

## Chapter 2.82 RECORDS MANAGEMENT

### 2.82.010 Government Records Findings--Recognition of public policy.

The council of Salt Lake County finds the following:

- A. It is in the best interests of Salt Lake County and the citizens thereof, and essential for the administration of county government, to maintain and preserve accurate governmental records; to provide ready access to records which are defined by law as open to the public; to maintain the security of records which are defined by law as nonpublic; and to ensure the preservation of vital and historically valuable records.
- B. As the records of Salt Lake County government agencies are a resource containing information which (1) allows government programs to function; (2) provides officials with a basis for making decisions and ensuring continuity with past operations; and (3) permits citizens to research and document matters of personal and community importance; this resource must be systematically and efficiently managed.
- C. It is the policy of the county that all governmental records, which are defined by applicable Utah statutory and case law as public records, shall be made available to citizens as set forth in this chapter.
- D. The county recognizes a public policy interest in allowing the government to restrict access to certain records, as specified in the Act and this chapter, for the public good.

### 2.82.020 Purpose and intent.

In enacting this chapter, it is the purpose and intent of the council to provide, in accordance with the Government Records Access and Management Act (hereinafter referred to as "the Act"), Chapter 2 of Title 63 of the Utah Code Annotated (1953), an ordinance acknowledging and complying with the Act and providing for its application in the county. County agencies shall

comply with the provisions of this chapter, the Act, and other federal and state statutory and regulatory record-keeping requirements.

#### 2.82.030 Definitions.

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

A. "Act" means the Government Records Access and Management Act, §§63-2-1, et seq., Utah Code Annotated, 1953, as amended.

B. "Agency" means any office, department, division, section, staff office, board, committee or other division of Salt Lake County Government, any public or private entity or person which contracts with the county to provide goods or services directly to the county, or any private nonprofit entity that receives funds from the county.

C. "Computer software ~~program~~ application means the series of instructions or statements that permit the functioning of a computer system in a manner designed to provide storage, retrieval, and manipulation of data from the computer system, and any associated documentation, manuals or other source material explaining how to operate the software ~~program~~ application.

"Software" does not include the original data or record which is manipulated by the software.

D. "Controlled records" means those defined as controlled under the provisions of this chapter and in accordance with the provisions of the Act.

E. "Data" means individual elements or fields ~~containing~~ (for example, birth date, address) in records.

F. "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 likely be given if classified.

G. "Dispose" means to destroy, or render irretrievable or illegible, a record or the

information contained in it by any physical, electronic or other means, including unauthorized deletion or erasure of electronically recorded audio, visual, non-written formats, data processing or other records.

H. "Nonpublic records" means those records defined as private, controlled or protected under the provisions of this chapter and of the Act.

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

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

K. "Public" records shall refer to those records which have not been classified as nonpublic in accordance with the provisions of this chapter and the Act.

L. 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, used, received or retained by the county where all the information in the original is reproducible by some mechanical, electronic, photographic or other means.

2. "Record" does not mean:

a. Temporary drafts or similar materials prepared for the originator's personal use or prepared by the originator for the personal use of a person for whom he is working;

b. Materials that are legally owned by an individual in his private capacity;

c. Materials to which access is limited by the laws of copyright or patent, unless owned by the county;

d. Junk mail or commercial publications received by the county or by an officer or employee of the county;

- e. Books and other materials that are catalogued, indexed, or inventoried and contained in the collections of county libraries open to the public, regardless of physical form or characteristics of the material;
- f. Personal notes or daily calendars prepared by any county officer or employee for personal use or the personal use of a supervisor or such notes, calendars or internal memoranda prepared for the use of an officer or agency acting in a quasi-judicial or deliberative process or pursuant to matters discussed in a meeting closed pursuant to Utah Open Meetings Act; or
- g. Proprietary computer software applications as defined in Subsection C of this section that are developed or purchased by or for the county for its own use.

#### 2.82.040 Public access.

- A. Members of the public shall have the right to see, review, examine and take copies, in any format maintained by the county and subject to Section 2.82.170 hereof, of all county governmental records designated as "public" under the provisions of this chapter, and of the Act and policies and procedures developed hereunder.
- B. The county has no obligation to create a record or record series in response to a request from a member of the public, if the record requested is not otherwise regularly maintained or kept.
- C. When a record is temporarily held by a custodial county agency, pursuant to that custodial agency's statutory and ordinance functions, such as records storage, investigation, litigation or audit, the record shall not be considered a record of the custodial agency for the purpose of this chapter. The record shall be considered a record of the agency or agencies which usually keeps or maintains that record and any requests for access to such records shall be directed to that agency or agencies, rather than the custodial agency, pursuant to procedures

established by the county. Only when records have been formally filed for permanent archival retention shall county archives be responsible for responding to requests for another agency's records.

#### 2.82.050 Availability--Restrictions.

A. Public records shall be those county records as defined in the Act, §§63-2-301 (U.C.A., 1953, as amended), as public. Public records shall be made available to any person. All county records are considered public unless they are expressly classified otherwise in accordance with policies and procedures established under this chapter and the Act or are made nonpublic by the Act or other applicable law.

B. Private records shall be those county records classified as "private," as defined in the Act, §§63-2-302 (U.C.A., 1953, as amended), and as classified and defined in procedures established pursuant to this chapter and in accordance with the Act. Private records shall be made available to the following persons: The subject of the record, the parent or legal guardian of an unemancipated minor who is the subject of a record, the legal guardian of an incapacitated individual who is the subject of a record, any person who has a power of attorney or a notarized release dated not more than ninety days prior to the request from the subject of the record or his legal representative, or any person presenting a legislative subpoena or a court order issued by a court of competent jurisdiction.

C. Controlled records shall be those county records classified as "controlled," as defined in the Act, §§63-2-303 (U.C.A., 1953, as amended), and as classified and defined in procedures established in this chapter and in accordance with the Act. Controlled records shall be made available to a physician, psychologist or licensed 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 a legislative subpoena or a court order issued by a ~~judge~~ court of competent jurisdiction.

D. Protected records shall be those county records classified as "protected," as defined in the Act, §§63-2-304 (U.C.A., 1953, as amended), and as classified and defined in procedures established in this chapter and in accordance with the Act. Protected records shall be made available to the person who submitted the record, to a person who has power of attorney or notarized release dated not more than ninety days prior to the request from any persons or governmental entities whose interests are protected by the classification of the record, or to any person presenting a legislative subpoena or a court order issued by a court of competent jurisdiction.

E. Under circumstances set out by the Act, it may be appropriate to disclose nonpublic county records to persons other than those set out in this section. The determination to so release records shall be at the discretion of the department director or elected official or designee, consistent with the Act, and upon the advice of the attorney.

#### 2.82.060 Right of privacy.

A. The county recognizes and upholds the personal right of privacy retained by persons who may be the subject of governmental records. The county also recognizes that the Act and Utah case law establish a presumption that governmental records will generally be considered open and public, with certain specific exceptions. In circumstances where a record's public or nonpublic status is not specifically established by the Act or another statute, by this chapter, or by policies established or designations made under this chapter, the public's right to access and the record subject's right of privacy must be compared. The county shall not release any records when to do so would constitute a clearly unwarranted invasion of personal privacy, in accordance with the Act, applicable case law, and procedures established in this chapter. Under circumstances and procedures established by this chapter, certain items of data may be rendered nonpublic, although other items of data in the record, or the record itself, may be classified public.

B. The county may, as determined appropriate by the agency director of the agency responding to a request for records, notify a subject of a record that a request for access to the subject's record has been made.

#### 2.82.070 Designation, classification and retention scheduling.

All county records and record series, of any format, shall be evaluated, designated, classified and scheduled for retention according to the provisions of the Act and this chapter. The county may designate or redesignate or classify or reclassify records or data at any time and is not required to classify a particular record or item of data until access thereto is requested. Any records or record series generated in the future shall also be so designated, classified and scheduled for retention. Records designation, classification and scheduling for retention shall be conducted

under the supervision of the county records manager or designee in consultation with the agency director of the agency in charge of the record in question, or designee. All proposed schedules shall be submitted to the county records manager. Assistance may be requested from the attorney as needed. Designation, classification and retention scheduling forms and guidelines shall be prepared and promulgated by the county records manager and the records policy administration.

#### 2.82.080 Requisition--Response time--Denial.

A. Under circumstances in which an agency is not able to immediately respond to a records request, the requester shall fill out and present to the agency a written request on forms provided by the county. The date and time of the request shall be noted on the written request form and all times provided under this chapter shall commence from that time and date. Requesters of nonpublic records shall adequately identify themselves and, if applicable, their status when requesting access to nonpublic records.

B. An agency may respond to a request for a record by approving the request and providing the records, denying the request, or such other appropriate response as may be established by policies and procedures. If a written request is denied in whole or in part, the agency shall provide a notice of denial to the requester. The denial notice shall include the reasons for denial and information regarding the appeals process and such other information as may be required by this chapter and the Act.

C. 1. An agency shall respond to a written request for a record as soon as reasonably possible, but no later than ten business days after receiving the request or five business days after receiving a request if the requester satisfactorily demonstrates that an expedited response time primarily benefits the public at large, rather than the requester individually. A requester seeking records for a story or report for publication or broadcast purposes to the general public is presumed to be acting to benefit of the public rather than a person.

2. The following extraordinary circumstances shall justify an agency's failure to timely respond to a written request for a record and shall extend the time for response thereto to that time reasonably necessary to respond to the request, as determined by the agency director.

Extraordinary circumstances include:

- a. The agency, another 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 agency to review a large number of records or perform extensive research to locate the materials requested;
- c. The agency 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 release of a record involves legal issues that require an agency to seek legal counsel for analysis of applicable laws;
- e. The request involves extensive editing to separate public data in a record from that which is not public; or
- f. Providing the information request requires computer programming or other format manipulation.

3. When a timely response cannot be made to a record request, the agency shall notify the

requester that it cannot immediately approve or deny the request because of one of the extraordinary circumstances listed in Subsection C.2 of this section, and provide an explanation of the circumstances and an estimate of the time required to respond to the request. If the agency fails to provide the requested record within the estimated time, that failure shall be considered a denial of the request.

D. The failure or inability of an agency to respond to a request for a record within the time frames set out herein, or the agency's denial of such a request, shall give the requester the right to appeal as provided in Section 2.82.100.

E. Any county record which is subject to litigation, criminal investigation or audit or has been requested in accordance with this chapter and the Act, that is disposable by approved retention schedule, may not be disposed of until the litigation or audit has been resolved or the request is granted and fulfilled, or sixty days after the request is denied if no appeals are filed, or sixty days after all appeals are completed, pursuant to Section 2.82.100.

F. In response to a request for access, an agency may designate or reclassify the record or segregate data in the requested record in accordance with this chapter and the Act.

#### 2.82.090 Fee determination.

A. An agency may charge a reasonable fee to cover its actual cost of duplicating a record or compiling a record in a form other than that maintained by the agency.

B. An agency may fulfill a record request without charge and is encouraged to do so when it determines that:

1. Releasing the record primarily benefits the public rather than a person;
2. The individual requesting the record is the subject of the record; or
3. The requester's rights are directly implicated by the information in the record, and the

requester is impecunious.

C. Fee policies adopted under this chapter shall be consistent with this section.

#### 2.82.100 Appeals.

A. 1. Persons aggrieved by the county's classification of a record or by an agency's response to a record request may request and be granted an initial administrative appeal of that grievance, in accordance with policies adopted by the records policy administration. The initial administrative appeal is made to a hearing board convened pursuant to policies adopted by the records policy administration.

2. A written notice of appeal shall be filed with the director of the involved agency within ten (10) business days after the date of the agency's action, who shall immediately notify the county records manager. The records manager shall institute the initial convening of the hearing board within ten business days after the date the members of the hearing board are chosen by the agency and the petitioner but no later than twenty-one (21) days after the date the appeal is filed.

3. The records officer shall send a written notice by certified mail of the date and location of the hearing to the requester, and notice to members of the hearing board and the director of the involved agency. the hearing shall be conducted in accordance with policies adopted by the council and with the Utah Open Meetings Act.

4. Failure of the hearing board to issue a written decision and forward it to the appellant within five days after conclusion of the hearing grants to the requester the right to carry the appeal to the council.

B. 1. A requester who is aggrieved by the hearing board decision may file an appeal with the chair of the council within ten business days after the date the hearing board decision is issued..

2. A council review of the appeal shall be initially convened within twenty-one days following the decision of the hearing board.

3. Notices and staff assistance regarding the council hearing shall be provided by the county records manager and shall be provided as set out in subsection A of this section and in policies and procedures.

4. Failure of the council to issue a written decision within five days after conclusion of the hearing grants to the requester the right to carry the appeal to the district court.

5. The appeal of a decision of the council may be made to the district court, in accordance with the Act and the Utah Rules of Civil Procedure.

C. The appellant shall set forth in writing the nature and date of the request, attaching a copy of the request form, if available, and setting out the basis and legal authority for the request.

D. The decisions of any hearing board or the council regarding access to or classification of records shall be forwarded to the county records policy administration for corrective action including any reclassification or designation of data or records which may be necessitated by the appellate decision.

#### 2.82.110 Access for persons with disabilities.

Reasonable accommodations regarding access to governmental records shall be provided to persons with disabilities in accordance with policies developed under this chapter and in compliance with The Americans with Disabilities Act.

#### 2.82.120 Amendments and corrections.

Records held by the county may be amended or corrected as needed and as authorized by law. Requests for amendments, corrections or other changes shall be made in writing to the agency having custody of the records and setting forth, with specificity, the amendment or correction requested and the reason for the change. When an amendment or correction of a government record is made, generally both the original record and 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.

#### 2.82.130 Liability for Unauthorized Release.

A. A county employee or other person having lawful custody of county records who knowingly refuses to permit access to records in accordance with the Act and this chapter, or who permits access to nonpublic 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 be subject to criminal prosecution and disciplinary action, including termination of employment.

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

#### 2.82.140 Access management and archiving.

A. There shall be designated a county records manager to oversee and coordinate records access and management and county archives activities. The records manager shall make annual reports of records services activities to the council.

B. There is hereby created the government records access and management policy

administration ("records policy administration"), to be chaired by the county records ~~officer~~ manager. Members of the records policy administration shall include representatives from the council staff, the county departments and from the elected offices. The records policy administration shall meet periodically as needed, as determined by the county records manager. The minutes and other records of the records policy administration shall be maintained and staff provided by Records Management and Archives Section.

C. Each agency of county government shall appoint an individual or individuals to assist with and be directly responsible for the implementation of this chapter. Regular training shall be provided under the direction of the records manager to agency records personnel.

D. The records policy administration shall develop and provide records management, maintenance and access standards, policies and procedures, as approved by the council to govern and implement the provisions of the Act and this chapter. Approval and promulgation of records policies and procedures shall be in accordance with the provisions of this code of ordinances and the Act. Copies of any rule or policy promulgated under this chapter shall be forwarded by the county record manager to the Utah State Division of Archives within thirty days after its effective date. Any agency's internal policies regarding records management and access shall be consistent with this chapter and state law.

#### 2.82.150 Custody and control.

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

maintenance of records. Countywide policies and regulations regarding types and formats of papers, inks, electronic media, and other records and information storage media, materials, equipment, procedures and techniques shall be developed and promulgated, subject to the approval of the council.

B. All county records which constitute an intellectual property right shall remain the property of the county unless federal or state legal authority provides otherwise. All other records shall be the property of the state. Property rights to county records may not be permanently transferred from the county to any private individual or entity, including those legally disposable obsolete county records of county archives or other agencies. This prohibition does not include the providing of record copies for release or distribution under this chapter. All records disposals shall be conducted in accordance with policies and procedures.

C. Any county officer or employee having custody or control of any county records shall, at the expiration of their terms of office, appointment or employment, deliver custody and control of all records kept or received by them to their successors, supervisors, or to the county records manager.

D. All records which are in the possession of any county agency shall, upon termination of activities of such agency, be transferred to any successor agency or to county records management and archives, provided that such transfer is consistent with the formal provisions of such termination.

2.82.160 Receipt, storage and preservation. There is created the county Records Management and Archives section, to be managed by the county records manager. It is the responsibility of the section to receive, store, and preserve county agency records and other materials and to store and to provide reasonable access thereto as may be calculated to accurately and safely maintain

county records over a long term 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 county records management and archives shall be developed and promulgated by the records policy administration. County records management and archives shall be considered the formal, official repository of county records; the central depository for the reports, publications, productions in other media, rules, policies and regulations of the county, where not otherwise determined by law; and, where appropriate, historical artifacts. Each agency shall be responsible for assisting county records management and archives in the collection of such records, depository materials, and artifacts through methods promulgated by the records policy administration.

#### 2.82.170 Computerized and non-written format records.

A. The county retains and reserves to itself the right to use any type of formats for the storage, retention and retrieval of government records, including, but not limited to, audio tapes, video tapes, micro-forms, and any type of computer, data processing, imaging, or electronic information storage or processing equipment or systems, which are not prohibited by state statute and do not compromise legal requirements for record storage, retrieval, security and maintenance, to store and maintain county records. All computerized and non-written format records and data which are designated and classified in accordance with the act and this chapter, shall be made available to a requester in accordance with this chapter and the Act.

B. The methods of access to records in non-written formats or data processing systems shall be as determined appropriate by the agency director of the agency maintaining the records, considering all circumstances. Access may include, but not be limited to, the following:

1. By using a county computer workstation, data system or other viewing or listening device

to retrieve data directly from the workstation screen or device; provided, however, that due regard shall be exercised to ensure that any nonpublic 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, disks or other means of electronic storage containing the non-written format or data processing system records; or

3. By the use, where appropriate, of remote workstations which have access to county 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 nonpublic records will not be available by remote terminal access.

C. Computer software applications are not considered a record. Software ~~programs~~ applications shall not be subject to disclosure under this chapter or the Act, including copyrighted software applications and other copyrighted materials which have been purchased by or licensed to the county and software applications and other materials which have been copyrighted by the county.

2.82.180 County justice court system.

Records activities of the county justice court system shall comply with and be governed by Section 63-2-702 of the Act.

2.82.190 Violation--Penalty.

Knowing violation of this chapter is a misdemeanor, punishable as set forth in this code of ordinances.