

TITLE 8

RECORDS ACCESS AND MANAGEMENT PROCEDURES

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TITLE 8

RECORDS ACCESS AND MANAGEMENT PROCEDURES

CHAPTER 1

RECORDS ACCESS AND MANAGEMENT PROCEDURES

- 8-1-1 General Purpose
- 8-1-2 District Policy

8-1-1 GENERAL PURPOSE

The District adopts this policy to establish guidelines for open government information recognizing the need to maintain and preserve accurate records, provide public access to public records and preserve the right of privacy of personal data collected or received by the District.

8-1-2 DISTRICT POLICY

In adopting this policy, the District recognizes the enactment of Government Records Access and Management Act by the Utah State Legislature (§ 63-2-101 et seq., Utah Code Annotated, 1953) and the application of that Act to the District records. The purpose of these policies is to conform to § 63-2-701 which provides that each political subdivision may adopt an ordinance or a policy relating to information practices including classification, designation, access, denials, segregation, appeals, management, retention and amendment of

records. The intent of this policy is to provide modifications to the general provisions of State law, where allowed, to meet the public needs, operation, management capabilities and resources of the District.

CHAPTER 2

COMPLIANCE WITH STATE LAW

8-2-1 Adoption of State Law

8-2-1 ADOPTION OF STATE LAW

In adopting this policy, the District recognizes the following sections of the Government Records Access and Management Act apply to the District and adopts by reference such provisions as part of this policy. Any inconsistency or conflict between this policy and the following referenced statutes shall be governed by the statute.

Part 1 General Provisions

§63-2-101	Short title
§63-2-102	Legislative intent
§63-2-103	Definitions
§63-2-104	Administrative Procedures Act not applicable
§63-2-105	Confidentiality agreements

Part 2 Access to Records

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

Part 3 Classification

§63-2-301	Records that must be disclosed
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§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

Part 4 [EXCLUDED]

Part 5 [EXCLUDED]

Part 6 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

Part 7 Applicability to Political Subdivisions: The Judiciary and the Legislature

§63-2-701	Political subdivisions to enact ordinances in compliance with chapter
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Part 8 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

Part 9 Archives and Records Service

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

Part 10 Other

§63-30-10.6	Attorneys' fees for records request .
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CHAPTER 3

DEFINITIONS

8-3-1 Definitions

8-3-1 DEFINITIONS

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

1. "Act" shall refer to the Government Records Access and Management Act, §§63-2-1, et seq., Utah Code Annotated, 1953, as amended.
2. "District" shall refer to the North Davis Sewer District.
3. "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.
4. "Controlled" records shall be those defined as controlled under the provisions of the Act.
5. "Data" shall refer to individual entries (for example, birth date, address, etc.) in records.

6. "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.
7. "Non-public" records shall refer to those records defined as private, controlled, or protected under the provisions of the Act.
8. "Private" records shall refer to those records classified as private under the provisions of the Act.
9. "Protected" records shall refer to those records classified as protected under the provisions of the Act.
10. "Public" records shall refer to those records which have not been classified as non-public in accordance with the provisions of the Act.
11. "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 District where all the information in the original is reproducible by some mechanical, electronic, photographic or other means.

12. "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;
 - d. Junk mail or commercial publications received by the District or by an officer or employee of the District;
 - e. Personal notes or daily calendars prepared by any District 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
 - f. Proprietary computer software programs as defined in subsection C. above that are developed or purchased by or for the District for its own use.

CHAPTER 4

PUBLIC RIGHT TO RECORDS

- 8-4-1 Access to Records
- 8-4-2 No Creation of Records
- 8-4-3 Temporary Location of Record
- 8-4-4 District to Retain Custody

8-4-1 ACCESS TO RECORDS

Members of the public shall have the right to see, review, examine and take copies, in any format maintained by the District, of all District governmental records defined as "public" under the provisions of this Title, upon the payment of the lawful fee and pursuant to the provisions of this Title and the Act.

8-4-2 NO CREATION OF RECORDS

The District 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.

8-4-3 TEMPORARY LOCATION OF RECORD

When a record is temporarily held by a custodial District agency, pursuant to that custodial agency's statutory 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 Title. The record shall be considered a record of the District and any requests for access to such records shall be directed to the District, rather than the custodial agency, pursuant to these procedures.

8-4-4 **DISTRICT TO RETAIN CUSTODY**

Original documents shall not leave the custody of the District. Document inspection will occur in the conference area of the administrative office building or such other area designated by the Records Officer. Private citizens will not be allowed in the vault where original documents are maintained. The appropriate documents and/or files given to the individual will be accounted for subsequent to the individual's inspection and prior to his/her departure from the District offices.

CHAPTER 5

PUBLIC, PRIVATE, CONTROLLED AND PROTECTED RECORDS

- 8-5-1 "Public Records" Defined
- 8-5-2 "Private Records" Defined
- 8-5-3 "Controlled Records" Defined
- 8-5-4 "Protected Records" Defined

8-5-1 "PUBLIC RECORDS" DEFINED

Public records shall be all those District records that are not private, controlled, or protected and that are not exempt from disclosure as provided in subsection 63-2-201(3)(b) of the Act. Public records shall be made available to any person. All District records are considered public unless they are (1) expressly designated, classified, or defined otherwise by the District in accordance with policies and procedures established by this Policy, (2) are so designated, classified or defined by the Act, or (3) are made non-public by other applicable law.

8-5-2 "PRIVATE RECORDS" DEFINED

Private records shall be those District records classified as "private", as defined in the Act (§63-2-302 U.C.A., 1953, as amended) and as designated, classified, or defined in procedures established pursuant to this Title. 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 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 legislative subpoena or a court order issued by a court of competent jurisdiction.

8-5-3 **"CONTROLLED RECORDS" DEFINED**

Controlled records shall be those District records classified as "controlled", as defined in the Act, (§63-2-303 U.C.A., 1953, as amended) and as designated, classified, or defined in procedures established in this Title. 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.

8-5-4 **"PROTECTED RECORDS" DEFINED**

Protected records shall be those District records classified as "protected" as defined in the Act, (§63-2-304 U.C.A., 1953, as amended) and as designated, classified or defined in procedures established in this Title. 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 regarding the release of the information and issued by a court or competent jurisdiction.

CHAPTER 6

PRIVACY RIGHTS

- 8-6-1 Right of Privacy
- 8-6-2 Notification to Subject
- 8-6-3 Written Release

8-6-1 **RIGHT OF PRIVACY**

The District recognizes and upholds the personal right of privacy retained by persons who may be the subject of governmental records.

8-6-2 **NOTIFICATION TO SUBJECT**

The District may, as determined appropriate by the District Records Officer, notify the subject of a record that a request for access to the subject's record has been made.

8-6-3 **WRITTEN RELEASE**

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

CHAPTER 7

DESIGNATION, CLASSIFICATION AND RETENTION

8-7-1 Classification

8-7-1 CLASSIFICATION

All District records and records series, of any format, shall be designated, classified and scheduled for retention according to the provisions of the Act and this Title. 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 by the Records Officer under the supervision of the District Manager.

CHAPTER 8

PROCEDURES FOR RECORDS REQUEST

- 8-8-1 Written Request
- 8-8-2 Response to Request
- 8-8-3 Time for Response
- 8-8-4 Failure to Respond

8-8-1 WRITTEN REQUEST

Under circumstances in which a District is not able to respond immediately to a records request, the requester shall fill out and present the District a written request on forms provided by the District. The date and time of the request shall be noted on the written request form and all time frames provided under this Title 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.

8-8-2 RESPONSE TO REQUEST

The District 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.

8-8-3 TIME FOR RESPONSE

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

2. Extraordinary circumstances shall justify the District's failure to respond to a written request for a public record within ten business days and shall extend the time for response thereto to that time reasonably necessary to respond to the request, as determined by the District Records Officer. Extraordinary circumstances shall include, but not be limited to, the following:
 - a. 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 District to review a large number of records or perform extensive research to locate the materials requested;
 - c. The District is currently processing either a large number of records requests or is subject to extraordinary 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 format manipulation.

- C. When a record request cannot be responded to within ten (10) days, the District Records Officer shall give the requester an estimate of the time required to respond to the request.

8-8-4 **FAILURE TO RESPOND**

The failure or inability of the District to respond to a request for a record within the time frames set out herein, or the District's denial of such a request, shall give the requester the right to appeal as provided in Chapter 10 of this Title.

CHAPTER 10

APPEAL PROCESS

- 8-10-1 Notice of Appeal
- 8-10-2 Confidentiality
- 8-10-3 Action by District Manager
- 8-10-4 Denial of Appeal
- 8-10-5 Notice of Appeal to Board
- 8-10-6 Appeal to District Court

8-10-1 NOTICE OF APPEAL

Any person aggrieved by the District's denial or claim of extraordinary circumstances may appeal the determination within thirty (30) days after notice of the District's action to the District Manager by filing a written notice of appeal. The notice of appeal shall contain the petitioner's name, address, phone number, relief sought and if petitioner desires, a short statement of the facts, reasons and legal authority for the appeal.

8-10-2 CONFIDENTIALITY

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

8-10-3 ACTION BY DISTRICT MANAGER

The District Manager shall make a determination on the appeal within thirty (30) days after receipt of the appeal. During this 30 day period the District Manager may schedule an

informal hearing or request any additional information deemed necessary to make a determination. The District Records Officer shall send written notice to all participants providing the reasons for the District Manager's determination.

8-10-4 DENIAL OF APPEAL

In addition, if the District 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 District's Board of Trustees within thirty days at the next scheduled meeting.

8-10-5 NOTICE OF APPEAL TO BOARD

The person may file a written notice of appeal to the Board of Trustees to be heard at the next scheduled meeting of the Board. If there is no meeting scheduled in the next thirty days the Board of Trustees shall schedule a special meeting for the purpose of hearing the appeal. The final decision of the Board of Trustees shall be by majority vote of a quorum of the Board. The Board shall prepare a written decision outlining their final determination and reasons for the final determination.

8-10-6 APPEAL TO DISTRICT COURT

If the Board of Trustees affirms the denial, in whole or in part, the person may petition for judicial review in District Court as provided in §63-2-404, U.C.A., 1953.

CHAPTER 11

REASONABLE ACCOMMODATION

8-11-1 Accommodation for Disabled Persons

8-11-1 **ACCOMMODATION FOR DISABLED PERSONS**

Reasonable accommodations regarding access to governmental records shall be provided to persons with disabilities in accordance with the Americans with Disabilities Act upon request of the applicant.

CHAPTER 12

RECORDS AMENDMENTS

8-12-1 Amendments

8-12-1 AMENDMENTS

Government records held by the District may be amended or corrected as needed. Requests for amendments, corrections, or other changes shall be made in writing to the District having custody of the records and setting forth, with specificity, the amendment or correction requested. When an amendment or correction of a government record is made, both the original record and the amended or corrected record shall be retained, unless provided otherwise by the Act or other State or Federal law.

CHAPTER 13

PENALTIES

- 8-13-1 Penalties
- 8-13-2 No Liability for Damages

8-13-1 PENALTIES

District employees who knowingly refuse to permit access to records in accordance with the Act and this Policy, who knowingly permit access to non-public records, or who knowingly, without authorization or legal authority, dispose of, alter, or remove records or allow other persons to do so in violation of the provisions of the Act, this Title or other law or regulation may be subject to criminal prosecution in accordance with the Act and disciplinary action, including termination of employment.

8-13-2 NO LIABILITY FOR DAMAGES

In accordance with the Act, neither the District nor any of its 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.

CHAPTER 14

RECORDS OFFICER

8-14-1 Designation

8-14-1 DESIGNATION

The District Administrative Assistant is appointed as District Records Officer and shall oversee and coordinate records access, management and archives activities and shall make annual reports of records services activities to the Board of Trustees under the direction of the District Manager.

CHAPTER 15

RECORDS MAINTENANCE

- 8-15-1 Records Maintenance Procedures
- 8-15-2 Records Remain District Property
- 8-15-3 Custody

8-15-1 RECORDS MAINTENANCE PROCEDURES

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

8-15-2 RECORDS REMAIN DISTRICT PROPERTY

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

8-15-3 CUSTODY

Custodians of any District 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 District Manager.