

TITLE 5 - GOVERNMENT RECORDS ACCESS AND MANAGEMENT ACT

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**TITLE 5 - GOVERNMENT RECORDS ACCESS
AND MANAGEMENT ACT**

CHAPTER 1 - IN GENERAL

5- 1- 1. SHORT TITLE.

This Title is known as the "Park City Government Records Access and Management Act".

5- 1- 2. PURPOSE AND INTENT.

In enacting this act, the City recognizes two fundamental constitutional rights: the right of privacy in relation to personal data gathered by the City; and the public's right of access to information concerning the conduct of the public's business. The City also recognizes a public policy interest in restricting access to certain records, as specified in this Title for the public good.

It is the intent of the City to:

- (A) Establish fair and efficient management practices for City records.
- (B) Promote the public's right of easy and reasonable access to unrestricted public records.
- (C) Permit confidential treatment of

records only as provided in this Title.

(D) Provide guidelines for both disclosure and restrictions on access to City records, based on the equitable weighing of the pertinent interests and which are consistent with the nationwide standards.

(E) Favor public access when in the application of this Title countervailing interests are of equal weight.

5- 1- 3. DEFINITIONS.

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

(B) **CHRONOLOGICAL LOGS.** Regular and customary summary of records of 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.

**(C) CLASSIFICATION, CLASSIFY
AND THEIR DERIVATIVE FORMS.**

Determining whether a record series, record, or information within a record is public, private, controlled, or protected, or exempt from disclosure under U.C.A. Section 63G-2-201(3)(B).

(D) COMPUTER PROGRAM. 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. Computer program does not mean the original data, including numbers, text, voice, graphics, and images; analysis, compilation, and other manipulated forms of the original data produced by the use of the program; or 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) CONTRACTOR. Any person who contracts with a governmental entity to provide goods or services directly to the City; or any private, nonprofit organization that receives funds from the City. Contractor does not mean a private provider.

(F) CONTROLLED RECORD. A record containing data on individuals that is controlled as provided in Section 5-3-5 of

- (3) the nature or general scope of the agency's initial actions in

this Title.

**(G) DESIGNATION, DESIGNATE,
AND THEIR DERIVATIVE FORMS.**

Indicating, based on the City's familiarity with a record series or based on the City'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.

(H) GROSS COMPENSATION.

Every form of enumeration 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.

(I) INDIVIDUAL. A human being.

(J) INITIAL CONTACT REPORT.

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 apparent discovery of an apparent violation of the law, which report may describe:

- (1) the date, time, location, and nature of the complaint, the incident or offense;
 - (2) names of victims;
- response to the incident;

(4) the general nature of any injuries or estimate of any damages sustained in the incident; (5) the name, address, and other identifying information about any person arrested or charged in connection with the incident; (6) the identity of the public safety personnel (except undercover personnel) or prosecuting attorney involved in responding to the initial incident. (K) <u>PERSON</u>. Any individual, nonprofit or profit corporation, partnership, sole proprietorship, or other type of business organization. (L) <u>PRIVATE RECORD</u>. A record containing data on individuals that is private as provided by Section 5-3-3 of this Title. (M) <u>PRIVATE PROVIDER</u>. Any person who contracts with the City to provide services directly to the public. (N) <u>PROTECTED RECORD</u>. A record that is classified as protected as provided by Section 5-3-7 of this Title. (O) <u>PUBLIC RECORD</u>. Any record that is not private, controlled, or protected and that is not exempt from disclosure as provided in Section 5-3-1 of this Title. (P) <u>RECORD</u>. All books, letters, documents, papers, maps, plans, photographs, films, cards, tapes recording or other documentary materials, and electronic data regardless of physical form or	characteristics, prepared, owned, used, received, or retained by the City. Record does not mean: (1) temporary drafts or similar materials prepared for the originator's own use or for the use of an individual for whom the originator is working; (2) materials that are legally owned by an individual in her or his private capacity; (3) materials to which access is limited by the laws of copyright or patent unless the copyright or patent is owned by the City; (4) proprietary software (5) junk mail or other commercial publications received by the City or an official or an employee of the City; (6) books and other materials that are catalogued, indexed, or inventoried and contained in the collections of libraries open to the public, regardless of physical form or characteristics of the material; (7) daily calendars and other personal notes prepared for the personal use of the originator or for the personal use of an individual for whom she or he is working; or (8) computer programs that are purchased or developed by the City for its own use;
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(9) 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, or member of any other body charged with performing a quasi-judicial function.

(Q) **RECORD SERIES.** A group of records that may be treated as a unit for purposes of designation, description, management or disposition.

(R) **STATE ARCHIVES.** The Division of Archives and Records Service created in U.C.A. Section 63G-12-101.

(S) **SUMMARY DATA.** Statistical records and compilations that contain data derived from private, controlled, or protected information but that do not disclose private, controlled, or protected information.

(Amended by Ord. No. 08-49)

5- 1- 4. RECORDS CLASSIFICATION AND DESIGNATION.

The City shall evaluate all record series that it uses or creates and designate those record series as provided by this Title. The City shall report the designation of its record series to the State Archives. A record, record series or information within a record may be classified at any time, but the City is not required to classify a particular record, record series or information until access to the record is requested. A record, record

series or information within a record series may be reclassified or re-designated at any time.

**CHAPTER 2. PUBLIC RECORDS AND
THEIR DISCLOSURE**

**5- 2- 1. RIGHT TO INSPECT
AND COPY RECORDS.**

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 the payment of costs and pursuant to Chapter 8 of this Title.

All records are public unless otherwise expressly provided by this Title or state or federal law or regulation.

5- 2 -2. PUBLIC RECORDS.

The list of public records in this section is not exhaustive and should not be used to limit access to records. The following records are public:

(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 qualification of the City's former and present employees and officers, excluding undercover law enforcement personnel or investigative personnel if disclosure could reasonably be expected to impair the effectiveness of investigations or endanger any individual's safety;

(C) Final options, including concurring and dissenting opinions, and orders that are made by the City 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, protected, or controlled.

(D) Final interpretations of statutes or rules by the City unless classified as protected under this Title.

(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 U.C.A. Section 52-4, Open and Public Meetings, including the records of all votes of each member of the City Council;

(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 Title.

(G) Records filed with or maintained by City and County Recorders, clerks, treasurers, surveyors, zoning commissions, or other governmental entities that give public notice of:

(1) title or encumbrances to real property;

(2) restrictions on the use of real property;

(3) the capacity of persons to take or convey title to real property; or

(4) tax status for real or personal property.

(H) Data on individuals that would

otherwise be private under this Title if the individual who is the subject of the record has given the City written permission to make the record available to the public;

(I) Documentation of the compensation the City pays to a contractor or private provider; and

(J) Summary data.

**5 -2 -3. PUBLIC RECORDS
UNLESS EXEMPTED.**

The following records are normally public unless they are expressly exempt from disclosure under Subsection 5-3-1(B), or Section 5-3-3, 5-3-5, or 5-3-7:

(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 private provider to the extent the records would be public if prepared by the City;

(D) Contracts entered into with the City;

(E) Any account, voucher, or contract that deals with the receipt or expenditure of funds by the City;

(F) Chronological logs and initial contact reports;

(G) Correspondence by and with the City in which the City determines or states and

opinion upon the rights of the State, a political subdivision, the public, or any person;

(H) Empirical data contained in drafts if the empirical data is not reasonably available to the requester elsewhere in similar form and the City is given a reasonable opportunity to correct any errors or make non-substantive changes before release;

(I) Original data in a computer program if the City chooses not to disclose the program;

(J) Arrest warrants after issuance, except that, for good cause, a court may order restricted access to arrest warrants prior to service;

(K) 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;

(L) Records that would disclose information relating to formal charges or disciplinary actions against a past or present employee if the disciplinary action has been completed and all time periods for administrative appeal have expired and the formal charges were sustained;

(M) Final audit reports;

(N) Business licenses;

(O) A notice of violation or similar records used to initiate proceedings for discipline or sanctions against persons regulated by the City, but not including

records that initiate employee discipline.

**CHAPTER 3. NON-PUBLIC RECORDS
AND THEIR DISCLOSURE**

**5- 3- 1. RECORDS THAT ARE
NOT PUBLIC.**

The following records are not public:

(A) Records that are appropriately classified private, controlled, or protected as allowed by Sections 5-3-3, 5-3-5 and 5-3-7 of this title.

(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.

(C) Only those records specified in Sections 5-3-3, 5-3-5, and 5-3-7 may be classified private, controlled, or protected.

**5- 3- 2. DISCLOSURE OF
RECORDS THAT ARE NOT PUBLIC.**

The City may not disclose a record that is private, controlled, or protected to any person except as provided below:

(A) Before releasing a private, controlled, or protected record, the City shall obtain evidence of the requester's identity.

(B) The City may disclose a private, controlled, or protected record to another governmental entity only as provided by U.C.A. Section 63G-2-206.

(C) The City shall disclose or authorize disclosure of private or controlled records for research purposes only as provided by U.C.A. Section 63G-2-202(8).

(D) Under Section 5-5-4, the City Council may require the disclosure of records that are private under Section 5-3-3, controlled under Section 5-3-5, or protected under Section 5-3-7 to persons other than those specified in this section.

(E) Under U.C.A. Sections 63G-2-404(8) and 63G-2-202(7), a court may require the disclosure of records that are private under Section 5-3-3, controlled under Section 5-3-5, or protected under Section 5-3-7 to persons other than those specified in this section.

(F) The City may, at its discretion, disclose records that are private under Section 5-3-3 or protected under Section 5-3-5 to persons other than those specified in this Title 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 outweigh the interest favoring restriction of access.

(G) The specific provisions of the statute, rule, or regulation govern the disclosure of records to which access is mandated pursuant to court rule, another state statute, federal statute, or federal regulation, including records for which access is mandated or limited as a condition of participation in a state or federal program or for receiving state or federal funds.

(Amended by Ord. No. 08-49)

5- 3- 3. PRIVATE RECORDS.

The following records are private:

(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 describing individuals' 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 concerning a current or former employee of, or applicant for employment with the City that would disclose the individual's home address, home telephone number, social security number, insurance coverage, marital status, or payroll deductions;

(E) 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 Section 5-2-2(B) or 5-2-3(A).

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

- (1) Records described in Section 5-2-2;
- (2) Information provided to the City for the purpose of complying

with a financial assurance requirement; or

(3) Records that must be disclosed in accordance with another statute

(G) Other records containing data on individuals the disclosure of which constitutes a clearly unwarranted invasion of personal privacy.

(H) Information obtained through a criminal background check under Utah Code Title 11, Chapter 40.

(I) Records provided by the United States or a governmental 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.

(Amended by Ord. No. 08-49)

5- 3- 4. DISCLOSURE OF PRIVATE RECORDS.

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 any legally incapacitated individual who is the subject of the record;

(D) any other individual who;

(1) has a power of attorney from the subject of the record; or

(2) submits a notarized release from the subject of the record or from her or his legal representative dated no later than ninety (90) days before the date the request is made; or

(3) any person to whom the record must be provided pursuant to court order.

5- 3- 5. CONTROLLED RECORDS.

Records are classified as controlled by the City when the record contains medical, psychiatric, or psychological data about an individual and 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 the safety of any individual;

(B) releasing the information would constitute a violation of normal professional practice and medical ethics.

5- 3- 6. DISCLOSURE OF CONTROLLED RECORDS.

Upon request, the City shall disclose a **controlled** record to:

(A) a physician, psychologist, or certified social worker upon submission of a

notarized release from the subject of the record that is dated no more than ninety (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 (C).

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

(C) a person who receives a record from the City in accordance with Subsection (A) above may not disclose the controlled information to any person, including the subject of the record. 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.

5- 3- 7. PROTECTED RECORDS.

The following records are classified as protected by the City:

(A) Trade secrets, as defined in U.C.A. Section 13-24-2, if the person submitting the trade secret has provided the City with the information specified in U.C.A. Section 63G-2-309 for business confidentiality claims.

(B) Commercial information or non-individual financial information obtained from a person if:

(1) 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 City to obtain necessary information in the future;

(2) The person submitting the information has a greater interest in prohibiting access than the public has in obtaining access; and

(3) The person submitting the information has provided the City with the information specified in U.C.A. Section 63G-2-309.

(C) Commercial or financial information acquired or prepared by the City to the extent that a disclosure would lead to financial speculations in currencies, securities, or commodities that will interfere with a planned transaction by the City or cause substantial financial injury to the City or cause financial injury to the State economy;

(D) Test or interview questions and answers to be used in future license, certification, registration, employment or academic examinations;

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

(F) 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;

(1) Public interest in obtaining the information outweighs the City's need to acquire the property on the best terms possible; (2) The information has already been disclosed by persons not employed by or under a duty of confidentiality to the City; or (3) In the case of records that would identify property described, potential sellers of the property have already learned of the City's plans to acquire the property; (4) In the case of records that would identify the appraisal or estimated value of the property, the potential sellers have already learned of the City's estimated value of the property; (G) Records prepared in contemplation of sale, lease, exchange, rental, or other contemplated 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: (1) The public interest in access outweighs the interest in restricting access, including the City's interest in maximizing the financial benefit of the transaction; or (2) When prepared by or on behalf of the City, appraisals or estimates of the value of the subject	property have been disclosed to persons not employed by or under a duty of confidentiality to the City; (H) 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 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 the 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 the 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
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efforts;	provided in U.C.A. Section 78B-1-137;
(I) Records the disclosure of which would jeopardize the life or safety of an individual;	(P) Drafts, unless otherwise classified as public;
(J) 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;	(Q) Records concerning the City's strategy concerning collective bargaining or pending litigation;
(K) Records the disclosure of which 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 or an offender's incarceration, treatment, probation, or parole;	(R) Records of investigations of loss occurrences and analyses of loss occurrences;
(L) Records of a governmental audit agency relating to an ongoing or planned audit until the final audit is released;	(S) 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;
(M) Records prepared by or on behalf of the City solely in anticipation of litigation that are not available under the rules of discovery;	(T) Records that contain the location of historic, prehistoric, or biological resources that if known would jeopardize the security of those resources or the security of valuable cultural, historic, scientific, or educational information;
(N) Records disclosing an attorney's work product, including the mental impressions or legal theories of an attorney or other representative of the City concerning litigation;	(U) Records of independent state agencies if the disclosure of the records would conflict with the fiduciary obligations of the agency;
(O) Records of communications between the City and an attorney representing, retained or employed by the City if the communications would be privileged as	(V) Records provided by the United States or a governmental entity outside the State that are given to the City with the 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;
	(W) Transcripts, minutes, or reports of the closed portion of a meeting of a public

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body except as provided in U.C.A. Section 52-4-7 of the Open and Public Meetings Act;

(X) 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;

(Y) Memorandum 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 of law charged by law with performing a quasi-judicial function; and

(Z) Records that would reveal negotiations regarding assistance or incentives offered by or requested from the city 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 city at a competitive disadvantage, but this section may not be used to restrict access to a record evidencing a final contract; and

(AA) Materials to which access must be limited for purposes of securing or maintaining the City's proprietary protection of intellectual property rights including patents, copyrights, and trade secrets.

(Amended by Ord. No. 08-49)

5-3-8. DISCLOSURE OF PROTECTED RECORDS.

Upon request the City shall disclose a **protected** record to:

(A) The person who submitted the record;

(B) Any other individual who:

(1) has a power of attorney from all persons and governmental entities whose interest were sought to be protected by the protected classification;

(2) submits a notarized release from all persons and governmental entities whose interests were sought to be protected by the protected classification or from their legal representatives dated no more than ninety (90) days prior to the date the request was made; or

(C) Any other person to whom a record must be provided pursuant to a court order.

(D) The City shall provide a person with a copy of the record if the person:

(1) has a right to inspect it;

(2) identifies the record with reasonable specificity; and

(3) pays the lawful fees.

5-3-9. CONFIDENTIAL TREATMENT OF RECORDS FOR WHICH NO EXEMPTION APPLIES.

A court may order the confidential treatment of records for which no exemption from disclosure applies if compelling interests, which favor restriction of access to the records clearly outweigh the interests favoring access. 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 attorney's fees and court costs incurred by the leading party in opposing the City's request if the court denies confidential treatment under this section.

This section does not apply to records that are specifically required to be public under Chapter 2 of this Title or under U.C.A. Section 63G-2-301.

Access to drafts and empirical data may be limited under this section, but the courts may consider, in their 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.

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 statutes of that data as part of a computer program.

(Amended by Ord. No. 08-49)

CHAPTER 4 - PROCEDURES FOR ACCESS

5- 4- 1. WRITTEN REQUESTS FOR RECORDS.

A person making a request for a record shall furnish the City with a written request containing their name, mailing address, daytime phone number if available, and a reasonably specific description of the records requested.

5- 4- 2. RESPONSE TO REQUEST.

As soon as reasonably possible, but no later than ten (10) business days after receiving a written request, or five business days after receiving a written request if the requester demonstrates that expedited response would primarily benefit the public, the City shall respond to the request by:

- (A) approving the request and providing the record;
- (B) denying the request;
- (C) notifying the requester that it does not maintain the record and providing, if known, the name and address where the record can be found; or
- (D) notifying the requester that because of one of the extraordinary circumstances listed in Section 5-4-4, below, it cannot immediately approve or deny the request. The notice shall describe the circumstances relied upon and shall specify the date when the record request will be approved or denied.

**5- 4- 3. DUTY OF CITY TO
RESPOND IS LIMITED.**

The following limits shall apply to requests:

(A) The City is not required to create a record in response to a request.

(B) The City is not required to fulfill a record request if the request unreasonably duplicates prior record requests from that person.

(C) If a person requests copies of more than fifty (50) pages of records, and if the records are contained in files that do not contain records that are exempt from disclosure, the City may:

- (1) provide the requester with copying facilities and require the requester to make her or his own copies; or
- (2) allow the requester to provide her or his own copying facilities and personnel to make the copies at the City offices, and waive the fees for copying the records.
- (3) nothing in this Title shall be construed to limit or impair the rights or protection granted to the City under federal copyright or patent law as a result of its ownership of the intellectual property right.
- (4) 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.

(D) The City may provide access to an electronic copy of a record in lieu of providing access to its paper equivalent.

(Amended by Ord. No. 08-49)

**5- 4- 4. CIRCUMSTANCES
WHICH WOULD EXTEND RESPONSE
TIME.**

The following circumstances constitute "extraordinary circumstances" that allow the City to delay approval or denial for a reasonable period of time, but for no longer than fifteen (15) business days. 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:

(A) The request is for a voluminous quantity of records;

(B) The City is currently processing a large number of record requests;

(C) The request requires the City to review a large number of records to locate the records requested;

(D) The decision to release a record involves legal issues that require analysis of statutes, rules, ordinances, regulations, or case law;

(E) Segregating information that the requester is entitled to inspect from

information that the requester is not entitled to inspect requires extensive editing or computer programming; or

(F) Another governmental entity is using the record, in which case the City shall promptly request that governmental entity currently in possession to return the record.

(G) 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.

**5- 4- 5. DENIALS OF REQUESTS
FOR RECORDS.**

If the City denies a request in whole or in part, it shall provide a denial notice to the requester either in person or by sending the notice to the requester's address. The denial notice shall contain the following information:

(A) A brief 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 authority that exempt the record or portions of the record from disclosure;

(C) A statement that the requester has

the right to appeal the denial to the City Manager; and

(D) A brief summary of the appeals process and time limits for filing an appeal.

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.

CHAPTER 5. APPEALS

5- 5- 1. APPEALS IN GENERAL.

Any person aggrieved by the City's access determination under this Title, including a person not a party to the City's proceeding, may appeal the determination to the City Manager by filing a notice of appeal. 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.
- (C) A short statement of facts, reasons, and legal authority in support of the appeal.

**5- 5- 2. APPEAL OF
EXTRAORDINARY
CIRCUMSTANCES DECISIONS.**

If the City claims extraordinary circumstances and specifies the date when the records will be available 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 thirty (30) days of notification of a claim of extraordinary circumstances by the City, despite the lack of a "determination" or its equivalent.

**5- 5- 3. APPEAL OF BUSINESS
CONFIDENTIALITY CLAIMS.**

If the appeal involves a record that is the subject of a business confidentiality claim

under U.C.A. Section 63G-2-309, the City Recorder shall:

- (A) Send notice of the requester's appeal to the business confidentiality claimant within three (3) business days after receiving notice, except that if notice under this section must be given to more than thirty-five (35) persons, it shall be given as soon as reasonably possible;
- (B) Send notice of the business confidentiality claim and the schedule for the City Recorder's determination to the requester within three (3) business days after receiving notice of the requester's appeal.
- (C) The requester shall have seven (7) business days after notice sent by the City Recorder to submit further support for the claim for business confidentiality.

(Amended by Ord. No. 08-49)

**5- 5- 4. DETERMINATION BY
CITY MANAGER.**

The City Manager shall make a determination on any appeal within five (5) business days of the City Manager's receipt of the notice of appeal or within twelve (12) business days after the City sends the requester's notice of appeal to a person who submitted a claim of business confidentiality. The City Manager may, upon consideration and weighing 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 5-3-3 or protected under Section 5-3-7 if the interests favoring access

outweigh the interests favoring restriction of access.

The City Recorder shall send written notice of the Mayor's determination to all participants. If the City Manager 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 the City Council, and the time limits for filing an appeal.

The City Manager's duties under this section may be delegated.

If the City Manager fails to make a determination within the time specified in Subsection (A), the failure shall be considered the equivalent of an order denying the appeal.

5- 5- 5. APPEAL OF CITY MANAGER'S DECISION TO CITY COUNCIL.

A notice of appeal of the City Manager's decision must be filed with the City Recorder no later than thirty (30) days after the City Manager has denied the appeal or fails to make a determination within the time specified in Section 5-5-4. No later than three (3) days after receiving notice of appeal, the recorder shall schedule a hearing for the City Council to discuss the appeal which shall be held no sooner than fifteen (15) days and no later than thirty (30) days from the date of the filing of the appeal.

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. No later than three (3) 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 Manager in whole or in part.

The order of the City shall include:

(A) A statement of reasons for the decision, including citations to this Title or federal regulations that govern disclosure of the record, provided that the citations do not disclose private, controlled, or protected information;

(B) A description of the record or portions of the record to which access was ordered or denied, provided that the description does not disclose private, controlled, or protected information;

(C) A statement that any party to the appeal may appeal the City's decision to the District Court; and

(D) 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.

5- 5- 6. NON-REQUESTER APPEALS.

Any person aggrieved by the City's classification or designation determination under this Title, but who is not requesting access to the records, may appeal that determination using the procedures provided in this chapter. If a non-requester is the only appellant, the procedures provided in this section shall apply, except that the

determination on the appeal shall be made within thirty (30) days after receiving the notice of appeal.

5- 5- 7. EXTENSION OF TIME PERIOD.

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

5- 5- 8. JUDICIAL REVIEW.

Any party to the proceeding before the City Council may petition for judicial review by the District Court of the City Council's order. The petition shall be filed no later than thirty (30) days after the date of the City Council's order.

CHAPTER 6. RECORDS RETENTION SCHEDULES

5- 6- 1. ADOPTION OF RECORDS RETENTION SCHEDULES.

The City shall adopt by Resolution retention schedules for each record series pursuant to the Utah Municipal General Records Retention Schedule, prepared by the Utah Department of Administrative Services, Division of Archives and Records Service, with amendments and exclusions as necessary.

CHAPTER 7. RIGHTS OF

**INDIVIDUALS ON WHOM DATA IS
MAINTAINED**

**5- 7- 1. REQUESTS FOR
INFORMATION.**

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. This statement shall be a public record. When individuals on whom data is maintained request it, the City shall explain the reasons the individual has been asked to furnish the City with information that could be classified private or controlled, the intended uses of the information, and the consequences for refusing to provide the information.

The City shall 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 U.C.A. Section 63G-2-206.

(Amended by Ord. No. 08-49)

5- 7- 2. SEGREGATION OF RECORDS.

Notwithstanding any other provision in this Title, 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 Title, the City shall allow access to information in the record that the requester is entitled to inspect under this Title and deny access to information in the record if the information

is exempt from disclosure to the requester, by issuing a written denial notice.

**5- 7- 3. REQUEST TO AMEND A
RECORD.**

Any individual may contest the accuracy or completeness of any public, private, or protected record by requesting the City to amend the record. However, this section does not affect the right of access to any private or protected records concerning him or her. The request shall contain the requester's name, mailing address, and daytime phone number and a brief statement explaining why the City should amend the record. The City shall issue an order either approving or denying the request to amend no later than thirty days from the receipt of the request.

If the City approves the request, the City shall correct all of its records that contain the same incorrect information as soon as practical. The City shall not disclose the record until it has amended it, once the request has been approved.

If the City denies the request it shall inform the requester in writing and provide a brief written statement giving its reasons for denying the request.

If the requester disagrees with the City's decision not to amend a record, the requester may submit a written statement contesting the information in the record and the City shall file the requester's statement along with the disputed record or make the statement accessible if the record is not in a form such that the statement can accompany the record and disclose the requester's

statement along with the information in the record whenever the City discloses the disputed information.

**5- 7- 4. APPEAL OF DENIAL TO
AMEND RECORD.**

The requester may appeal the denial of the request to amend a record pursuant to Chapter 5 of this Title governing appeals.

**5- 7- 5. SECTION NOT
APPLICABLE.**

This section does not apply to records relating to title or real or personal property, medical records, judicial case files, or any other records that the City determines must be maintained in their original form to protect the public interest and to preserve the integrity of the record system.

CHAPTER 8. FEES.

**5- 8- 1. REASONABLE FEES TO
BE SET BY RESOLUTION.**

The City will set reasonable fees by Resolution to cover the City's actual cost of duplicating a record or compiling a record in a form other than that maintained by the City. The initial fee, until changed by resolution is as set forth in Appendix "A". The City may not charge a fee for reviewing a record to determine whether it is subject to disclosure or inspecting a record.

5- 8- 2. WAIVER OF FEES.

The City may fulfill a record request without charge when it determines that:

- (A) releasing the record primarily benefits the public;
- (B) the individual requesting the record is the subject of the record;
- (C) the requester's legal rights are directly implicated by the information in the record; or
- (E) the requester is impecunious.

CHAPTER 9. CRIMINAL PENALTIES

**5- 9- 1. INTENTIONAL
DISCLOSURE OF PRIVATE,
CONTROLLED OR PROTECTED
RECORDS OR NON-DISCLOSURE OF
PUBLIC RECORDS BY EMPLOYEES
OR OTHERS.**

A public employee or other person who has lawful access to any private, controlled, or protected record under this Title, 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. 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 the City, the Records Committee, or a court, is guilty of a class B misdemeanor.

It is a defense to prosecution under this subsection that the actor released private, protected, or controlled information in the reasonable belief that the disclosure of the information was necessary to expose a violation of the law involving government corruption, abuse of office or misappropriation of public funds or property. It is also a defense to prosecution under this subsection that the record could have been lawfully released to the recipient if it had been properly classified.

**5- 9- 2. OBTAINING RECORDS
ILLEGALLY.**

A person who, by false pretense, bribery, or theft, gains access or obtains a copy of any private, controlled, or protected record to which she or 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.