

Ordinance 2018-20

SHORT TITLE:

An ordinance amending Provo City Code to adopt provisions of the Utah Government Records Access and Management Act by reference, comply with the appeals board composition required by the act, and clarify the application of the act to Provo City. (18-072)

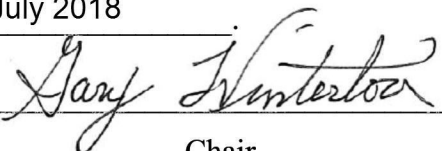
I

PASSAGE BY MUNICIPAL COUNCIL

ROLL CALL

DISTRICT	NAME	FOR	AGAINST	OTHER
CW 1	DAVID SEWELL	✓		
CW 2	GEORGE STEWART	✓		
CD 1	GARY WINTERTON	✓		
CD 2	GEORGE HANDLEY	✓		
CD 3	DAVID KNECHT	✓		
CD 4	KAY VAN BUREN	✓		
CD 5	DAVID HARDING	✓		
TOTALS		7	0	

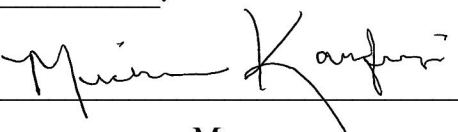
This ordinance was passed by the Municipal Council of Provo City, on the 10th day of July 2018, on a roll call vote as described above. Signed this 18th day of July 2018


Chair

II

APPROVAL BY MAYOR

This ordinance is approved by me this 18th day of July 2018.


Mayor

Ordinance 2018-20

III

CITY RECORDER'S CERTIFICATE AND ATTEST

This ordinance was signed and recorded in the office of the Provo City Recorder on the
18th day of July 2018, with a short summary being published on the 14th day of July
2018, in The Daily Herald, a newspaper circulated in Provo, Utah. I hereby certify and attest that
the foregoing constitutes a true and accurate record of proceedings with respect to Ordinance
Number 2018-20.





City Recorder

1 ORDINANCE 2018-20.

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3 AN ORDINANCE AMENDING PROVO CITY CODE TO ADOPT
4 PROVISIONS OF THE UTAH GOVERNMENT RECORDS ACCESS AND
5 MANAGEMENT ACT BY REFERENCE, COMPLY WITH THE APPEALS
6 BOARD COMPOSITION REQUIRED BY THE ACT, AND CLARIFY THE
7 APPLICATION OF THE ACT TO PROVO CITY. (18-072)

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9
10 WHEREAS, the State of Utah has adopted the Government Records Access and
11 Management Act (the Act), which Act is also known as "GRAMA;" and

12
13 WHEREAS, pursuant to GRAMA, Provo City in 1992 adopted its own government
14 records access and management ordinance and codified the ordinance as Provo City Code
15 Chapter 3.13; and

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17 WHEREAS, GRAMA allows a political subdivision to create an appeals board to hear
18 appeals of the records' decisions of the political subdivision's chief administrative officer; and

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20 WHEREAS, the State of Utah recently amended GRAMA to specify the composition of
21 any political subdivision's appeals board; and

22
23 WHEREAS, to provide continuity and consistency with state law, it is proposed that the
24 provisions of GRAMA now be adopted by reference with such clarifying changes, consistent
25 with Utah Code Section 63G-2-701, as may be desirable to make it clear how the language of the
26 Act applies to Provo City; and

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28 WHEREAS, on June 19, 2018 and July 10, 2018, the Municipal Council met to ascertain
29 the facts regarding this matter and receive public comment, which facts and comments are found
30 in the public record of the Council's consideration; and

31
32 WHEREAS, after considering the facts and comments presented to the Municipal
33 Council, the Council finds: (i) Provo City Code should be amended as described herein; and (ii)
34 such amendments are in the best interests of the residents of Provo City and reasonably further
35 the health, safety, and general welfare of the citizens of Provo City.

36
37 NOW, THEREFORE, be it ordained by the Municipal Council of Provo City, Utah, as
38 follows:

39 PART I:

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41 Chapter 3.13 of the Provo City Code is hereby repealed and reenacted to read as shown in
42 Exhibit A.

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44 PART II:

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46 A. If a provision of this ordinance conflicts with a provision of a previously adopted
47 ordinance, this ordinance shall prevail.

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B. This ordinance and its various sections, clauses and paragraphs are hereby declared to be severable. If any part, sentence, clause or phrase is adjudged to be unconstitutional or invalid, the remainder of the ordinance shall not be affected thereby.

C. The Municipal Council hereby directs that the official copy of the Provo City Code be updated to reflect the provisions enacted by this ordinance.

D. This ordinance shall take effect immediately after it has been posted or published in accordance with Utah Code 10-3-711, presented to the Mayor in accordance with Utah Code 10-3b-204, and recorded in accordance with Utah Code 10-3-713.

END OF ORDINANCE.

61 **EXHIBIT A**

62
63 **Chapter 3.13**
64 **Records Access and Management.**

- 65
66 **3.13.010. Provisions of the Utah Government Access and Management Act Adopted.**
67 **3.13.020. Definitions.**
68 **3.13.030. Identification.**
69 **3.13.040. Fees.**
70 **3.13.050. Private Records.**
71 **3.13.060. Protected Records.**
72 **3.13.070. Discipline for Violation of Chapter.**
73 **3.13.080. Severability.**

74
75 **3.13.010. Provisions of the Utah Government Access and Management Act Adopted.**

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77 The Utah "Government Records Access and Management Act" Chapter 2, Title 63G, Utah Code,
78 as amended, is hereby adopted as a chapter of the Provo City Code; provided, however, that such
79 provisions expressly set forth below herein shall, consistent with the criteria of Utah Code §
80 63G-2-701, supersede and replace the provisions of the Act where there is a conflict between
81 said provision and the Act.

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83 **3.13.020. Definitions.**

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85 Terms referring to the State of Utah, a "state statute" or "state department or agency" shall,
86 unless the context clearly requires otherwise, be construed to refer to Provo City, a Provo City
87 ordinance, or a corresponding Provo City department or agency. Likewise, other terms shall be
88 construed to make the Act's provisions applicable to the City, unless such usage would be
89 inconsistent with the purposes of this Chapter. Unless the context requires otherwise, the
90 following terms shall expressly have the following meanings:

91
92 "Act" means the Utah "Government Records Access and Management Act."

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94 "Appeals Board" or "Record Appeals Boards" shall be composed of members as required by
95 the Act, appointed by the Mayor of Provo City with the advice and consent of the Provo City
96 Municipal Council.

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98 "City" or "Provo City" means the City of Provo, Utah, and its departments, agencies,
99 commissions, and boards.

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101 "Elected official" means each person elected to a Provo City office, municipal office, or
102 special service district office, but does not include judges.

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104 "Governmental Entity" referred to in the Act means Provo City unless otherwise expressly
105 designated herein.

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107 "Legislative body" means the Provo City Municipal Council.
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109 “Records Officer” means the Provo City Recorder. “Department Records Officer” means the
110 individual in each department designated by the Mayor to work with the City Recorder in the
111 care, maintenance, scheduling, designation, classification, disposal, and preservation of records.
112 The Municipal Council may also designate a “Council Records Officer” with respect to records
113 prepared, owned, received, or retained by the Municipal Council who shall be deemed to be the
114 Records Officer with respect to those records.

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116 **3.13.030. Identification.**

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118 A person making a request for a private, controlled or protected record shall provide two (2)
119 forms of identification such as a driver's license, birth certificate, social security card, etc.,
120 verifying the person’s identity, before the City releases the private, controlled, or protected
121 record. The City shall have the right, but not the obligation or duty, to notify the subject of the
122 record’s request, and delay disclosure for not longer than two (2) business days. Initial contact
123 reports concerning ongoing civil or criminal law enforcement investigations may be classified as
124 “protected” under Utah Code 63G-2-305(10), as amended, while the investigation continues if
125 the requirements of that section are met.

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127 **3.13.040. Fees.**

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129 Consistent with the provisions of the Act, the Mayor shall propose and the Municipal Council
130 shall establish and revise as necessary, a schedule of reasonable fees for the cost of duplicating,
131 compiling, researching, or otherwise providing a record.

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133 **3.13.050. Private Records.**

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135 In addition to the records that are classified as "private" by the Act, records of City departments
136 or agencies may be classified as "private" if the disclosure of those records would conflict with
137 the fiduciary obligations of the department or agency.

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139 **3.13.060. Protected Records.**

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141 In addition to the records that are classified as "protected" by the Act, the following records may
142 be classified as protected:

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144 (1) records disclosing an attorney’s work product, including the mental impressions, or legal
145 theories of an attorney or other representative of the City entity concerning litigation;

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147 (2) records of communications between the City and an attorney representing, retained, or
148 employed by the City if the communications would be privileged as provided by Section 78-24-
149 8, Utah Code, as amended;

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151 (3)

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153 (a) records in the custody or control of the City Attorney’s Office, or any separate legal
154 counsel retained by the Municipal Council, that, if disclosed, would reveal a particular
155 legislator's contemplated legislation or contemplated course of action before the legislator
156 has elected to support the legislation or course of action, or made the legislation or course of

157 action public; and

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159 (b) records requesting the drafting of legislation submitted to the City Attorney's Office, or
160 any separate legal counsel retained by the Municipal Council, are public documents unless a
161 council member specifies that the legislation be maintained as protected records until such
162 time as the council member elects to make the legislation or course of action public;

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164 (4) research requests from the administration or Municipal Council to the City Attorney's Office
165 or the Office of the Municipal Council Attorney and research findings prepared in response to
166 these requests;

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168 (5) communications between individuals sitting on a board or commission who are acting in a
169 judicial or quasi-judicial capacity to the extent that the communications relate to the deliberative
170 aspects of an appeal or other adjudication;

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172 (6) records of the Mayor's office, including, but not limited to, budget recommendations,
173 legislative proposals, and policy statements, that if disclosed would reveal the Mayor's
174 contemplated policies or contemplated courses of action before the Mayor has implemented or
175 rejected those policies or courses of action or made them public;

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177 (7) records of the Finance Department relating to budget analysis, revenue estimates, and fiscal
178 notes of proposed legislation before issuance of the final recommendations in these areas; and

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180 (8) the name of a donor or a prospective donor to the City, the Provo Foundation, or other non-
181 profit City-related entity, and other information concerning the donation that could reasonably be
182 expected to reveal the identity of the donor, provided that:

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184 (a) the donor requests anonymity in writing; and

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186 (b) any terms, conditions, restrictions, or privileges relating to the donation may not be
187 classified protected by the governmental entity under this Subsection.

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189 **3.13.170. Discipline for Violation of Chapter.**

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191 A City employee who intentionally fails to keep confidential a private, controlled or protected
192 record and releases the record in violation of the Act and/or this Chapter, or who refuses to
193 release a record, the disclosure of which the employee knows is required by law or by a final un-
194 appealed order from the City, or a court, is subject to disciplinary action, which may include
195 suspension or discharge from employment in addition to any other penalty imposed by law.

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197 **3.13.080. Severability.**

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199 If any word phrase, sentence, part, Section, Subsection, or other portion of this Chapter, or any
200 application thereof to any person or circumstance is declared void, unconstitutional, or invalid
201 for any reason, such word, phrase, sentence, part, Section, Subsection, or other portion, or the
202 proscribed application thereof, shall be severable, and the remaining provisions of this Chapter,
203 and all applications thereof, not having been declared void, unconstitutional, or invalid, shall
204 remain in full force and effect.

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3.13.090. Appeals.

(1) Following the procedures and timelines provided in the Act, a requester or interested party may appeal an access denial to the Mayor, who shall consider, or appoint a designee to consider, the appeal in accordance with the Act.

(2) A Provo City Record Appeals Board shall be appointed that complies with the requirements of the Act.

(3) A requester or interested party may appeal a decision of the Mayor, or Mayor’s designee, under this Chapter to the City Record Appeals Board by filing a notice of appeal consistent with the Act within thirty (30) days after the earlier of:

- (a) the date the City sends notice of the Mayor’s, or Mayor’s designee’s, decision, or
- (b) the date on which an appeal to the Mayor, or Mayor’s designee, is deemed denied under the Act.

(4) The City Records Appeals Board’s review shall be in camera, and de novo. Members of the City Records Appeals Board may not disclose any information or record reviewed by the Board in camera unless the disclosure is otherwise authorized by this Chapter.

(5) The City Records Appeals Board shall make a determination in camera on the appeal within fifteen (15) business days of receipt of the notice. If the City Records Appeals Board fails to make a determination within this time, that failure shall be considered the equivalent of an order denying the appeal.

(6) If the City Records Appeals Board affirms the denial in whole or in part, it shall send to the appellant a written statement that the appellant may appeal the decision to the state records committee or the district court.