

SOUTHWEST UTAH PUBLIC HEALTH DEPARTMENT
PUBLIC RECORDS REGULATION

SOUTHWEST UTAH PUBLIC HEALTH DEPARTMENT
REGULATION ESTABLISHING DEPARTMENT
POLICIES REGARDING THE MAINTENANCE AND
PRESERVATION OF ACCURATE PUBLIC RECORDS;
PROVIDING FOR ACCESS TO RECORDS BY
MEMBERS OF THE PUBLIC AND IN ACCORDANCE
WITH APPROPRIATE STATE STATUTE; SETTING
OUR RESPONSE TIME REQUIREMENTS AND FEE
FORMULAS FOR PUBLIC RECORD ACCESS REQUESTS;
AND ESTABLISHING OTHER PROCEDURES REGARDING
THE STORAGE AND ACCESS TO GOVERNMENTAL
RECORDS HELD BY THE SOUTHWEST UTAH PUBLIC
HEALTH DEPARTMENT.

The Southwest Utah Board of Health adopts the Public
Records Regulation pursuant to the Government Records Access
Management Act Utah Code Annotated (1991) Section 63-2-701
(GRAMA), to read as follows:

CHAPTER 1

1.A. The Southwest Utah Board of Public Health
(hereinafter referred to as "the Board" or "Board of Health"),
finds that it is in the best interests of the citizens
served by the Southwest Utah Public Health Department
(hereinafter referred to as "Department" or "Health
Department"), to maintain and preserve accurate public
health records, and to provide ready access to records which
are defined by law as open to the public, and to retain
the security of records which are defined by law as non-public.

It is the policy of the Board that all governmental records, which are defined by applicable Utah statutory and case law as public records, shall be made available to citizens within a reasonable time after request and at a reasonable cost as set forth in this regulation.

1.B. In enacting this section, it is the purpose and intent of the Board to provide, in accordance with the Government Records Access Management Act (hereinafter referred to as "the Act"), Chapter 2 of Title 63 of the Utah Code Annotated (1953), a regulation acknowledging and complying with the act and providing for its application within the jurisdiction served by the Department. The Department divisions and programs shall comply with the provisions of this regulation, the Act and shall also comply with other federal and state statutory and regulatory record-keeping requirements.

Chapter 2

2.A. Members of the public shall have the right to see, review, examine, and take copies of all Department records defined as "public" under the provisions of the regulation, upon the payment of the lawful fee. Appropriate access to public records may be had, regardless of the format in which the record is kept.

2.B. The Department has no obligation to create a new record or new record series in response to a request from a member of the public, if the record requested is not

~~otherwise regularly maintained or kept.~~

2.C. When a Department record is temporarily held by the County Attorney's Office, pursuant to its statutory and regulatory functions, the record shall not be considered a County Attorney's Office record for the purposes of this regulation; the record shall be considered a record of the Department and any requests for access to such records shall be directed to the Department, rather than the County Attorney's Office.

Chapter 3

3.A. Public record shall be those Health Department records as defined in the Act, Section 63-2-201 (U.C.A., 1953, as amended). Public records may be made available to any person. All Department records are considered public unless they are expressly classified otherwise in accordance with procedures established by this regulation, by the Act, or by other applicable law.

3.B. Private records shall be those Department records classified as "private", as defined in the Act, Section 63-2-302 (U.C.A., 1953, as amended) and as defined in procedures established in this chapter. 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 court order issued by a court of competent jurisdiction.

3.C. Confidential (controlled) records shall be those Department records classified as "confidential" (controlled), as defined in the Act, Section 63-2-303 (U.C.A., 1953, as amended) and as defined in procedures established in this regulation. Confidential (controlled) records shall be made available to a physician, psychologist, or certified social worker who submits a notarized release from the subject of the record or any person presenting a court order signed by a judge of competent jurisdiction.

Chapter 4

4.A. The Department recognizes and upholds the personal right of privacy retained by persons who may be the subject of government records. Department records regarding named or readily identifiable individuals which deal with matters of a delicate nature which could engender shame, humiliation or embarrassment in the subject of that record, in accordance with accepted standards of social propriety, shall generally not be classified as public records, in accordance with the Act and procedures established in this ordinance.

4.B. The Department may, as determined appropriate by the Chief Health Officer, or his designated representative

responding to a request for records, notify the subject of a record that a request for access to the subject's record has been made. In cases in which a request is made for records which are not classified as public, the Chief Health Officer or his designated representative shall notify the subject of such records that the request has been made. In circumstances in which a controversy arises or an appeal is taken by a requester of records regarding the propriety of the classification of the record or a denial of access thereto or under circumstances in which the requester maintains that the public interest in access to the record outweighs the subject's privacy interest, the Chief Health Officer or his designated representative in charge of such records shall notify the subject of the records in question of the request.

4.C. The Department may require that the requester of records in contested cases, as related in sub-paragraphs 4.A. and 4.B. above, shall be required to provide a written release from the subject of the records in question before access to such records is provided.

Chapter 5

5.A. Department records and records series shall be classified according to the provisions of the Act and this regulation. Any records or record series generated in the future shall also be so classified. Records classification shall be conducted under the supervision of the Chief Health

Officer or his designated representative who shall be assisted, as necessary, by a Classification Review Committee consisting of the Chief Health Officer or his designee(s), a representative of the County Attorney's Office, and the Chairperson of the Board of Health or his designee. Classification forms and guidelines shall be prepared and promulgated by the Chief Health Officer.

Chapter 6

6.A. Requests for records shall, in the majority of cases, be responded to immediately. Under circumstances in which the Department is not able to immediately respond to a records request, the requester shall fill out and present to the Department a written request on forms provided by the Department. The date and time of the request shall be noted on the written request form and all time frames provided under this section shall commence from that time and date.

6.B. The Department may respond to a request for a record by approving the request and providing the records, denying the request, notifying the requester that the Department does not maintain the record, notifying the requester that it cannot immediately approve or deny the request, or by specifying that the request may not immediately be satisfied but will be responded to on or before a certain date.

6.C. 1. In most circumstances and excepting those

eventualities set out below at subparagraph Chapter 6.C.2, the Department shall respond to a written request for a public record within ten business days after that request.

2. The following extraordinary circumstances shall justify the Department'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 fifteen business days.

a. The Department, another division or agency, or some other governmental entity is currently and actively using the record requested;

b. The record requested is for either a voluminous quantity of records or requires the Department to review a large number of records to locate the materials requested;

c. The Department is currently processing either a large number of records requests or is subject to extraordinary seasonal work loads in the processing of other work;

d. The request involves an analysis of legal issues to determine the proper Department response to the request;

e. The request involves extensive editing to separate public information in a record from that which is not public; or

f. Providing the information in a format requested or separating public information from that which is non-public

~~requires computer programming.~~

6.D. The failure or inability of the Department to respond to a request for a record within the time frames set out herein, or the Department's denial of such a request, shall give an aggrieved requester the right to appeal as provided in Chapter 8.

Chapter 7

7.A. Applicable fees for the processing of information requests under this regulation shall include the following categories of fees and charges:

1. Fees and charges set out by statute shall be imposed at the amount so set.

2. For fees and charges not set out by statute, the level of cost recovery shall be established at the full cost of the service, including overhead.

3. Services provided to any public or private agencies, for their sole use, shall be charged at full cost. Services or information provided to any public or private agency for resale shall be charged at fair market value, but in no instance shall the rate charged be less than full cost.

7.B. Nonstatutory fees or charges for records services provided by the Department shall be set by the Board of Health based upon its review of the full costs of providing such services. Such rates shall be reviewed annually.

7.C. The methodology of determining full costs of

records services shall be the responsibility of the County Auditor, who shall maintain and disseminate forms and review procedures as necessary for the determination of the full costs of County services. The procedures and methodology for cost allocation shall be set forth in the policies and procedures of the County Auditor's Office.

7.D. Where practical, uniform schedules of fees shall be established, with the approval of the Board of Health.

7.E. In circumstances in which a record request will entail extraordinary costs, such as the writing of new computer programs or research involving extensive personnel costs, the requester may receive an estimate of appropriate costs before any extraordinary costs are accrued.

Chapter 8

8.A. Persons aggrieved by the Department's classification of a record or by the Department's response to a record request may request and be granted a full administrative appeal of that grievance. An intermediate or initial appeal may be made, at the requester's option, to the Classification Review Committee (5.A.). A requester who is aggrieved by the Classification Review Committee may file an administrative appeal of that decision with the Board of Health. The appeal of a decision of the Board of Health may be made to the District Court, in accordance with the Act and the Utah Rules of Civil Procedure.

8.B. An appeal under this Chapter shall be brought

within fifteen calendar days of the date of the action aggrieved, or of the date when the person grieving reasonable should have become aware of the action.

8.C. The appellant shall set forth in writing the nature and date of the request, attaching a copy of the request form, if available.

Chapter 9

In accordance with the procedures of Section 63-2-803 U.C.A., 1953, as amended) of the Act, neither the Department nor any of its officers or employees shall be liable for damages resulting from the release of a record where the requester presented to the Department evidence of authority to obtain the record, even if it may be subsequently determined that the requester had no such authority.

Chapter 10

10.A. The Board of Health shall appoint a Department Records Officer, within the Department to oversee and coordinate records access and management and Department archives activities. The Records Officer shall make annual reports of his activities to the Board of Health.

10.B. There is hereby created the Department Records Task Force, to be chaired by the Health Officer or his representative. Members of the Task Force shall include representatives of the major divisions or programs of the

Department, and the Board of Health. The Records Task Force shall meet periodically as needed as determined by the Task Force and the Health Officer.

10.C. The Records Task Force shall develop, as needed, records maintenance and access policies and procedures to govern and implement the provisions of this act and this Chapter. Copies of all rules and policies promulgated under this regulation shall be forwarded to the Utah State Division of Archives.

Chapter 11

The Records Officer and Records Task Force shall develop Department policies and guidelines relating to the retention and maintenance of Department records. Records maintenance policies and procedures shall be developed to ensure that due care is taken to maintain Department records safely and accurately. All Department records shall remain the property of the Department unless federal or state statutory authority relating to a specific record or record series provides otherwise.

Chapter 12

There is created the Department Archives Section, to be managed by the Records Officer. It is the responsibility of Department Archives to receive formal Department records, minutes and other documents and to store and preserve such

records and to provide reasonable access thereto as may be calculated to accurately and safely maintain Department records over a long term in compliance with the regulation and the Act. Policies and guidelines regarding the nature of records and record series which are to be received and stored by Department Archives shall be developed and promulgated by the Records Task Force. Department Archives shall be considered the formal and official repository of Department records, documents and where appropriate, historical artifacts.

Chapter 13

13.A. The Department retains and reserves to itself the right to use any type of computer, data processing, or electronic information storage or processing system, which is not prohibited by state statute, to store and maintain Department records. All computerized data and information which is properly classified, in accordance with the Act and this regulation, as a public record shall be made available to a requester within a reasonable time and at a reasonable cost.

13.B. Members of the public shall have the right to have access to data, which are defined as public records in accordance with the Act and this regulation, contained in computers, data processing systems or other electronic information storage systems. Access to such public record data may be had in such a manner as determined by the Health

Officer or his representative. Access may include but not be limited to the following:

1. By sitting at and viewing a Department terminal to retrieve data directly from the terminal screen; provided, however, that due regard shall be defined by the Act or this regulation as not being public records will not be retrieved or displayed on the screen;

2. By providing paper or "hard" copies of data printouts or by providing magnetic tapes, disks, or other means of electronic storage containing the computer, data processing, or other electronic information system data, at the requester's option; or

3. By the use, where appropriate, of remote terminals which have access to Department computer, data processing or electronic information systems pursuant to a formal two-party contract permitting such remote terminal access and provided that due regard shall be exercised to ensure that data which might be defined as not being public records will not be available by remote terminal access.

13.C. Computer software, which is defined to refer to the computer program which consists of a series of computer commands or directions which are used to manipulate data, is not considered data nor a public record. It shall not be subject to disclosure under this regulation or the Act, including copyrighted software and other copyrighted materials which have been purchased by or licensed to the

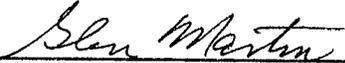
Department and software and other materials which have been copyrighted by the Department.

13.D. All data retained on Computer, data processing or electronic information systems shall be kept and maintained with due diligence to protect the security of any data which is considered not public under state law. The Department Records Task Force shall develop policies and regulations regarding the nature and duration of the storage of any public or non-public data, contained or stored upon computer, data processing or electronic information systems.

Chapter 14

This regulation shall become effective immediately upon passage by the Southwest Utah Board of Public Health.

APPROVED AND ADOPTED this twentieth day of
March, 1992.



Glen Martin, Chairperson
Southwest Utah Board of Public Health

Supplement

SOUTHWEST UTAH PUBLIC HEALTH DEPARTMENT

GRAM REGULATIONS

1. The Deputy Director of Vital Statistics shall serve as the Records Officer.
2. The Department Records Task Force shall consist of the Records Officer, Department Director, Administrative Assistant, Director of Environmental Health, Director of Community and Family Health Services, and members of the Board of Health.
3. The Department Archives Section shall observe the State of Utah, "Records Retention Schedule - Local Health General Retention Schedule, No. 25 (Draft 6)" regarding guidelines and policies.
4. A "public record" means a record that is not "private," "confidential (controlled)," or "protected" and that is not exempt from disclosure except as contained in Chapter 13 of the Southwest Utah Public Health Department GRAM Regulation.
5. The Classification Review Committee shall consist of the Records Officer, a representative of the Iron County Attorney's Office and a representative of the Board of Health.
6. A "private record" means a record containing:
 - 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 concerning a current or former employee of, or applicant for employment with, a governmental entity that would disclose that individual's home address, home telephone number, social security number, insurance coverage, marital status, or payroll deductions.
7. The following are "private" if properly classified by the Department:

- a. Records concerning a current or former employee of, or applicant for employment with the Department, including performance evaluations and personal status information such as race, religion, or disabilities, but not including records that are "public" under Subsections 63-2-301(1)(b) or 63-2-301(2)(o), or private under Subsections 63-2-302(1)(e) of the Utah Code Annotated, 1953;
 - b. Records describing an individual's finances, except that the following are "public":
 - (1) Records described in Subsection 63-2-301(1), U.C.A., 1953;
 - (2) Information provided to the Department for the purpose of complying with a financial assurance requirement; or
 - (3) Records that must be disclosed in accordance with another statute;
 - c. Records of independent state agencies if the disclosure of those records would conflict with the fiduciary obligations of the agency;
 - d. Other records containing data on individuals, the disclosure of which constitutes a clearly unwarranted 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.
8. A record is "confidential" or "controlled" if:
- a. The record contains medical, psychiatric, or psychological data about an individual;
 - b. The Department reasonably believes that:
 - (1) 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
 - (2) Releasing the information would constitute a violation of normal professional practice and medical ethics; and
 - c. The Department has properly classified the record.

9. The following records are "protected" if properly classified by the Department:
- a. 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:
 - (1) Reasonably could be expected to interfere with investigations undertaken for enforcement, discipline, licensing, certification, or registration purposes;
 - (2) Reasonably could be expected to interfere with audits, disciplinary, or enforcement proceedings;
 - (3) Would create a danger of depriving a person of a right to a fair trial or impartial hearing;
 - (4) 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, discloses information furnished by a source not generally known outside of government if disclosure would compromise the source; or
 - (5) 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;
 - b. Records the disclosure of which would jeopardize the life or safety of an individual;
 - c. Records the disclosure of which would jeopardize the security of governmental property, governmental programs, or governmental record-keeping systems from damage, theft, or other appropriation or use contrary to law or public policy;
 - d. Records of governmental audit agency relating to an ongoing or planned audit until the final audit is released;
 - e. Records prepared by or on behalf of the Department solely in anticipation of litigation that are not available under the rules of discovery;
 - f. Records disclosing an attorney's work product, including the mental impressions or legal theories

- of an attorney or other representative of the Department concerning litigation;
- g. Records of communications between the Department and an attorney representing, retained, or employed by the Department if the communications would be privileged as provided in Section 78-24-8, U.C.A., 1953;
 - h. Drafts, unless otherwise classified as "public;"
 - i. Records concerning the Department's strategy about collective bargaining or pending litigation;
 - j. Records of investigations of loss occurrences and analysis of loss occurrences that may be covered by the Risk Management Fund, the Employer's Reinsurance Fund, the Uninsured Employers' Fund, or similar divisions in other governmental entities;
 - k. 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;
 - l. Records provided by the United States or by a governmental entity outside the state that are given to the Department 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;
 - m. Memoranda prepared by staff and used in the decision-making process by an administrative law judge, a member of the Board of Pardons, or a member of any other body charged by law with performing a quasi-judicial function;
 - n. The name of a donor or a prospective donor to the Department.