaged in educational, charitable, or artistic endeavors, and has no regulatory or legislative authority over the donor, a member of his immediate family, or any entity owned or controlled by the donor or his immediate family;

(38) accident reports, except as provided in Sections 41-6-40, 41-12a-202, and 73-18-13 of Utah Code Annotated;

(39) a notification of workers' compensation insurance coverage described in Section 34A-2-205 of Utah Code Annotated.

Section 16. Records Classification and Designation

(1) If more than one provision of this ordinance could govern the classification of a record, the City shall classify the record by considering the nature of the interests intended to be protected and the specificity of the competing provisions.

(2) Nothing in S Section 14 or 15 requires The city to classify a record as private, controlled, or protected.

(3) The city shall:

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

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

(c) report the designations of its record series to the state archives.

(4) 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.

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

Section 17. Records Retention

(1) The city shall by Resolution establish a retention schedule for each record series. The initial retention schedule shall be as set forth in Exhibit "B" hereto.

Section 18. Segregation of records.

Notwithstanding any other provision in this chapter, 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 chapter, 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 as provided in Section 9 of this ordinance.

Section 19. Business confidentiality claims.

(1) (a) Any person who provides to the City a record that he believes should be protected under Section 12 or 13 shall provide with the record a written claim of business confidentiality and a concise statement of reasons supporting the claim of business confidentiality.

(b) The claimant shall be notified by the City if a record claimed to be protected under Section 12 or 13 is classified public or if the City interests under Section 5 or Section 20.

(2) Except as provided by court order, the City may not disclose records claimed to be protected under Section 15 but which it determines should be classified public until the period in which to bring an appeal expires or the end of the appeals process, including

judicial appeal. This subsection does not apply where the claimant, after notice, has waived the claim by not appealing or intervening before the records committee.

(3) Disclosure or acquisition of information under this chapter does not constitute misappropriation under Subsection 13-24-2(2) of Utah Code Annotated.

Section 20. Appeals

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

(b) If the City claims extraordinary circumstances and specifies the date when the records will be available under Subsection 5, 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 under Subsection 5.
- (2) (a) If the appeal involves a record that is the subject of a business confidentiality claim under Section 19, 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; and
 - (ii) send notice of the business confidentiality claim and the schedule for the chief administrative officer's determination to the requester within three business days after receiving notice of the requester's 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 the appeal within the following period of time:
 - (i) within five business days after the Mayor's receipt of the 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 (5)(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 12 or protected under Section 15 if the interests favoring access outweigh the interests 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 either the City Council, and the time limits for filing an appeal.

(6) The duties of the Mayor under this section 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 had denied the appeal or fails to make a determination within the time specified in Section 5.

(a) 45 days after the original request for records if;

(i) the circumstances described in Section 20 occur and

(ii) the Mayor failed to make a determination under Section 20.

(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) Except as provided in Section 7, no later than three business days after receiving a notice of appeal, the City recorder of the City shall:

(b) 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;

(i) send a copy of the notice of hearing to the petitioner; and

(ii) send a copy of the notice of appeal, supporting statement, and a notice of hearing to:

(A) each member of the City Council;

(B) the City Recorder and the Mayor of the City from which the appeal originated;

(C) any person who made a business confidentiality claim under Section 19 for a record that is the subject of the appeal; and

(D) all persons who participated in the proceedings before the City's Mayor.

(c) (i) The City Recorder may decline to schedule a hearing if the record series that is the subject of the appeal has been found by the City Council in a previous hearing involving the City to be appropriately classified as private, controlled, or protected.

(ii) (A) If the City Recorder by order of the Mayor declines to schedule a hearing, the City Council shall send a notice to the petitioner indicating that the request for hearing has been denied and the reason for the denial.

(B) The City Council shall make rules to implement this section as provided by Title 63, Chapter 46a, Utah Administrative Rulemaking Act, Utah Code Annotated.

(11) (a) A written statement of facts, reasons, and legal authority in support of the City's position must be submitted to the City Recorder not later than five business days before the hearing.

(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.

(12) (a) The City Council may review the disputed records. However, if the City Council is weighing the various interests under Subsection (11), the committee must review the disputed records. The review shall be in recorded by camera.

(b) Members of the City Council may not disclose any information or record reviewed by the City Council in camera unless the disclosure is otherwise authorized by this ordinance.

(13) (a) Discovery is prohibited, but the City Council may issue subpoenas or other orders to compel production of necessary evidence.

(b) When the subject of the City Council's subpoena disobeys or fails to comply with the subpoena, the City Council may file a motion for an order to compel obedience to the subpoena with the district court.

(c) The City Council review shall be de novo.

(d) 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.

(e) The City Council may, upon consideration and weighing of the various interests and public policies pertinent to the classification and disclosure or nondisclosure, order the disclosure of information properly classified as private, controlled, or protected if the public interest favoring access outweighs the interest favoring restriction of access.

(f) In making a determination under subsection 11.6 the records City Council'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 15, and privacy interests or the public interest in the case of other protected records.

(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 order or denied, provided that the description does not disclose private controlled, or protected information;

(iii) a statement that any part 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.

(14) If the City Council fails to issue a decision within 35 days of the filing of the notice of appeal, that failure shall be considered the equivalent of an order denying the appeal. The petitioner shall notify the records committee in writing if he considers the appeal denied.

(15) (a) The Mayor shall comply with the order of the City Council and, if records are ordered to be produced, file:

(i) a notice of compliance with the City Council upon production of the records; or

(ii) a notice of intent to appeal.

(b) (i) If the Mayor fails to file a notice of compliance or a notice of intent to appeal, the City Council may do either or both of the following:

(A) impose a civil penalty of up to \$500 for each day of continuing noncompliance; or

(B) send written notice of the City's noncompliance to the governor for executive branch entities, to the Legislative Management Committee for legislative branch entities, and to the Judicial Council for judicial branch entities.

(16) In imposing a civil penalty, the records committee shall consider the gravity and circumstances of the violation, include A person aggrieved by the city's classification or designation determination under this chapter ordinance, but who is not requesting access to the records, may appeal that determination using the procedures provided in this section. If a nonrequester is the only appellant, the procedures provided in this section shall apply, except that the determination on the appeal shall be made within 30 days after receiving the notice of appeal.

Section 21. Judicial review.

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

(a) The city council is a necessary party to the petition for judicial review.

(b) The City Council may be served with notice of the petition in accordance with the Utah Rules of Civil Procedure.

(2) (a) A requester may petition for judicial review by the district court of the City's determination as specified in Section 20.

(b) The requester shall file a petition no later than:

(i) 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;

(ii) 35 days after the original request if the city has failed to respond to the request; or

(iii) 45 days after the original request for records if:

(A) the circumstances described in Section 20 occur; and

(B) the Mayor failed to make a determination under Section 20.

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

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

(b) a copy of the City Councils order from which the appeal is taken, if the petitioner brought a prior appeal to City;

(c) the name and mailing address of the City that issued the initial determination with a copy of that determination;

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

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

(4) If the appeal is based on the denial of access to a protected record, the court shall allow the claimant of business confidentiality to provide to the court the reasons for the claim of business confidentiality.

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

(6) The district court may review the disputed records. The review shall be in camera.

(7) The court shall:

(a) make its decision de novo, but allow introduction of evidence presented to the records committee;

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

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

(8) (a) The court 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, controlled, or protected if the interest favoring access outweighs the interest favoring restriction of access.

(b) The court shall consider and, where appropriate, limit 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 Section 15, and privacy interests or the public interest in the case of other protected records.

Section 22. Confidential treatment of records 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 interests favoring restriction of access to the record; and

(b) the interests favoring restriction of access clearly outweigh 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 attorneys' 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, or ~~Section 11 in this ordinance~~, 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 interests 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.

Section 23. Disclosure to subject of records

When providing records under ~~Subsection 63-2-202(1)~~ Section 5 or when providing public records about an individual to the persons specified in ~~Subsection 63-2-202(1)~~, Section 5 the City shall, upon request, disclose the context in which the record is used.

Section 24. Requests to amend a record

~~(1) Proceedings of the city under this ordinance shall be governed by Title 63, Chapter 46b, Administrative Procedures Act of Utah Code Annotated.~~

(2) (a) Subject to Subsection (7), an individual may contest the accuracy or completeness of any public, or private, or protected record concerning him by requesting the governmental entity to amend the record. However, this section does not affect the right of access to private or protected 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.

(3) The City shall issue an order either approving or denying the request to amend, no later than 30 days after receipt of the request.

(4) 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.

(5) If the governmental entity denies the request, it shall:

(a) inform the requester in writing; and

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

(6) (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.

(7) The requester may appeal the denial of the request to amend a record pursuant ~~Section 16~~ 20 of the ordinance.

(8) 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 governmental entity determines must be maintained in their original form to protect the public interest and to preserve the integrity of the record system.

Section 25. 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 the city that are contained in this ordinance.

(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 5.

Section 26. 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 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 governmental entity, the records committee, or a court, is guilty of a class B misdemeanor.

Section 27. No liability for certain decisions of the City

(1) The City, nor any officer or employee of the City, is liable for damages resulting from the release of a record where the person or government requesting the record presented evidence of authority to obtain the record even if it is subsequently determined that the requester had no authority.

(2) The City nor any officer or employee of the City, is liable for damages arising from the negligent disclosure of records classified as private under Section 12 or 13 unless:

(a) the disclosure was of employment records maintained by City;
or

(b) the current or former City employee had previously filed the notice required by Section 16 and:

(i) The City did not take reasonable steps to preclude access or distribution of the record; or

(ii) The release of the record was otherwise willfully or grossly negligent.

(3) A mailing from the City to an individual who has filed an application under Section 12 and 13, is not a wrongful disclosure under this chapter.

Section 28. Disciplinary action.

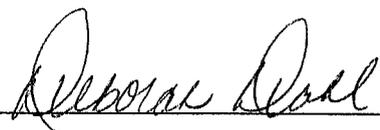
The City may take disciplinary action which may include suspension or discharge against any employee of the City who intentionally violates any provision of this ordinance.

This ordinance shall take effect on the 17 day of November, 2006. Passed in Regular Council Meeting by the motion of Councilman Boyd Mickel and Seconded by Councilman Gary Parnell. The vote is as follows:

	For	Against	Abstain
Councilman Michael Workman	X		
Councilman Boyd Mickel	X		
Councilman Thomas Allred	X		
Councilman Bryan Sorensen	X		
Councilman Gary Parnell	X		

Dated this 17th day of November, 2006.


 Mayor of Spring City

Attest: 

Recorder

Record of Proceedings:

Date	Happening
August 3, 2006	Submission to Council by City Recorder
Nov. 9, 2006	Public Hearing
Nov. 17, 2006	Passed in Council
Dec 28, 2006	Becomes law.

Exhibit "B"

Retention Schedule

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

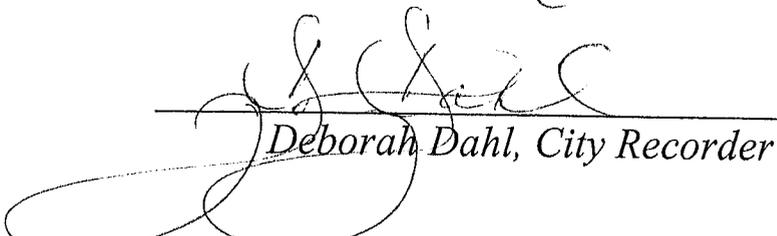
CERTIFICATE OF POSTING ORDINANCE

*I, the duly appointed and acting recorder for
The City of Spring City, hereby certify that
Notice has been given of the foregoing
Ordinance No. 2006-01
posted at three public places within the
Municipality this 18th day of November, 2006
Which public places are:*

- 1. Spring City Hall*
- 2. Spring City Post Office*
- 3. Spring City Service Station*

*Copies of the Ordinance are available to the public at Spring City
Hall, 150 East Center Street, Spring City, Utah.*

Dated this 18th day of November, 2006



Deborah Dahl, City Recorder