

ORDINANCE NO. 182-A  
AN ORDINANCE AMENDING BOX ELDER COUNTY  
ORDINANCE NO. 182, PUBLIC RECORDS ORDINANCE

The Board of County Commissioners of Box Elder County, State of Utah, ordains as follows:

1. Box Elder County Ordinance No. 182, adopted June 30, 1992, dealing with public records, is hereby amended as follows:

SECTION 1: All references throughout Ordinance No. 182 to the term "confidential", including by not limited to the reference on Page 3, Section 4(C), are hereby amended, and the word "confidential" is changed to the word "controlled".

SECTION 2: Section 12 of Box Elder County Ordinance No. 182 is hereby amended to read as follows:

SECTION 12: The County Clerk shall develop County policies and guidelines relating to the retention and maintenance of county records, which policies and guidelines shall be comparable to Section 63-2-903 (U.C.A.), with the assistance of the Records Classification Committee. Records maintenance policies and procedures shall be developed to ensure that due care is taken to maintain County records safely and accurately. All County records shall remain the property of the County unless federal or state statutory authority relating to a specific record or record series provides otherwise.

APPROVED AND ADOPTED this 5th day of January  
199<sup>3</sup>/<sub>2</sub>.

BOX ELDER COUNTY COMMISSION

by:

James J. White  
JAMES J. WHITE, CHAIRMAN

Allen L. Jensen  
ALLEN L. JENSEN

R. Lee Allen  
R. LEE ALLEN

ATTEST:

Marie G. Korth  
MARIE KORTH, COUNTY CLERK

### SUMMARY DESCRIPTION

Box Elder County has adopted a Records Ordinance, pursuant to Chapter 2, Title 63, of the Utah Code.

The ordinance is known as Ordinance No. 182, and it may be found on file with the Box Elder County Clerk, along with any subsequent amendments.

The ordinance is consistent with the provisions of Title 2, Chapter 63. The ordinance requires that county departments and agencies comply with the provisions thereof, and that the county also comply with Federal and State statutory and regulatory record keeping requirements imposed on Box Elder County by those other governmental entities.

The ordinance provides access to various records, for members of the public, under the restrictions and specifications stated therein, which are consistent with Utah Law.

The ordinance allows Box Elder County to charge fees for copying records, consistent with Utah Law.

The ordinance allows an appeals procedure for persons aggrieved by record classifications, and establishes a records classification committee.

The ordinance otherwise complies with all applicable State requirements.

ORDINANCE NO. 182  
PUBLIC RECORDS ORDINANCE

The Board of County Commissioners of Box Elder County, State of Utah, ordains as follows:

SECTION 1: The Board of County Commissioners of Box Elder County finds that it is in the best interests of Box Elder County and the citizens thereof to maintain and preserve accurate governmental records, to provide ready access to records which are defined by law as open to the public, and to retain the security of records which are defined by law as non-public. It is the policy of the County that all governmental records, which are defined by applicable Utah statutory and case law as public records, shall be made available to citizens within a reasonable time after request and at a reasonable cost as set forth in this ordinance.

SECTION 2: In enacting this Ordinance, it is the purpose and intent of the Board of County Commissioners to provide, in accordance with the Government Records Access Management Act (hereinafter referred to as "the Act"), Chapter 2 of Title 63 of the Utah Code Annotated (1953), an Ordinance acknowledging and complying with the Act and providing for its application in the County. County departments and agencies shall comply with the provisions of this ordinance, the Act and shall also comply with other federal and state statutory and regulatory record-keeping requirements.

SECTION 3: (A) Members of the public shall have the right to see, review, examine, and take copies of all County governmental records defined as "public" under the provisions of

this Ordinance, upon the payment of the lawful fee. Appropriate access to public records may be had, regardless of the format in which the record is kept.

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

(C) When an agency or division record is temporarily held by the County Attorney's Office, pursuant to its statutory and ordinance functions, the records shall not be considered a County Attorney's Office record for the purposes of this Ordinance; provided, however, the record shall be considered a record of the division or agency which usually keeps or maintains that record and any requests for access to such records shall be directed to that department or agency, rather than the County Attorney's Office.

SECTION 4: (A) Public records shall be those County records as defined in the Act, Section 63-2-301 (U.C.A., 1953, as amended). Public records may be made available to any person, All County records are considered public unless they are expressly classified otherwise in accordance with procedures established by this Ordinance, by the Act, or by other applicable law.

(B) Private records shall be those County records classified as "private", as defined in the Act Section 63-2-302 (U.C.A., 1953, as amended) and as defined in procedures

established in this Ordinance. Private records shall be made available to the following persons:

The subject of the record, the parent or legal guardian of a minor who is the subject of a record, the legal guardian of an incapacitated individual who is the subject of the record, any person who has a Power of Attorney or a notarized Release from the subject of the record or his legal representative, or any person possessed of and serving a Court Order signed by a Judge of competent jurisdiction.

(C) Confidential records shall be those County records classified as "confidential", as defined in the Act, Section 63-2-303 (U.C.A., 1953, as amended) and as defined in procedures established in this Ordinance. Confidential records shall be made available to a physician, psychologist, or certified social worker who submits a notarized Release from the subject of the record or any person presenting a Court Order signed by a Judge of competent jurisdiction.

(D) Protected records shall be those County records classified as "protected", as defined in the Act, Section 63-2-304 (U.C.A., 1953, as amended) and as defined in procedures established in this Ordinance. Protected records shall be made available to the person who submitted the record, a person who has power of authority or notarized Release from the subject of the record, or to any person presenting a Court Order regarding the Release of the information and signed by a Judge of competent jurisdiction.

SECTION 5: (A) The County recognizes and upholds the personal right of privacy retained by persons who may be the subject of government 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 non-public status is not specifically established by the Act or another statute, by this Ordinance, or by policies established or designations made under this Ordinance, 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 and procedures established in this Ordinance. Under circumstances and procedures established by this Ordinance, certain items of data may be rendered non-public, 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 department head of the department responding to a request for records, notify the subject of a record that a request for access to the subject's record has been made. In cases in which a request is made for records which are not classified as public, the department head shall notify the subject of such records that the request has been made. In circumstance in which a controversy arises or an appeal is taken by a requester of records regarding the propriety of the classification of the

record or a denial of access thereto or under circumstances in which the requester maintains that the public interest in access to the record outweighs the subject's privacy interest, the County department head in charge of such records shall notify the subject of the records in question of the request.

(C) The County may require that the requester of records in contested cases, as related in subparagraphs (A) and (B) of this section, shall be required to provide a written Release from the subject of the records in question before access to such records is provided.

SECTION 6: All County records and records series shall be classified according to the provisions of the Act and this Ordinance. Any records or record series generated in the future shall also be so classified. Records classification shall be conducted under the supervision of the County Clerk, who shall be assisted, as necessary, by a Classification Review Committee consisting of the County Clerk, County Attorney, and three other individuals appointed by the County Commission. The individuals appointed by the County Commission shall be either department heads or elected officials, and in addition to the three members, the County Commission shall also appoint two alternates, who shall also be either department heads or elected officials. No department shall have more than one representative on the Classification Review Committee, either as a member or an alternate. In any case where the Review Committee is involved in making a contested decision or complaint involving a particular

department, no individual from that department shall sit as a member of the Classification Review Committee for that particular case. Classification forms and guidelines shall be prepared and promulgated by the County Clerk, with the assistance of the Classification Review Committee.

SECTION 7: (A) Requests for records shall, in the majority of cases, be responded to immediately. Under circumstances in which a County department or agency is not able to immediately respond to a records request, the requester shall fill out and present to the County 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 time frames provided under this section shall commence from that time and date.

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

(C) 1. In most circumstances and excepting those eventualities set out below, a County agency shall respond to a written request for a public record within five business days after that request.

2. The following extraordinary circumstances shall justify a County agency's failure to respond to a written

request for a public record within five business days and shall extend the time for response thereto to fifteen business days.

(a) The County department or agency, another division or agency, or some other governmental entity is currently and actively using the record requested;

(b) The record requested is for either a voluminous quantity of records or requires a County department or agency to review a large number of records to locate the materials requested;

(c) The County division or 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 request involves an analysis of legal issues to determine the proper County response to the request;

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

(f) Providing the information in a format requested or separating public information from that which is non-public requires computer programming.

(D) The failure or inability of a County department or agency to respond to a request for a record within the time frame set out herein, or the County's denial of such a request, shall give an aggrieved requester the right to appeal as provided

herein.

SECTION 8: (A) Applicable fees for the processing of information requests under this Ordinance shall include the following categories of fees and charges:

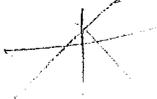
1. Fees and charges set out by statute shall be imposed at the amount so set.

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

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

(B) Nonstatutory fees or charges for records services provided by the county shall be set by the County Commission, based upon its review of the full costs of providing such services. Such rates shall be reviewed annually.

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

 (D) Where practical, uniform schedules of fees shall

be established, with the approval of the Board of County Commissioners, for use by all county agencies, departments and offices.

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

SECTION 9: (A) Persons aggrieved by the County's classification of a record or by the County's response to a record request may request and be granted a full administrative appeal of that grievance to the Board of Box Elder County Commissioners. The appeal of a decision of the Board of County Commissioners may be made to the District Court, in accordance with the Act and the Utah Rules of Civil Procedure.

(B) An appeal under this section shall be brought within ten calendar days of the date of the action aggrieved, or of the date when the person filing the grievance reasonably should have become aware of the action.

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

SECTION 10: In accordance with the procedures of Section 63-2-803 (U.C.A., 1953, as amended) of the Act, neither the County nor any of its officers or employees shall be liable for damages resulting from the release of a record where the

requester presented to the County evidence of authority to obtain the record, even if it may be subsequently determined that the requester had no such authority.

SECTION 11: The Box Elder County Clerk shall be the County Records Officer, to oversee and coordinate records access and management and County record-keeping activities. Each elected official and department head shall be responsible for the implementation of this Ordinance within the department over which that officer presides.

SECTION 12: The County Clerk shall develop County policies and guidelines relating to the retention and maintenance of County records, with the assistance of the Records Classification Committee. Records maintenance policies and procedures shall be developed to ensure that due care is taken to maintain County records safely and accurately. All County records shall remain the property of the County unless federal or state statutory authority relating to a specific record or record series provides otherwise.

SECTION 13: It is the responsibility of each elected official and/or department head to assure that County records, minutes and other documents kept by that particular department are stored and preserved, and that reasonable access thereto is provided as may be calculated to accurately and safely maintain County records over a long term in compliance with this Ordinance and the Act. Policies and guidelines regarding the nature of records and record series shall be developed and promulgated by

the Classification Review Committee. If any department head or elected official disagrees with a policy or guideline promulgated by said Committee concerning the records of that particular department, the aggrieved department head or elected official, within ten days of receiving notice of a final decision by the Classification Review Committee, may apply to the County Commission for review of that particular decision. The decision of the County Commission shall be final in all cases, except those cases controlled by State law, and in such situations the State law shall be determinative. Each department or agency shall be considered the formal and official repository of the records, documents and historical artifacts of that particular department. The County Clerk's office shall be considered the formal and official repository of County records, documents, and historical artifacts which do not otherwise fall under the jurisdiction of a particular department or agency.

SECTION 14: (A) The County retains and reserves to itself the right to use any type of computer, data processing, or electronic information storage or processing system, which is not prohibited by state statute, to store and maintain County records. All computerized data and information which is properly classified, in accordance with the Act and this Ordinance, as a public record shall be made available to a requester within a reasonable time and at a reasonable cost.

(B) Members of the public shall have the right to have access to data, which are defined as public records in accordance

with the Act and this Ordinance, contained in computers, data processing systems or other electronic information storage systems. Access to such public record data may be had in such a manner as determined by the department head of the department or agency maintaining the records to be appropriate, considering all circumstances. Access may include but is not limited to the following:

1. By sitting at and viewing a County computer terminal to retrieve data directly from the terminal screen; provided, however, that due regard shall be exercised to ensure that any data which might be defined by the Act or this Ordinance as not being public records will not be retrieved or displayed on the screen;

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

3. By the use, where appropriate, of remote terminals which have access to 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 data which might be defined as not being public records will not be available by remote terminal access.

(C) Computer software, which is defined to refer to

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

(D) All data retained on computer, data processing or electronic information systems shall be kept and maintained with due diligence to protect the security of any data which is considered not public under state law. The Classification Review Committee shall develop policies and regulations regarding the nature and duration of the storage of any public or non-public data, confined or stored upon computer, data processing or electronic information systems.

SECTION 15: This Ordinance shall become effective fifteen days after its passage and upon at least one publication in a newspaper published in and having general circulation in Box Elder County.

APPROVED AND ADOPTED this 30th day of June  
1992.

BOX ELDER COUNTY COMMISSION

by:

James J. White  
JAMES J. WHITE, CHAIRMAN

Allen L. Jensen  
ALLEN L. JENSEN

R. Lee Allen  
R. LEE ALLEN

ATTEST:

Marie G. Korth  
MARIE KORTH, COUNTY CLERK