ORDINANCE NO. 92-28

AN ORDINANCE ENACTING TITLE 2, CHAPTER 7 OF THE FARMINGTON CITY CODE ESTABLISHING A GOVERNMENT RECORDS ACCESS AND MANAGEMENT PROGRAM AND RELATED PROCEDURES FOR FARMINGTON CITY.

BE IT ORDAINED BY THE CITY COUNCIL OF FARMINGTON CITY, STATE OF UTAH:

Section 1. Enactment. Title 2, Chapter 7 of the Farmington City Code is hereby enacted and adopted to read in its entirety as follows:

CHAPTER VII.

GOVERNMENT RECORDS ACCESS AND MANAGEMENT.

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2-7-1. Short Title. This Chapter shall be known as the Farmington City Government Records Access and Management Ordinance, and may be so cited, pleaded. This Ordinance shall be referred to herein as "this Chapter" and may also be referred to as Chapter 7 of Title 2 of the Farmington City Code.

2-7-2. Purpose. In enacting this Chapter, it is the purpose and intent of the City Council to adopt an Ordinance acknowledging and complying with the Government Records Access and Management Act as contained in Chapter 2 of Title 63 of the Utah Code Annotated 1953, as amended, (hereinafter referred to as the Act), and specifically to conform with Section 63-2-701 of the Act which provides that the City may adopt an ordinance or a policy relating to information practices of the City and its agencies including classification, designation, access, denials, segregation appeals, management, retention and amendment of records.

2-7-3. Compliance with State Law. In enacting this Chapter the City Council hereby adopts and incorporates by reference the following provisions of the Act as part of this Ordinance as though fully set forth herein. Any inconsistency or conflict between this Ordinance and the following referenced statutes of the State of Utah shall be governed by the statute.

General Provisions

63-2-102 Legislative Intent
63-2-103 Definitions
63-2-104 Administrative Procedures Act not applicable
63-2-105 Confidentiality Agreements

Access to Records

63-2-201 Right to inspect records and receive copies of records
63-2-202 Access to private, controlled and protected documents
63-2-205 Denials
63-2-206 Sharing records

Classification

63-2-301 Records that must be disclosed
63-2-302 Private records
63-2-303 Controlled records
63-2-304 Protected records
63-2-305 Procedure to determine classification
63-2-306 Duty to evaluate records and make designations and classifications
63-2-307 Segregation of records
63-2-308 Business confidentiality claims

Confidential Treatment of Records

63-2-405 Confidential treatment of records for which no exemption applies

Accuracy of Records

63-2-601 Rights of individuals on whom data is maintained
63-2-602 Disclosure to subject of records - Context of use

Applicability to Political Subdivisions

63-2-701 Political subdivisions to enact ordinances in compliance with chapter

Remedies

63-2-801 Criminal penalties
63-2-802 Injunction - Attorneys' Fees

63-2-803 No liability for certain decisions of a governmental entity
63-2-804 Disciplinary action

Archives and Records Service

63-2-905 Records declared property of the State - Disposition
63-2-907 Right to replevin

2-7-4. Additional Definitions. As used in this Ordinance, certain words and terms are defined as follows:

A. "Act" shall refer to the Government Records Access and Management Act, Chapter 2 of Title 63 of the Utah Code Annotated 1953, as amended.

B. "Agency" shall refer to any office, department, division, section, staff office, board, commission, committee or other division of Farmington City or any public or private entity which pursuant to contract with the City has agreed to produce and maintain public City records.

C. "City" shall mean Farmington City.

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

E. "Controlled records" shall be those defined as controlled under the provisions of this Ordinance and in accordance with the provisions of the Act.

F. "Data" shall refer to individual entries (for example, birth date, address, etc.) in records.

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. "Non-public records" shall refer to those records defined as private, controlled, or protected under the provisions of this Ordinance and the Act.

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

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

K. "Public records" shall refer to those records which have not been classified as non-public in accordance with the provisions of this Ordinance 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 City 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 or she is working;

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

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

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

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 City 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 the Utah Open Meetings Act; or

g. Proprietary computer software programs as defined above that are developed or purchased by or for the City for its own use.

2-7-5. <u>Public Access to Records</u>.

A. Members of the public shall have the right to see, review, examine and take copies, in any format maintained by the City, of all City governmental records defined as "public" under

the provisions of this Ordinance, upon the payment of the lawful fee and pursuant to the provisions of this Chapter, the Act, and policies and procedures developed hereunder.

B. The City 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 City 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 purposes of this Chapter. The record shall be considered a record of the agency or agencies which usually keeps or maintains that record and any request for access to such records shall be directed to that agency or agencies, rather than the custodial agency, pursuant to procedures established by the City. Only when records have been formally filed for permanent archival retention shall City Archives be responsible for responding to records requests.

2-7-6. Public, Private, Controlled, Protected Records.

A. Public records shall be those City records as defined in the Act, 63-2-201 (U.C.A., 1953, as amended). Public records shall be made available to any person. All City records are considered public unless they are (1) expressly classified otherwise in accordance with policies and procedures established by this Chapter, (2) are so classified by the Act, or (3) are made non-public by other applicable law.

B. Private records shall be those City records classified as "private", as defined in Section 63-2-302 of the Act and as classified and defined in procedures established pursuant to this Chapter. 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 the record, the legal guardian of an incapacitated individual who is the subject of the record, any person who has power of attorney or a notarized release from the subject of the record or his or her legal representative, or any person possessed of and serving a legislative subpoena or a court order issued by a court of competent jurisdiction.

C. Controlled records shall be those City records classified as "controlled", as defined in Section 63-2-303 of the Act and as classified and defined in procedures established in this Chapter. Controlled records shall be made available to a physician, psychologist, or licensed social worker who submits a notarized release from the subject of the record or any person presenting a legislative subpoena or a court order issued by a court of competent jurisdiction.

D. Protected records shall be those City records classified as "protected", as defined in Section 63-2-304 of the Act and as classified and defined in procedures established in this Chapter. Protected records shall be made available to the person who submitted the information in the record, to a person who has power of attorney or notarized release 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.

2-7-7. Privacy Rights.

A. The City recognizes and upholds the personal right of privacy retained by persons who may be the subject of governmental records. The City also recognizes that the Act and Utah case law establish a presumption that governmental records will generally be considered open and public, with certain 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 classifications made under this Ordinance, the public's right to access and the record subject's right of privacy must be compared. In accordance with decisions of the Utah Supreme Court, City records which have not been specifically made public by the Act and which refer to named or readily identifiable individuals which deal with matters of a delicate nature which could engender shame, humiliation or embarrassment in the subject of that record, in accordance with accepted standards of social propriety, shall generally not be classified as public records and release thereof may constitute a clearly unwarranted invasion of privacy, in accordance with the Act. 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 City may, as determined appropriate by the agency director of the agency 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.

C. The City may require that the requester of records provide a written release, notarized within thirty (30) days before request, from the subject of the records in question before access to such records is provided.

2-7-8. Designation, Classification and Retention. All City records and records series, of any format, shall be classified and scheduled for retention according to the provisions of the Act and this Chapter. Any records generated in the future shall also be so classified and scheduled for retention. Records classification and scheduling for retention shall be conducted under the supervision of the City Records Officer who shall be assisted by a

Classification Review Committee consisting of the Records Officer, the City Manager, and the agency director of the agency in charge of the record in question. Assistance may be requested from the City Attorney as needed. Classification and retention scheduling forms and guidelines shall be prepared and promulgated by the Records Officer. The City shall by resolution establish a retention schedule for all City records and records series. The initial retention schedule shall be as set forth in Appendix A attached hereto.

2-7-9. Procedures for Records Request.

A. Under circumstances in which the City or an agency is not able to immediately respond to a records request, the requester shall fill out and present to the City or the agency a written request on forms provided by the City. The date and time of the request shall be noted on the written request form and all time frames provided under this Chapter shall commence from that time and date. Requesters of non-public information shall adequately identify themselves and their status prior to receiving access to non-public records.

B. The City or the 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.

C. 1. In most circumstances and excepting those eventualities set out below, the City or the agency shall respond to a written request for a public record within 10 business days after that request.

2. Extraordinary circumstances shall justify the City's or the agency's failure to respond to a written request for a public record within 10 business days and shall extend the time for response thereto to that time reasonably necessary to respond to the request, as determined by the City or the agency director. Extraordinary circumstances shall include but not be limited to the following:

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 request involves an analysis of legal issues to determine the proper response to the request;

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 manipulation.

3. When a record request cannot be responded to within 10 days, the City or the agency director shall give the requester an estimate of the time required to respond to the request.

D. The failure or inability of the City or an agency to respond to a request for a record within the time frames set out herein, or the City's or agency's denial of such request, shall give the requester the right to appeal as provided herein in Section 2-7-11.

E. Any City record which has been requested in accordance with this Ordinance and the Act, that is disposable by approved retention schedule, may not be disposed of until the request is granted and fulfilled, or 60 days after all appeals are completed, pursuant to Section 2-7-11.

F. No City record, disposable by approved retention schedule, which is subject to pending litigation or audit shall be disposed of until the litigation or audit has been completed or resolved.

2-7-10. Fees. The City may charge a reasonable fee to cover the City's costs of duplicating and compiling records requested by any person. The fees may be set and amended by resolution from time to time. The initial fee, until changed by resolution, is set forth in Appendix A attached hereto. The City may fulfill a record request without charge when it determines that:

A. Releasing the record primarily benefits the public rather than a person;

B. The individual requesting the record is the subject of the record; or

C. Requester's legal rights are directly implicated by the information in the record, and the requester is impecunious.

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

2-7-11. Appeals.

A. Any person aggrieved by the City's classification of a record or by the City's or any agency's response to a record request may appeal the determination within 30 days after notice of the City's action to the City Manager by filing a written notice of appeal. The notice of appeal shall contain the petitioner's name, address, phone number, relief sought and shall set forth in detail a statement of the facts, reasons and legal authority relied upon in making the appeal.

B. If the appeal involves a record that is subject to business confidentiality or affects the privacy rights of an individual, the City Manager shall send a notice of the requester's appeal to the affected person.

C. The City Manager shall make a determination on the appeal within 30 days after receipt of the appeal. During this 30 day period, the City Manager may schedule an informal hearing or request any additional information deemed necessary to make a determination. The City Manager shall send written notice to all participants providing the City Manager's determination on the appeal and the reasons therefor.

D. In addition, if the City Manager affirms the denial in whole or in part, the denial shall include a statement that the requester has a right to appeal the denial to the City Council within 30 days after date of the City Manager's decision.

E. Any person aggrieved by the City Manager's decision may file a written notice of appeal to the City Council which appeal shall thereafter be scheduled by the City for hearing at a regular or special meeting of the Council. The final decision of the City Council shall be by majority vote of a quorum of the Council. The City Council shall prepare a written decision indicating the Council's determination of the appeal and the reasons therefor. A copy of the written decision shall be sent to all parties to the appeal.

F. If the City Council affirms the denial, in whole or in part, the person may petition for judicial review in District Court as provided in Section 63-2-404 of the Act.

2-7-12. Record Amendments. Government records held by the City may be amended or corrected as needed. An individual may contest the accuracy or completeness of any public, or private, or protected record concerning him or her by submitting a written request to the City to amend the record. However, this Section does not affect the right of access to private or protected records. The request shall contain the requester's name, mailing address and daytime telephone number and a detailed statement explaining why the City should amend the record. The City shall

issue a decision either approving or denying the request to amend no later than 60 days after receipt of the request. The City shall inform the requester in writing of its decision. The requester may appeal the denial of the request to amend a record pursuant to the provisions contained herein regarding appeals. This Section does not apply to records relating to title to 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.

2-7-13. Penalties.

A. Any City employee who knowingly refuses to permit access to records in accordance with the Act and this Chapter, who knowingly permits access to non-public records, 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.

B. In accordance with the Act, neither the City nor any of its agencies 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.

2-7-14. Records Officer.

A. There shall be appointed a City Records Officer to oversee and coordinate records access, management and archives activities. The Records Officer shall make annual reports of records services activities to the City Manager.

B. A person may be designated by each agency of the City to assist with and to work under the direction of the City Records Officer in implementing the policies and procedures set forth in this Ordinance.

2-7-15. Records Maintenance.

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

B. All City records shall remain the property of the City unless federal or state legal authority provides otherwise. Property rights to City records may not be permanently transferred from the City to any private individual or entity, including those legally disposable obsolete City records of City Archives or any agencies. This prohibition does not include the providing of copies of City records otherwise produced for release or distribution under this Chapter.

C. Custodians of any City 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 City Records Officer.

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

2-7-16. City Archives. There is created the City Archives to be managed by the City Records Officer. It is the responsibility of the City Archives to receive, store, and preserve City and agency records and other materials and to provide reasonable access thereto as may be calculated to accurately and safely maintain City 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 City Archives shall be developed and promulgated by the City. Unless determined and designated otherwise by the City Council, the City Archives shall be considered the formal, official repository of City records; the central depository for the reports, publications, productions in other media, rules, policies, and regulations of the City, where not otherwise determined by law; and, where appropriate, historical artifacts. Each agency shall be responsible for assisting the City Archives in the collection of such records, depository materials, and artifacts through methods promulgated by the Records Officer.

Section 2. Effective Date. This Ordinance shall become effective upon publication or posting, or thirty days after passage, whichever occurs first.

PASSED AND ADOPTED BY THE CITY COUNCIL OF FARMINGTON, STATE OF UTAH, on this 19th day of August, 1992.

FARMINGTON CITY

By: _____
Robert W. Arbuckle
Mayor

ATTEST:

_____
Dona Scharp
City Recorder

APPENDIX A

FEES

Cost per page	$ .15
Certified copies per page	$ 1.00
Compilation time per hour	$15.00

RETENTION SCHEDULE

The Retention Schedule of the City is the schedule promulgated by the Utah Division of Archives and Records Service for local governments with the following amendments:

None