

COPY

CHAPTER 34

GOVERNMENT RECORDS ACCESS AND MANAGEMENT

34-1. General Purpose.

The City adopts this policy to establish guidelines for open government information recognizing the need to maintain and preserve accurate records, provide public access to public records and preserve the right of privacy of personal data collected or received by the City.

34-2. City Policy.

In adopting this policy, the City recognizes the enactment of Government Records Access and Management Act by the Utah State Legislature (Sections 63-2-101 et seq., Utah Code Annotated, 1953) and the application of that Act to City records. The purpose of this Section is to conform to Section 63-2-701 which provides that each political subdivision may adopt an ordinance or a policy relating to information practices including classification, designation, access, denials, segregation, appeals, management, retention and amendment of records. The intent of this policy is to provide modifications to the general provisions of State law, where allowed, to meet the public needs, operation, management capabilities and resources of the City.

34-3. Compliance with State Law.

In adopting this policy, the City recognizes the following sections of the Government Records Access and Management Act apply to the City and adopts by reference such provisions as part of this Section. Any inconsistency or conflict between this Section and the following referenced statutes shall be governed by the State statute.

Part 1 General Provisions

§63-2-101	Short title
§63-2-102	Legislative intent
§63-2-103	Definitions
§63-2-104	Administrative Procedures Act not applicable
§63-2-105	Confidentiality agreements

Part 2	<u>Access to Records</u>	
	§63-2-201	Right to inspect records and receive copies of
	§63-2-202	Access to private, controlled and protected documents
	§63-2-205	Denials
	§63-2-206	Sharing records
Part 3	<u>Classification</u>	
	§63-2-301	Records that must be disclosed
	§63-2-302	Private records
	§63-2-303	Controlled records
	§63-2-304	Protected records
	§63-2-305	Procedure to determine classification
	§63-2-306	Duty to evaluate records and make designations and classifications
	§63-2-307	Segregation of records
	§63-2-308	Business confidentiality claims
Part 4	[EXCLUDED]	
Part 5	[EXCLUDED]	
Part 6	<u>Accuracy of Records</u>	
	§63-2-601	Rights of individuals on whom data is maintained
	§63-2-602	Disclosure to subject of records - Context of use
Part 7	<u>Applicability to Political Subdivisions: The Judiciary and the Legislature</u>	
	§63-2-701	Political subdivisions to enact ordinances in compliance with chapter
Part 8	<u>Remedies</u>	
	§63-2-801	Criminal penalties
	§63-2-802	Injunction - Attorneys' Fees

	§63-2-803	No liability for certain decisions of a governmental entity
	§63-2-804	Disciplinary action
Part 9	<u>Archives and Records Service</u>	
	§63-2-905	Records declared property of the State -
	§63-2-907	Right to replevin
Part 10	<u>Other</u>	
	§63-30-10.6	Attorneys' fees for records request

34-4. Definitions.

As used in this Chapter, the following definitions shall be applicable.

(1) "Act" shall refer to the Government Records Access and Management Act, §§63-2-101, et seq., Utah Code Annotated, 1953, as amended.

(2) "Computer software program" means the 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, manuals, or other source material explaining how to operate the software program. "Software" does not include the original data or record which is manipulated by the software.

(3) "Controlled" records shall be those defined as controlled under the provisions of the Act.

(4) "Data" shall refer to individual entries (for example, birth date, address, etc.) in records.

(5) "Dispose" means to destroy, or render irretrievable or illegible, a record or the information contained in it by any physical, electronic, or other means, including unauthorized deletion or erasure of electronically recorded audio, visual, non-written formats, data processing, or other records.

(6) "Non-public" records shall refer to those records defined as private, controlled, or protected under the provisions of the Act.

(7) "Private" records shall refer to those records classified as private under the provisions of the Act.

(8) "Protected" records shall refer to those records classified as protected under the provisions of the Act.

(9) "Public" records shall refer to those records which have not been classified as non-public in accordance with the provisions of the Act.

(10) (A) "Record" means all books, letters, documents, papers, maps, plans, photographs, films, cards, tapes, recordings, or other documentary materials, and electronic data regardless of physical form or characteristics, prepared, owned, used, received, or retained by the City where all the information in the original is reproducible by some mechanical, electronic, photographic or other 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 a person for whom he is working;
- (ii) Materials that are legally owned by an individual in his private capacity;
- (iii) Materials to which access is limited by the laws of copyright or patent;
- (iv) Junk mail or commercial publications received by the City or by an officer or employee of the City;
- (v) Personal notes or daily calendars prepared by any City employee for personal use or the personal use of a supervisor or such notes, calendars or internal memoranda prepared for the use of an officer or agency acting in a quasi-judicial or deliberative process or

pursuant to matters discussed in a meeting closed pursuant to Utah Open Meetings Act; or

- (vi) Proprietary computer software programs as defined in subsection C. above that are developed or purchased by or for the City for its own use.

34-5. Public Right to Records.

(1) Members of the public shall have the right to see, review, examine and take copies, in any format maintained by the City, of all City governmental records defined as "public" under the provisions of this Section, upon the payment of the lawful fee and pursuant to the provisions of this Chapter and the Act.

(2) The City has no obligation to create a record or record series in response to a request from a member of the public, if the record requested is not otherwise regularly maintained or kept.

(3) When a record is temporarily held by a custodial City agency, pursuant to that custodial agency's statutory functions, such as records storage, investigation, litigation or audit, the record shall not be considered a record of the custodial agency for the purposes of this Section. The record shall be considered a record of the City and any requests for access to such records shall be directed to the City, rather than the custodial agency, pursuant to these procedures.

(4) Original documents shall not leave the custody of the City. Document inspection will occur in the conference area of the administrative office building or such other area designated by the Records Officer. Private citizens will not be allowed in the vault where original documents are maintained. The appropriate documents and/or files given to the individual will be accounted for subsequent to the individual's inspection and prior to his/her departure from the City offices.

34-6. Public, Private, Controlled and Protected Records.

(1) Public records shall be all those City records that are not private, controlled, or protected and that are not exempt from disclosure as provided in subsection 63-2-201(3)(b) of the Act. Public records shall be made available to any person. All City records are considered public unless they are (A) expressly designated, classified, or defined otherwise by the City in accordance with policies and procedures established by this Section, (B) are so designated, classified or defined by the Act, or (C) are made non-public by other applicable law.

(2) Private records shall be those City records classified as "private", as defined in the Act (§63-2-302, U.C.A., 1953, as amended) and as designated, classified, or defined in procedures established pursuant to this Section. Private records shall be made available to the following persons: The subject of the record, the parent or legal guardian of a minor who is the subject of the record, the legal guardian of an incapacitated individual who is the subject of the record, any person who has a power of attorney or a notarized release from the subject of the record or his legal representative, or any person possessed of and serving a legislative subpoena or a court order issued by a court of competent jurisdiction.

(3) Controlled records shall be those City records classified as "controlled", as defined in the Act, (§63-2-303, U.C.A., 1953, as amended) and as designated, classified, or defined in procedures established in this Section. Controlled records shall be made available to a physician, psychologist, or licensed social worker who submits a notarized release from the subject of the record or any person presenting a legislative subpoena or a court order issued by a court of competent jurisdiction.

(4) Protected records shall be those City records classified as "protected" as defined in the Act, (§63-2-304, U.C.A., 1953, as amended) and as designated, classified or defined in procedures established in this Section. Protected records shall be made available to the person who submitted the information in the record, to a person who has power of attorney or notarized release from any persons or governmental entities whose interests are protected by the classification of the record, or to any person presenting a legislative subpoena or a court order regarding the release of the information and issued by a court or competent jurisdiction.

34-7. Privacy Rights.

(1) The City recognizes and upholds the personal right of privacy retained by persons who may be the subject of governmental records.

(2) The City may, as determined appropriate by the City Manager, notify the subject of a record that a request for access to the subject's record has been made.

(3) The City may require that the requester of records provide a written release, notarized within thirty (30) days before the request, from the subject of the records in question before access to such records is provided.

34-8. Designation, Classification and Retention.

All City records and records series, of any format, shall be designated, classified and scheduled for retention according to the provisions of the Act and this Section. Any records or record series generated in the future shall also be so designated, classified and scheduled for retention. Records designation classification and scheduling for retention shall be conducted under the supervision of the City Manager.

34-9. Procedures for Records Request.

(1) Under circumstances in which the City is not able to respond immediately to a records request, the requester shall fill out and present the City a written request on forms provided by the City. The date and time of the request shall be noted on the written request form and all time forms provided under this Section shall commence from that time and date. Requesters of non-public information shall adequately identify themselves and their status prior to receiving access to non-public records.

(2) The City may respond to a request for a record by approving the request and providing the records, denying the request, or such other appropriate response as may be established by policies and procedures.

(3)

(A) In most circumstances and excepting those eventualities set out below, the City shall respond to a written request for a public

record within ten business days after that request.

(B) Extraordinary circumstances shall justify the City's failure to respond to a written request for a public record within ten business days and shall extend the time for response thereto to that time reasonably necessary to respond to the request, as determined by the City Manager. Extraordinary circumstances shall include, but not be limited to, the following:

(i) Some other governmental entity is currently and actively using the record requested;

(ii) The record requested is for either a voluminous quantity of records or requires the City to review a large number of records or perform extensive research to locate the materials requested;

(iii) The City is currently processing either a large number of records requests or is subject to extraordinary work loads in the processing of other work;

(iv) The request involves an analysis of legal issues to determine the proper response to the request;

(v) The request involves extensive editing to separate public data in a record from that which is not public; or

(vi) Providing the information request requires computer programming or other format manipulation.

(c) When a record request cannot be responded to within ten (10) days, the City Records Officer shall give the requester an estimate of the time required to respond to the request.

(4) The failure or inability of the City to respond to a request for a record within the time frames set out herein, or the City's denial of such a request, shall give the

requester the right to appeal as provided in paragraph 11 of this Section.

34-10. Fees.

(1) Applicable fees for the processing of information requests under this Section shall generally be set at actual cost or as otherwise established by this Section. The City will charge the following fees for requests relating to the Government Records Access and Management Act.

- A. Reviewing a record to determine whether it is subject to disclosure.....No charge
- B. Inspection of record by requesting person.....No charge
- C. Copy Fees.....25 cents per page
- D. Computer Disk.....Actual cost
(including overhead and time of City staff in preparation of information request)
- E. Other Forms.....Actual cost
- F. Miscellaneous Fees.....Actual cost

34-11. Appeal Process.

(1) Any person aggrieved by the City's denial or claim of extraordinary circumstances may appeal the determination within thirty (30) days after notice of the City's action to the City Manager by filing a written notice of appeal. The notice of appeal shall contain the petitioner's name, address, phone number, relief sought and if petitioner desires, a short statement of the facts, reasons and legal authority for the appeal.

(2) If the appeal involves a record that is subject to business confidentiality or affects the privacy rights of an individual, the City Manager shall send a notice of the requester's appeal to the affected person.

(3) The City Manager shall make a determination on the appeal within thirty (30) days after receipt of the appeal. During this 30 day period the City Manager may schedule an informal hearing or request any additional

information deemed necessary to make a determination. The City Manager shall send written notice to all participants providing the reasons for the City Manager's determination.

(4) In addition, if the City Manager affirms the denial in whole or in part, the denial shall include a statement that the requester has a right to appeal the denial to the West Point City Council within thirty days.

(5) The person may file a written notice of appeal to the West Point City Council to be heard at the next scheduled meeting of the Council. If there is no meeting scheduled in the next thirty days the City Council shall schedule a special meeting for the purpose of hearing the appeal. The final decision of the City Council shall be by majority vote of a quorum of the Council. The Council shall prepare a written decision outlining its final determination and reasons for the final determination.

(6) If the City Council affirms the denial, in whole or in part, the person may petition for judicial review in City Court as provided in §63-2-404, U.C.A., 1953.

34-12. Reasonable Accommodation.

Reasonable accommodations regarding access to governmental records shall be provided to persons with disabilities in accordance with the Americans with Disabilities Act upon request of the applicant.

34-13. Records Amendments.

Government records held by the City may be amended or corrected as needed. Requests for amendments, corrections, or other changes shall be made in writing to the City having custody of the records and setting forth, with specificity, the amendment or correction requested. When an amendment or correction of a government record is made, both the original record and the amended or corrected record shall be retained, unless provided otherwise by the Act or other State or Federal law.

34-14. Penalties.

(1) City employees who knowingly refuse to permit access to records in accordance with the Act and this Section, who knowingly permit access to non-public records, or who knowingly, without authorization or legal authority, dispose of, alter, or remove records or allow other persons to do so

in violation of the provisions of the Act, this Section or other law or regulation may be subject to criminal prosecution in accordance with the Act and disciplinary action, including termination of employment.

(2) In accordance with the Act, neither the City nor any of its officers or employees shall be liable for damages resulting from the release of a record where the requester presented evidence of authority to obtain the record, even if it may be subsequently determined that the requester had no such authority.

34-15. Records Officer.

(1) Personnel Records.

The City Manager is designated as the City Record's Officer with respect to personnel records and the City Manager shall oversee and coordinate records access, management and archives activities and shall make annual reports of personnel records activities to the Mayor and City Council.

(2) Other Records.

The City Recorder is designated as the City Record's Officer with respect to all records other than personnel records and the City Recorder shall oversee and coordinate records access, management and archives activities and shall make annual reports of all records services activities, with the exception of personnel records, to the City Manager who shall make an annual report of such activities to the Mayor and City Council.

34-16. Records Maintenance.

(1) Records maintenance procedures shall be developed to ensure that due care is taken to maintain and preserve City records safely and accurately over the long term. The City Records Officer shall be responsible for monitoring the application and use of technical processes in the creation, duplication, and disposal of City records. He/she shall monitor compliance with required standards of quality, permanence, and admissibility pertaining to the creation, use, and maintenance of records.

(2) All City records shall remain the property of the City unless federal or state legal authority provides otherwise. Property rights to City records may not be permanently transferred from the City to any private

individual or entity, including those legally disposable obsolete City records. This prohibition does not include the providing of copies of City records otherwise produced for release or distribution under this Section.

(3) Custodians of any City records shall, at the expiration of their terms of office, appointment or employment, deliver custody and control of all records kept or received by them to their successors, supervisors, or to the City Manager.

P:WPTGramma.Cha

ORDINANCE NO. 4-25-95A

**AN ORDINANCE AMENDING TITLE 34
OF THE "CITY OF WEST POINT
POLICY AND PROCEDURE
REGULATIONS AND COMPENSATION
EVALUATION PLAN" AND
PROVIDING AN EFFECTIVE DATE.**

WHEREAS, the City Council of West Point City has previously passed Ordinance No. 6-23-92A adopting a new Title 34 to the "City of West Point Policy and Procedure Regulations and Compensation Evaluation Plan", which Title 34 is entitled "Government Records Access and Management"; and,

WHEREAS, it is now necessary to adopt a technical amendment to said Title 34 in order to be in compliance with a request from the State of Utah, Department of Administrative Services, Division of Archives and Records Services;

NOW, THEREFORE, BE IT ORDAINED BY THE WEST POINT CITY COUNCIL, as follows:

SECTION ONE: AMENDMENT TO TITLE 34-11(6)

Title 34 of the "City of West Point Policy and Procedure Regulations and Compensation Evaluation Plan", as adopted by Ordinance No. 6-23-92A on June 23,

1992 is hereby amended by adopting a substitute §34-11(6) to read as follows:

- (6) If the City Council affirms the denial, in whole or in part, the person may petition for judicial review in District Court as provided in §36-2-404, U.C.A., 1953.

SECTION TWO: REPEAL

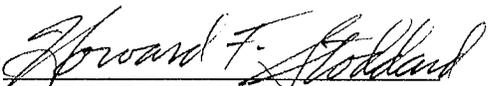
The former §34-11(6) is hereby repealed and replaced by the new §34-11(6) as set forth in Section One.

SECTION THREE: EFFECTIVE DATE

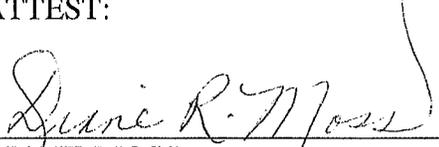
This Ordinance shall take effect immediately upon publication of this Ordinance, or a Summary thereof, one time only, in a newspaper published within West Point City.

PASSED AND ADOPTED by the City Council in regular session assembled this 25th day of April, 1995.

WEST POINT CITY, a municipal Corporation,

By: 
HOWARD F. STODDARD
Mayor

ATTEST:


DIANE MOSS
City Recorder

P:WP95A.Ord

ORDINANCE NO. 6-23-92A

AN ORDINANCE ADDING CHAPTER 34 AS AN AMENDMENT TO THE "CITY OF WEST POINT POLICY AND PROCEDURE REGULATIONS AND COMPENSATION EVALUATION PLAN" FOR THE PURPOSE OF CREATING A POLICY RELATING TO INFORMATION PRACTICES INCLUDING CLASSIFICATION, DESIGNATION, ACCESS, DENIALS, SEGREGATION, APPEALS, MANAGEMENT, RETENTION AND AMENDMENT OF RECORDS IN ACCORDANCE WITH THE PROVISIONS OF THE UTAH "GOVERNMENT RECORDS ACCESS AND MANAGEMENT ACT" AND PROVIDING FOR AN EFFECTIVE DATE.

SUMMARY OF ORDINANCE

This Ordinance adopts a policy relating to information practices including classification, designation, access, denials, segregation, appeals, management, retention and amendment of records in accordance with provisions of the Utah "Government Records Access and Management Act" and provides for an effective date for such Ordinance.

DATED this 22nd day of March, 1994.

WEST POINT CITY, a municipal corporation,

By: Howard F. Stoddard
HOWARD STODDARD
Mayor

ATTEST:

By: Diane R. Moss
DIANE MOSS
City Recorder

Date of publication: 30 MAR. 1994