

CITY OF BLUFFDALE, UTAH

ORDINANCE No. 2014-09

AN ORDINANCE ADOPTING RULES RELATED TO GOVERNMENT RECORDS ACCESS AND MANAGEMENT.

WHEREAS the City of Bluffdale (“City”) creates, stores, and manages and allows the public to access these records in accordance with federal, state and city law;

WHEREAS the City desires to adopt a policy of conduct for access to Bluffdale City government records to better manage government records and comply with federal and state statutory and regulatory record-keeping requirements; and

WHEREAS, pursuant to the Utah Code Annotated 63G-2-701, “each political subdivision may adopt an ordinance or a policy applicable throughout its jurisdiction relating to information practices including classification, designation, access, denials, segregation, appeals, management, retention, and amendment of records”;

NOW, THEREFORE, BE IT ORDAINED BY THE BLUFFDALE CITY COUNCIL AS FOLLOWS:

Section 1. Adoption of Bluffdale City Government Records Access and Management Act. The Bluffdale City Council adopts a new chapter of the Bluffdale City Code related to the Access and Management of Bluffdale City Government Records as Title 1, Chapter 13, as shown in Exhibit A.

Section 2. Effective Date. This Ordinance shall become effective on the date the ordinance is recorded in the office of the City Recorder, or 20 days after publication or posting, or 30 days after final passage by the governing body, whichever is sooner.

PASSED AND APPROVED: June 10, 2014.

CITY OF BLUFFDALE



Derk P. Finney
Mayor

ATTEST:

[seal]

Seddie K. Bee
City Recorder

Voting by the City Council: Yes No

Councilmember Jackson	<u> X </u>	<u> </u>
Councilmember Kartchner	<u>Absent</u>	<u> </u>
Councilmember Nielsen	<u> X </u>	<u> </u>
Councilmember Pehrson	<u> X </u>	<u> </u>
Councilmember Westwood	<u> X </u>	<u> </u>

EXHIBIT A

**GOVERNMENT RECORDS ACCESS AND MANAGEMENT ACT
BLUFFDALE CITY CODE, TITLE 1, CHAPTER 13**

TITLE 1, ADMINISTRATION, CHAPTER 13, GOVERNMENT RECORDS ACCESS AND MANAGEMENT ACT

§ 1-13-1 PURPOSE AND INENT:

It is the purpose and intent of the Bluffdale City Council to provide, in accordance with the Government Records Access and Management Act, Chapter 2 of Title 63G of the Utah Code Annotated, 1953 as amended, an ordinance acknowledging and complying with said Act and providing for its application in the City. City departments shall comply with the provisions of this Chapter and shall also comply with other federal and state statutory and regulatory record-keeping requirements.

§ 1-13-2 CITY RECORDS OFFICER: DESIGNATION AND DUTIES:

- A. The City Recorder is hereby appointed as the Records Officer to oversee and coordinate records access and management and City archives activities.
- B. The Records Officer shall:
 - 1. Make annual reports of records services activities to the City Council, as requested;
 - 2. Provide training relative to records management, maintenance and access, to the various City departments, as necessary;
 - 3. Establish and maintain an active, continuing program for the economical and efficient management of the City's records as provided by this Chapter;
 - 4. Make and maintain adequate and proper documentation of the organization, functions, policies, decisions, procedures and essential transactions of the City designed to furnish information to protect the legal and financial rights of persons directly affected by the City's activities;
 - 5. Submit to the state archivist proposed schedules of records;
 - 6. Cooperate with the state archivist in conducting surveys made by the state archivist;
 - 7. Evaluate all record series that the City uses or creates and report to the state archives the classification of each record series that is classified;
 - 8. Establish and report to the state archives, retention schedules for objects that the City determines are not records, but that have historical or evidentiary value; and
 - 9. Designate those record series as required by this Chapter and report the designations of its record series to the state archives.
- C. The Records Officer may classify a particular record, record series or

information within a record at any time, but is not required to classify a particular record, record series or information until access to the record is requested.

- D. The Records Officer may re-designate a record series or reclassify a record, record series or information within a record at any time.
- E. The Records Officer shall file with the state archives a copy of any amendment to this Ordinance, no later than 30 days after its effective date.

§ 1-13-3 RECORDS MAINTENANCE PROCEDURES:

Records maintenance procedures shall be developed by the Records Officer to ensure that due care is taken to maintain and preserve City records safely and accurately for the term specified by adopted retention schedules. The Records Officer shall be responsible for monitoring the application and use of technical processes in the creation, duplication and disposal of City Records, and shall monitor compliance with the required standards of quality, permanence and admissibility pertaining to the creation, use and maintenance of records.

§ 1-13-4 STORAGE MEDIUM:

The City retains and reserves to itself the right to use any type of non-verbal or non-written format for the storage, retention and retrieval of government records, including, but not limited to, audio tapes, video tapes, microforms, 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 records storage, retrieval, security and maintenance, to store and maintain City records. All computerized and non-written format records and data which are designated and classified in accordance with this Chapter shall be made available to a requester in accordance with this Chapter.

§ 1-13-5 ACCESS TO PUBLIC RECORDS; RIGHT TO INSPECT AND RECEIVE COPIES:

Every person has a right to inspect a public record, free of charge, and has the right to take a copy of a public record during normal City business hours, subject to the payment of costs and fees as set forth in this Chapter.

§ 1-13-6 NO DUTY TO CREATE A RECORD:

- A. The City has no obligation to create a record or a record series in response to a request, if the record or record series requested is not otherwise regularly maintained or kept.
- B. Upon request, the City shall provide a record in a particular format if:
 - 1. The City is able to do so without unreasonably interfering with the City's duties and responsibilities; and
 - 2. The requester agrees to pay the City for its additional costs actually incurred in providing the record in the requested format.
- C. Nothing in this section requires the City to fulfill a person's record request if the request unreasonably duplicates prior record requests from that person.

§ 1-13-7 OBLIGATION TO MAKE COPIES OF LARGE RECORDS:

If a person requests copies of more than 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 the facilities for copying the requested records and require that the requester make the copies himself; or
- 2. Allow the requester to provide his own copying facilities and personnel to make the copies at the City's offices and waive the fees for copying the records.

§ 1-13-8 REQUEST FOR RECORD:

All record requests shall be directed to the City department where the record is kept in writing on forms provided by Bluffdale City.

§ 1-13-9 FEES:

- A. The City may charge a reasonable fee to cover its actual cost of duplicating a record, compiling a record in a form other than that maintained by the City, postage or any other fee reasonably related to the request for the record consistent with this Chapter.
- B. The City may fulfill a record request without charge, 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. Fees to be charged under this section shall be set forth in the Bluffdale City Consolidated Fee Schedule.

- D. The City shall not charge a fee for:
 - 1. Reviewing a record to determine whether it is subject to disclosure; or
 - 2. Inspecting a record.

§ 1-13-10 APPEAL TO CITY MANAGER:

- A. Any person aggrieved by an access determination of the Records Officer under this Chapter may appeal the determination to the City Manager by filing a notice of appeal with the City Manager within ten (10) calendar days of receiving notice of denial.
- B. If the Records Officer 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 Records Officer's claim of extraordinary circumstances or date for compliance within 30 days after notification of a claim of extraordinary circumstances by the Records Officer, despite the lack of a "determination" or its equivalent.
- C. If the appeal involves a record that is the subject of a business confidentiality claim under this Chapter, the City Manager shall:
 - 1. Send notice of the requester's appeal to the business confidentiality claimant within three business days after receiving notice of the appeal, except that if notice under this section must be given to more than 35 persons, it shall be given as soon as reasonably possible; and
 - 2. Send notice of the business confidentiality claim and the schedule for the Records Officer's determination to the requester within three business days after receiving notice of the requester's appeal.
- D. The claimant shall have seven business days after notice of the requester's appeal is sent by the City Manager to the claimant to submit further support for the claim of business confidentiality.
- E. The City Manager shall make a determination on any appeal within the following period of time:
 - 1. Within five business days after the City Manager's receipt of the notice of appeal; or
 - 2. Within 12 business days after the City sends the requester's notice of appeal to a person who submitted a claim of business confidentiality.
- F. If the City Manager fails to make a determination within the time specified in paragraph (C)(1) above, the failure shall be considered the equivalent of an order denying the appeal.
- G. The provisions of this section notwithstanding, the parties participating in the proceeding may, by agreement, extend the time period specified in this section.

- H. The City Manager may, upon consideration and weighing of the various interests and public policies pertinent to the classification and disclosure or non-disclosure of a record, order the disclosure of information properly classified as private or protected, if the interest favoring access outweighs the interest favoring restriction of access.
- I. The City Manager shall send written notice of the determination of the City Manager 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 pursuant to this Chapter and the time limits for filing an appeal.
- J. A person aggrieved by the City's classification or designation determination under this Chapter, but who is not requesting access to the records, may appeal that determination using the procedures provided in this section. If a 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 30 days after the City Manager receives the notice of appeal.
- K. The duties of the City Manager under this section may be delegated.

§ 1-13-11 APPEAL TO THE CITY COUNCIL:

- A. Any person aggrieved by a determination of the City Manager under this Chapter may appeal the determination to the City Council.
- B. The notice of appeal to the City Council shall be in writing and shall be filed with the City Recorder no later than 30 calendar days after the City Manager has denied the appeal or fails to make a determination within the time period specified in this Chapter.
- C. The notice of appeal shall contain the following information:
 - 1. The petitioner's name, mailing address and daytime telephone number;
 - 2. A copy of any denial of the records request; and
 - 3. The relief sought.
- D. The petitioner shall file a short supporting statement, including a statement of facts, and a recitation of the reasons and legal authority in support of the appeal.
- E. No later than three business days after receiving a notice of appeal, the City Recorder shall:
 - 1. Schedule a hearing for the City Council to discuss the appeal. Unless otherwise agreed to by all the parties, the hearing shall be held no sooner than 15 days and no later than 30 days after receiving the notice of appeal;
 - 2. Send a copy of the notice of hearing to the petitioner; and
 - 3. Send a copy of the notice of appeal, supporting statement and a notice of the hearing to:
 - i. Each member of the City Council;

- ii. The Records Officer and the City Manager;
 - iii. The City Attorney; and
 - iv. Any person who made a business confidentiality claim under this Chapter for a record that is the subject of the appeal.
- F. No later than ten business days after the notice of appeal is sent by the City Recorder, any person whose legal interest may be substantially affected by the appeal may file a request for intervention before the City Council. Any written statement of facts, reasons and legal authority in support of the intervener's positions shall be filed with the request for intervention. The person seeking intervention shall provide copies of the statement to all parties to the proceeding before the City Council.
- G. The City Council shall hold a hearing no sooner than 15 days and no later than 30 days after receiving the notice of appeal.
- H. 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.
- I. The City Council may review the disputed records.
 1. The review shall be in camera; and
 2. Members of the City Council may not disclose any information or record reviewed by the City Council in camera, unless the disclosure is otherwise authorized by this Chapter.
- J. No later than five 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.
- K. The City Council may, upon consideration and weighing of the various interests and public policies pertinent to the classification and disclosure or non-disclosure, order the disclosure of information properly classified as private, controlled or protected, if the public interest favoring access outweighs the interest favoring restriction of access. In making a determination under this section, the City Council shall consider and, where appropriate, limit the requester's use and further disclosure of the record in order to protect privacy interests in the case of private or controlled records, business confidentiality interests and privacy interests or the public interest in the case of other protected records.
- L. The order of the City Council shall include:
 1. A statement of reasons for the decision;
 2. A description of the record or portions of the record to which access was ordered or denied, or to which it refuses to amend, provided that the description does not disclose private, controlled or protected information;
 3. A statement that any party to the appeal may appeal the City Council's

decision to district court; and

M. If the City Council fails to issue a decision within ten business days after the hearing, said failure shall be considered the equivalent of an order denying the appeal. The petitioner shall notify the City Council, in writing, if he considers the appeal denied.

§ 1-13-12 JUDICIAL REVIEW:

Any party to a 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 30 days after the date of the City Council's decision.

§ 1-13-13 DISCIPLINARY ACTION:

The City may take disciplinary action, which may include suspension or discharge, against any employee who intentionally violates any provision of this Chapter.