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Section 3-1-1. Purpose.

A. The purpose of this chapter is to provide, consistent with the Utah Government Records Access and Management Act (the "Act"), and other state and federal law, criteria and procedures relating to the records practices of the city including:

- 1. Classification and designation of city records pursuant to the Act;
- 2. Procedures to access public city records;
- 3. Procedures to deny requests for access to non-public city records;
- 4. Process to appeal decisions regarding city records;
- 5. Management and retention of city records; and
- 6. Amendment to city records.

B. It is the intent of the city to:

1. Maintain and preserve accurate records;
2. Provide, on request, access, within a reasonable time and at a reasonable cost, to city records which are defined by law as open to the public; and
3. Retain the security of city records which are "private," "protected," "controlled"; and records to which access is restricted pursuant to a court rule, Utah statute, federal statute, or federal regulation.

Section 3-1-2. Definitions.

As used in this chapter, the following definitions shall be applicable:

- A. "Act" shall refer to the Government Records Access and Management Act, Sections 63-2-101 et seq. of the Utah Code Ann.
- B. "Chronological logs" means the regular and customary summary records of city law enforcement and public safety divisions that show the time and general nature of police, fire and paramedic calls, and any arrests or jail bookings made.
- C. "Classification," "classify" and their derivative forms mean determining whether a record series, record or information within a record is "public," "private," "controlled," "protected" or "limited."
- D.
 1. "Computer software program" means a series of instructions or statements that permit the functioning of a computer system in a manner designed to provide storage, retrieval and manipulation of data from the computer system, and any associated documentation and source material that explain how to operate the computer program.
 2. "Computer software program" does not mean:
 - a. The original data, including numbers, text, voice, graphics and images;
 - b. Analysis, compilation and other manipulated forms of the original data produced by use of the program; or
 - c. 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.
- E.
 1. "Contractor" means:
 - a. Any person who contracts with the city to provide goods or services directly to the city; or
 - b. Any private, nonprofit organization that receives funds from the city.
 2. "Contractor" does not mean a private provider. "Private provider" is any person or entity who contracts with the city to provide services directly to the public.
- F. "Controlled" records shall be those records defined as controlled under the provisions of this chapter and the Act.
- G. "Data" shall refer to individual entries in the records.
- H. "Department" or "departments" shall mean the separate administrative departments in the city.
- I. "Designate" or "designation" means to give an initial or primary classification to a record or record series indicating the likely classification that a majority of such records

or record series would be given if classified.

J. "Governmental entity" means the state of Utah and its political subdivisions including their boards, commissions, departments and advisory committees.

K. "Limited records" shall refer to records whose access is limited by a specific state or federal statute, court rule or federal regulation.

L. "Non-public" records shall refer to those records defined as "private," "controlled," "protected," or those records limited by a state and federal statute, federal and state regulations or court rules.

M. "Private" records shall refer to those records classified as "private" under the provisions of this chapter and the Act.

N. "Protected" records shall refer to those records classified as "protected" under the provisions of this chapter and the Act.

O. "Public" records shall refer to those records which have not been defined as non-public in accordance with the provisions of this chapter and the Act.

P. 1. "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, received or retained by the city where information in the original is reproducible by photocopy or other mechanical or electronic means.

2. "Record" does not mean:

- a. Daily calendars and other personal notes, 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 the originator is working;
- b. Materials that are legally owned by individuals in their private capacity;
- c. Materials to which access is limited by the laws of copyright or patent;
- d. Proprietary software;
- e. Books and other materials that are catalogued, indexed, or inventoried and contained in the collections of city libraries open to the public, regardless of the physical form or characteristics of the material;
- f. Notes or internal memoranda prepared, as part of the deliberative process, by any city employee, or members of boards and commissions acting in a quasi-judicial process; or
- g. Software programs as defined in subsection E of this section, or its successor, that are developed or purchased by the city for its own use.

Section 3-1-3. Access to public records.

A. Persons shall have the right to inspect, review, examine and take copies of city records designated as "public" under this chapter, upon compliance with the procedures provided

- B. The city has no obligation to create a new 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.

Section 3-1-4. Public records.

All city records are considered public unless they are designated or classified otherwise in accordance with procedures established by this chapter consistent with the Act, or made non-public by other applicable law, 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. Public records include those records listed in Section 63-2-301 of the Act and shall be made available to any person.

Section 3-1-5. Private records.

A. "Private" records shall include the following:

1. City records defined as "private" in Section 63-2-302 of the Act;
2. City records classified or designated as private in accordance with procedures established in this chapter and the Act;
3. As provided in Section 63-2-302 of the Act, private records include records containing data on individuals the disclosure of which constitutes a clearly unwarranted invasion of personal privacy.

B. Private records shall be made available to the following persons:

1. The subject of the record;
2. The parent or legal guardian of an unemancipated minor who is the subject of a record;
3. The legal guardian of a legally incapacitated individual who is the subject of the record; or
4. Any person who has a power of attorney or notarized release, dated not more than ninety days prior to the request, from the subject of the record or the subject's legal representative; or
5. Any person presenting an order issued by a court of competent jurisdiction.

Section 3-1-6. Controlled records.

A. "Controlled" records shall be those city records defined as "controlled" in Section 63-2-303 of the Act or as classified or designated as "controlled" pursuant to procedures established in this chapter consistent with the Act.

B. Controlled records shall be made available to a physician, psychologist or certified social worker who submits a notarized release, dated not more than ninety days prior to the request, from the subject of the record or any person presenting an order issued by a court of competent jurisdiction.

Section 3-1-7. Protected records.

A. Protected records shall be:

1. City records defined as "protected" in Section 63-2-304 of the Act;
 2. City records designated or classified as "protected" according to the procedures established in this chapter consistent with the Act;
 3. "Drafts," as provided in Section 63-2-304(22) of the Act, which may include records of the mayor or the city financial officer council relating to budget analysis and fiscal notes of proposed budgets before issuance of their final recommendations;
 4. As provided in Section 63-2-304(9) of the Act, records which, if released, could reasonably be expected to interfere with investigations undertaken for discipline purposes including city records pertaining to internal investigation of city employees such as investigations by the internal affairs division of the city's police department;
 5.
 - a. As provided in Section 63-2-304(9) of the Act, records created or maintained for discipline purposes against city employees unless:
 - i. All available remedies have been exhausted by the employee, including the internal grievance procedures and proceedings before administrative agencies,
 - ii. All time periods for appeal have expired, and
 - iii. The disciplinary action was sustained,
 - b. Notwithstanding subsections (A)(5)(a)(i), (ii) and (iii), a record or parts of a record maintained for discipline purposes shall not be disclosed if the release of the record or part of the record:
 - i. Reasonably could be expected to interfere with investigations undertaken for discipline or enforcement purposes,
 - ii. Reasonably could be expected to disclose the identity of a source who is not generally known outside of government or disclose information furnished by a source not generally known outside of government if disclosure would compromise the source,
 - iii. Reasonably could be expected to disclose investigative techniques, procedures, policies or orders not generally known outside of government if disclosure would interfere with enforcement or audit efforts, or
 - iv. Reasonably could be expected to jeopardize the life or safety of an individual.
- B. Protected records shall be made available to:
1. The person who submitted the information in the record;
 2. A person who has a power of attorney or notarized release, dated not more than ninety days prior to the request, from a person whose interests were sought to be protected by the protected classification or their legal representative; or
 3. Any person presenting an order issued by a court of competent jurisdiction.

Section 3-1-8. Limited records.

Limited records shall be those records whose access is limited by a specific state or federal statute, federal regulations or court rule. Limited records shall be made available as provided in the specific statute, regulation and rule which protects the record.

Section 3-1-9. Sharing records.

The city may disclose a record classified as "private," "controlled" or "protected" to another governmental entity if the other governmental entity complies with Section 63-2-206 of the Act. The city may provide a private, protected or controlled record to another governmental entity if the record is necessary to the performance of the governmental entity's duties and functions; the record will be used for a purpose similar to the purpose for which the information in the record was collected or obtained; and the use of the record produces a public benefit that outweighs the individual privacy right that protects the record.

Section 3-1-10. Privacy interest in a city record.

A. The city recognizes and upholds the personal right of privacy retained by persons who may be the subject of government records. The city also recognizes that the Act establishes a presumption that governmental records will generally be considered open and public with certain exceptions. The city may, at its discretion, disclose records that are "private" or "protected" as defined in the Act and this chapter to persons other than those specified in Sections 3-1-5 and Section 3-1-7, if the city recorder determines that there is no interest in restricting access to the record, or that the interest favoring access outweighs the interest favoring restriction of access. Public access is favored when countervailing interests are of equal weight. The city shall not release any record when to do so would constitute a clearly unwarranted invasion of privacy in accordance with the Act and procedures established in this chapter. Under circumstances and procedures established by this chapter, certain data in a record may be rendered non-public, although the record itself may be classified or designated as "public."

B. If the city receives a request for access to a record that contains both information that the requester is entitled to inspect and information the requester is not entitled to inspect under this chapter and the Act, the city shall allow access to information in the record that the requester is entitled to inspect under this chapter and the Act; and may deny access to information in the record if the information is exempt from disclosure to the requester under this chapter and the Act.

C. The city may require that the requester of the private and controlled records, in contested cases, provide a written release, dated not more than ninety days prior to the date of the request, from the subject of the record in question before access to such record is provided.

Section 3-1-11. Classification, designation and retention of records.

All city records and records series shall be evaluated, designated, classified and scheduled

for retention consistent with the provisions of the Act and this chapter. The city may classify a particular record, record series or information within a record at any time, and is not required to classify a particular record, record series or information until access to the record is requested. The city may redesignate or reclassify records at any time. Any record or record series generated in the future shall also be so designated, classified and scheduled for retention. Records classification, designation and scheduling for retention shall be conducted under the supervision of the city recorder.

Section 3-1-12. Response to request for records.

A. Requests, either verbal or written, for a city record shall be made to the city department maintaining the record in question. The department may respond to a verbal request consistent with the provisions of this chapter. The department, may require the requester to fill out and present a written request. The written request may be on forms provided by the city. The written request shall include the name, mailing address, daytime telephone number, if available, of the requester, and a description of the records requested that identifies the record with reasonable specificity. Requesters of non-public records shall adequately identify themselves and, if applicable, their status when requesting access to non-public records. The date and time of the request shall be included on the written request and all time frames provided under this chapter shall commence from that time and date. Request for records shall, to the extent possible, be responded to within ten business days after receipt of the written request or within five business days after receiving a written request if the requester demonstrates that an expedited response benefits the public rather than the person. 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. If the department does not have custody of the record, it shall request the appropriate department to respond.

B. The appropriate department shall respond to a request for a record by:

1. Approving the request and providing the records;
2. Denying the request;
3. Notifying the requester that the city does not maintain the record;
4. Notifying the requester that it cannot respond to the request within the period of time specified in subsection A of this section, stating the reason or reasons for the delay as provided in subsection C of this section; or
5. Such other appropriate response as may be established in the Act or this chapter.

C. 1. In most circumstances and excepting those eventualities set out in subsection C (2), the appropriate department shall respond to a written request for a public record within the time period specified in Section 3-1-12(A) of this chapter.
2. The following extraordinary circumstances shall justify the city's failure to respond to a written request for a record within the specified time period and shall extend the time for response thereto to that time reasonably necessary to respond

to the request:

- a. The department or some other governmental entity is currently and actively using the record requested;
- b. The record is being used as part of an audit, and returning the record before the completion of the audit would impair the conduct of the audit;
- c. The record requested is for either a voluminous quantity of records or requires the appropriate department, to review a large number of records or perform extensive research to locate the materials requested;
- d. The appropriate department is currently processing either a large number of records requests or is subject to extraordinary seasonal workloads;
- e. The request involves legal issues that require an analysis by legal counsel to determine the proper response to the request;
- f. The request involves extensive editing to separate public data in a record from that which is non-public; or
- g. Providing the information in the format requested, or separating public information from that which is non-public, requires computer programming.

3. If the time limits are extended based on extraordinary circumstances provided in this subsection, the response to the request shall be made as soon as reasonably possible.

4. When a timely response cannot be made to a record request, the appropriate department shall notify the requester that it cannot immediately approve or deny the request because of one or more of the extraordinary circumstances stated in subsection C (2) of this section, and shall provide the requester with an estimate of the time required to respond to the request. If the appropriate department fails to provide the requested record within the estimated time, that failure shall be considered a denial of the request.

5. In response to a request for access, the appropriate department may redesignate or reclassify the record or segregate data in the requested record in accordance with this chapter and the Act.

- D.
1. If the request for records is denied in whole or part, the department 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, protected, limited or other non-public information as defined in the Act and this chapter;
 - b. Citations to the provisions of the Act, this chapter, ordinance, state statute, federal statute, federal regulation or court rule that exempts the record or portions of the record from disclosure; provided, that the citations do not disclose private, controlled, protected, limited or other non-public information; and
 - c. A statement that the requester has the right to appeal according to the

provisions of Section 3-1-13 of this chapter, the time limits for filing an appeal, and the name and business address of the city recorder's office.

3. Unless otherwise required by a court of competent jurisdiction, the city may not, during the appeal process, destroy or give up custody of any record to which access was denied.

E. The failure or inability of a 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 the requester the right to appeal as provided in Section 3-1-14 of this chapter or its successor.

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

Section 3-1-13. Fees or charges for records services.

A. A fee may be charged for paper-to-paper photocopying not to exceed twenty-five cents per copy. A fee, not to exceed fifteen dollars per hour, may also be charged for the following employee's time; however, no charge may be made for the first quarter hour of said time:

1. The staff time incurred for summarizing or compiling the record into an organization or media to meet the person's request;
2. The staff time incurred for search, retrieval, and other direct administrative time incurred for complying with a request; and
3. In the case of a record that is the result of computer output other than word processing, the actual incremental staff time incurred in providing the electronic services and products together with a reasonable portion of the staff time associated with formatting or interfacing the information for particular users, and the administrative time as set forth in subsections(A)(1) and (2) of this section.

B. A \$5.00 fee may be charged for copies of traffic accident reports.

C. A fee, not to exceed the actual costs of the recording media and fifteen dollars per hour for a city employee's time, may be charged to copy recording tapes or, to copy computer readable records to a computer readable form (e.g., discs).

D. The city may fulfill a request, without charge, if it determines that:

1. Releasing the record primarily benefits the public rather than a person;
2. The person requesting the record is the subject of the record, or an individual specified in Section 3-1-5(B) of this chapter;
3. The rights of persons requesting the records are directly implicated by the information in the record, and the requester is impecunious.

E. A person who believes that there has been an unreasonable denial of a fee waiver under subsection C of this section or its successor may appeal the denial in the same manner as a person appeals when inspection of a public record is denied under Section 3-1-14 of this chapter.

F. The city may not charge a fee for reviewing a record to determine whether it is subject to disclosure or inspecting a record.

Section 3-1-14. Appeals by persons aggrieved by the city's classification of a record or by a response to a record request.

A. Persons aggrieved by the city's classification of a record or by a response to a record request may demand and be granted an appeal of that decision.

B. For records maintained by city departments at the time of the request, the appeal shall be made to the city recorder who is hereby delegated the responsibilities of the chief administrative officer or is designated as the chief administrative officer of the city for the purposes of this Section.

C. An appeal under this section shall be brought within thirty calendar days from the date of the city's classification of a record or response to a records request. The notice of appeal must be in writing and filed with the city recorder and shall set forth the relief sought and the date of the request. A short statement of facts, reasons and legal authority may also be filed in support of the appeal.

D. After receiving notice of appeal, and the appeal involves a record that is the subject of a business confidentiality claim under Section 63-2-308 of the Act, the city recorder shall 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 send notice of the business confidentiality claim and the schedule for the city recorder's determination to the requester within three business days after receiving notice of the requester's appeal. The business confidentiality claimant shall have seven business days after notice is sent by the city recorder to submit further support for the claim of business confidentiality.

E. The city recorder shall make a determination on the appeal within the following period of time:

1. Within five business days after the city recorder's receipt of the notice of appeal; or

2. Within twelve business days after the city sends the requester's notice of appeal to a person who submitted a claim of business confidentiality.

3. If the city recorder fails to make a determination within the times specified, the failure shall be considered the equivalent of an order denying the appeal.

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

(F) The city recorder, 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 63-2-302(2) of the Act or protected under Section 63-2-304 of the Act, if the interests favoring access outweigh the interests favoring restriction of access.

(G) The city shall send written notice of the determination of the city recorder to all participants. If the city recorder 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 records committee or district court, the time limits for filing an appeal, and the name and business address of the executive secretary of the records committee.

(H) A person aggrieved by the city's classification or designation determination under this chapter, but who is not requesting access to the records, may appeal that determination using the procedures provided in this section. If a 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 3-1-15. Limitation of liability.

Neither the city, its employees, boards or commissions shall be liable for damages resulting from the release of a record where the requester has presented evidence of authority to obtain the record, even if it may be subsequently determined that the requester had no such authority or that the release resulted in a clearly unwarranted invasion of privacy.

Section 3-1-16. City's recorder responsible for records access and management.

A. The city recorder shall oversee and coordinate the city's records access and management and archives activities.

B. Each department and the city council office shall appoint a records representative to assist with and be directly responsible for the implementation of this chapter regarding their records. Regular training shall be coordinated under the direction of the city recorder.

C. The city recorder shall develop, as needed, records management and access policies and procedures to govern and implement the provisions of the Act and this chapter. Copies of all rules and policies promulgated under this chapter shall be forwarded to the Utah State Division of Archives.

Section 3-1-17. Development of policies and guidelines relating to retention and maintenance of city records.

A. The city recorder shall develop policies and guidelines relating to the retention and maintenance of city records. Records maintenance policies and procedures shall be developed to ensure that due care is taken to maintain and preserve city records. Policies and regulations regarding types and formats of papers, inks, electronic media, and other records and information storage media, materials, equipment and techniques shall be developed and promulgated by the city recorder.

B. Property rights to city records may not be permanently transferred from the city to any private individual or entity, including those legally disposable as obsolete city records. This prohibition does not include the providing of copies of city records otherwise produced for release or distribution under this chapter.

Section 3-1-18. Receiving, storing and preserving city records.

It is the responsibility of the city recorder to receive, store and preserve city records and to store and to provide reasonable access to them in compliance with this chapter and the Act. Policies and guidelines regarding the nature of records and record series which are to be received and stored by the city shall be developed and promulgated by the city recorder. The office of the city recorder shall be considered the formal and official repository of city records including historical records.

Section 3-1-19. Computerized records.

A. The city retains and reserves to itself the right to use any type of non-verbal or non-written formats to store, maintain or retrieve city records which are not prohibited by state statute, and does not compromise legal requirements for record storage, retrieval, security and maintenance. All computerized and non-written format records and data which are properly designated and classified as "public" in accordance with the Act and this chapter shall be made available to a requester as provided in this chapter and the Act.

B. The public shall have the right to access records, in accordance with the Act and this chapter, contained in non-written formats or data processing systems. The method of access to such public records shall be as determined appropriate by the director of the department maintaining the records, considering all the circumstances; provided, however, that a director of a department shall not use the physical form, electronic or otherwise, in which a record is stored, to deny the right to inspect and receive copies of a record under this chapter and the Act. Access may include, but not be limited, to the following:

1. By using a city computer terminal or other viewing or listening device to retrieve data directly from the terminal screen; provided, however, that due regard shall be exercised to ensure that any non-public records will not be accessed, retrieved or displayed on the device and that records are not erased or damaged;
2. By providing paper or "hard" copies of record printouts or by providing magnetic tapes, discs or other means of electronic storage containing the computer, data processing or other electronic information system records; or
3. By the use, where appropriate, of remote terminals which have access to city computer, data processing or electronic information systems permitting such remote terminal access and provided that due regard shall be exercised to ensure that non-public records will not be available by remote terminal access.

C. 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 record which is considered non-public under the Act and this chapter. The city recorder shall develop policies and regulations regarding the nature and duration of the storage of any public or non-public record, contained or stored upon non-written formats or data processing systems.

Section 3-1-20. Accommodations for persons with disabilities.

Reasonable accommodations regarding access to city records shall be provided to persons with disabilities in accordance with policies developed under this chapter.

Section 3-1-21. Amendment or correction of record.

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 department maintaining the record in question, setting forth, with specificity, the amendment or correction requested and the reason for the change. When an amendment or correction of a city record is made, generally only the amended or corrected record shall be retained, unless the nature of the record indicates otherwise or as may be provided by policies and procedures adopted under the provisions of this chapter.

Section 3-1-22. Disciplinary action for knowing violation of this chapter.

A city employee who knowingly refuses to permit access to records in accordance with the Act and this chapter, or who permits access to non-public records knowing that such access is prohibited, or who knowingly, without authorization or legal authority, disposes of, alters, or removes records or allows other persons to do so in violation of the provisions of the Act, this chapter, or other law or regulation, may, in addition to the penalties established in the Act, be subject to disciplinary action, including termination.

Section 3-1-23. Criminal Penalties.

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, provides a copy of, or improperly uses a private, controlled, or protected record knowing that the disclosure or use is prohibited under this chapter, is guilty of a class B misdemeanor. B. It is a defense to prosecution under this Section that the actor used or released private, controlled, or protected information in the reasonable belief that the use or 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. It is a defense to prosecution under this subsection that the record could have lawfully been released to the recipient if it had been properly classified.

C. 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. No person shall be guilty under this subsection who receives the record, information, or copy after the fact and without prior knowledge of or participation in the false pretenses, bribery, or theft.

D. 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.